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4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, July 19, 2005
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 648

[Docket No. 050517132–5132–01; I.D. 051105D]

RIN 0648–AT36

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Haddock Incidental Catch Allowance for the 2005 Atlantic Herring Fishery

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

ACTION: Temporary rule; emergency action; request for comments.

SUMMARY: NMFS is promulgating emergency regulations to establish an incidental haddock catch allowance for the 2005 Atlantic herring fishery. Emergency action was requested by the New England Fishery Management Council (Council) at its meeting on March 30, 2005, to address haddock bycatch in the herring fishery. In developing these measures, NMFS considered recommendations made by the Council's Ad-hoc Bycatch Committee and the Council. The intent of these provisions is to allow the herring fleet to continue its normal fishing operations for the 2005 fishing year, despite the presence of two large year classes of haddock, without providing an incentive for the industry to target haddock, and without causing harm to the GB haddock resource. The proposed measures would reflect the intention of maintaining a haddock possession tolerance as close to zero as practicable, while allowing the herring industry to operate.

DATES: Effective from June 13, 2005, through December 10, 2005. Comments must be received by July 13, 2005.

ADDRESSES: Comments may be submitted by any of the following methods:

- E-mail: *HerringEmergencyRule@NOAA.gov*. Include in the subject line the following: ''Comments on the Emergency Rule for Incidental Haddock Catch Allowance in the 2005 Herring Fishery.''
- Federal e-Rulemaking Portal: *http://www.regulations.gov*.
- Mail: Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on the Emergency Rule for Incidental Haddock Catch Allowance in the 2005 Herring Fishery.''
- Fax: (978) 281–9135.

Copies of the emergency rule and its Regulatory Impact Review (RIR) are available from Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be submitted to the Regional Administrator at One Blackburn Drive, Gloucester, MA 01930, and by e-mail to *David__Rostker@omb.eop.gov*, or fax to (202) 395–7285. Comments may also be submitted electronically through the Federal e-Rulemaking portal address provided above.

FOR FURTHER INFORMATION CONTACT: Brian Hooker, Fishery Policy Analyst, phone: (978) 281–9220, fax; (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

Regulations established under the Fishery Management Plan for the NE Multispecies Fishery (NE Multispecies FMP) prohibit vessels fishing for Atlantic herring (herring) from possessing or landing any groundfish species, including haddock. In July 2004, NMFS's Office of Law Enforcement (OLE) observed prohibited juvenile haddock in catches being landed by midwater trawl vessels fishing for herring on Georges Bank (GB). Representatives of the herring industry requested a series of meetings with staff from NMFS to report that they were encountering haddock unusually high in the water column, and were unable to avoid catching it, even with midwater trawl gear. Many midwater trawl vessels ceased fishing for herring on GB due to concern about haddock bycatch.

The Council established an Ad-hoc Bycatch Committee late in 2004 to develop specific recommendations to mitigate the potential for bycatch of haddock in several of the region's fisheries, including the herring fishery. Due to the presence of the extremely large 2003 year class of haddock and reports of another large year class in 2004, herring industry members expressed concern that they would continue to catch haddock during 2005. The Bycatch Committee met several times to consider the issue, and recommended to the Council on March 30, 2005, that herring vessels should be allowed to catch haddock until the catch reaches a specified haddock incidental total allowable catch (TAC) level. The Committee further recommended that, if the incidental TAC were fully harvested, the directed herring fishery should be closed. However, the Bycatch Committee did not recommend measures that would allow the incidental haddock catch to be effectively monitored. Because there is not time for the Council to develop and complete a Council action to implement the Committee's recommendation, the Council requested emergency action to authorize herring vessels to possess up to 1,000 lb (454 kg) of haddock incidentally caught when fishing for herring. The Council's emergency request recommended that this measure apply only to vessels issued permits that authorize the catch of more than 500 mt of herring in 2005 (Category 1 herring vessels). Without this emergency action, the Council fears that, when herring move onto GB in June 2005, vessel operators will decline to fish there for herring due to their concerns about violating the existing prohibition on possession of groundfish. Category 1 vessels accounted for 99.3 percent of the herring landings in 2004. Due to concerns regarding the immediacy of this problem, the Council requested that

NMFS enact measures through an emergency rule, to be effective through December 31, 2005. The Council's formal request for emergency action was made at the March 30, 2005, Council meeting and was followed by a written request received by NMFS on April 6, 2005. This interim measure is intended to provide an incidental catch allowance that will allow the herring fishery to operate on GB this year while the Council develops a long-term solution.

The following provisions will be implemented through this emergency rule: (1) Suspension of the prohibition on the possession of haddock by Category 1 herring vessels using purse seines or midwater trawls (including pair trawls), (2) establishment of a 1,000–lb (454–kg) haddock incidental possession allowance for Category 1 herring vessels, (3) suspension of the haddock minimum fish size for Category 1 herring vessels, (4) prohibition on the purchase and sale of haddock landed by Category 1 herring vessels for human consumption, (5) establishment of a provision to require herring processors to cull landings made by Category 1 herring vessels and to retain haddock for inspection by enforcement officials, (6) establishment of a requirement for all Category 1 herring vessels to provide advance notification of landing via the Vessel Monitoring System (VMS), whether or not such a vessel is carrying an at-sea observer, and (7) establishment of a cap of 270,000 lb (122,470 kg) on the total amount of observed and reported haddock that could be landed under the haddock incidental possession allowance.

NMFS reviewed the Council's recommendation and concluded that emergency action is warranted because the current absolute prohibition on the possession of haddock by vessels targeting herring appears to be unrealistic, given the current abundance of haddock on GB. Unless action is taken on an emergency basis to give some relief from the existing provisions, it appears likely that participants in the herring fishery may decline to fish on GB due to concern about enforcement actions that could result from possession of even small amounts of haddock catch under existing regulations. Such an interruption in the herring fishery would have negative impacts on the fishery participants, and would likely interrupt the supply of herring used as bait for the American lobster fishery in the Gulf of Maine.

NMFS has determined that this action meets the criteria for emergency action for the purposes of section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and is consistent with NMFS policy guidelines for the use of emergency rules as published on August 21, 1997 (62 FR 44421). This emergency rule results from a recent, unforeseen event. The bycatch of small haddock from the very large 2003 year class was first reported in the summer of 2004. The Council quickly established the Bycatch Committee to look into the matter and to make recommendations to the Council. This timeframe did not allow sufficient time to address this unforeseen event through the normal rulemaking process. The situation presents a serious management problem in the herring fishery in that participants are currently prohibited from possessing any haddock. This absolute prohibition is not appropriate for the current conditions in the fishery, given the very large haddock year class on GB, the size of which has not been seen since 1962. This situation can be addressed through emergency regulations for which the immediate benefits of allowing the herring fishery to occur unfettered and the immediate concerns of catching small amounts of haddock outweigh the value of advance notice and public comment. Moreover, this issue has been discussed at several Committee meetings, two Council meetings, and a groundfish advisory panel meeting. NMFS is confident that any adverse impacts of this emergency rule are being minimized to the maximum extent practicable. The public will have an opportunity to comment on a long-term solution to this situation through the notice-and-comment rulemaking process for Amendment 1 to the Atlantic Herring FMP. This emergency rule is further justified because it will prevent significant direct economic loss resulting from herring harvest that would otherwise likely be foregone. An evaluation conducted by the Northeast Fisheries Science Center (NEFSC) estimated that foregone revenue from Category 1 herring vessels not fishing in Herring Fishery Management Area 3 (Area 3) would be $3,131,882. This assumes that the herring fleet would not fish in Area 3 for fear of being in violation of the prohibition on the possession of haddock on every trip. The estimate of foregone future haddock revenue as a result of this emergency action is $625,000. Thus, the negative economic consequences would be much greater (5 to 1) if no action were taken to address the haddock bycatch issue for the 2005 fishing year.

NMFS concludes that there is little risk to GB haddock associated with this action. The measures being implemented will allow the herring fleet to continue its normal fishing operations, despite the presence of two large year classes of haddock. The measures provide no incentive for the industry to target haddock and any haddock landed cannot be sold for human consumption. Further, haddock culled by processors cannot be sold for any purpose. The measures maintain a haddock possession tolerance as close to zero as practicable, without causing harm to the haddock resource or slowing the haddock rebuilding schedule. While the haddock from these two large years classes have not been recruited to the fishery (i.e., they are too small to be included in the calculation of the target TAC for haddock established under the NE Multispecies FMP), NMFS notes that, on May 6, 2005 (70 FR 23939), the agency published the suspension of the haddock daily and maximum trip limits for vessels fishing under a limited access NE multispecies days-at-sea permit. This suspension of the haddock restrictions was deemed necessary to provide the opportunity to harvest at least 75 percent of the TAC for haddock for the fishing year, which extends through April 30, 2006. Even so, given current projections of landings, the NE multispecies fishery may not fully harvest the GB haddock TAC for the current fishing year, supporting NMFS's conclusion that these measures pose very little risk to the haddock resource.

This emergency action includes a cap on the total amount of observed and reported haddock that could be landed as a result of this action. The bycatch cap will place a backstop on the total amount of haddock permitted to be landed in order to mitigate any unexpected haddock harvest levels. Thus, the herring fishery will not be allowed an unlimited harvest of haddock. This bycatch cap differs from the TAC recommended by the Council's Bycatch Committee because it is based on actual landings reported or observed, rather than on an extrapolation of landings from incomplete data. NMFS will use landings reported by vessels and dealers/processors, as well as any other landings reported through observer reports or enforcement actions to determine if observed and reported landings reach the bycatch cap level. If the bycatch cap is reached, the directed herring fishery in the GB haddock stock area will be closed, and the emergency measures that authorize Category 1 vessels to possess haddock will be

terminated. If the fishery is closed due to attainment of the bycatch cap, the measures established by this action to require herring processors and dealers to retain haddock landed by Category 1 herring vessels would remain in effect, as would the requirement for Category 1 herring vessels to provide advance notification of landing, to ensure that the closure is enforceable.

Management Measures

Suspension of Prohibition on Possession of Haddock

Current regulations prohibit vessels fishing in the Gulf of Maine (GOM) and GB Exemption Areas using midwater trawl and purse seine gear from possessing or landing NE multispecies, including haddock. This action suspends that provision for Category 1 herring vessels for haddock only. Vessels using these gears will continue to be prohibited from possessing any of the other multispecies.

Haddock Incidental Catch Allowance

This action establishes an incidental catch allowance for Category 1 herring vessels of 1,000 lb (454 kg) of haddock. In order to facilitate the enforcement of this provision, a dockside sampling protocol is being developed, with the advice of the NEFSC, to allow enforcement officers to sample herring catches to determine compliance with the possession limit. Subsampling is necessary because of the large volume of herring that such trips land. At the March 30, 2005, Council meeting, some industry representatives indicated that the 1,000–lb (454–kg) allowance would be sufficient to allow the herring fishery to be prosecuted. This is further supported by the enforcement actions resulting from haddock possession by herring vessels in the summer of 2004. Of 14 such enforcement actions, only 4 revealed haddock bycatch greater than the 1,000–lb (454–kg) possession limit implemented by this emergency action. This action is intended to maintain a haddock possession tolerance as close to zero as practicable, while still allowing the herring fishery to operate on GB in 2005.

Suspension of Haddock Minimum Size

This action suspends the minimum haddock size requirement for Category 1 herring vessels. Many of the haddock in the 2003 and 2004 year classes are expected to be smaller than the current minimum size of 19 inches (48.3 cm). The suspension of the minimum size limit is necessary because, in a high-volume fishery such as the herring fishery, it is difficult, if not impossible, to cull fish of the same size and similar shape. Herring are often pumped directly from the nets into the holds, with no intermediary step to sort the catch. Thus it is impracticable to sort out haddock that are smaller than the current minimum fish size.

Prohibition on the Sale of Haddock for Human Consumption

To eliminate any incentive for herring vessels to target haddock, this action prohibits the sale of haddock caught by Category 1 herring vessels for human consumption. It is not feasible to establish a similar prohibition on the sale of haddock for use as bait because herring catches landed for use as bait cannot always be sorted; they are often offloaded by pumping the fish from the vessel hold into tanker trucks. As a result, some haddock could remain mixed in with the herring catch. NMFS determined that it would be inequitable to make downstream purchasers of such bait legally liable for the presence of haddock. Such offloads will be sampled to determine compliance with the haddock possession limit.

Requirement for Herring Dealers/ Processors to Retain Haddock Landed by Category 1 Herring Vessels

This action requires herring dealers and processors, such as canneries, freezer plants, and at-sea processors, that handle and/or sort fish individually, to separate out and retain all haddock from the catch offloaded from a Category 1 herring vessel in order to facilitate monitoring and enforcement of haddock bycatch limits. The haddock must be set aside and retained for 12 hours to facilitate inspection by enforcement officials, and the vessel that landed the haddock must be clearly identified. Sale of these culled haddock, for any purpose, is prohibited. All herring dealers and processors must continue to comply with the current reporting requirements that require federally permitted dealers and processors to report all fish purchased or received with a vessel trip identifier via the weekly electronic dealer reporting system as specified under § 648.7(a).

VMS Notification Prior to Landing

This action expands upon a provision enacted in the final rule (70 FR 31323, June 1, 2005) for Framework Adjustment 40B to the NE Multispecies FMP (Framework 40B). Framework 40B requires all Category 1 herring vessels, except those that are carrying a NMFS approved observer, to notify OLE via VMS of the port in which they will land their catch. Through this action notification must be given by all Category 1 herring vessels at least 12 hours prior to crossing the VMS demarcation line on the return trip to port, or, for vessels that have not fished seaward of the VMS demarcation line, at least 12 hours prior to landing. If a fishing trip is less than 12 hours in length, Category 1 herring vessels must notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 6 hours prior to crossing the VMS demarcation line on its return trip to port, or, for vessels that have not fished seaward of the VMS demarcation line, at least 6 hours prior to landing. The Regional Administrator may adjust the prior notification minimum time through publication of a notice in the **Federal Register** consistent with the Administrative Procedure Act. This emergency action expands the notification requirement to all Category 1 herring vessels and adjusts the minimum notification time to accommodate trips lasting less than 12 hours. This provision will facilitate the enforcement and monitoring of the 1,000–lb (454–kg) haddock possession limit and the 270,000–lb (122,470–kg) bycatch cap by giving enforcement agents sufficient notice of landing to enable them to meet a fishing vessel at the dock to sample the catch.

Haddock Bycatch Cap

This action establishes a bycatch cap for Category 1 herring vessels of 270,000 lb (122,470 kg) of haddock. This amount equals 1 percent of the proposed 2005 target TAC for GB haddock (70 FR 19724, April 14, 2005). The bycatch cap will place a backstop on the total amount of haddock permitted to be landed in order to mitigate any unexpected haddock harvest levels and prevent the herring fishery from catching an unlimited amount of haddock. NMFS will use all available data to tabulate haddock landings made by Category 1 herring vessels, including at-sea observer reports, Federal dealer/ processor reports, and haddock landings reported by law enforcement agents. If the available data indicate the bycatch cap has been harvested, the GB haddock stock area will be closed to herring fishing by Category 1 herring vessels, and the emergency measures that authorize Category 1 vessels to possess haddock will be terminated. The measures established by this action to require herring processors and dealers to retain haddock landed by Category 1 herring vessels would remain in effect, as would the requirement for Category 1 herring vessels to provide advance notification of landing, to ensure that the closure is enforceable.

Under NOAA Administrative Order 205–11, 07/01, dated December 17, 1990, the under Secretary for Oceans and Atmosphere has delegated authority to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA.

Classification

This emergency rule has been determined to be not significant for purposes of Executive Order 12866.

This emergency rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

The Assistant Administrator Fisheries, NOAA (AA) finds good cause under U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment on this action. These measures are intended to allow the herring fishery to conduct normal operations on GB when herring return to the area in June 2005. Absent this action, participants in the herring fishery are likely to avoid fishing in the area, with resultant negative impacts to participants in the herring fishery and to entities that purchase herring, such as harvesters of American lobster who use herring as bait. An evaluation conducted by the Northeast Fisheries Science Center (NEFSC) estimated that foregone revenue from Category 1 herring vessels not fishing in Area 3 would be $3,131,882. This assumes that the herring fleet would not fish in Area 3 for fear of being in violation of the prohibition on the possession of haddock on every trip. The estimate of foregone future haddock revenue as a result of this emergency action is $625,000. Thus, the negative economic consequences would be much greater (5 to 1) if no action were taken to address the haddock bycatch issue for the 2005 fishing year. The implementation of these measures would be ineffective if they are not in place when the fish return to the area in June 2005.

Because of the late date that this need for emergency action was fully understood and developed, there is insufficient time to allow for prior public comment before the GB herring fishing season begins. This emergency rule results from a recent, unforeseen event. The bycatch of small haddock from the very large 2003 year class was first reported in the summer of 2004. The Council quickly established the Bycatch Committee in late 2004 to look into the matter and to make recommendations to the Council. The Bycatch Committee met several times to consider the issue, and recommended to the Council on March 30, 2005, that herring vessels should be allowed to catch haddock until the catch reaches a specified haddock incidental total allowable catch (TAC) level. The Council's formal request for emergency action was made at the March 30, 2005, Council meeting and was followed by a written request received by NMFS on April 6, 2005. This timeframe did not allow sufficient time to address this unforeseen event through the normal rulemaking process. Therefore, the AA finds that it would be impracticable and contrary to the public interest to delay the implementation of these measures by providing additional opportunities for public comment.

The AA also finds that this action relieves an existing restriction on participants in the herring fishery by increasing the haddock possession limit for Category 1 herring vessels from 0 lb/kg to 1,000 lb (454 kg), and suspending the minimum size requirement for haddock possessed by Category 1 herring vessels consistent with that possession limit. Because this rule relieves a restriction imposed on herring vessels, it is not subject to the 30–day delayed effectiveness provision of the APA pursuant to 5 U.S.C. 553(d)(1). The AA also finds good cause to waive the 30–day delay in effectiveness for the requirement to provide notification of landing via the VMS unit for Category 1 herring vessels carrying an Observer; the prohibition on the sale of haddock for human consumption; the requirement for herring dealers/processors to retain haddock landed by category 1 herring vessels; and the haddock bycatch cap. Because the need for this emergency action was not fully understood and addressed until a few months prior to this action, there is insufficient time to allow for prior public comment before the GB herring fishing season begins. The Council became aware of the haddock bycatch issue in the summer of 2004. At that time, a Bycatch Committee was formed to look into the matter and to make recommendations to the Council. The Bycatch Committee met several times to consider the issue, and recommended to the Council on March 30, 2005, that herring vessels should be allowed to catch haddock until the catch reaches a specified haddock incidental total allowable catch (TAC) level. The Council's formal request for emergency action was made at the March 30, 2005, Council meeting and was followed by a written request received by NMFS on April 6, 2005. Due to the short timeframe between the time when the haddock bycatch issue was first brought to the Council's attention and the start of the 2005 fishing season there was not sufficient time to address this unforeseen event through the normal rulemaking process. Delaying the effectiveness of the requirement for prior notification of landing via the VMS unit for Category 1 herring vessels carrying an observer would not give enforcement officers an adequate opportunity to meet the vessel at the dock to inspect the herring catch for the presence of haddock. If the implementation of the bycatch cap is delayed the result could be that the herring fishery could continue in the Georges Bank stock area longer than intended, undermining one of the intents of this rule, which is to keep the bycatch of haddock as minimal as practicable.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirement

This emergency rule establishes a new collection-of-information requirement subject to the Paperwork Reduction Act (PRA). Category 1 herring vessels will be required to notify OLE via VMS of the port in which they will land their catch. Notice is required prior to landing. The public's reporting burden for the collection-of-information requirements includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information requirements. This requirements has been approved by OMB as follows: Haddock Bycatch Notification of Landing, Office of Management and Budget (OMB) control number 0648–0525, (5 min/response).

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 7, 2005.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons stated in the preamble, 15 CFR, Chapter IX, Part 902 is amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, the table in paragraph (b) under ''50 CFR'' is amended by adding in numerical order an entry for § 648.81(d) to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the paperwork Reduction Act

* * * * *

CFR part or section where the information collection requirement is located	Current OMB control number the information (All numbers begin with 0648–)
* * * *	*
50 CFR	
* * * *	*
648.81(d)	–0525
* * * *	*

50 CFR Chapter VI

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, a definition for ''Category 1 herring vessel'' is added, to read as follows:

§ 648.2 Definitions.

* * * * *

Category 1 herring vessel means a vessel issued a permit to fish for Atlantic herring that is required to have an operable VMS unit installed on board pursuant to § 648.205(b).

* * * * *

■ 3. In § 648.14, paragraph (bb)(20) is suspended and paragraphs (a)(166), (a)(167), (a)(168), (bb)(21), and (bb)(22) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(166) Sell, purchase, receive, trade, barter, or transfer haddock, or attempt to sell, purchase, receive, trade, barter, or transfer haddock for, or intended for, human consumption landed by a Category 1 herring vessel as defined in § 648.2.

(167) Fail to comply with requirements for herring processors/dealers that handle individual fish to separate out and retain all haddock offloaded from a Category 1 herring vessel, and to retain such catch for at least 12 hours with the vessel that landed the haddock clearly identified by name.

(168) Sell, purchase, receive, trade, barter, or transfer, or attempt to sell, purchase, receive, trade, barter, or transfer to another person any haddock separated out from a herring catch offloaded from a Category 1 herring vessel.

* * * * *

(bb) * * *

(21) If the vessel is a Category 1 herring vessel and is fishing for herring in the GOM and GB Exemption Area as specified in § 648.80(a)(17), fail to notify the NMFS Office of Law Enforcement of the time and date of landing via VMS 12 hours prior to crossing the VMS demarcation line on its return trip to port, or, for vessels that have not fished seaward of the VMS demarcation line, at least 12 hours prior to landing. Or, if a fishing trip is less than 12 hours in length, fail to notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 6 hours prior to crossing the VMS demarcation line on its return trip to port, or, for vessels that have not fished seaward of the VMS demarcation line, at least 6 hours prior to landing.

(22) Possess, transfer, receive, sell, purchase, trade, or barter, or attempt to transfer, receive, purcahse, trade, or barter, or sell more than 2,000 lb (907.2 kg) of Atlantic herring per trip from the GB haddock stock area defined in § 648.86(b)(6)(v)(B) following the effective date of any closure enacted pursuant to § 648.86(a)(3).

* * * * *

■ 4. In § 648.15, paragraph (d) is added to read as follows:

§ 648.15 Facilitation of enforcement.

* * * * *

(d) *Retention of haddock by herring dealers and processors.* (1) Federally permitted herring dealers and processors, including at-sea processors, that receive herring from Category 1 herring vessels, and that cull or separate out from the herring catch all fish other than herring in the course of normal operations, must separate out and retain all haddock offloaded from a Category 1 herring vessel. Such haddock may not be sold, purchased, received, traded, bartered, or transferred, and must be retained for at least 12 hours with the vessel that landed the haddock clearly identified, and law enforcement officials must be given access to inspect the haddock.

(2) All haddock separated out and retained is subject to reporting requirements specified at § 648.7.

■ 5. In § 648.80, paragraphs (d)(4), (d)(7), (e)(4), and (e)(6) are suspended and paragraphs (d)(8), (d)(9), (e)(7), and (e)(8) are added to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(d) * * *

(8) The vessel does not fish for, possess or land NE multispecies, except that Category 1 herring vessels may possess and land haddock consistent with the incidental catch allowance and bycatch cap specified in § 648.86(a)(3). Such haddock may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for, or intended for, human consumption. Haddock that is separated out from the herring catch pursuant to 648.15(d) may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for any purpose.

(9) All Category 1 herring vessels must notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 12 hours prior to crossing the VMS demarcation line on their return trip to port, or, for vessels that have not fished seaward of the VMS demarcation line, at least 12 hours prior to landing. If a fishing trip is less than 12 hours in length, Category 1 herring vessels must notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 6 hours prior to crossing the VMS demarcation line on their return trip to port, or, for vessels that have not fished seaward of the VMS demarcation line, at least 6 hours prior to landing. The Regional Administrator may adjust the prior notification minimum time through publication of a notice in the **Federal Register** consistent with the Administrative Procedure Act.

(e) * * *

(7) The vessel does not fish for, possess or land NE multispecies, except that Category 1 herring vessels may possess and land haddock consistent with the incidental catch allowance and bycatch cap specified in § 648.86(a)(3).

(8) All Category 1 herring vessels must notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 12 hours prior to crossing the VMS demarcation line on their return trip to port, or, for vessels that have not fished seaward of the VMS demarcation line, at least 12 hours prior to landing. If a fishing trip is less than 12 hours in length, Category 1 herring vessels must notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 6 hours prior to crossing the VMS demarcation line on their return trip to port, or, for vessels that have not fished seaward of the VMS demarcation line, at least 6 hours prior to landing. The Regional Administrator may adjust the prior notification minimum time through publication of a notice in the **Federal Register** consistent with the Administrative Procedure Act.

* * * * *

■ 6. In § 648.83, paragraph (b)(4) is added to read as follows:

§ 648.83 Multispecies minimum fish sizes.

* * * * *

(b) * * *

(4) Category 1 herring vessels may possess and land haddock that measure less than the minimum fish size, consistent with the haddock incidental catch allowance and bycatch cap specified in § 648.86(a)(3).

* * * * *

■ 7. In § 648.86, paragraph (a)(3) is added to read as follows:

§ 648.86 Multispecies possession restrictions.

* * * * *

(a) * * *

(3)(i) Incidental catch allowance for herring Category 1 vessels. Category 1 herring vessels defined in § 648.2 may possess and land up to 1,000 lb (454 kg) of haddock per trip, subject to the requirements specified in § 648.80(d) and (e).

(ii) *Bycatch cap.* (A) When the Regional Administrator has determined that 270,000 lb (122,470 kg) of observed and reported haddock have been landed, NMFS shall prohibit Category 1 herring vessels from entering or fishing in the GB haddock stock area defined by the coordinates specified in paragraph (b)(6)(v)(B) of this section for GB cod through a notice in the **Federal Register** consistent with rulemaking requirements of the Administrative Procedure Act. In making this determination, the Regional Administrator shall use only haddock landings observed by NMFS approved observers and law enforcement officials, and reports of haddock bycatch submitted by vessels and dealers pursuant to the reporting requirements of this part.

(B) Upon the effective date of prohibiting Category 1 herring vessels from entering or fishing in the GB haddock stock area as described in paragraph (a)(3)(ii)(A) of this section, the haddock possession limit is reduced to 0 lb (0 kg) for all Category 1 herring vessels.

* * * * *

[FR Doc. 05–11593 Filed 6–7–05; 4:49 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 501 and 538

Reporting, Procedures and Penalties Regulations and Sudanese Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control (''OFAC'') of the U.S. Department of the Treasury is revising the Reporting, Procedures and Penalties Regulations (the ''RPPR'') to make a technical change in order to remove a reference to the Government of Sudan that was used prior to the promulgation of Executive Order 13067 and the Sudanese Sanctions Regulations.

OFAC is also amending the Sudanese Sanctions Regulations, (the ''SSR''). The amendments to the SSR include the issuance of two general licenses, effective June 13, 2005. One general license authorizes the operation of accounts in U.S. financial institutions under certain circumstances for individuals ordinarily resident in Sudan. The other general license authorizes U.S. depository institutions, U.S. registered brokers and dealers in securities, and U.S. registered money transmitters to process transfers of funds constituting noncommercial, personal remittances to or from Sudan or for or on behalf of individuals ordinarily resident in Sudan. Other amendments to the SSR include the removal of two regulatory provisions and the revision of a provision regarding reexportation of U.S.-origin goods, technology or software by non-U.S. persons, and another revision of to reflect changes in OFAC's procedure for imposing civil penalties.

DATES: *Effective Date:* June 13, 2005.

FOR FURTHER INFORMATION CONTACT: Chief of Compliance Programs, tel.: 202/622–2490, Chief of Civil Penalties, tel.: 202/622–6140, Chief of Licensing, tel.: 202/622–2480, Chief of Policy Planning and Program Management, tel.: 202/622–4855, or Chief Counsel, tel.: 202/622–2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This file is available for download without charge in ASCII and Adobe Acrobat readable (*.PDF) formats at GPO Access. GPO Access supports HTTP, FTP, and Telnet at *fedbbs.access.gpo.gov.* It may also be accessed by modem dialup at 202/512–1387 followed by typing ''/GO/FAC.'' Paper copies of this document can be obtained by calling the Government Printing Office at 202–512–1530. Additional information concerning the programs of the Office of Foreign Assets Control is available for download from the Office's Internet Home Page at: *http://www.treas.gov/ofac* or via FTP at *ofacftp.treas.gov.* Facsimiles of information are available through the Office's 24-hour fax-on-demand service: call 202/622–0077 using a fax machine, a fax modem, or (within the United States) a touch-tone telephone.

Background

On November 3, 1997, President Clinton, invoking the authority, inter alia, of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), issued Executive Order 13067 (62 FR 59989, November 5, 1997). The order declared a national emergency with respect to the policies and actions of the Government of Sudan, ''including continued support for international terrorism; ongoing efforts to destabilize neighboring governments; and the prevalence of human rights violations, including slavery and the denial of religious freedom.'' To deal with this national emergency, Executive Order 13067 imposed trade sanctions with respect to Sudan and blocked all property and interests in property of the Government of Sudan in the United States or within the possession or control of U.S. persons. The Sudanese Sanctions Regulations, 31 CFR part 538 (the ''SSR''), implement Executive Order 13067.

The Reporting, Procedures and Penalties Regulations, 31 CFR part 501 (the ''RPPR''), set forth uniform reporting and procedural requirements applicable to all OFAC sanctions programs. OFAC is amending the RPPR to make a technical change to § 501.604 by removing a reference to the Government of Sudan from that section. Section 501.604(b) uses the Government of Sudan in an example of transactions involving funds transfers that are rejected, but not blocked. This example, however, was published before the issuance of Executive Order 13067 and OFAC's promulgation of the SSR. Executive Order 13067 and the SSR require U.S. financial institutions to block unlicensed funds transfers involving the Government of Sudan.

OFAC is also amending provisions of the SSR dealing with the transfer of funds to Sudan. First, the SSR are being amended by the removal of § 538.413, an interpretive provision stating that the transfer of funds to Sudan from the United States does not constitute an exportation of services pursuant to § 538.205. As a result of the removal of § 538.413, money transmittal services to Sudan are prohibited except as otherwise authorized.

Second, to authorize a means by which noncommercial, personal transmittals of money to Sudan may take place in a manner consistent with Executive Order 13067, OFAC is amending the SSR by issuing a general license, effective June 13, 2005. This general license, new § 538.528, authorizes U.S. depository institutions, U.S. registered brokers and dealers in securities, and U.S. registered money transmitters to process transfers of funds constituting noncommercial, personal remittances under certain circumstances to or from Sudan or for or on behalf of individuals ordinarily resident in Sudan. The general license does not authorize transfers if the underlying transaction is otherwise prohibited by subpart B of the SSR. Definitions of ''U.S. depository institution,'' ''U.S. registered broker or dealer in securities,'' and ''U.S. registered money transmitter'' are added to subpart C of the SSR to clarify the scope of the general license.

Third, § 538.412, an interpretive provision stating that the operation of accounts in financial institutions for private Sudanese persons does not constitute the exportation of a service to Sudan, is removed from subpart D of the SSR. The content of this section appears in revised form in subpart E as a new general license, § 538.527, effective June 13, 2005. Section 538.527 authorizes the operation of accounts in U.S. financial institutions for individuals ordinarily resident in Sudan, provided that transactions through the accounts are of a personal nature. The section does not authorize account transactions for use in supporting or operating a business; nor does it authorize transfers of funds to Sudan or to or for the benefit of individuals ordinarily resident in Sudan unless authorized by § 538.528. The section also does not authorize transactions that are otherwise prohibited by subpart B of the SSR.

In addition to the changes described above, § 538.507 of the SSR is also revised to clarify the circumstances under which the reexportation of goods, technology or software of U.S. origin to Sudan or the Government of Sudan by a non-U.S. person is authorized.

Finally, §§ 538.701–.704 of the SSR are amended to reflect changes in OFAC's procedure for imposing or settling civil penalties. Sections 538.701–.704 set forth the procedure by which civil penalties will be issued or settled, as well as guidelines for responding to a prepenalty notice. The amendments do not affect the maximum penalty amounts that the SSR authorize.

Public Participation

Because the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) (the ''APA'') requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply. However, OFAC encourages interested persons who wish to comment to do so in writing by any of the following methods:

- Agency Web site: *http://www.treas.gov/offices/enforcement/ofac/comment.html.*
- Fax: Chief of Records, 202/622–1657.
- Mail: Chief of Records, Attn: Request for Comments, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

OFAC will not accept public comments in languages other than English or accompanied by a request that a part or all of the submission be treated confidentially because of its business proprietary nature or for any other reason. OFAC will return any such submission to the originator. All public comments on these Regulations will be a matter of public record. Copies of the public record concerning these Regulations will be made available not sooner than September 12, 2005 and will be obtainable from OFAC's Web site (*http://www.treas.gov/ofac*). If that service is unavailable, written requests for copies may be sent to: Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220, Attn: Chief, Records Division.

Paperwork Reduction Act

The collections of information related to 31 CFR part 501 and 31 CFR part 538 are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects

31 CFR Part 501

Administrative practice and procedure, Banks, Banking, Blocking of assets, Information, Investments, Loans, Penalties, Reporting and recordkeeping requirements, Services, Specially designated nationals, Sudan, Terrorism.

31 CFR Part 538

Administrative practice and procedure, Agricultural commodities, Banks, Banking, Blocking of assets, Drugs, Exports, Foods, Foreign trade, Humanitarian aid, Imports, Information, Investments, Loans, Medical devices, Medicine, Penalties, Reporting and recordkeeping requirements, Services, Specially designated nationals, Sudan, Terrorism, Transportation.

■ For the reasons set forth in the Preamble, 31 CFR parts 501 and 538 are amended as follows:

PART 501—REPORTING, PROCEDURES AND PENALTIES REGULATIONS

■ 1. The authority citation for part 501 continues to read as follows:

Authority: 21 U.S.C. 1901–1908; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1701–1706; 50 U.S.C. App. 1–44.

■ 2. Section 501.604 is amended by revising paragraph (b) (3) to read as follows:

§ 501.604 Reports by U.S. financial institutions on rejected funds transfers.

* * * * *

(b) * * *

(3) Transferring unlicensed gifts or charitable donations from the Government of Syria to a U.S. person;

PART 538—SUDANESE SANCTIONS REGULATIONS

■ 3. The authority citation for part 538 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 18 U.S.C. 2339B, 2332d; 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 106–387, 114 Stat. 1549; E.O. 13067, 62 FR 59989, 3 CFR, 1997 Comp., p. 230.

Subpart C—General Definitions

■ 4. Section 538.317 is added to subpart C as follows:

§ 538.317 U.S. depository institution.

The term *U.S. depository institution* means any entity (including its foreign branches) organized under the laws of the United States or of any jurisdiction within the United States, or any agency, office or branch located in the United States of a foreign entity, that is engaged primarily in the business of banking (for example, banks, savings banks, savings associations, credit unions, trust companies and United States bank holding companies) and is subject to regulation by federal or state banking authorities.

■ 5. Section 538.318 is added to subpart C as follows:

§ 538.318 U.S. registered broker or dealer in securities.

The term *U.S. registered broker or dealer in securities* means any U.S. citizen, permanent resident alien, or entity organized under the laws of the United States or of any jurisdiction within the United States, including its foreign branches, or any agency, office or branch of a foreign entity located in the United States, that:

(a) Is a ''broker'' or ''dealer'' in securities within the meanings set forth in the Securities Exchange Act of 1934;

(b) Holds or clears customer accounts; and

(c) Is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

■ 3. Section 538.319 is added to subpart C as follows:

§ 538.319 U.S. registered money transmitter.

The term *U.S. registered money transmitter* means any U.S. citizen, permanent resident alien, or entity organized under the laws of the United States or of any jurisdiction within the United States, including its foreign branches, or any agency, office or branch of a foreign entity located in the United States, that is a money transmitter, as defined in 31 CFR 103.11(uu)(5), that is registered pursuant to 31 CFR 103.41.

Subpart D—Interpretations

§ 538.412 [Removed]

■ 7. Section 538.412 is removed from subpart D.

§ 538.413 [Removed]

■ 8. Section 538.413 is removed from subpart D.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 9. Section 538.507 is revised to read as follows:

§ 538.507 Reexports by non-U.S. persons.

(a) *Goods and technology subject to export license application requirements under other United States regulations.* The reexportation to Sudan or the Government of Sudan by a non-U.S. person of any goods or technology exported from the United States, the exportation of which to Sudan is subject to export or reexport license application requirements, is authorized under this section provided that the goods or technology:

(1) Have been incorporated into another product outside the United States and constitute 10 percent or less by value of that product exported from a third country; or

(2) Have been substantially transformed outside the United States.

Note to paragraph (a) of § 538.507: Notwithstanding the authorization set forth in paragraph (a), a non-U.S. person's reexportation of goods, technology or software of U.S. origin that are subject to the Export Administration Regulations (15 CFR parts 730 through 774) may require specific authorization from the Department of Commerce, Bureau of Industry and Security.

(b) *Goods and technology not subject to export license application requirements under other United States regulations.* The reexportation to Sudan or the Government of Sudan by a non-U.S. person of any goods or technology of U.S. origin, the exportation of which to Sudan is not subject to any export license application requirements under any other United States regulations, is authorized under this section.

Note to paragraph (b) of § 538.507: However, the reexportation by non-U.S. persons of U.S.-origin goods, technology or software classified as EAR99 under the Export Administration Regulations (15 CFR parts 730 through 774) may require specific authorization from the Department of Commerce, Bureau of Industry and Security. See, for example, the end-use and end-user restrictions set forth in 15 CFR part 744.

■ 10. Section 538.527 is added to subpart E to read as follows:

§ 538.527 Operation of accounts.

The operation of an account in a U.S. financial institution for an individual ordinarily resident in Sudan who is not included within the term ''Government of Sudan,'' as defined in § 538.305, is authorized, provided that transactions processed through the account:

(a) Are of a personal nature and not for use in supporting or operating a business;

(b) Do not involve transfers directly or indirectly to Sudan or for the benefit of individuals ordinarily resident in Sudan unless authorized by § 538.528; and

(c) Are not otherwise prohibited by this part.

■ 11. Section 538.528 is added to subpart E to read as follows:

§ 538.528 Noncommercial, personal remittances.

(a) U.S. depository institutions, U.S. registered brokers or dealers in securities, and U.S. registered money transmitters are authorized to process transfers of funds to or from Sudan or for or on behalf of an individual ordinarily resident in Sudan who is not included within the term ''Government of Sudan,'' as defined in § 538.305, in cases in which the transfer involves a noncommercial, personal remittance, provided the transfer is not by, to, or through a person who is included within the term ''Government of Sudan,'' as defined in § 538.305. Noncommercial, personal remittances do not include charitable donations to or for the benefit of an entity or funds transfers for use in supporting or operating a business.

Note to paragraph (a) of § 538.528: The institutions identified in paragraph (a) may transfer charitable donations made by U.S. persons to nongovernmental organizations in Sudan registered pursuant to § 538.521, provided that the transfer is made pursuant to § 538.521 and the terms of the registration.

(b) The transferring institutions identified in paragraph (a) of this section may rely on the originator of a funds transfer with regard to compliance with paragraph (a), provided that the transferring institution does not know or have reason to know that the funds transfer is not in compliance with paragraph (a).

(c) This section does not authorize transactions with respect to property blocked pursuant to § 538.201.

Subpart G—Penalties

■ 12. Section 538.701(c) is amended by revising paragraph (c) as follows:

§ 538.701 Penalties.

* * * * *

(c) Attention is also directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the United States, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any materially false, fictitious or fraudulent statement or representation or makes or uses any false writing or document knowing the same to contain any materially false, fictitious or fraudulent statement or entry, shall be fined under title 18, United States Code, or imprisoned not more than five years, or both.

■ 13. Section 538.702 is revised to read as follows:

§ 538.702 Prepenalty notice.

(a) *When required.* If the Director of the Office of Foreign Assets Control has reason to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act, and the Director determines that further proceedings are warranted, the Director shall notify the alleged violator of the agency's intent to impose a monetary penalty by issuing a prepenalty notice. The prepenalty notice shall be in writing. The prepenalty notice may be issued whether or not another agency has taken any action with respect to the matter.

(b) *Contents of notice.*—(1) *Facts of violation.* The prepenalty notice shall describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty.

(2) *Right to respond.* The prepenalty notice also shall inform the respondent of the respondent's right to make a written presentation within the applicable 30-day period set forth in § 538.703 as to why a monetary penalty should not be imposed or why, if imposed, the monetary penalty should be in a lesser amount than proposed.

(c) *Informal settlement prior to issuance of prepenalty notice.* At any time prior to the issuance of a prepenalty notice, an alleged violator may request in writing that, for a period not to exceed sixty (60) days, the agency withhold issuance of the prepenalty notice for the exclusive purpose of effecting settlement of the agency's potential civil monetary penalty claims. In the event the Director grants the request, under terms and conditions within the Director's discretion, the Office of Foreign Assets Control will agree to withhold issuance of the prepenalty notice for a period not to exceed 60 days and will enter into settlement negotiations with respect to the potential civil monetary penalty claim.

■ 14. Section 538.703 is revised to read as follows:

§ 538.703 Response to prepenalty notice; informal settlement.

(a) *Deadline for response.* The respondent may submit a response to the prepenalty notice within the applicable 30-day period set forth in this paragraph. The Director may grant, at the Director's discretion, an extension of time in which to submit a response to the prepenalty notice. The failure to submit a response within the applicable time period set forth in this paragraph shall be deemed to be a waiver of the right to respond.

(1) *Computation of time for response.* A response to the prepenalty notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to OFAC by courier) on or before the 30th day after the postmark date on the envelope in which the prepenalty notice was mailed. If the respondent refused delivery or otherwise avoided receipt of the prepenalty notice, a response must be postmarked or date-stamped on or before the 30th day after the date on the stamped postal receipt maintained at the Office of Foreign Assets Control. If the prepenalty notice was personally delivered to the respondent by a non-U.S. Postal Service agent authorized by the Director, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(2) *Extensions of time for response.* If a due date falls on a federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the Director's discretion, only upon the respondent's specific request to the Office of Foreign Assets Control.

(b) *Form and method of response.* The response must be submitted in typewritten form and signed by the respondent or a representative thereof. The response need not be in any particular form. A copy of the written response may be sent by facsimile, but the original also must be sent to the Office of Foreign Assets Control Civil Penalties Division by mail or courier and must be postmarked or date-stamped, in accordance with paragraph (a) of this section.

(c) *Contents of response.* A written response must contain information sufficient to indicate that it is in response to the prepenalty notice and must identify the Office of Foreign Assets Control identification number listed on the prepenalty notice.

(1) A written response must include the respondent's full name, address, telephone number, and facsimile number, if available, or those of the representative of the respondent.

(2) A written response should either admit or deny each specific violation alleged in the prepenalty notice and also state if the respondent has no knowledge of a particular violation. If the written response fails to address any specific violation alleged in the prepenalty notice, that alleged violation shall be deemed to be admitted.

(3) A written response should include any information in defense, evidence in support of an asserted defense, or other factors that the respondent requests the Office of Foreign Assets Control to consider. Any defense or explanation previously made to the Office of Foreign Assets Control or any other agency must be repeated in the written response. Any defense not raised in the written response will be considered waived. The written response also should set forth the reasons why the respondent believes the penalty should not be imposed or why, if imposed, it should be in a lesser amount than proposed.

(d) *Failure to respond.* Where OFAC receives no response to a prepenalty notice within the applicable time period set forth in paragraph (a) of this section, a penalty notice generally will be issued, taking into account the mitigating and/or aggravating factors present in the record. If there are no mitigating factors present in the record, or the record contains a preponderance of aggravating factors, the proposed prepenalty amount generally will be assessed as the final penalty.

(e) *Informal settlement.* In addition to or as an alternative to a written response to a prepenalty notice, the respondent or respondent's representative may contact the Office of Foreign Assets Control's Civil Penalties Division as advised in the prepenalty notice to propose the settlement of allegations contained in the prepenalty notice and related matters. However, the requirements set forth in paragraph (g) of this section as

to oral communication by the representative must first be fulfilled. In the event of settlement at the prepenalty stage, the claim proposed in the prepenalty notice will be withdrawn, the respondent will not be required to take a written position on allegations contained in the prepenalty notice, and the Office of Foreign Assets Control will make no final determination as to whether a violation occurred. The amount accepted in settlement of allegations in a prepenalty notice may vary from the civil penalty that might finally be imposed in the event of a formal determination of violation. In the event no settlement is reached, the time limit specified in paragraph (a) of this section for written response to the prepenalty notice will remain in effect, unless additional time is granted by the Office of Foreign Assets Control.

(f) *Guidelines.* Guidelines for the imposition or settlement of civil penalties by the Office of Foreign Assets Control have been codified in the Appendix to 31 CFR part 501, the Reporting, Procedures and Penalties Regulations.

(g) *Representation.* A representative of the respondent may act on behalf of the respondent, but any oral communication with the Office of Foreign Assets Control prior to a written submission regarding the specific allegations contained in the prepenalty notice must be preceded by a written letter of representation, unless the prepenalty notice was served upon the respondent in care of the representative.

■ 15. Section 538.704 is revised to read as follows:

§ 538.704 Penalty imposition or withdrawal.

(a) *No violation.* If, after considering any response to the prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was no violation by the respondent named in the prepenalty notice, the Director shall notify the respondent in writing of that determination and of the cancellation of the proposed monetary penalty.

(b) *Violation.*—(1) If, after considering any written response to the prepenalty notice, or default in the submission of a written response, and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was a violation by the respondent named in the prepenalty notice, the Director is authorized to issue a written penalty notice to the respondent of the determination of the violation and the imposition of the monetary penalty.

(2) The penalty notice shall inform the respondent that payment or arrangement for installment payment of the assessed penalty must be made within 30 days of the date of mailing of the penalty notice by the Office of Foreign Assets Control.

(3) The penalty notice shall inform the respondent of the requirement to furnish the respondent's taxpayer identification number pursuant to 31 U.S.C. 7701 and that such number will be used for purposes of collecting and reporting on any delinquent penalty amount.

(4) The issuance of the penalty notice finding a violation and imposing a monetary penalty shall constitute final agency action. The respondent has the right to seek judicial review of that agency action in federal district court.

Dated: April 26, 2005.

Robert W. Werner,

Director, Office of Foreign Assets Control.

Approved: May 9, 2005.

Juan C. Zarate,

Assistant Secretary (Terrorist Financing and Financial Crimes), Department of the Treasury.

[FR Doc. 05–11637 Filed 6–8–05; 3:22 pm]

BILLING CODE 4810–25–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–05–014]

RIN 2115–AA87

Security Zone; Duluth Harbor, Duluth, MN

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone in Duluth's inner harbor for the Commissioning ceremony of the Coast Guard Cutter ALDER. The security zone is necessary to ensure the security of dignitaries attending this ceremony on June 10, 2005. The security zone is intended to restrict vessels from a portion of Duluth Harbor in Duluth, Minnesota.

DATES: This rule is effective from 10 a.m. (local) until 3 p.m., June 10, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD09–05–014) and are available for inspection or copying at the U.S. Coast Guard Marine Safety Office Duluth, 600 South Lake Avenue, Canal Park, Duluth, Minnesota 55802, between the hours of 7:30 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Greg Schultz, U.S. Coast Guard Marine Safety Office Duluth, at (218) 720–5285.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 13, 2005, we published a notice of proposed rulemaking in the **Federal Register** (70 FR 25514). We received no comments on the proposed rule. No public hearing was requested, and none was held. Under 5 U.S.C. 553 (d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The regulation is needed to protect dignitaries during the event and a delay would be contrary to the public interest.

Background and Purpose

The security zone will encompass the waters of Duluth Harbor, within a 500 foot radius from a fixed point located at 46°46′17″ N, 92°05′26″ W. These coordinates are based upon North American Datum (NAD 1983).

Entry into, transit through, or anchoring within this security zone is prohibited unless authorized by the Captain of the Port Duluth or his designated on-scene representative. The designated on-scene representative will be the Coast Guard Patrol Commander. The Coast Guard Patrol Commander may be contacted via VHF Channel 16.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

The security zone will only be in effect for a few hours on the day of the event and vessels may easily still transit inside the Duluth Harbor.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not

dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities: the owners or operators of vessels intending to transit or anchor in this portion of Duluth Harbor from 10 a.m. to 3 p.m. June 10, 2005. This regulation will not have a significant economic impact for the following reasons. The regulation is only in effect for one day of the event. The designated area is being established to allow for maximum use of the waterway for commercial and recreational vessels. The Coast Guard will inform the public that the regulation is in effect via Marine Information Broadcasts.

Assistance for Small Entities

Under Section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pubic Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the U.S. Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132, Federalism, and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulation That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This event establishes a safety zone, therefore paragraph (34)(g) of the Instruction applies.

A preliminary ''Environmental Analysis Check List'' is available in the docket where indicated under **ADDRESSES.** Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T09–014 is added to read as follows:

§ 165.T09–014 Security Zone; Duluth Harbor, Duluth, Minnesota.

(a) *Location.* The following area is designated as a security zone: The waters of Duluth Harbor, within a 500 foot radius from a fixed point located at 46°46′17″ N, 92°05′26″ W. These coordinates are based upon North American Datum (NAD 1983).

(b) *Effective time and date.* This section is effective from 10 a.m. until 3 p.m. (local), on June 10, 2005.

(c) *Regulations.* Entry into, transit through, or anchoring within the security zone is prohibited unless authorized by the Captain of the Port Duluth or the Coast Guard Patrol Commander.

Dated: June 6, 2005.

H.M. Nguyen,

Commander, U.S. Coast Guard, Captain of the Port Duluth.

[FR Doc. 05–11666 Filed 6–10–05; 3:31 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173, 178, 179 and 180

[Docket No. PHMSA–04–18683 (HM–218C)]

RIN 2137–AD87

Hazardous Materials; Miscellaneous Amendments

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the Hazardous Materials Regulations by incorporating miscellaneous changes based on petitions for rulemaking and PHMSA initiatives. The intended effect of these regulatory changes is to update, clarify or provide relief from certain regulatory requirements.

DATES: *Effective Date:* The effective date of these amendments is August 12, 2005.

Incorporation by Reference Date: The incorporation by reference of certain publications listed in these amendments is approved by the Director of the Federal Register as of August 12, 2005.

FOR FURTHER INFORMATION CONTACT: Gigi Corbin, Office of Hazardous Materials Standards, (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule reduces regulatory burdens on industry by incorporating changes into the Hazardous Materials Regulations (HMR) based on PHMSA's own initiatives and petitions for rulemaking submitted in accordance with 49 CFR 106.95. In a continuing effort to review the HMR for necessary revisions, PHMSA (''we'' and ''us'') is eliminating, revising, clarifying and relaxing certain other regulatory requirements. On August 12, 2004, RSPA, the predecessor agency to PHMSA, published a notice of proposed rulemaking (NPRM) under Docket RSPA–04–18683 (HM–218C; 69 FR 49846). The NPRM contained information concerning each proposal and invited public comment. Readers should refer to the NPRM for additional background discussion. We received eight comments in response to the NPRM. These comments were submitted by trade associations, such as the Air Transport Association (ATA), the Chlorine Institute (CI), and the International Vessel Operators Hazardous Materials Association, Inc. (VOHMA); hazardous materials consulting firms; and providers of emergency response. Most commenters expressed support for various proposals, but some commenters raised concerns about certain provisions in the proposal that are discussed below. Certain commenters raised issues that are beyond the scope of this rulemaking; such comments will not be addressed.

The following is a section-by-section summary of changes, and, where applicable, a discussion of comments received.

Section-by-Section Review

Part 171

Section 171.7

In the NPRM, we proposed to incorporate by reference a document entitled ''An Example of a Test Method for Vent Sizing—OPPSD/SPI Methodology,'' which described an alternative method to determine the vent size of emergency relief devices on portable tanks transporting organic peroxides. This document was added to the § 171.7(b) *List of informational materials not requiring incorporation by reference* in a final rule published December 20, 2004, under Docket No. RSPA–04–17036 (HM–215G; 69 FR 76061); therefore, the proposal is not adopted in this final rule.

Under the entry ''American Society for Testing and Materials'' (ASTM), we are incorporating by reference ASTM Standards A 1008/A 1008M–03 ''Standard Specification for Steel, Sheet, Cold-Rolled, Carbon, Structural, High-Strength Low-Alloy and High-Strength Low-Alloy with Improved Formability'' and A 1011/A 1011M–03a ''Standard Specification for Steel, Sheet and Strip, Hot-Rolled, Carbon, Structural, High-Strength Low-Alloy and High-Strength Low-Alloy with Improved Formability.'' We received a comment from the ASTM requesting we incorporate by reference ASTM Standards A1008/A1008M–04b and A1011/A1011M–04a to reflect the latest version of these standards. Because we did not propose to incorporate the newer edition of these standards in the NPRM, we are not incorporating them at this time. These standards may be considered for incorporation by reference in a future rulemaking.

We are updating the Compressed Gas Association ''CGA Pamphlet C–6.1, Standards for Visual Inspection of High Pressure Aluminum Compressed Gas Cylinders'' from the 1995 edition to the 2002 edition. We proposed to update CGA Pamphlet C–6.1 in an NPRM published on September 10, 2003, under Docket No. RSPA–03–14405 (HM–220F; 68 FR 53318). Because of delay in finalizing HM–220F, we are incorporating the 2002 edition of CGA Pamphlet C–6.1 in this final rule. The 2002 edition of the standard has provisions discussing cleaning methods that may result in the removal of cylinder wall material. It also contains a new requirement that all aluminum cylinders be internally inspected for cracks in the neck region. Also see § 180.212 preamble discussion.

We are incorporating by reference the Department of Defense's (DOD) ''Packaging of Hazardous Material, DLAD 4145.41/AR 700–143/AFJI 24–210/NAVSUPINST 4030.55B/MCO 4030.40B.''

Also, we are updating the following documents which are incorporated by reference:

—Chlorine Institute instruction booklets entitled ''Chlorine Institute Emergency Kit 'A' for 100-lb. & 150-lb. Chlorine Cylinders'' (Edition 10, June 2003) and ''Chlorine Institute Emergency Kit 'B' for Chlorine Ton Containers'' (Edition 9, June 2003);

—Transport Canada ''Transportation of Dangerous Goods Regulations (August 15, 2001)'' edition.

In paragraph (b), we are removing the table entry ''National Association of Corrosive Engineers (NACE)'' and NACE Standard TM–01–69 which described an acceptable test for a liquid corrosive material. This entry is obsolete because the definition and testing methods for corrosive materials have been revised.

Section 171.8

In the NPRM, we proposed to revise the definition for ''Materials of trade'' (MOTS) by removing the phrase ''in direct support of a principal business that is other than transportation by motor vehicle.'' This would allow private carriage of qualified hazardous materials under the MOTs exception regardless of the principal business of the carrier. We received one comment in favor of this proposal. Since publication of the NPRM, we have identified additional issues pertaining to the transportation of hazardous materials under the MOTs exception that require further study; therefore, we are not adopting the proposal in this final rule.

Section 171.12a

In paragraph (b)(2), we are clarifying that certain exceptions in Transport Canada's Transportation of Dangerous Goods (TDG) Regulations are not

recognized under the reciprocity provisions; specifically, materials subject to the 500 kg exception in paragraph 1.16 of the TDG Regulations may not be transported under the provisions of § 171.12a and are subject to the requirements of the HMR.

Section 171.14

We are removing paragraph (d)(3) because the transition period for use of the KEEP AWAY FROM FOOD label and placard has expired.

Part 172

Section 172.101

We are adding a statement in § 172.101(i)(3) and a new paragraph (i)(5) to clarify that some bulk packaging authorizations are found in column (8B) and the special provisions in column (7) of the HMT.

We are revising the entry for ''Bromine'' and adding two new entries, one for bromine solution, PIH Zone A and one for bromine solution, PIH Zone B. This recognizes that some bromine solutions do not meet the criteria for a PIH Zone A material and are, in fact, in Hazard Zone B. Also, for the entry ''Bromine'' we are adding stowage category ''D'' for vessel transportation in column (10A) of the HMT. In the NPRM, we proposed to remove Special provisions A3 and A6 in column (7) for the entry ''Bromine.'' Special provisions A3 and A6 were removed in a final rule published December 20, 2004, under Docket No. RSPA–04–17036 (HM–215G; 69 FR 76075).

We are reinstating the entry ''Denatured Alcohol, NA 1987'' in response to a petition by the Renewable Fuels Association (P–1430). We are also adding a new Special provision 172 for the entries ''Denatured Alcohol, NA 1987'' and ''Alcohols, n.o.s., UN 1987'' to allow solutions of alcohol and petroleum products to be described as either ''Denatured Alcohol'' or ''Alcohols, n.o.s.'' provided the solution contains no more than 5% petroleum products.

For the entries ''sec-Butyl chloroformate, NA 2742'' and ''Isobutyl chloroformate, NA 2742'' we are adding the word ''Forbidden'' in columns (9A) and (9B). These materials are poisonous by inhalation in Hazard Zone B and are forbidden on passenger and cargo only aircraft.

For the entry ''Refrigerating machines, *containing flammable, non-toxic, liquefied gas,* UN 3358'' we are adding a reference to § 173.307 in column (8A) of the HMT. This will except refrigerating machines containing 12 kg (25 pounds) or less of a flammable, non-toxic gas from the HMR, except when offered or transported by air or vessel. We are also correcting inconsistencies with the International Maritime Dangerous Goods (IMDG) Code pertaining to vessel stowage for this entry.

In the NPRM, we proposed to add a reference to the limited quantity exception for flammable liquids in Column (8A) of the HMT for the entry ''1,3,5-Trimethylbenzene, UN 2325.'' We revised the entry ''1,3,5-Trimethylbenzene, UN 2325'' in a final rule published December 20, 2004, under Docket No. RSPA–04–17036 (HM–215G; 69 FR 76145) to include the limited quantity exception.

Section 172.102

We are revising Special provision 53 to provide relief from the subsidiary hazard class/division entry on the shipping paper if the material is excepted from the subsidiary label requirements. We are also adding a new Special provision 172 for alcohol mixtures containing up to 5% petroleum products.

Section 172.203

We are adding a new paragraph (l)(4) that cross-references the requirements and exceptions for marine pollutants in § 171.4. A commenter suggests that the language proposed in the NPRM might suggest ''the consignor who packs the freight container or other cargo transport unit and offers it in intermodal transportation has no obligation to declare the marine pollutant on the shipping paper, or mark the inner packages and the CTU with the MARINE POLLUTANT mark since the initial transport is by road or rail.'' The commenter asks us to exclude shipments that are ''intended for vessel transportation'' from the exception in § 171.4. We disagree. Marine pollutants in non-bulk packagings transported domestically by rail or motor vehicle are not subject to the HMR. If subsequent transportation is by vessel, the shipment must be brought into compliance. The HMR do not prescribe how this is to be accomplished; it is left to the shippers' discretion. Mandating compliance with the vessel transportation requirements of the HMR or the IMDG Code from the original point of origin may impose additional burdens and costs to the offeror. We did not consider such burdens and associated costs and consider this comment beyond the scope of this rulemaking. We disagree with the commenter that the proposed language creates difficulties for the shipper; it is a cross-reference to existing language in § 171.4 and does not impose additional burdens. We are adopting the paragraph as proposed.

Section 172.205

We are adding a new paragraph (i) alerting the user that the word ''Waste'' must precede the proper shipping name as provided by § 172.101(c)(9).

Section 172.504

We are amending § 172.504(g)(2) to clarify that explosives articles of compatibility groups C, D, or E when transported with explosives articles in compatibility group N may be placarded with a Class 1 compatibility group D placard. The display of only one placard bearing one compatibility letter when certain Class 1 materials of different compatibility groups are transported together in a single transport vehicle or container is authorized in the HMR.

Section 172.519

We are editorially revising paragraph (f) by adding the parenthetical phrase ''(IBR, see § 171.7 of this subchapter),'' after the wording ''ICAO Technical Instructions, the IMDG Code, or the TDG Regulations.''

Part 173

Section 173.7

We are authorizing military shipments of hazardous materials to be packaged in accordance with the procedures prescribed in the DOD document ''Packaging of Hazardous Material, DLAD 4145.41/AR 700–143/AFJI 24–210/NAVSUPINST 4030.55B/MCO 4030.40B'' as an alternative to the HMR. This document replaces the packaging standards in the document ''Performance Oriented Packagings of Hazardous Material, DLAR 4145.41/AR 700–143/AFR 71–5/NAVSUPINST 4030.55/MCO 4030.40.''

Section 173.28

In paragraph (b)(3), we are clarifying that packagings made of fiberboard are authorized for reuse.

Section 173.31

We are amending paragraph (b) to except tank cars transporting elevated temperature materials and molten sulfur from retrofit bottom discontinuity protection requirements. Based on past risk-analysis evaluations conducted by the Federal Railroad Administration (FRA) and industry, it was determined that tank cars transporting elevated temperature materials and molten sulfur do not require retrofit protection.

Section 173.150

In the NPRM, we proposed to remove paragraph (f)(1), which contains the

definition of ''combustible liquid.'' The definition is also found in § 173.120 Class 3—Definitions. VOHMA requested we reconsider this proposal because of problems that are encountered in intermodal transportation. Combustible liquids in non-bulk packagings are not subject to the HMR when transported domestically. VOHMA states that when these shipments are subsequently offered for international transportation, re-shippers may be unaware that these materials are regulated in international commerce and may fail to comply with the applicable regulations. VOHMA suggests that retaining the classification criteria for a combustible liquid in § 173.150 may alert shippers to the classification differences between the HMR and international regulations and prevent undeclared hazardous materials from entering the transportation system. We agree, and are not adopting this proposal.

Section 173.225

In the NPRM, we proposed to revise the Note to paragraph (e)(3)(vi) by authorizing an alternative method to determine the size of emergency-relief devices on portable tanks. In a final rule published on December 20, 2004, under Docket No. RSPA 04–17036 (HM–215G; 69 FR 76172), we redesignated paragraph (e) as paragraph (h) and authorized this alternative method of an emergency-relief device sizing.

Section 173.241

For clarity, in paragraph (c), we are adding a reference to certain additional requirements in § 176.340 that apply when offering combustible liquids in portable tanks for transportation by vessel.

Section 173.301

In the NPRM, we proposed to revise the requirement in paragraph (a)(9) that a strong outer packaging containing specification 2P, 2Q, 3E, 3HT, spherical 4BA, 4D, 4DA, 4DS, and 39 cylinders must conform to the requirements in § 173.25. Instead of referencing § 173.25, we proposed to require the outside of the combination packaging to be marked with an indication that the inner packagings conform to the prescribed specification. Our intention was to clarify that the outer packaging is not an overpack and, thus, each inner cylinder must comply with the Part 172 marking and labeling requirements. The Air Transport Association (ATA) objects to marking the outer packaging with a statement indicating that the inner packagings conform to the prescribed specifications because it implies ''that the outer packagings are in fact overpacks and would create inconsistency with the International Civil Aviation Organization's Technical Instructions, where, beginning in 2005, an overpack must be marked with the word 'Overpack.' '' ATA also requests that we delete the reference to an overpack in Special provision A52. ATA states that air carriers use many thin walled DOT 3HT cylinders that are required to be placed in outer packagings meeting the ATA specification 300 standard and meet the strong outer packaging requirement in § 173.302a(a)(2) of the HMR. ATA states that, should the proposed marking be finalized, air carriers will be forced to use separate marked packagings for their DOT 3HT cylinders. Also, ATA suggests that operational confusion regarding the appropriate use or reuse of outer packagings marked with the proposed marking instead of the ''Overpack'' marking could lead to unwarranted actions by enforcement personnel.

We disagree with ATA that a marking indicating the inner packagings conforming to the prescribed specification implies the packaging is an overpack. There are other instances in the HMR where this marking is required, *e.g.*, in § 173.306 where DOT 2P and 2Q containers must be in a combination packaging and the outer packaging is a non-specification packaging. Because the outer packaging does not have specification markings, the proposed marking alerts anyone coming into contact with the package that the inner container is a specification packaging.

We also disagree with ATA that Special provision A52 should be revised to remove the word ''overpack.'' The special provision requires an oxygen cylinder that is loaded into a passenger-carrying aircraft or into an inaccessible cargo location on a cargo-only aircraft to be placed in an overpack or an outer packaging meeting the performance criteria in ATA specification 300 for Category I. The current HMR requirements authorize compressed oxygen to be packaged in DOT 3, 3A, 3AA, 3AL, 3B, 3E, 3HT, 4B, 4BA and 4BW cylinders. Of these cylinders, only the DOT 3E, 3HT and spherical 4BA cylinders are considered to be inner packagings. The other cylinders must be properly marked and labeled individually in accordance with Part 172 and, when offered for air transportation, placed in an overpack conforming to § 173.25.

In this final rule, we are revising paragraph (a)(9) to require an outer packaging containing specification 2P, 2Q, 3E, 3HT, spherical 4BA, 4D, 4DA, 4DS, and 39 cylinders to be marked to indicate that the inner packagings conform to the prescribed specifications, as proposed in the NPRM. Consistent with this change, we are also revising the last sentence in § 173.302a(a)(2) and Note 7 following the table in § 173.304a(a)(2) by adding a reference to § 173.301(a)(9).

In paragraph (l)(2), we are revising the wording to state clearly that foreign cylinders filled for export, in addition to meeting the maximum filling density and service pressure requirements, must be fitted with pressure relief devices when required by the HMR for the gas contained within the cylinder.

We are editorially revising paragraph (m) by adding the parenthetical phrase ''(IBR, see § 171.7 of this subchapter)'' after the first occurrence of the term ''Canadian Transport of Dangerous Goods (TDG) Regulations.''

Section 173.302a

In paragraph (a)(2), we are removing the reference to the overpack provisions in § 173.25 and adding a reference to § 173.301(a)(9).

We are editorially revising paragraph (a)(3).

In paragraph (d), we are authorizing use of a DOT 3AL1800 cylinder for the transportation of diborane and diborane mixtures.

We are adding new paragraph (e) to reinstate the requirement that a cylinder containing fluorine may not be charged to over 400 psig at 21 °C (70 °F) and may not contain more than 2.7 kg (6 lbs) of gas.

Section 173.304a

In the paragraph (a)(2) table, in column 3, we are removing several references to DOT specification 4, 4A, 9, 38, 40 and 41 cylinders that are no longer authorized for use. Also, for the entry Bromotrifluoromethane, in column 3, we are correcting the reference ''DOT–3AL40'' to read ''DOT–3AL400.'' We are revising the last sentence in Note 7 following the table to reference the packaging provisions in § 173.301(a)(9). We are also correcting a typographical error in Note 8.

Sections 173.314 and 173.319

In the NPRM, we proposed to require notification of delayed rail cars containing a time-sensitive product to the FRA instead of the Bureau of Explosives (BOE). Two commenters, the Chlorine Institute and the BOE, support moving the reporting requirements to FRA. The Chlorine Institute also states that the carrier, not the shipper, should be reporting the delay since the carrier knows where the rail car is. In the NPRM, we did not propose to transfer

this requirement from the shipper to the carrier. At this time, we prefer to retain the reporting requirement as a shipper responsibility and are adopting the change as proposed.

We also received a comment from the AAR regarding our statement in the Regulatory Analyses and Notices section of this rule that ''BOE no longer exists.'' We apologize for this misstatement. Since 1997 the Bureau of Explosives Field Force and associated activities have been under the direction of The Transportation Technology Center, Inc., which is a wholly owned subsidiary of the AAR.

Section 173.315

In the paragraph (a) table, column 4, we are adding a reference to Note 27 for the entry ''Ammonia, anhydrous or Ammonia solutions, with greater than 50 percent ammonia,'' and following the table, we are adding a new Note 27 to authorize the use of non-specification cargo tanks.

Section 173.337

In the introductory text, we are reinstating a requirement that a cylinder containing nitric oxide may be charged to a pressure of not more than 5,170 kPa (750 psig) at 21° C (70° F).

Part 178

Sections 178.338–2 and 178.345–2

We are removing the reference to ASTM Standard A 607 and adding ASTM Standards A 1008/A 1008M and A 1011/A 1011M in its place.

Section 178.606

In paragraph (c)(2), we are correcting the formula for calculating the pressure to be applied when a packaging containing a solid is subjected to a dynamic compression test.

Part 179

Section 179.200–7

In paragraph (e), we are adding a reference to § 171.7 for a standard that is incorporated by reference.

Part 180

Section 180.205

In paragraph (c)(2), we are adding a reference to new § 180.212. See § 180.212 preamble discussion. Also, we are broadening the provisions in paragraph (i)(2) to allow a composite cylinder that is condemned to have the wording ''CONDEMNED'' displayed instead of stamped on the cylinder. The use of a label is currently authorized in some exemptions.

Section 180.212

We are adding a new section allowing repairs to a DOT 3-series cylinder under the terms of an approval issued by the Associate Administrator under Subpart I of Part 107. In addition, the person who performs the repair work must have an approval as currently required under Subpart H of Part 107. An approval will not be required for the removal and replacement of non-pressure components on a DOT 3-series cylinder, such as a neck ring or foot ring; the replacement material must be equivalent to that used at the time of original manufacture.

Additionally, in the NPRM, we proposed that an approval would not be required for the repair of worn or damaged cylinder neck threads when performed by the original cylinder manufacturer in accordance with the cylinder's specification requirements and under the supervision of an independent inspection agency. We are relaxing this provision to permit re-threading to be performed by any manufacturer of these types of cylinders. CGA Pamphlets C–6 and C–6.1 contain guidelines for inspection of the cylinder neck areas for damaged threads. The cylinder must be rejected if the required number of effective threads are not engaged to provide a gas-tight seal. The rejected cylinder may qualify for repair to restore the effectiveness of the threads. If the threads cannot be repaired, the cylinder must be condemned. We proposed to update the reference to CGA Pamphlet C–6.1 from the 1995 to the 2002 edition in an NPRM published on September 10, 2003 (HM–220F; 68 FR 53318). The 2002 edition contains criteria for inspection of cylinder neck threads for abnormal thread conditions resulting from structural defects, corrosion, or damage. Because of delay in finalizing HM–220F, we are incorporating the 2002 edition of CGA Pamphlet C–6.1 in this final rule. Currently CGA is updating CGA Pamphlet C–6 to better address inspection for neck areas on high pressure and low pressure steel cylinders. We will consider adopting the revised pamphlet in a future rulemaking.

Section 180.417

In paragraph (b)(2)(v), we are reinstating the requirement that each test or inspection report completed for a repaired cargo tank must include the ASME or National Board Certificate of Authorization number of the facility performing the repairs.

Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under authority of Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*) Section 5103(b) of Federal hazmat law authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commere.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) and was not reviewed by the Office of Management and Budget (OMB). This final rule is not considered a significant rule under the Regulatory Policies and Procedures of the U.S. Department of Transportation (44 FR 11034). The costs and benefits of this rule are considered to be so minimal as to not warrant preparation of a regulatory evaluation.

In this final rule, we are amending miscellaneous provisions in the HMR to clarify the provisions and to relax overly burdensome requirements. We are also responding to requests from industry associations to update and add references to standards that are incorporated in the HMR. These clarifications and updates of the HMR will enhance safety while reducing the compliance burden on the regulated industry. In the NPRM, we invited public comment on any impacts of the proposed changes. We did not receive any comments regarding the impacts of these changes.

C. Executive Order 13132

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule preempts state, local and Indian tribe requirements but does not impose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Federal hazardous material transportation law, 49 U.S.C. 5125(b)(1), contains an express preemption provision (49 U.S.C. 5125(b)) preempting State, local, and Indian tribe requirements on certain covered subjects:

(1) The designation, description, and classification of hazardous material;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(3) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, content, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a packaging or container which is represented, marked, certified, or sold as qualified for use in the transport of hazardous material.

This final rule addresses covered subject items (1), (2), and (5) described above and preempts any State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are ''substantively the same'' (*see* 49 CFR 107.202(d)) as the Federal requirements.

Federal hazardous materials transportation law provides at 49 U.S.C. 5125(b)(2) that if PHMSA issues a regulation concerning any of the covered subjects, PHMSA must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of preemption of this final rule is 90 days from publication of this final rule in the **Federal Register**.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not have tribal implications and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities. This final rule amends miscellaneous provisions in the HMR to clarify provisions based on our own initiatives and also on petitions for rulemaking. While maintaining safety, it relaxes certain requirements that are overly burdensome and updates references to consensus standards that are incorporated in the HMR. These amendments are intended to provide relief to shippers, carriers, and packaging manufacturers, including small entities.

This final rule has been developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered. The changes proposed in this Notice will enhance safety while reducing the compliance burden on the regulated industry. I certify that this final rule does not have a significant economic impact on a substantial number of small entities.

F. Paperwork Reduction Act

PHMSA currently has an approved information collection under OMB Control Number 2137–0559, ''Requirements for Rail Tank Car Tanks—Transportation of Hazardous Materials by Rail'' with 2,759 burden hours, and an expiration date of May 31, 2006. This final rule will result in a minimal increase in information collection and recordkeeping burden under OMB Control Number 2137–0559, due to editorial changes to §§ 173.314 and 173.319. We are removing references to BOE in §§ 173.314 and 173.319, and replacing them with references to FRA. Therefore, this final rule will result in a minimal increase in burden since FRA instead of BOE will now be notified if a rail car containing a time-sensitive product is not received within 20 days from shipment.

Section 1320.8(d), Title 5, Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This final rule identifies a revised information collection request that PHMSA will submit to OMB for approval based on the requirements in this final rule.

PHMSA has developed burden estimates to reflect changes in this final rule. The revised burden indicated below includes revisions in this final rule and corrections of previous mathematical errors discovered during the review process. PHMSA estimates the net total of information and recordkeeping burden in this final rule as: ''Requirements for Rail Tank Car Tanks—Transportation of Hazardous Materials by Rail'' OMB Number 2137–0559:

Total Annual Number of Respondents: 266.

Total Annual Responses: 16,781.

Total Annual Burden Hours: 2,689.

Total Annual Burden Cost: $102,586.25.

Requests for a copy of this information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–11), Pipeline and Hazardous Materials Safety Administration, Room 8430, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553. We will publish a notice advising interested parties of the OMB approval for this information collection request when approved by OMB.

In addition, you may submit comments specifically related to the information collection burden to the PHMSA Desk Officer, OMB, at fax number 202–395–6974. Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $120.7 million or more to either state, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347) requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. We developed an assessment to determine the effects of this final rule on the environment and have concluded that there would be no

significant environmental impacts associated with this final rule.

J. Privacy Act

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov*.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping equirements, Uranium.

49 CFR Part 178

Hazardous materials transportation, Incorporation by reference, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 179

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Incorporation by reference, Motor carriers, Motor vehicle safety, Packaging and containers, Railroad Safety, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–134 section 31001.

■ 2. In § 171.7:

■ a. In the paragraph (a)(3) table:

■ (1) Under the entry ''American Society for Testing and Materials,'' two new standards are added in appropriate numerical order;

■ (2) Under the entry ''Chlorine Institute, Inc.,'' the address for the Chlorine Institute and the entries for Chlorine Institute Emergency Kit ''A'' and ''B'' are revised;

■ (3) Under the entry ''Compressed Gas Association, Inc.,'' the entry for pamphlet C–6.1 is revised;

■ (4) Under the entry ''Department of Defense (DOD),'' a new entry is added in appropriate alphabetical order; and

■ (5) Under the entry ''Transport Canada,'' the entry is revised.

■ b. In the paragraph (b) table, the entry ''National Association of Corrosion Engineers,'' is removed.

The revisions and additions read as follows:

§ 171.7 Reference material.

(a) * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
* * * * * * *	
American Society for Testing and Materials.	
* * * * * * *	
ASTM A 1008/A 1008M—03 Standard Specification for Steel, Sheet, Cold-Rolled, Carbon, Structural, High-Strength Low-Alloy and High Strength Low-Alloy with Improved Formability.	178.338–2; 178.345–2
ASTM A 1011/A 1011M—03a Standard Specification for Steel, Sheet and Strip, Hot-Rolled, Carbon, Structural, High-Strength Low Alloy and High Strength Low-Alloy with Improved Formability.	178.338–2; 178.345–2
* * * * * * *	
Chlorine Institute, Inc., 1300 Wilson Boulevard, Arlington, VA 22209	
Chlorine Institute Emergency Kit ''A'' for 100-lb. & 150 lb. Chlorine Cylinders (with the exception of repair method using Device 8 for side leaks), Edition 10, June 2003.	173.3
Chlorine Institute Emergency Kit ''B'' for Chlorine Ton Containers (with the exception of repair method using Device 9 for side leaks), Edition 9, June 2003.	173.3
* * * * * * *	
Compressed Gas Association, Inc.,	
CGA Pamphlet C–6.1, Standards for Visual Inspection of High Pressure Aluminum Compressed Gas Cylinders, 2002, Fourth Edition.	180.205; 180.209
* * * * * * *	
Department of Defense (DOD),	
* * * * * * *	
Packaging of Hazardous Material, DLAD 4145.41/ AR 700–143/AFJI 24–210/NAVSUPINST 4030.55B/MCO 4030.40B, January 14, 2000.	173.7
* * * * * * *	
Transport Canada,	
* * * * * * *	
Transportation of Dangerous Goods (TDG) Regulations, August 2001 including Clear Language Amendments SOR/2001–286, Amendment 1 (SOR/2002–306) August 8, 2002; Amendment 2 (SOR/2003–273) July 24, 2003; and Amendment 3 (SOR/2003-400) December 3, 2003.	171.12a; 172.401; 172.502; 172.519; 172.602; 173.301.

Source and name of material						49 CFR reference
*	*	*	*	*	*	*

■ 3. In § 171.12a, paragraph (b)(2) is revised to read as follows:

§ 171.12a Canadian shipments and packagings.

* * * * *

(b) * * *

(2) A material designated as a hazardous material under this subchapter which is not subject to the requirements of the TDG Regulations or is afforded hazard communication or packaging exceptions not authorized in this subchapter (*e.g.*, paragraph 1.16 of the TDG Regulations excepts quantities of hazardous materials less than or equal to 500 kg gross transported by highway or rail) may not be transported under the provisions of this section.

* * * * *

§ 171.14 [Amended]

■ 4. In § 171.14, paragraph (d)(3) is removed and reserved.

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

■ 5. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.53.

■ 6. In § 172.101, the first and second sentences in paragraph (i)(3) are revised and a new paragraph (i)(5) is added to read as follows:

§ 172.101 Purpose and use of the hazardous materials table.

* * * * *

(i) * * *

(3) * * * Column (8C) specifies the section in part 173 of this subchapter that prescribes packaging requirements for bulk packagings, subject to the limitations, requirements, and additional authorizations of Columns (7) and (8B). A ''None'' in Column (8C) means bulk packagings are not authorized, except as may be provided by special provisions in Column (7) and in packaging authorizations Column (8B). * * *

* * * * *

(5) *Cylinders.* For cylinders, both non-bulk and bulk packaging authorizations are set forth in Column (8B). Notwithstanding a designation of ''None'' in Column (8C), a bulk cylinder may be used when specified through the section reference in Column (8B).

* * * * *

■ 7. In § 172.101, the Hazardous Materials Table is amended by removing, adding and revising, in the appropriate alphabetical sequence, the following entries to read as follows:

§ 172.101 HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Numbers	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.* * *)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	* * * [REMOVE:]												
+	Bromine *or* Bromine solutions	8	UN1744	I	8, 6.1	1, B9, B64, B85, N34, N43, T22, TP2, TP10, TP12, TP13.	None	227	249	Forbidden	Forbidden	D	12, 40, 66, 74, 89, 90
	* * * [ADD:]												
+	Bromine	8	UN1744	I	8, 6.1	1, B9, B64, B85, N34, N43, T22, TP2, TP10, TP12, TP13.	None	226	249	Forbidden	Forbidden	D	12, 40, 66, 74, 89, 90
+	Bromine solutions	8	UN1744	I	8, 6.1	1, B9, B64, B85, N34, N43, T22, TP2, TP10, TP12, TP13.	None	226	249	Forbidden	Forbidden	D	12, 40, 66, 74, 89, 90
+	Bromine solutions	8	UN1744	I	8, 6.1	2, B9, B64, B85, N34, N43, T22, TP2, TP10, TP12, TP13.	None	227	249	Forbidden	Forbidden	D	12, 40, 66, 74, 89, 90
D	Denatured alcohol	3	NA1987	II	3	172, T8, T31	150	202	242	5 L	60 L	B.	
				III	3	172, B1, T7, T30	150	203	242	60 L	220 L	A.	
	* * * [REVISE:]												
	Alcohols, n.o.s.	3	UN1987	1	3	172, T11, TP1, TP8, TP27.	None	201	243	1 L	30 L	E.	
				II	3	172, 1B2, T7, TP1, TP8, TP28.	150	202	242	5 L	60 L	B.	
				III	3	172, B1, IB3, T4, TP1, TP29.	150	203	242	60 L	220 L	A.	
D	sec-Butyl chloroformate	6.1	NA2742	I	6.1, 3, 8	2, B9, B14, B32, B74, T20, TP4, TP12, TP13, TP38, TP45.	None	227	244	Forbidden	Forbidden	A	12, 13, 22, 25, 40, 48, 100
D	Isobutyl chloroformate	6.1	NA2742	I	6.1, 3, 8	2, B9, B14, B32, B74, T20, TP4, TP12, TP13, TP38, TP45.	None	227	244	Forbidden	Forbidden	A	12, 13, 22, 25, 40, 48, 100

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Numbers	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.* * *)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*	*		*	*	*	*		*				
	Refrigerating machines, *containing flammable, non-toxic, liquefied gas*.	2.1	UN3358 ..	.....	2.1	.....	306, 307	306	306	Forbidden	Forbidden	D	40
	*	*		*	*		*		*				

■ 8. In § 172.102, in paragraph (c)(1), in Special provision 53, the first sentence is revised and new Special provision 172 is added in appropriate numerical order to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

53 Packages of these materials must bear the subsidiary risk label, ''EXPLOSIVE'', and the subsidiary hazard class/division must be entered in parentheses immediately following the primary hazard class in the shipping description, unless otherwise provided in this subchapter or through an approval issued by the Associate Administrator, or the competent authority of the country of origin. * * *

* * * * *

172 This entry includes alcohol mixtures containing up to 5% petroleum products.

* * * * *

■ 9. In § 172.203, a new paragraph (l)(4) is added to read as follows:

§ 172.203 Additional description requirements.

* * * * *

(l) * * *

(4) Except when transported aboard vessel, marine pollutants in non-bulk packagings are not subject to the requirements of this subchapter (see § 171.4 of this subchapter).

* * * * *

■ 10. In § 172.205, a new paragraph (i) is added to read as follows:

§ 172.205 Hazardous waste manifest.

* * * * *

(i) The shipping description for a hazardous waste must be modified as required by § 172.101(c)(9).

■ 11. In § 172.504, paragraph (g)(2) is revised to read as follows:

§ 172.504 General placarding requirements.

* * * * *

(g) * * *

(2) Explosive articles of compatibility groups C, D, or E, when transported with those in compatibility group N, may be placarded displaying compatibility group D.

* * * * *

§ 172.519 [Amended]

■ 12. In § 172.519, in paragraph (f), the wording ''the ICAO Technical Instructions, the IMDG Code, or the TDG Regulations,'' is removed and the wording ''the ICAO Technical Instructions, the IMDG Code, or the TDG Regulations (IBR, see § 171.7 of this subchapter),'' is added in its place.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 13. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

§ 173.7 [Amended]

■ 14. In § 173.7, in paragraph (a) introductory text, the wording ''Performance Oriented Packaging of Hazardous Material, DLAR 4145.41/AR 700–143/AFR 71–5/NAVSUPINST 4030.55/MCO 4030.40'' is removed and the wording ''Packaging of Hazardous Material, DLAD 4145.41/AR 700–143/AFJI 24–210/NAVSUPINST 4030.55B/MCO 4030.40B (IBR, see § 171.7 of this subchapter)'' is added in its place.

■ 15. In § 173.28, paragraph (b)(3) is revised to read as follows:

§ 173.28 Reuse, reconditioning and remanufacture of packagings.

* * * * *

(b) * * *

(3) Packagings made of paper (other than fiberboard), plastic film, or textile are not authorized for reuse;

* * * * *

■ 16. In § 173.31, in paragraph (b)(5), the second sentence is revised to read as follows:

§ 173.31 Use of tank cars.

* * * * *

(b) * * *

(5) * * * Tank cars not requiring bottom-discontinuity protection under the terms of Appendix Y of the AAR Specifications for Tank Cars as of July 1, 1996, must conform to these requirements no later than July 1, 2006, except that tank cars transporting a material that is hazardous only because it meets the definition of an elevated temperature material or because it is molten sulfur do not require bottom discontinuity protection. * * *

* * * * *

■ 17. In § 173.241, paragraph (c) is amended by adding a new last sentence to read as follows:

§ 173.241 Bulk packagings for certain low hazard liquid and solid materials.

* * * * *

(c) * * * For transportation of combustible liquids by vessel, additional requirements are specified in § 176.340 of this subchapter.

* * * * *

■ 18. In § 173.301, paragraphs (a)(9), (l)(2) and (m) introductory text are revised to read as follows:

§ 173.301 General requirements for shipment of compressed gases in cylinders and spherical pressure vessels.

(a) * * *

(9) Specification 2P, 2Q, 3E, 3HT, spherical 4BA, 4D, 4DA, 4DS, and 39 cylinders must be packed in strong non-bulk outer packagings. The outside of the combination packaging must be marked with an indication that the inner packagings conform to the prescribed specifications.

* * * * *

(l) * * *

(2) In addition to other requirements of this subchapter, the maximum filling density, service pressure, and pressure relief device for each cylinder conform to the requirements of this part for the gas involved.

* * * * *

(m) *Canadian cylinders in domestic use.* A Canadian Transport Commission (CTC) specification cylinder manufactured, originally marked and approved in accordance with the CTC regulations and in full conformance with the Canadian Transport of Dangerous Goods (TDG) Regulations (IBR, see § 171.7 of this subchapter) is authorized for the transportation of a hazardous material to, from or within the United States under the following conditions:

* * * * *

■ 19. In § 173.302a, the last sentence in paragraph (a)(2), paragraph (a)(3) and the first sentence in paragraph (d) are revised, and a new paragraph (e) is added to read as follows:

§ 173.302a Additional requirements for shipment of nonliquefied (permanent) compressed gases in specification cylinders.

(a) * * *

(2) * * * Specification 3HT cylinders may be offered for transportation only when packaged in accordance with § 173.301(a)(9).

(3) *DOT 39 cylinders.* When the cylinder is filled with a Division 2.1 material, the internal volume of the cylinder may not exceed 1.23 L (75 in^3.

* * * * *

(d) * * * Diborane and diborane mixed with compatible compressed gas must be offered in a DOT 3AL1800 or 3AA1800 cylinder. * * *

(e) *Fluorine.* Fluorine must be shipped in specification 3A1000,

3AA1000, or 3BN400 cylinders without pressure relief devices and equipped with valve protection cap. The cylinder may not be charged to over 400 psig at 21°C (70° F) and may not contain over 2.7 kg (6 lbs) of gas.

■ 20. In § 173.304a, in the paragraph (a)(2) table,

■ a. For the entry ''Methyl acetylene-propadiene, mixtures, stabilized'', in column 1, the wording ''DOT–3A240'' is removed;

■ b. In column 3, make the following changes:

■ i. For the entry ''Anhydrous ammonia'', remove the phrases ''DOT–4;'' and ''DOT–4A480;'';

■ ii. For the entry ''Bromotrifluoromethane'', remove the phrase ''DOT–4A400;'' and revise ''DOT–3AL40'' to read ''DOT–3AL400.'';

■ iii. For the entry ''Chlorodifluoromethane R–22)'', remove the phrase ''DOT–41;'';

■ iv. For the entry ''Chloropentafluorethane R–115)'', remove the phrase ''DOT–4A225;'';

■ v. For the entry ''Cyclopropane'', remove the phrase ''DOT–4A225;'';

■ vi. For the entry ''Dichlorodifluoromethane R–12)'', remove the phrases ''DOT–4A225;'', ''DOT–9;'' and ''DOT–41;'';

■ vii. For the entry ''Dichlorodifluoromethane and difluoroethane mixture (constant boiling mixture) (R–500)'', remove the phrases ''DOT–4A240;'' and ''DOT–9;'';

■ viii. For the entry ''Hydrogen sulfide'', remove the phrase ''DOT–4A480;'';

■ ix. For the entry ''Insecticide, gases liquefied'', remove the phrase ''DOT–9; DOT–40; DOT–41;'';

■ x. For the entry ''Methyl acetylene-propadiene, mixtures, stabilized'', remove the phrase ''DOT–4; DOT–41;'';

■ xi. For the entry ''Methyl chloride'', remove the phrases ''DOT–4A225;'' and ''DOT–4; DOT–38;'' and ''DOT–4A150;'';

■ xii. For the entry ''Refrigerant gas, n.o.s. or Dispersant gas, n.o.s.'', remove the phrases ''DOT–4A240;'' and ''DOT–9;'';

■ xiii. For the entry ''Sulfur dioxide'', remove the phrases ''DOT–4A225;'' ''DOT–4; DOT–38;'';

■ xiv. For the entry ''Trifluorochloroethylene, stabilized'', remove the phrase ''DOT–4A300;''; and

■ c. In Note 7 following the table, the last sentence is revised to read as set forth below;

■ d. In Note 8, the phrase ''§ 173.301(a)(8)'' is revised to read ''§ 173.301(a)(9)''.

§ 173.304a Additional requirements for shipment of liquefied compressed gases in specification cylinders.

(a) * * *

(2) * * *

Note 7: * * * Cylinders may be offered for transportation only when packaged in accordance with § 173.301(a)(9).

* * * * *

■ 21. In § 173.314, paragraph (g)(1) is revised to read as follows:

§ 173.314 Compressed gases in tank cars and multi-unit tank cars.

* * * * *

(g) * * *

(1) The shipper shall notify the Federal Railroad Administration whenever a tank car is not received by the consignee within 20 days from the date of shipment. Notification to the Federal Railroad Administration may be made by e-mail to *Hmassist@fra.dot.gov* or telephone call to (202) 493–6229.

* * * * *

■ 22. In § 173.315, in the paragraph (a) table, in column 4, the entry ''Ammonia, anhydrous or Ammonia solutions with greater than 50% ammonia'' is amended by removing the wording ''Notes 12 and 17'' and adding the wording ''Notes 12, 17 and 27'' in its place; and following the table, a new Note 27 is added in the appropriate numerical order to read as follows:

§ 173.315 Compressed gases in cargo tanks and portable tanks.

(a) * * *

Note 27: Non-specification cargo tanks may be used for transportation of Ammonia, anhydrous and ammonia solutions with greater than 50% ammonia, subject to the conditions prescribed in paragraph (m) of this section.

* * * * *

■ 23. In § 173.319, paragraph (a)(3) is revised to read as follows:

§ 173.319 Cryogenic liquids in tank cars.

(a) * * *

(3) The shipper shall notify the Federal Railroad Administration whenever a tank car containing any flammable cryogenic liquid is not received by the consignee within 20 days from the date of shipment. Notification to the Federal Railroad Administration may be made by e-mail to *Hmassist@fra.dot.gov* or telephone call to (202) 493–6229.

* * * * *

■ 24. In § 173.337, in the introductory text, the first sentence is revised to read as follows:

§ 173.337 Nitric oxide.

Nitric oxide must be packed in DOT 3A1800, 3AA1800, 3E1800, or 3AL1800 cylinders charged to a pressure of not more than 5,170 kPa (750 psig) at 21 °C (70 °F) and conforming to the requirements in § 173.40. * * *

* * * * *

PART 178—SPECIFICATIONS FOR PACKAGINGS

■ 25. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 26. In § 178.338–2, in paragraph (a), the last sentence is revised to read as follows:

§ 178.338–2 Material.

(a) * * * All material used for evacuated jacket pressure parts must conform to the chemistry and steelmaking practices of one of the material specifications of Section II of the ASME Code or the following ASTM Specifications (IBR, see § 171.7 of this subchapter): A 242, A 441, A 514, A 572, A 588, A 606, A 633, A 715, A 1008/A 1008M, A 1011/A 1011M.

* * * * *

§ 178.345–2 [Amended]

■ 27. In § 178.345–2, in paragraph (a)(1), the wording ''ASTM A 607'' is removed and the wording ''ASTM A 1008/ A 1008M, ASTM A 1011/A 1011M'' is added in the appropriate numerical order.

§ 178.606 [Amended]

■ 28. In § 178.606, in paragraph (c)(2)(ii), the following changes are made:

■ a. In the formula, the wording ''Solids: $A = (N-1)\,[w + (s \times v \times 8.3 \times .95) \times 1.5$'' is removed and the wording ''Solids: $A = (N-1)\,(m \times 1.5)$'' is added in its place;

■ b. In the definitions following the formula, the wording ''m = the certified maximum gross mass for the container in kilograms;'' is added in appropriate alphabetical order.

PART 179—SPECIFICATIONS FOR TANK CARS

■ 29. The authority citation for part 179 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR part 1.53.

■ 30. In § 179.200–7, in paragraph (e), the first sentence is revised to read as follows:

§ 179.200–7 Materials.

* * * * *

(e) *Nickel plate:* Nickel plate must comply with the following specification (IBR, see § 171.7 of this subchapter):

* * *

* * * * *

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

■ 31. The authority citation for part 180 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 32. In § 180.205, paragraphs (c)(2)(i), (i)(2) and (i)(3) are revised to read as follows:

§ 180.205 General requirements for requalification of cylinders.

* * * * *

(c) * * *

(2) * * *

(i) Rejected and may be repaired or rebuilt in accordance with § 180.211 or § 180.212, as appropriate; or

* * * * *

(i) * * *

(2) When a cylinder must be condemned, the requalifier must—

(i) Stamp a series of X's over the DOT specification number and the marked pressure or stamp ''CONDEMNED'' on the shoulder, top head, or neck using a steel stamp;

(ii) For composite cylinders, securely affix to the cylinder a label with the word ''CONDEMNED'' overcoated with epoxy near, but not obscuring, the original cylinder manufacturer's label; or

(iii) As an alternative to the stamping or labeling as described in this paragraph (i)(2), at the direction of the owner, the requalifier may render the cylinder incapable of holding pressure.

(3) No person may remove or obliterate the ''CONDEMNED'' marking. In addition, the requalifier must notify the cylinder owner, in writing, that the cylinder is condemned and may not be filled with hazardous material and offered for transportation in commerce where use of a specification packaging is required.

■ 33. A new section 180.212 is added to read as follows:

§ 180.212 Repair of DOT–3 series specification cylinders.

(a) *General requirements for repair of DOT 3 series cylinders.* (1) No person may repair a DOT 3-series cylinder unless—

(i) The repair facility holds an approval issued under the provisions of subpart I of part 107 of subchapter A of this chapter; and

(ii) Except as provided in paragraph (b) of this section, the repair and the inspection are performed under the provisions of an approval issued under subpart H of part 107 of subchapter A of this chapter and conform to the applicable cylinder specification contained in Part 178 of this subchapter.

(2) The person performing the repair must prepare a report containing, at a minimum, the results prescribed in § 180.215.

(b) *Repairs not requiring prior approval.* Approval is not required for the following specific repairs:

(1) The removal and replacement of a neck ring or foot ring on a DOT 3A, 3AA, or 3B cylinder that does not affect a pressure part of the cylinder when the repair is performed by a repair facility or a cylinder manufacturer of these types of cylinders. The repair may be made by welding or brazing in conformance with the original specification. After removal and before replacement, the cylinder must be visually inspected and any defective cylinder must be rejected. The heat treatment, testing and inspection of the repair must be performed under the supervision of an inspector and in accordance with the original specification.

(2) External re-threading of a DOT 3AX, 3AAX or 3T cylinder or internal re-threading of a DOT–3 series cylinder to restore the total number of neck threads engaged to the condition specified in the applicable specification. The repair work must be performed by a manufacturer of these types of cylinders. Upon completion of the re-threading, the threaded opening must be inspected by an independent inspection agency and gauged in accordance with Federal Standard H–28 or an equivalent standard containing the same specification limits. The re-threaded cylinder must be stamped clearly and legibly with the word ''RETHREAD'' on the shoulder, head, or neck. No cylinder may be re-threaded more than one time without approval of the Associate Administrator.

■ 34. In § 180.417, paragraph (b)(2)(v) is revised to read as follows:

§ 180.417 Reporting and record retention requirements.

* * * * *

(b) * * *

(2) * * *

(v) ASME or National Board Certificate of Authorization number of facility performing repairs, if applicable;

* * * * *

Issued in Washington, DC on June 6, 2005 under authority delegated in 49 CFR part 1.

Stacey L. Gerard,

Acting Assistant Administrator/Chief Safety Officer, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 05–11647 Filed 6–10–05; 8:45 am]

BILLING CODE 4910–60–P

Proposed Rules

Federal Register
Vol. 70, No. 112
Monday, June 13, 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.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Huntington–05–002]

RIN 1625–AA00

Safety Zone; Huntington, WV

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone for the waters of the Ohio River. This safety zone is needed to protect participating vessels and mariners during the Huntington Challenge Tunnel Boat Race. With the exception of participating vessels and mariners, all vessels and persons are prohibited from transiting within this safety zone unless authorized by the Captain of the Port Huntington or a designated representative.

DATES: Comments and related material must reach the Coast Guard on or before July 13, 2005.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard, Marine Safety Office Huntington, 1415 Sixth Avenue, Huntington, West Virginia 25701, Attn: Petty Officer Andrew Caldwell. Marine Safety Office Huntington maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Huntington, 1415 Sixth Avenue, Huntington, West Virginia, 25701 between 8 a.m. and 4 p.m., Monday through Friday except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Petty Officer (PO) Andrew Caldwell, Marine Safety Office Huntington, WV, at (304) 529–5524, extension 2119.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [COTP Huntington 05–002], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8 ½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Huntington at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Big Sandy Superstore Arena will be conducting the Huntington Challenge Tunnel Boat Race on August 13 and 14, 2005. Race boats will be traveling at a very high rate of speed and at times may not be able to stop to avoid a collision if spectator or other vessels are operating in close proximity of the race course. A safety zone is needed to protect the race boats, operators and spectators from the potential safety hazards associated with this boat race.

Discussion of Proposed Rule

The Coast Guard proposes to establish a temporary safety zone for the waters of the Ohio River beginning at mile 307.5 and ending at mile 308.8, extending the entire width of the river. With the exception of participant vessels and those mariners operating participant vessels, all vessels and persons are prohibited from transiting within this safety zone unless authorized by the Captain of the Port Huntington or a designated representative. The term ''participant vessel'' includes all vessels registered with race officials to race or work in the event. They include race boats, rescue boats, tow boats and picket boats associated with the race. This rule is effective from 10 a.m. on August 13, 2005 until 7 p.m. on August 14, 2005. This rule will only be enforced from 10 a.m. until 7 p.m. on each day that it is effective. During non-enforcement hours all vessels will be allowed to transit through the safety zone without having to obtain permission from the Captain of the Port Huntington or a designated representative. The Captain of the Port Huntington will inform the public through broadcast notice to mariners of the enforcement periods for the safety zone.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

This regulation will only be in effect for nine hours each day and notifications to the maritime community will be made through broadcast notice to mariners. During non-enforcement hours all vessels will be allowed to transit through the safety zone without having to obtain permission from the Captain of the Port Huntington or a designated representative. Additionally, 30-minute breaks will be scheduled every three hours to allow awaiting vessels to pass through the safety zone. The impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which may be small entities: the owners and operators of commercial and recreational vessels intending to transit the Ohio River during the effective period. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (1) This rule will only be enforced from 10 a.m. until 7 p.m. on each day that it is effective; (2) During non-enforcement hours all vessels will be allowed to transit through the safety zone without permission from the Captain of the Port Huntington or a designated representative; and (3) 30-minute breaks will be scheduled every three hours to allow awaiting vessels to pass through the safety zone.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they could better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small businesses, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Petty Officer Andrew Caldwell at (304) 529–5524, extension 2119. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule does not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that Order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management system practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because this rule is not expected to result in any significant adverse environmental impact as described in the National Environmental Policy Act of 1969 (NEPA).

Under figure 2–1, paragraph (34)(g), of the Instruction, as ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this proposed rule.

Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping

requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. A new temporary § 165.T08–053 is added to read as follows:

§ 165.T08–053 Safety Zone; Ohio River, Mile 307.5 to 308.8 Huntington, WV.

(a) *Definition.* As used in this section—

Participant Vessel includes all vessels registered with race officials to race or work in the event. These vessels include race boats, rescue boats, tow boats and picket boats associated with the race.

(b) *Location.* The following area is a safety zone: all waters of the Ohio River beginning at mile 307.5 and ending at mile 308.8, extending the entire width of the river.

(c) *Effective date.* This rule is effective from 10 a.m. on August 13, 2005 until 7 p.m. on August 14, 2005.

(d) *Periods of Enforcement.* This rule will be enforced from 10 a.m. until 7 p.m. on each day that it is effective. The Captain of the Port Huntington or a designated representative will inform the public through broadcast notice to mariners of the enforcement periods for the safety zone.

(e) *Regulations:* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited to all persons and vessels except participant vessels and those vessels specifically authorized by the Captain of the Port Huntington or a designated representative.

(2) Persons or vessels other than participating vessels and mariners requiring entry into or passage through the zone must request permission from the Captain of the Port Huntington or designated on-scene patrol personnel. They may be contacted on VHF–FM Channel 13 or 16 or by telephone at (304) 529–5524.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Huntington and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: April 25, 2005.

J.M. Michalowski,

Commander, U.S. Coast Guard, Captain of the Port Huntington.

[FR Doc. 05–11589 Filed 6–10–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAR Case 2004–014]

RIN: 9000–AK19

Federal Acquisition Regulation; Buy–Back of Assets

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) by revising the contract cost principle regarding depreciation. The proposed rule adds language which addresses the allowability of depreciation costs of reacquired assets involved in a sales and leaseback arrangement.

DATES: Interested parties should submit comments in writing on or before August 12, 2005, to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2004–014 by any of the following methods:

Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Agency Web Site: *http://www.acqnet.gov/far/ProposedRules/proposed.htm*. Click on the FAR case number to submit comments.

E–mail: *farcase.2004–014@gsa.gov*. Include FAR case 2004–014 in the subject line of the message.

Fax: 202–501–4067.

Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2004–014 in all correspondence related to this case. All comments received will be posted without change to *http://www.acqnet.gov/far/ProposedRules/proposed.htm*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson, at (202) 501–3221. Please cite FAR case 2004–014.

SUPPLEMENTARY INFORMATION:

A. Background

In response to public comments related to FAR 31.205–16 (submitted under FAR Case 2002–008), the Councils revised the proposed rule to state that the disposition date is the date of the sale and leaseback arrangement, rather than at the end of the lease term. During the deliberations on this case, the Defense Contract Audit Agency brought to the Councils' attention a concern regarding the cost treatment when a contractor ''buys back'' an asset after a sale and leaseback transaction is recognized under the revised proposed rule. The Councils recognized this concern, not just for sale and leaseback arrangements, but also for assets that are purchased, depreciated, sold, and repurchased. As such, the issue involves a myriad of situations where a contractor depreciates an asset or charges cost of ownership in lieu of lease costs, disposes of that asset, and then reacquires the asset. The Councils recognized this issue required research and deliberation and established a new case (FAR Case 2004–014) to address this buy–back issue.

The Councils recognize that there are situations when a contractor can and will reacquire an asset after relinquishing title, in either a sale and leaseback arrangement or simply a typical sale and subsequent repurchase. It appears that the only area that currently requires coverage is in the case of a sale and leaseback arrangement. The coverage related to a sale and leaseback arrangement is needed as a result of the changes made under FAR Case 2004–005, Gains and Losses (see **Federal Register** 70 FR 33673, dated June 8, 2005).

Currently, no situations in which the Government was at risk in the areas of typical sale and reacquisition, or capital leases were identified. FAR 31.205–11(f) and 31.205–36(b)(3) currently provide coverage for typical sale and reacquisition transactions at less than arm's–length. In addition, FAR 31.205–11(i) requires contractors to treat leases meeting the definition of a capital lease in FAS–13 as an asset owned by the contractor. The subsequent acquisition

of title to the asset is not a disposition and therefore no gain or loss need to be considered. In addition, the GAAP treatment of the acquisition of an asset under a capital lease, which in effect steps–up the value of the asset, would result in an unallowable cost, based on the intent of the FAR as shown in FAR 31.205–52, Asset valuations resulting from business combinations.

The Councils recommend revising FAR 31.205–11, Depreciation, to include specific language regarding the treatment of assets reacquired after entering into a sale and leaseback arrangement. The Councils believe this will eliminate potential disagreements regarding the allowable depreciation expense of assets involved in a sale and leaseback arrangement.

The Councils believe that, for Government contract costing purposes, a contractor should not benefit or be penalized for entering into a sale and leaseback arrangement. The Government should reimburse the contractor the same amount for the subject asset as if the contractor had retained title throughout the service life of the asset. Therefore, the Councils recommend that the determination of allowable depreciation expense of the reacquired asset consider—

- Any gain or loss recognized in accordance with FAR 31.205–16(b);
- Any depreciation expense included in the calculation of the normal cost of ownership for the limitations at FAR 31.205–11(h)(1) and 31.205–36(b)(2); and
- The depreciation expense taken prior to the sale and leaseback arrangement.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed–price basis, and do not require application of the cost principles and procedures discussed in this rule. For fiscal year 2003, only 2.4 percent of all contract actions were cost contracts awarded to small business. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Part 31 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2004–014), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: June 8, 2005.

Julia B. Wise,

Director, Contract Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 31 as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR part 31 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 31.205–11 by—

a. Revising paragraph (g);

b. Removing paragraph (h); and

c. Redesignating paragraph (i) as (h).

The revised text reads as follows:

31.205–11 Depreciation.

* * * * *

(g) Whether or not the contract is otherwise subject to CAS, the following apply:

(1) The requirements of 31.205–52 shall be observed.

(2) In the event of a write–down from carrying value to fair value as a result of impairments caused by events or changes in circumstances, allowable depreciation of the impaired assets is limited to the amounts that would have been allowed had the assets not been written down (see 31.205–16(g)). However, this does not preclude a change in depreciation resulting from other causes such as permissible changes in estimates of service life, consumption of services, or residual value.

(3)(i) In the event the contractor reacquires property involved in a sale and leaseback arrangement, allowable depreciation of reacquired property shall be based on the net book value of the asset as of the date the contractor originally became a lessee of the property in the sale and leaseback arrangement—

(A) Adjusted for any allowable gain or loss determined in accordance with 31.205–16(b); and

(B) Less any amount of depreciation expense included in the calculation of the amount that would have been allowed had the contractor retained title under 31.205–11(h)(1) and 31.205–36(b)(2).

(ii) As used in this paragraph (g)(3), ''reacquired property'' is property that generated either any depreciation expense or any cost of money considered in the calculation of the limitations under 31.205–11(h)(1) and 31.205–36(b)(2) during the most recent accounting period prior to the date of reacquisition.

* * * * *

[FR Doc. 05–11643 Filed 6–10–05; 8:45 am]

BILLING CODE 6820–EP–S

Notices

Federal Register
Vol. 70, No. 112
Monday, June 13, 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

Rogue/Umpqua Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Action of meeting.

SUMMARY: The Rogue/Umpqua Resource Advisory Committee (RAC) will meet on Thursday and Friday, July 14 and 15, 2005, at 1215 SW. G Street in Grants Pass, Oregon. The purpose of the meeting is to review and make recommendations for funding fiscal year 2006 projects with Title II funds from the Secure Rural Schools and Community Self-Determination Act of 2000. Presentations for projects in Klamath, Jackson and Josephine counties will occur on Thursday. Presentations for projects in Douglas and Lane counties will take place on Friday. The RAC will also be updated on the status of projects from the last four years. The meetings are scheduled to begin at 8 a.m. and conclude at approximately 5 p.m. each day. Public comments are welcome between approximately 9:50 a.m. to 10:20 a.m. on Thursday and at approximately 10 a.m. to 10:30 a.m. on Friday. Written public comments may be submitted prior to the meetings by sending them to Designated Federal Official Jim Caplan at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding these meetings, contact Designated Federal Official Jim Caplan; Umpqua National Forest; 2900 NW. Stewart Parkway, Roseburg, Oregon 97470; (541) 672–6601.

Dated: June 7, 2005.

Cheryl R. Walters,

Acting Forest Supervisor, Umpqua National Forest.

[FR Doc. 05–11616 Filed 6–10–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Characterization of the U.S. Atlantic Recreational Fishery for White Marlin.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Regular submission.

Burden Hours: 34.

Number of Respondents: 266.

Average Hours Per Response: 10 minutes.

Needs and Uses: This project is designed to investigate characteristics of the offshore recreational white marlin fishery, including identification of specific fishing techniques and potential variables that might be included in post-release survival experiments. Specific in-depth knowledge of fishing techniques is essential to evaluate recreational fishing impacts, to develop relevant research and management approaches to reduce mortality for this sector of the fishery, and to promote rebuilding of Atlantic white marlin stocks.

The information will be obtained through a survey and complemented and confirmed by on-board observers in the Ocean City, Maryland area, which is known as the ''White Marlin Capital of the World.'' The project will gain general acceptance for the survey through meetings, face-to-face dialogue and word of mouth. This work attempts to form a current and knowledgeable information source on which to base appropriate research and conservation measures relative to the U.S. recreational fishery for Atlantic white marlin.

Affected Public: Individuals or households; not-for-profit institutions.

Frequency: Once per individual.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: June 6, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–11605 Filed 6–10–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On December 7, 2004, the Department of Commerce (''the Department'') published the preliminary results of the administrative review of the antidumping duty order on fresh garlic from the People's Republic of China. The period of review is November 1, 2002, through October 31, 2003. The review covers twelve manufacturers/exporters.

We invited interested parties to comment on our preliminary results. Based on our analysis of the comments received, we have made certain changes to our calculations. The final dumping margins for this review are listed in the ''Final Results of the Reviews'' section below.

EFFECTIVE DATE: June 13, 2005.

FOR FURTHER INFORMATION CONTACT: Salim Bhahbhrawala or Brian Ledgerwood, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202)

482–1784 or (202) 482–3836, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 7, 2004, the Department published the preliminary results of the administrative review of the antidumping duty order on fresh garlic from the People's Republic of China. *See Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission in Part*, 69 FR 70638 (December 7, 2004) (''*Preliminary Results*''). In the *Preliminary Results*, we reopened the record to accept independent third–party submissions regarding the factors of production data submitted by certain respondents in this review. On November 28, 2004, January 6, 2005, and January 7, 2005, we received and accepted submissions from the petitioners[1] and five respondents, Jinxiang Dongyun Freezing Storage Co., Ltd. (''Dongyun''), Fook Huat Tong Kee Pte., Ltd. (''FHTK''), Huaiyang Hongda Dehydrated Vegetable Company (''Hongda''), Taiyan Ziyang Food Co., Ltd. (''Ziyang''), and Jining Trans–High Trading Co., Ltd. (''Trans–High''). We received rebuttal submissions from FHTK, Ziyang, and the petitioners on January 19, 2005.

In January 2005, we conducted verification of the data submitted by Linshu Dading Private Agricultural Products Co., Ltd. (''Linshu Dading'') and Sunny Import and Export Co., Ltd. (''Sunny''). Furthermore, on March 22, 2005, we extended to all interested parties an additional opportunity to comment on the intermediate–product methodology used to calculate normal value in the *Preliminary Results* as well as the impact that certain factors of production had on garlic yield. We received comments for consideration from Dongyun, FHTK, Hongda, Ziyang, and the petitioners on March 29, 2005, and March 30, 2005. Trans–High provided a submission stating that it would reserve its comments for its case briefs.

In April 2005, we released the reports detailing the results of the Linshu Dading and Sunny verifications. Also in April 2005, we received administrative case briefs from nine respondents, Dongyun, FHTK, Hongda, Jinan Yipin Corporation, Ltd. (''Jinan Yipin''), Linshu Dading, Sunny, Ziyang, Trans–High, and Zhengzhou Harmoni Spice Co., Ltd. (''Harmoni''), and rebuttal comments from the petitioners. The petitioners did not file a case brief. We subsequently rejected several submissions made following the *Preliminary Results*. We determined that these submissions either contained untimely, new factual information, or contained unsolicited, new written argument re–characterizing existing facts on the record. Several of the parties in question filed objections to our decision to reject these submissions.

On May 11, 2005, we conducted a public hearing to discuss the issues raised by the parties in their administrative case and rebuttal briefs. On May 12, 2005, the Department gave all interested parties the opportunity to comment on certain memoranda that we had placed on the record of this proceeding after the deadline for case briefs had passed. We received these comments from Dongyun, Hongda, FHTK, Ziyang, and the petitioners on May 16, 2005.

In the *Preliminary Results*, we extended the time limit for the completion of the final results of this review, including our analysis of issues raised in any case or rebuttal briefs, until May 30, 2005. *See Preliminary Results*. On May 26, 2005, we extended again the time limit for the completion of the final results of this review until June 6, 2005. *See Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Review: Fresh Garlic from the People's Republic of China*, 70 FR 30413 (May 26, 2005).

We have conducted these reviews in accordance with section 751 of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.213 (2005).

Scope of the Order

The products covered by this antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of this order does not include the following: (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non–fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non–fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to the U.S. Customs and Border Protection (CBP) to that effect.

Analysis of Comments Received

All issues raised in the post–preliminary comments by parties in this review are addressed in the Issues and Decision Memorandum, dated June 6, 2005, (''*Decision Memo*'') which is hereby adopted by this notice. A list of the issues which parties raised and to which we respond in the *Decision Memo* is attached to this notice as an Appendix. The *Decision Memo* is a public document which is on file in the Central Records Unit (''CRU'') in room B–099 in the main Department building, and is accessible on the Web at http://www.ia.ita.doc.gov/. The paper copy and electronic version of the memorandum are identical in content.

Separate Rates

In our *Preliminary Results*, we determined that Dongyun, FHTK, Hongda, Jinan Yipin, Linshu Dading, Sunny, Ziyang, Trans–High, and Harmoni met the criteria for the application of a separate rate. We determined that Jinxiang Hongyu Freezing and Storing Co., Ltd. (''Hongyu''), Linyi Sanshan Import and Export Trading Co., Ltd. (''Linyi Sanshan''), and Tancheng County Dexing Foods Co., Ltd. (''Dexing Foods'') did not qualify for a separate rate and, therefore, are deemed to be included in the PRC–entity rate. See *Preliminary Results*, 69 FR at 70638. We have not received any information since the issuance of the *Preliminary Results* that provides a basis for reconsideration of these determinations.

[1] The Fresh Garlic Producers Association (''FGPA'') and its individual members. The individual members are Christopher Ranch L.L.C., The Garlic Company, Valley Garlic, and Vessey and Company, Inc.

The PRC–Wide Rate and Use of Adverse Facts Available

Hongyu, Linyi Sanshan, and Dexing Foods

In the *Preliminary Results*, we determined that the PRC entity (including Hongyu, Linyi Sanshan, and Dexing Foods) did not respond to the questionnaire and, therefore, failed to cooperate to the best of its ability in the administrative review. Accordingly, we determined that the use of facts otherwise available in reaching our determination is appropriate pursuant to sections 776(a)(2)(A) and (B) and that the use of an adverse inference in selecting from the facts available is appropriate pursuant to section 776(b) of the Act. In accordance with the Department's practice, as adverse facts available, we assigned to the PRC entity (including Hongyu, Linyi Sanshan, and Dexing Foods) the PRC–wide rate of 376.67 percent. For detailed information on the Department's corroboration of this rate *see Preliminary Results* 69 FR at 70640.

The Application of Partial Adverse Facts Available to FHTK and Ziyang

The Department has determined that two respondents, FHTK and Ziyang, did not provide reliable and whole information and did not act to the best of their ability in reporting factors of production data to the Department. More specifically, the Department has determined that FHTK and Ziyang reported untimely, contradictory and confusing information with respect to factors pertaining to herbicide usage, and with respect to other growing and harvesting factors of production. In addition, the Department found that FHTK and Ziyang reported per–mu garlic yields that appeared to be unrealistic when reviewed in light of record information, including their own reported factor input levels (*e.g.*, seed, water, labor), the information provided by those companies' own expert, Dr. Ronald Voss, and the growing and harvesting experience of the other respondents in this review. Therefore, the Department concluded that the factors of production data reported by these companies was not reliable and could not be used. Morever, the Department concluded that these companies did not cooperate to the best of their ability in responding the Department's questionnaires. Accordingly, the Department has applied partial adverse facts available to FHTK and Ziyang's reported growing and harvesting factors of production in its calculations. *See* ''Administrative Review of Fresh Garlic from the People's Republic of China (PRC) (A–570–531): Application of Adverse Facts Available for Fook Huat Tong Kee Pte. in the Final Results of the Administrative Review for the Period 11/01/02 - 10/31/03'' dated June 6, 2005 and ''Administrative Review of Fresh Garlic from the People's Republic of China (PRC) (A–570–531): Application of Adverse Facts Available for Taiyan Ziyang Food Co., Ltd. in the Final Results of the Administrative Review for the Period 11/01/02 - 10/31/03,'' dated June 6, 2005 (collectively, ''*AFA Memos*'').

Section 776(a) of the Tariff Act of 1930, as amended (the Act), provides that if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use facts otherwise available in reaching the applicable determination.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of the review. In this administrative review, the Department issued its standard questionnaire and, in response to the inadequate responses and information provided by FHTK and Ziyang, supplemented the record with additional questionnaires to the respondents. The Department then took the unusual step of providing two additional opportunities for the companies to provide independent third–party information and comment on the record in an effort to support the validity of their reported FOP information. Accordingly, and pursuant to section 782(d) of the Act, the Department provided FHTK and Ziyang with numerous opportunities to remedy or explain deficiencies on the record.

The Department has concluded that, within the meaning of section 776(a) of the Act, FHTK and Ziyang have failed to provide necessary accurate information in response to the Department's questionnaires and various requests for information. More specifically, we find that FHTK and Ziyang withheld information or did not provide information to the Department pertaining to various factors of production in the form and manner requested by the Department. The lack of this necessary data impeded the conduct of the administrative review. Therefore, the data provided by the respondents is not reliable or usable and the use of facts otherwise available is appropriate.

Section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's request for information. *See also* Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act (URAA), H. Doc. No. 103–316 at 870 (1994). As noted in *Nippon Steel Corp. v. United States*, 118 F. Supp. 2d 1366, 1378 (Oct. 26, 2000) (Nippon Steel), such a finding is supported by substantial evidence, in accordance with 19 U.S.C. 1516a(b)(1)(B)(i), if the Department ''(1) articulates its reasons for concluding a party failed to act to the best of its ability; and (2) explains why the missing information is significant to the review.'' In determining if the application of adverse facts available is warranted, the Department may also draw some inferences from a pattern of behavior. *See Borden, Inc. v. United States*, 22 C.I.T. 1153, 1154 (1998). Furthermore, to determine whether the respondent ''cooperated'' by ''acting to the best of its ability'' under section 776(b) of the Act, the Department also considers the accuracy and completeness of submitted information, and whether the respondent has hindered the calculation of accurate dumping margins. *Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–53820 (October 16, 1997).

We conclude that, within the meaning of section 776(b) of the Act, FHTK and Ziyang failed to cooperate by not acting to the best of their abilities in complying with the Department's requests for information for certain Factors of productions and that the use of adverse facts available is appropriate. FHTK and Ziyang's responses to the Department's questions concerning herbicide and PE film contained significant omissions, mischaracterizations, and overall lack of clarity. FHTK's and Ziyang's claims that they did not use herbicide while reporting use of herbicide–impregnated

film were contradictory and confusing. Furthermore, these companies reported unreasonably high garlic yields per mu, despite reporting average or lower than average labor–per-mu rates, no herbicide usage, and low water usage rates. These companies' own expert, Dr. Voss, specifically stated that if a company had an unusually high yield and used no herbicide, one would expect other factors, like labor, to be larger–than-average to explain such a relationship. Neither the labor usage rate, nor the water usage rate were larger than average. This disparity is particularly pronounced given that these companies' farms are within 42 kilometers of several other respondents and, despite our requests for information, neither FHTK nor Ziyang provided any evidence on the record that would suggest a geographic or other reason for the disparity.

For the Department to calculate an accurate margin in an NME proceeding, respondents must provide the Department with correct responses to its questionnaires. Despite numerous opportunities to provide factual information or argument to support its reported factors of production, FHTK and Ziyang did not act to the best of their abilities in providing information on the record upon which the Department believed it could rely. By apparently not reporting realistic factor of productions for some factors, these companies have undermined the Department's confidence in all of their reported factors of production harvesting data. Accordingly, we find that the application of an adverse inference is warranted in this case.

In applying an adverse inference, the Department must consider that a respondent may not be rewarded for failing to cooperate and providing the agency with ''flawed'' information. *See NSM Ltd. v. United States*, 170 F. Supp. 2d 1280, 1312 (CIT 2001). We believe that an adverse inference, applied to FHTK's and Ziyang's factors of production data, would address satisfactorily their insufficient and/or confusing submissions and provide for a result that ''would not benefit [these companies] from [their] lack of cooperation'' in the review. *See id.* at 1312. Accordingly, we have assigned FHTK and Ziyang, as partial adverse facts available, the highest reported usage rate from the remaining seven respondents (Dongyun, Harmoni, Hongda, Jinan Yipin, Linshu Dading, Sunny, and Trans–High) for each of the following fresh garlic production inputs: seed, fertilizer, PE film, herbicide, water, and labor.[2] *See AFA Memos*. For the remaining inputs, we have used FHTK's and Ziyang's reported usage rates, and have calculated their margins using the factors of production methodology employed for the remaining seven respondents in this review.

Section 776(c) of the Act provides that, when the Department relies on facts otherwise available and relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. In the instant review, the Department is not relying on secondary information, but rather on primary information because the Department is calculating a dumping margin on the basis of the actual harvest factors of production experience of other respondents (*i.e.*, using the highest harvest usage rates among all respondents). Therefore, this provision does not apply.

Other Changes Since the Preliminary Results

Based on our analysis of information on the record of this review, comments received from the interested parties, and changes due to verification, we have made other changes to the margin calculations for all respondents.

We altered the methodology used to calculate normal value for Dongyun, Hongda, and Trans–High. In the *Preliminary Results*, we calculated normal value for these three respondents using an intermediate–product methodology. For these final results, we have calculated normal value for Dongyun, Hongda, and Trans–High using the same factors–of-production methodology that we used for Jinan Yipin, Harmoni, Sunny, and Linshu Dading for the *Preliminary Results*. For further details, *see Decision Memo* at Comment 1 and the memoranda regarding ''Analysis for the Final Results of the Administrative Duty Order on Fresh Garlic from the People's Republic of China'' for Dongyun, Hongda, and Trans–High, dated June 6, 2005.

For all of our respondents for which we are calculating a dumping margin, we have revalued several of the surrogate values used in the *Preliminary Results*. The values that were modified for these final results are those for attachment clips, water, cold storage, ocean freight, foreign brokerage, and the surrogate financial ratios for overhead, selling, general, and administrative expenses, and profit. For further details *see* ''Factors Valuations for the Final Results of the Administrative Review,'' dated June 6, 2004. Also, for each respondent for which we calculated dumping margins involving an offset for the sale of garlic sprouts, we adjusted our programs to apply the by–product offset to normal value, instead of to cost of manufacturing, as was done in the *Preliminary Results*.

In addition, we have made some company–specific changes since the *Preliminary Results*. Specifically, we have incorporated, where applicable, post–preliminary clarifications, pre–verification corrections, and verification findings for Sunny, Linshu Dading, and Jinan Yipin and performed clerical error corrections for Dongyun, Harmoni, Hongda, Jinan Yipin, Linshu Dading, and Sunny. For further details on these company–specific changes, *see Decision Memo* at Comments 15 and 16, respectively. We also modified our calculation of the constructed export price profit ratio for Harmoni and Jinan Yipin. *See Decision Memo* at Comment 14.

For further information detailing all of these changes, *see* the memoranda regarding ''Analysis for the Final Results of the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China'' for Dongyun, FHTK, Harmoni, Hongda, Jinan Yipin, Linshu Dading, Sunny, Trans–High, and Ziyang, dated June 6, 2005.

Final Results of the Reviews

The Department has determined that the following final dumping margins exist for the period November 1, 2002, through October 31, 2003:

Exporter	Weighted–average percentage margin
Jinan Yipin Corporation, Ltd.	17.01
Jinxiang Dongyun Freezing Storage Co., Ltd.	31.26
Fook Huat Tong Kee Pte., Ltd.	315.90
Huaiyang Hongda Dehydrated Vegetable Company	3.05

[2] We did not apply an AFA value for pesticide for these respondents. Record evidence indicates that seed, water, fertilizer, plastic film, and labor are all essential inputs in the production of fresh garlic. The record is not as clear with respect to herbicide and pesticide. However, both Ziyang and FHTK provided contradictory information with respect to their use of herbicide. Neither respondent, however, has provided any indication of pesticide use. Therefore, in light of the lack of clarity with respect to the use of pesticide in garlic growing, we are not valuing pesticide as part of either Ziyang's or FHTK's garlic factors of productions. *See Decision Memo* at Comment 2.

Exporter	Weighted–average percentage margin
Linshu Dading Private Agricultural Products Co., Ltd.	25.95
Sunny Import & Export Limited	10.86
Taian Ziyang Food Co., Ltd.	179.06
Jining Trans–High Trading Co., Ltd.	0
Zhengzhou Harmoni Spice Co., Ltd.	18.97
PRC–wide rate*	376.67

* includes Jinxiang Hongyu and Storing Co., Ltd., Linyi Sanshan Import and Export Trading Co., Ltd. And Tancheng County Dexing Foods Co., Ltd.

Duty Assessment and Cash–Deposit Requirements

The Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of this review. For assessment purposes, we calculated importer–specific assessment rates for fresh garlic from the PRC. In order to be consistent, for these final results, we have applied the same assessment rate calculation methodology for all respondents.[3] Specifically, we divided the total dumping margins for each importer by the total quantity of subject merchandise sold to that importer during the POR to calculate a per–unite assessment amount. In this and future reviews, we will direct CBP to assess importer–specific assessment rates based on the resulting per–unit (*i.e.*, per kilogram) amount on each entry of the subject merchandise during the POR.

Further, the following cash–deposit requirements will be effective upon publication of these final results of the administrative review for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Act: (1) for subject merchandise exported by Dongyun, FHTK, Hongda, Jinan Yipin, Linshu Dading, Sunny, Ziyang, Trans–High, and Harmoni, the cash–deposit rate will be that established in these final results of review; (2) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash–deposit rate will be the PRC–wide rate of 376.67 percent; (3) for all non–PRC exporters of subject merchandise, the cash–deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Cash Deposits Resulting from Subsequent Review Segments

For subsequent review segments, we will establish and collect a per–kilogram cash- deposit amount which will be equivalent to the company–specific dumping margin published in those future reviews. Specifically, the following deposit requirement will be effective upon completion of subsequent review segments of this proceeding for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Act: (1) for subject merchandise exported by reviewed respondents, the per–kilogram cash–deposit rate will be the total amount of dumping margins calculated for the POR divided by the total quantity sold during the POR; (2) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash–deposit rate will be the PRC–wide rate of 376.67 percent; (3) for all non–PRC exporters of subject merchandise, the cash–deposit rate will be the rate applicable to the PRC exporter who supplied that exporter.

Notification of Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Pursuant to 19 CFR 351.402(f)(3) failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO as explained in the administrative protective order itself. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These final results of administrative review and notice are issued and published in accordance with sections 751(a)(3) and 777(i) of the Act.

Dated: June 6, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix 1

Decision Memorandum

1. Intermediate Input Methodology
2. Valuation of Garlic Seed
3. Valuation of Water
4. Valuation of Leased Land
5. Surrogate Financial Ratios
6. Valuation of Garlic Sprouts
7. Valuation of Cartons
8. Valuation of Plastic Jars and Lids
9. Valuation of Attachment Clips
10. Valuation of Cold Storage
11. Valuation of Ocean Freight
12. Calculation of Surrogate Wage Rate

Company Specific Issues

13. Correct Calculation of CEP Profit
14. Use of Most Up–To-Date Information
15: Clerical and Programming Errors
16: Educational Meetings and Other Non–Used Information on the Record
17: Partial Facts Available

[FR Doc. E5–3048 Filed 6–10–05; 8:45 am]

Billing Code: 3510–DS–S

[3] In our *Preliminary Results*, for those respondents who reported an entered value, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each applicable importer to calculate an ad-valorem assessment rate. For respondents who did not report an entered value for their sales, we divided the total dumping margins for each importer by the total quantity of subject merchandise sold to that importer during the POR to calculate a per-unit assessment amount.

DEPARTMENT OF COMMERCE

International Trade Administration

(A–351–840)

Postponement of Preliminary Determination of Antidumping Duty Investigation: Certain Orange Juice from Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is postponing the preliminary determination in the antidumping duty investigation of certain orange juice from Brazil from June 27, 2005, until no later than August 16, 2005. This postponement is made pursuant to section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: June 13, 2005.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or Jill Pollack at (202) 482–3874 or (202) 482–4593, respectively, Import Administration, International Trade Administration,

U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230.

SUPPLEMENTARY INFORMATION:

Postponement of Due Date for Preliminary Determination

On February 7, 2005, the Department initiated an antidumping duty investigation of imports of certain orange juice from Brazil. *See Notice of Inititation of Antidumping Duty Investigation: Certain Orange Juice from Brazil*, 70 FR 7233 (Feb. 11, 2005). The notice of initiation stated that we would issue our preliminary determination no later than 140 days after the date of initiation. *See Id.* Currently, the preliminary determination in this investigation is due on June 27, 2005.

On June 2, 2005, the petitioners made a timely request pursuant to 19 CFR 351.205(e) for a 50–day postponement, pursuant to section 733(c)(1)(A) of the Act. The petitioners stated that a postponement of this preliminary determination is necessary in order to permit the Department and the petitioners to fully analyze the information that has been submitted in this investigation and to analyze cost information that will be submitted shortly. The petitioners also noted that the postponement will permit the Department to seek additional information from respondents prior to the preliminary determination.

Under section 733(c)(1)(A) of the Act, if the petitioner makes a timely request for an extension of the period within which the preliminary determination must be made under subsection (b)(1), then the Department may postpone making the preliminary determination under subsection (b)(1) until not later than the 190th day after the date on which the administering authority initiated the investigation. Therefore, for the reasons identified by the petitioners and because there are no compelling reasons to deny the request, the Department is postponing the preliminary determination in this investigation until August 16, 2005, which is 190 days from the date on which the Department initiated this investigation.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f).

Dated: June 7, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 05–11652 Filed 6–10–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

International Trade Administration, North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of panel.

SUMMARY: On June 7, 2005 the binational panel issued its decision in the review of the injury determination made by the International Trade Commission, respecting Hard Red Spring Wheat from Canada Final Injury Determination, Secretariat File No. USA–CDA–2003–1904–06. The binational panel remanded the decision to the Commission with one partial dissenting opinion. Copies of the panel decision are available from the U.S. Section of the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter has been conducted in accordance with these Rules.

Panel Decision: The panel remanded the International Trade Commission's final injury determination respecting Hard Red Spring Wheat from Canada with one partial dissenting opinion. The panel remanded the opinion as follows:

1. Explain why record evidence regarding pre- and post-petition prices is not sufficient to rebut the statutory presumption of 19 U.S.C. 1677(7)(I), insofar as post-petition price data is concerned. If the Commission finds that such information is sufficient to rebut the presumption, then it must make a new determination on all factors that gives full weight to the evidence previously discounted.

2. Explain how post-petition volume and price data were factored into the Commission's final determination and provide analysis that gives such data some weight, rather than no weight, in its determination. If the Commission finds that either category of evidence is not discounted, then it must make a new determination that gives such undiscounted evidence full weight in its analysis of the relevant factor.

3. Explain how instances of underselling caused adverse trends in price or industry performance in the domestic industry.

4. Analyze how increased volumes of the subject imports caused the domestic industry to suffer depressed prices taking into account all contradictory evidence and render a new determination based on the analysis.

5. Provide a new analysis of the impact of subject imports on the domestic industry, explaining and analyzing (a) how fluctuating yields may leave the domestic industry vulnerable as a result of price depression of the subject imports, (b) how yield fluctuations were accounted for, and (c) why yields per acre and farm prices are the most relevant factors in determining the financial state of the domestic industry.

6. Provide detail as to which prices have been used by the Commission in its analysis and whether prices have been used that are not at the level of sales to domestic milling operations. Having regard to the substantial evidence requirements discussed above, if prices that are not at the level of sales to domestic milling operations have been used, the Commission must explain how such prices show sales in competition with sales of imports at the same level of trade, or how they have been adjusted to reflect the same trade level as imports. If price comparisons could not be made at the same level of trade, the Commission must explain what link exists between prices at the different levels that supports the conclusions of the Commission. If some prices chosen do not involve comparisons at the same level of trade and cannot be adjusted, the Commission is instructed to reject them and reconsider its analysis of price underselling.

7. Examine the economic conditions of the grain trading companies and elevators to explain how the effect of imports was passed upstream to the farmers.

8. Examine the exports of domestically-produced HRS wheat and explain how the Commission has found injury by reason of the subject imports, rather than by reason of competition in third-country markets.

9. Analyze and explain how average farm prices for HRS wheat are based on the outcome of downstream transactions, and subject imports are large enough to impact HRS wheat prices on the futures market of the MGE, specifically taking into account the proprietary information found at page 56 of the CWB's Brief.

The Commission is to provide the determination on remand within 90 days of the panel decision or not later than September 6, 2005.

Dated: June 7, 2005.

Caratina L. Alston,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. E5–3015 Filed 6–10–05; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904; NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On May 31, 2005, West Fraser Mills, Ltd. filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Second requests were filed on June 1, 2005 on behalf of Ontario Forest Industries Association, the Ontario Lumber Manufacturers Association and Tembec, Inc; Weyerhaeuser Company Limited; Cascadia Forest Products, Ltd.; International Forest Products Ltd.; and a third request was received on June 7, 2005 on behalf of Abitibi-Consolidated Company of Canada (formerly known as Donohue Forest Products Inc.) Produits Forestiers Petit Paris Inc., Produits Forestiers la Tuque Inc., and Societe en Commandite Scierie Opitciwan. Panel review was requested of the Notice of Determination Under Section 129 of the Uruguay Round Agreement Act: Antidumping Measures on Certain Softwood Lumber Products from Canada made by the United States Department of Commerce, International Trade Administration. This determination was published in the **Federal Register**, (70 FR 22636) on May 31, 2005. The NAFTA Secretariat has assigned Case Number USA–CDA–2005–1904–04 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on May 31, 2005, requesting panel review of the final determination described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is June 30, 2005);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is July 15, 2005); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: June 7, 2005.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E5–3019 Filed 6–10–05; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Observer Providers of the North Pacific

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before August 12, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, 907–586–7008 or *patsy.bearden@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The main focus of this information collection continues to be the documentation required by National Marine Fisheries Service (NMFS) from an observer provider. Observer providers are permitted by NMFS to hire and deploy qualified individuals as observers in the North Pacific groundfish fisheries. Observer candidates are required to meet specified criteria in order to qualify as an observer and must successfully complete an initial certification training course, as well as meet other criteria, prior to being certified.

II. Method of Collection

Paper applications, electronic reports, and telephone calls are required from participants, and methods of submittal include Internet and facsimile transmission of paper forms.

III. Data

OMB Number: 0648–0318.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Not-for-profit institutions; and business or other for-profits organizations.
Estimated Number of Respondents: 405.
Estimated Time Per Response: 30 minutes for industry request for assistance in improving observer data quality issues; 60 hours for new permit application for observer provider; 15 minutes for update to provider information; 15 minutes for observer candidates college transcripts and disclosure statements, observer candidate; 15 minutes for observer candidates college transcripts and disclosure statements, observer provider; 5 minutes for notification of observer physical examination, observer provider; 2 hours for observer physical examination; 7 minutes for projected observer assignment; 7 minutes for briefing registration; 12 minutes for certificate of insurance; 15 minutes for copies of contracts; 7 minutes for weekly deployment/logistics reports; 7 minutes for debriefing registration; 2 hours for reports of problems; 40 hours for observer provider permit expiration or denial of permit appeals; and 20 hours for appeals for denial of observer certification, certification suspension, or decertification.
Estimated Total Annual Burden Hours: 1,963.
Estimated Total Annual Cost to Public: $84,458.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 6, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–11602 Filed 6–10–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Documentation of Fish Harvest

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before August 12, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue NW., Washington DC 20230 (or via Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Beverly Lambert, Southeast Office for Law Enforcement, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; telephone: 727–824–5347 or *Beverly.Lambert@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The seafood dealers who possess red porgy, gag, black grouper, or greater amberjack during seasonal fishery closures must maintain documentation that such fish were harvested from areas other than the South Atlantic. The documentation includes information on the vessel that harvested the fish and on where and when the fish were offloaded. The information is required for the enforcement of fishery regulations.

II. Method of Collection

The information is in the form of a paper affidavit which remains with the respondent.

III. Data

OMB Number: 0648–0365.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations, individuals or households.
Estimated Number of Respondents: 25.
Estimated Time Per Response: 30 minutes.
Estimated Total Annual Burden Hours: 13.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and /or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 6, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–11603 Filed 6–10–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Scale and Catch Weighing Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and

respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before August 12, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, 907–586–7008 or *patsy.bearden@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The NOAA Fisheries, Alaska Region, catch-weighing and catch monitoring procedures were extended to the Bering Sea/Aleutian Islands (BSAI) King and Tanner Crabs. In addition, this information collection is revised to add a new form for automatic hopper scale tests. This collection describes equipment and operational requirements, consisting of: Scales used to weigh catch at sea; scales approved by the State of Alaska; observer sampling station; inshore catch monitoring and control plan; and crab catch monitoring plan.

II. Method of Collection

Forms are available in both electronic and paper format and may be emailed or faxed.

III. Data

OMB Number: 0648–0330.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or for-profit organizations; individuals or households.

Estimated Number of Respondents: 90.

Estimated Time Per Response: 6 minutes for at-sea inspection request; 45 minutes for Record of daily scale tests; 45 minutes for printed output of at-sea scale weight; 45 minutes for printed output of State of Alaska scale weight; 63 hours for scale type evaluation; 6 minutes for at-sea scale approval report/sticker; 6 minutes for application to inspect scales on behalf of NMFS; 2 hours for observer sampling station inspection request; 5 minutes for inspection request for inshore catch monitoring and control plan (CMCP); 40 hours for inshore processors CMCP; 8 hours for CMCP addendum; 5 minutes for notification of observer offloading schedule for BSAI pollock; 2 minutes for prior notice to observers of scale tests; and 40 hours for crab catch monitoring plan.

Estimated Total Annual Burden Hours: 10,032.

Estimated Total Annual Cost to Public: $15,000.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 6, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–11604 Filed 6–10–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060705D]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of a public conference call meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene its Charterboat Advisory Panel (AP) via conference call to review the ''Draft Amendment to the FMPs for Reef Fish (Amendment 25) and Coastal Migratory Pelagics (CMP) (Amendment 17) for extending the Charter Vessel/Headboat Permit Moratorium.''

DATES: The conference call will be held on June 30, 2005. The conference call will begin at 10 a.m. EDT and conclude no later than 11 a.m. EDT.

ADDRESSES: The meeting will be held via conference call and listening stations will be available. For specific locations see **SUPPLEMENTARY INFORMATION**.

Council address: Gulf of Mexico Fishery Management Council, 3018 North U.S. Highway 301, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Mr. Stu Kennedy, Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council (Council) will convene its Charterboat AP to review the Draft Amendment to the FMPs for Reef Fish (Amendment 25) and Coastal Migratory Pelagics (Amendment 17) for extending the Charter Vessel/Headboat Permit Moratorium. Amendments establishing the charter vessel/headboat permit moratorium for the CMP fishery and the Reef Fish fishery were approved by NOAA Fisheries on May 6, 2003, and implemented on June 16, 2003 (68 FR 26280). The intended effect of these Amendments was to cap the number of for-hire vessels operating in these two fisheries at the current level (as of March 29, 2001) while the Council evaluated whether limited access programs were needed to constrain effort. In this amendment, the Council is considering allowing the permit to expire on June 16, 2006 or extending the moratorium on for-hire Reef Fish and CMP permits for a finite period of time or indefinitely.

Listening stations are available at the following locations:

The Gulf Council office (see **ADDRESSES**), and the following NMFS offices:

Galveston, TX 4700 Avenue U, Galveston, TX 77551, Rhonda O'Toole, 409–766–3500;

St. Petersburg, FL 263 13th Avenue South, St. Petersburg, FL 33701, Andy Strelcheck, 727–824–5374;

Pascagoula, MS 3209 Frederic Street, Pascagoula, MS 39567, Cheryl Hinkel, 228–769–9200; and

Panama City, FL 3500 Delwood Beach Road, Panama City, FL 32408, Bob Allman, 850–324–6541.

A copy of the Amendment and related materials can be obtained by calling the Council office at (813) 228–2815.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal

action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dawn Aring at the Council (see **ADDRESSES**) by June 23, 2005.

Dated: June 8, 2005.

Emily Menashes,

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

[FR Doc. E5–3043 Filed 6–10–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060705E]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene their Reef Fish Advisory Panel to review the ''Draft Amendment 18A to the Reef Fish Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico.''

DATES: The meeting will be held on Tuesday, June 28, 2005, from 8:30 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the DoubleTree Westshore Hotel, 4500 West Cypress Street, Tampa, FL.

Council address: Gulf of Mexico Fishery Management Council, 3018 North U.S. Highway 301, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: The Reef Fish Advisory Panel (AP) will review the Draft Amendment 18A to the Reef Fish Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico. Reef Fish Amendment 18A deals with enforcement and monitoring issues, including simultaneous commercial and recreational harvest on a vessel (to improve enforceability of prohibition on sale of recreationally caught reef fish), maximum crew size on a U.S. Coast Guard (USCG) inspected vessel when fishing commercially (to resolve a conflict between NMFS maximum crew size and USCG minimum crew size regulations), use of reef fish for bait, and vessel monitoring system (VMS) requirements on commercial reef fish vessels. Amendment 18A also addresses administrative changes to the framework procedure for setting total allowable catch (TAC) of reef fish, and measures to reduce bycatch and bycatch mortality of endangered sea turtles and smalltooth sawfish taken incidentally in the commercial and charter/headboat reef fish fishery.

The AP's comments/recommendations will be provided to the Council at its July 11–15, 2005 meeting in Ft. Myers, FL.

Although other non-emergency issues not on the agendas may come before the Ecosystem SSC for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions of the Ecosystem SSC will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

A copy of the Amendment and related materials can be obtained by calling the Council office at (813) 228–2815.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dawn Aring at the Council (see **ADDRESSES**) by June 21, 2005.

Dated: June 8, 2005.

Emily Menashes,

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

[FR Doc. E5–3044 Filed 6–10–05; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Commercial Availability Request under United States-Caribbean Basin Trade Partnership Act (CBTPA)

June 8, 2005.

AGENCY: Committee for the Implementation of Textile Agreements (CITA)

ACTION: Request for public comments concerning a request for a determination that certain 100 percent cotton, yarn-dyed in the warp direction, seersucker fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

SUMMARY: On June 7, 2005, the Chairman of CITA received a petition from Sandler, Travis & Rosenberg, P.A., on behalf of their client B*W*A of New York City, alleging that certain 100 percent cotton, yarn dyed in the warp direction, plain weave double warp beam seersucker fabrics, of specifications detailed below, classified in subheadings 5208.42.30, 5208.42.40, 5208.42.50, and 5209.41.60 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. The petition requests that woven shirts, blouses, and sleepwear of such fabrics be eligible for preferential treatment under the CBTPA. CITA hereby solicits public comments on this request, in particular with regard to whether such fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by June 28, 2005to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, 14th and Constitution Avenue, N.W. Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard Stetson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 211(a) of the CBTPA, amending Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Recovery Act (CBERA); Section 6 of Executive Order No. 13191 of January 17, 2001; Presidential Proclamations 7351 of October 2, 2000.

BACKGROUND:

The CBTPA provides for quota- and duty-free treatment for qualifying textile

and apparel products. Such treatment is generally limited to products manufactured from yarns and fabrics formed in the United States or a beneficiary country. The CBTPA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On June 7, 2005 the Chairman of CITA received a petition from B*W*A alleging that certain 100 percent cotton, yarn dyed in the warp direction, plain weave double warp beam seersucker fabrics, of specifications detailed below, classified in HTSUS subheadings 5208.42.30, 5208.42.40, 5208.42.50, and 5209.41.60, for use in woven shirts, blouses, and sleepwear, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for such apparel articles that are both cut and sewn in one or more beneficiary countries from such fabrics.

Specifications:

Petitioner Style Number:	Various
Fiber Content:	100% Cotton
Yarn Number:	(1) 33/1 - 119/1 metric warp; (2) 33/1 - 119/1 & 33/2 - 119/2 metric warp 33/1 - 119/1 metric filling; overall average yarn number: 30 - 115 metric
Thread Count:	23 - 48 warp ends per centimeter; 19 - 40 filling picks per centimeter; total: 42 - 88 threads per square centimeter
Weave:	Plain weave double warp beam seersucker
Weight:	101 - 255 grams per square meter
Width:	136 - 152 centimeters
Finish:	Of yarns of different colors in the warp direction

The petitioner states that one very important feature of the fabrics is that they are genuine seersucker fabrics, woven with two warp beams, one with half the warp yarns subject to normal warp tension, the other with the warp yarns in a relaxed or tensionless state. Thus, the unique ''crinkled'' appearance and feel of the finished fabric is achieved on the loom and enhanced in the dyeing and finishing process, not merely by dyeing and finishing alone.

CITA is soliciting public comments regarding this request, particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other fabrics that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for these fabrics for purposes of the intended use. Comments must be received no later than June 28, 2005. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the fabric stating that it produces the fabric that is the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked ''business confidential'' from disclosure to the full extent permitted by law. CITA generally considers specific details, such as quantities and lead times for providing the subject product as business confidential. However, information such as the names of domestic manufacturers who were contacted, questions concerning the capability to manufacture the subject product, and the responses thereto should be available for public review to ensure proper public participation in the process. If this is not possible, an explanation of the necessity for treating such information as business confidential must be provided. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–11739 Filed 6–9–05; 1:46 pm]

BILLING CODE 3510–DS–S

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

Notice of the Defense Base Closure and Realignment Commission—Cancellation of an Open Meeting

AGENCY: Defense Base Closure and Realignment Commission.

ACTION: Notice; Defense Base Closure and Realignment Commission—Cancellation of Open Meeting (Salt Lake City, UT).

SUMMARY: Notice is hereby given that the previously announced open meeting of a delegation of the 2005 Defense Base Closure and Realignment Commission scheduled for June 6, 2005 from 2 p.m. to 4:30 p.m. in Salt Lake City, Utah, has been cancelled. After extensive coordination with the various Federal, state and local officials concerned, the Commission determined that it was not possible to hold a meaningful public discussion on the date scheduled because Congressional delegations and community representatives had not been afforded adequate opportunity to analyze the data used by the Department of Defense (DoD) to formulate the base closure and realignment recommendations due to delays by DoD in releasing that data in an unclassified form. The Utah and Idaho Congressional delegations have been offered the opportunity to participate in the regional hearing currently scheduled in Portland, Oregon on June 17, 2005.

The delay of this notice resulted from unanticipated delays by DoD in the release of the data used by DoD to formulate the base closure and realignment recommendations in an unclassified form and the short time-frame established by statute for the operations of the Defense Base Closure and Realignment Commission. The Commission requests that the public consult the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*, for updates.

DATES: Not applicable.

ADDRESSES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Please see the 2005 Defense Base

Closure and Realignment Commission Web site, *http://www.brac.gov*. The Commission invites the public to provide direct comment by sending an electronic message through the portal provided on the Commission's Web site or by mailing comments and supporting documents to the 2005 Defense Base Closure and Realignment Commission, 2521 South Clark Street, Suite 600, Arlington, Virginia 22202–3920. The Commission requests that public comments be directed toward matters bearing on the decision criteria described in *The Defense Base Closure and Realignment Act of 1990*, as amended, available on the Commission Web site. Sections 2912 through 2914 of that Act describe the criteria and many of the essential elements of the 2005 BRAC process. For questions regarding this announcement, contact Mr. Dan Cowhig, Deputy General Counsel and Designated Federal Officer, at the Commission's mailing address or by telephone at 703–699–2950 or 2708.

Dated: June 6, 2005.

Jeannette Owings-Ballard,

Administrative Support Officer.

[FR Doc. 05–11625 Filed 6–10–05; 8:45 am]

BILLING CODE 5001–06–P

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

Notice of the Defense Base Closure and Realignment Commission—Change in Date, Location and Agenda of a Previously Announced Open Meeting

AGENCY: Defense Base Closure and Realignment Commission.

ACTION: Notice; Defense Base Closure and Realignment Commission—Change in Date, Location and Agenda of a Previously Announced Open Meeting (St. Louis, MO).

SUMMARY: Notice is hereby given that a Notice is hereby given that the previously announced open meeting of a delegation of the Defense Base Closure and Realignment Commission scheduled for June 7, 2005 from 8:30 a.m. to 6 p.m. in St. Louis, Missouri, has been rescheduled for June 20, 2005 from 8:30 a.m. to 6 p.m. After extensive coordination with the various Federal, State and local officials concerned, the Commission determined that it was not possible to hold a meaningful public discussion on the date originally scheduled because Congressional delegations and community representatives had not been afforded adequate opportunity to analyze the data used by the Department of Defense (DoD) to formulate the base closure and realignment recommendations due to delays by DoD in releasing that data in an unclassified form. The location of the meeting is yet to be determined. The agenda will now include comment from Federal, state and local government representatives and the general public on base realignment and closure actions in Kentucky, Illinois, Indiana, Iowa, Michigan, Missouri and Wisconsin that have been recommended by DoD.

The purpose of this regional meeting is to allow communities experiencing a base closure or major realignment action (defined as loss of 300 civilian positions or 400 military and civilian positions) an opportunity to voice their concerns, counter-arguments, and opinions. This meeting will be open to the public, subject to the availability of space. The sub-group of the Commission will not render decisions regarding the DoD recommendations at this meeting, but will gather information for later deliberations by the Commission as a whole.

The delay of this notice resulted from unanticipated delays by DoD in the release of the data used by DoD to formulate the base closure and realignment recommendations in an unclassified form and the short time-frame established by statute for the operations of the Defense Base Closure and Realignment Commission. The Commission requests that the public consult the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*, for updates.

DATES: June 20, 2005 from 8:30 a.m. to 6 p.m.

ADDRESSES: To Be Determined, St. Louis, Missouri.

FOR FURTHER INFORMATION CONTACT: Please see the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov.* The Commission invites the public to provide direct comment by sending an electronic message through the portal provided on the Commission's Web site or by mailing comments and supporting documents to the 2005 Defense Base Closure and Realignment Commission, 2521 South Clark Street, Suite 600, Arlington, Virginia 22202–3920. For questions regarding this announcement, contact Mr. Dan Cowhig, Deputy General Counsel and Designated Federal Officer, at the Commission's mailing address or by telephone at 703–699–2950 or 2708.

Dated: June 6, 2005.

Jeannette Owings-Ballard,

Administrative Support Officer.

[FR Doc. 05–11626 Filed 6–10–05; 8:45 am]

BILLING CODE 5001–06–P

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

Notice of the Defense Base Closure and Realignment Commission—Open Meeting

AGENCY: Defense Base Closure and Realignment Commission.

ACTION: Notice; Defense Base Closure and Realignment Commission—Open Meeting (Atlanta, GA).

SUMMARY: Notice is hereby given that a delegation of Commissioners of the Defense Base Closure and Realignment Commission will hold an open meeting on June 30, 2005 from 8:30 a.m. to 12 p.m. at the Georgia Tech Hotel and Conference Center, 800 Spring Street Northwest, Atlanta, Georgia 30308. The Commission requests that the public consult the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*, for updates.

The Commission delegation will meet to receive comment from Federal, State and local government representatives and the general public on base realignment and closure actions in Alabama and Georgia that have been recommended by the Department of Defense (DoD). The purpose of this regional meeting is to allow communities experiencing a base closure or major realignment action (defined as loss of 300 civilian positions or 400 military and civilian positions) an opportunity to voice their concerns, counter-arguments, and opinions in a live public forum. This meeting will be open to the public, subject to the availability of space. The delegation will not render decisions regarding the DoD recommendations at this meeting, but will gather information for later deliberations by the Commission as a whole.

DATES: June 30, 2005 from 8:30 a.m. to 12 p.m.

ADDRESSES: Georgia Tech Hotel and Conference Center, 800 Spring Street Northwest, Atlanta, Georgia 30308.

FOR FURTHER INFORMATION CONTACT: Please see the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov.* The Commission invites the public to provide direct comment by sending an electronic message through the portal provided on the Commission's Web site

or by mailing comments and supporting documents to the 2005 Defense Base Closure and Realignment Commission, 2521 South Clark Street, Suite 600, Arlington, Virginia 22202–3920. The Commission requests that public comments be directed toward matters bearing on the decision criteria described in *The Defense Base Closure and Realignment Act of 1990*, as amended, available on the Commission Web site. Sections 2912 through 2914 of that Act describe the criteria and many of the essential elements of the 2005 BRAC process. For questions regarding this announcement, contact Mr. Dan Cowhig, Deputy General Counsel and Designated Federal Officer, at the Commission's mailing address or by telephone at 703–699–2950 or 2708.

Dated: June 6, 2005.

Jeannette Owings-Ballard,

Administrative Support Officer.

[FR Doc. 05–11631 Filed 6–10–05; 8:45 am]

BILLING CODE 5001–06–P

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

Notice of the Defense Base Closure and Realignment Commission—Open Meeting

AGENCY: Defense Base Closure and Realignment Commission.

ACTION: Notice; Defense Base Closure and Realignment Commission—open meeting (San Antonio, TX).

SUMMARY: Notice is hereby given that a delegation of Commissioners of the Defense Base Closure and Realignment Commission will hold an open meeting on July 11, 2005, from 8:30 a.m. to 12:30 p.m. at the Ballroom of the Henry B. Gonzales Convention Center, 200 East Market Street, San Antonio, Texas 78205. The Commission requests that the public consult the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov,* for updates.

The Commission delegation will meet to receive comment from Federal, State and local government representatives and the general public on base realignment and closure actions in Arkansas and Texas that have been recommended by the Department of Defense (DoD). The purpose of this regional meeting is to allow communities experiencing a base closure or major realignment action (defined as loss of 300 civilian positions or 400 military and civilian positions) an opportunity to voice their concerns, counter-arguments, and opinions in a live public forum. This meeting will be open to the public, subject to the availability of space. The delegation will not render decisions regarding the DoD recommendations at this meeting, but will gather information for later deliberations by the Commission as a whole.

DATES: July 11, 2005, from 8:30 a.m. to 12:30 p.m.

ADDRESSES: Henry B. Gonzales Convention Center, Ballroom, 200 East Market Street, San Antonio, Texas 78205.

FOR FURTHER INFORMATION CONTACT: Please see the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov.* The Commission invites the public to provide direct comment by sending an electronic message through the portal provided on the Commission's Web site or by mailing comments and supporting documents to the 2005 Defense Base Closure and Realignment Commission, 2521 South Clark Street, Suite 600, Arlington, Virginia 22202–3920. The Commission requests that public comments be directed toward matters bearing on the decision criteria described in *The Defense Base Closure and Realignment Act of 1990*, as amended, available on the Commission Web site. Sections 2912 through 2914 of that Act describe the criteria and many of the essential elements of the 2005 BRAC process. For questions regarding this announcement, contact Mr. Dan Cowhig, Deputy General Counsel and Designated Federal Officer, at the Commission's mailing address or by telephone at 703–699–2950 or 2708.

Dated: June 6, 2005.

Jeannette Owings-Ballard,

Administrative Support Officer.

[FR Doc. 05–11633 Filed 6–10–05; 8:45 am]

BILLING CODE 5001–06–P

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

Notice of the Defense Base Closure and Realignment Commission—Change to the Agenda of a Previously Announced Open Meeting (Baltimore, MD); Correction

AGENCY: Defense Base Closure and Realignment Commission.

ACTION: Notice; correction.

SUMMARY: The Defense Base Closure and Realignment Commission published a document in the **Federal Register** of June 7, 2005, concerning receiving comments from Federal, state and local government representatives and the general public on base realignment and closure actions in the District of Columbia, Maryland, New Jersey, Pennsylvania and Virginia that have been recommended by the Department of Defense (DoD). The agenda for this meeting has changed.

FOR FURTHER INFORMATION CONTACT: Please see the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov.* The Commission invites the public to provide direct comment by sending an electronic message through the portal provided on the Commission's Web site or by mailing comments and supporting documents to the 2005 Defense Base Closure and Realignment Commission, 2521 South Clark Street, Suite 600, Arlington, Virginia 22202–3920. The Commission requests that public comments be directed toward matters bearing on the decision criteria described in *The Defense Base Closure and Realignment Act of 1990*, as amended, available on the Commission Web site. Sections 2912 through 2914 of that Act describe the criteria and many of the essential elements of the 2005 BRAC process. For questions regarding this announcement, contact Mr. Dan Cowhig, Deputy General Counsel and Designated Federal Officer, at the Commission's mailing address or by telephone at 703–699–2950 or 2708.

Correction

In the **Federal Register** of June 7, 2005, in FR Doc. 05–11232, on page 33126, in the first column, correct the **SUMMARY** caption to read:

SUMMARY: The delegation will meet to receive comments from Federal, state and local government representatives and the general public on base realignment and closure actions in Delaware, the District of Columbia, Maryland, New Jersey, Pennsylvania and Virginia that have been recommended by the Department of Defense (DoD).

Dated: June 6, 2005.

Jeannette Owings-Ballard,

Administrative Support Officer.

[FR Doc. 05–11630 Filed 6–10–05; 8:45 am]

BILLING CODE 5001–06–P

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

Notice of the Defense Base Closure and Realignment Commission—Change in Location of a Previously Announced Open Meeting (Fairbanks, AK); Correction

AGENCY: Defense Base Closure and Realignment Commission.

ACTION: Notice; correction.

SUMMARY: The Defense Base Closure and Realignment Commission published a document in the **Federal Register** of June 7, 2005, concerning receiving comments from Federal, state and local government representatives and the general public on base realignment and closure actions in Alaska that have been recommended by the Department of Defense (DoD). The location for this meeting has changed. The delay of this notice of change resulted from recent requests by community representatives to move the regional hearing to a location commonly used for community public events and the short time-frame established by statute for the operations of the Defense Base Closure and Realignment Commission. The Commission requests that the public consult the Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*, for updates.

FOR FURTHER INFORMATION CONTACT: Please see the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov.* The Commission invites the public to provide direct comment by sending an electronic message through the portal provided on the Commission's Web site or by mailing comments and supporting documents to the 2005 Defense Base Closure and Realignment Commission, 2521 South Clark Street, Suite 600, Arlington, Virginia 22202–3920. The Commission requests that public comments be directed toward matters bearing on the decision criteria described in *The Defense Base Closure and Realignment Act of 1990*, as amended, available on the Commission Web site. Sections 2912 through 2914 of that Act describe the criteria and many of the essential elements of the 2005 BRAC process. For questions regarding this announcement, contact Mr. Dan Cowhig, Deputy General Counsel and Designated Federal Officer, at the Commission's mailing address or by telephone at 703–699–2950 or 2708.

Correction

In the **Federal Register** of June 7, 2005, in FR Doc 05–11236, on page 33128, in the first column, correct the **ADDRESS** caption to read:

ADDRESSES: Hering Auditorium, Lathrop High School, 901 Airport Way, Fairbanks, Alaska 99701

Dated: June 7, 2005.

Jeannette Owings-Ballard,

Administrative Support Officer.

[FR Doc. 05–11627 Filed 6–10–05; 8:45 am]

BILLING CODE 5001–06–P

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

Notice of the Defense Base Closure and Realignment Commission—Change to the Agenda of a Previously Announced Open Meeting (Portland, OR); Correction

AGENCY: Defense Base Closure and Realignment Commission.

ACTION: Notice; correction.

SUMMARY: The Defense Base Closure and Realignment Commission Published a document in the **Federal Register** of June 7, 2005, concerning receiving comments from Federal, State and local government representatives and the general public on base realignment and closure action in Oregon and Washington that have been recommended by the Department of Defense (DoD). The agenda for this meeting has changed.

The delay of this change notice resulted from unanticipated delays by DoD in the release of the data used by DoD to formulate the base closure and realignment recommendations in an unclassified form, recent requests from representatives of communities in Montana to accommodate delegations from those communities, and the short time-frame established by statute for the operations of the Defense Base Closure and Realignment Commission. The Commission requests that the public consult the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*, for updates.

FOR FURTHER INFORMATION CONTACT: Please see the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*. The Commission invites the public to provide direct comment by sending an electronic message through the portal provided on the Commission's website or by mailing comments and supporting documents to the 2005 Defense Base Closure and Realignment Commission, 2521 South Clark Street, Suite 600, Arlington, Virginia 22202–3920. The Commission requests that public comments be directed toward matters bearing on the decision criteria described in *The Defense Base Closure and Realignment Act of 1990*, as amended, available on the Commission Web site. Sections 2912 through 2914 of that Act describe the criteria and many of the essential elements of the 2005 BRAC process. For questions regarding this announcement, contact Mr. Dan Cowhig, Deputy General Counsel and Designated Federal Officer, at the Commission's mailing address or by telephone at 703–699–2950 or 2708.

Correction

In the **Federal Register** of June 7, 2005, in FR Doc. 05–11241, on page 33129, in the third column, correct the **SUMMARY** caption to read:

SUMMARY: The delegation will now meet on the same date in the same location from 8:30 a.m. to 12 p.m. to receive comment from Federal, State and local government representatives and the general public on base realignment and closure actions in Idaho, Montana, Oregon and Washington that have been recommended by the Department of Defense (DoD).

Dated: June 6, 2005.

Jeannette Owings-Ballard,

Administrative Support Officer.

[FR Doc. 05–11628 Filed 6–10–05; 8:45 am]

BILLING CODE 5001–06–P

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

Notice of the Defense Base Closure and Realignment Commission—Change to the Agenda of a Previously Announced Open Meeting (Grand Forks, ND); Correction

AGENCY: Defense Base Closure and Realignment Commission.

ACTION: Notice; correction.

SUMMARY: The Defense Base Closure and Realignment Commission published a document in the **Federal Register** of June 7, 2005, concerning receiving comments from Federal, Sate and local government representatives and the general public on base closure actions in North Dakota that have been recommended by the Department of Defense (DoD). The agenda for this meeting has been changed.

The delay of this change notice resulted from recent requests from representatives of communities in Minnesota to accommodate delegations from those communities and the short time-frame established by statute for the operations of the Defense Base Closure and Realignment Commission. The Commission requests that the public consult the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*, for updates.

FOR FURTHER INFORMATION CONTACT: Please see the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov.* The Commission invites the public to provide direct comment by sending an electronic message through the portal provided on the Commission's Web site or by mailing comments and supporting documents to the 2005 Defense Base

Closure and Realignment Commission, 2521 South Clark Street, Suite 600, Arlington, Virginia 22202–3920. The Commission requests that public comments be directed toward matters bearing on the decision criteria described in *The Defense Base Closure and Realignment Act of 1990*, as amended, available on the Commission Web site. Sections 2912 through 2914 of that Act describe the criteria and many of the essential elements of the 2005 BRAC process. For questions regarding this announcement, contact Mr. Dan Cowhig, Deputy General Counsel and Designated Federal Officer, at the Commission's mailing address or by telephone at 703–699–2950 or 2708.

Correction

In the **Federal Register** of June 7, 2005, in FR Doc. 05–11239, on page 33129, in the first column, correct the **SUMMARY** caption to read:

SUMMARY: The delegation will now meet on the same date in the same location from 8:30 a.m. to 11:30 a.m. to receive comment from Federal, State and local government representatives and the general public on base realignment and closure actions in Minnesota and North Dakota that have been recommended by the Department of Defense (DoD).

Dated: June 6, 2005.

Jeannette Owings-Ballard,

Administrative Support Officer.

[FR Doc. 05–11629 Filed 6–10–05; 8:45 am]

BILLING CODE 5001–06–P

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

Notice of the Defense Base Closure and Realignment Commission—Change to the Agenda of a Previously Announced Open Meeting (Charlotte, NC); Correction

AGENCY: Defense Base Closure and Realignment Commission.

ACTION: Notice; correction.

SUMMARY: The Defense Base Closure and Realignment Commission published a document in the **Federal Register** of June 7, 2005, concerning receiving comments from Federal, State and local government representatives and the general public on base realignment and closure actions in North Carolina and South Carolina that have been recommended by the Department of Defense (DoD). The agenda for this meeting has changed.

FOR FURTHER INFORMATION CONTACT: Please see the Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*. The Commission invites the public to provide direct comment by sending an electronic message through the portal provided on the Commission's Web site or by mailing comments and supporting documents to the 2005 Defense Base Closure and Realignment Commission, 2521 South Clark Street, Suite 600, Arlington, Virginia 22202–3920. The Commission requests that public comments be directed toward matters bearing on the decision criteria described in *The Defense Base Closure and Realignment Act of 1990*, as amended, available on the Commission website. Sections 2912 through 2914 of that Act describe the criteria and many of the essential elements of the 2005 BRAC process. For questions regarding this announcement, contact Mr. Dan Cowhig, Deputy General Counsel and Designated Federal Officer, at the Commission's mailing address or by telephone at 703–699–2950 or 2708.

Correction

In the **Federal Register** of June 7, 2005, in FR Doc. 05–11233, on page 33126, in the second column, correct the **SUMMARY** caption to read:

SUMMARY: The delegation will meet to receive comments from Federal, State and local government representatives and the general public on base realignment and closure actions in North Carolina, South Carolina and West Virginia that have been recommended by the Department of Defense (DoD). The agenda for this meeting has changed.

Dated: June 6, 2005.

Jeannette Owings-Ballard,

Administrative Support Officer.

[FR Doc. 05–11632 Filed 6–10–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 05–22]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/OPS–ADMIN, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 05–22 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: June 3, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

27 May 2005

In reply refer to:
I-05/005063

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 05-22 concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Australia for defense articles and services estimated to cost $315 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 05-22

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Australia

(ii) Total Estimated Value:

Major Defense Equipment*	$275 million
Other	$ 40 million
TOTAL	$315 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: up to 175 SM-2 Block IIIA Standard missiles, up to 30 Telemetry missiles, up to 2 SM-2 Block IIIA Inert Operational missiles, canisters, containers, spare and repair parts, supply support, personnel training and training equipment, publications and technical data, U.S. Government and contractor technical assistance and other related elements of logistics support.

(iv) Military Department: Navy (LCY)

(v) Prior Related Cases, if any: numerous FMS cases pertaining to the SM-1 Standard missiles

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 27 May 2005

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Australia - SM-2 Block IIIA Standard Missiles

The Government of Australia has requested a possible sale of up to 175 SM-2 Block IIIA Standard missiles, up to 30 Telemetry missiles, up to 2 SM-2 Block IIIA Inert Operational missiles, canisters, containers, spare and repair parts, supply support, personnel training and training equipment, publications and technical data, U.S. Government and contractor technical assistance and other related elements of logistics support. The estimated cost is $315 million.

Australia is an important ally in the Western Pacific. The strategic location of this political and economic power significantly contributes to ensuring peace and economic stability in the region. It is vital to the U.S. national interest to assist the Royal Australian Navy (RAN) in modernizing its surface combatant fleet so as to maintain a strong and ready self-defense capability and contribute to an acceptable military balance in the area. This procurement also aids in maintaining the U.S. Navy (USN) production base and will improve interoperability between RAN and USN forces. This proposed sale is consistent with those objectives, and facilitates burden sharing with our allies.

The proposed sale will provide Australia continued anti-aircraft defense capabilities for its Navy. The RAN intends to use the SM-2 missiles on its destroyer class surface ships for self-defense against air and cruise missile threats. Australia, which already has SM-1 Standard missiles in its inventory, will have no difficulty absorbing these SM-2 Standard missiles.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principle contractors will be: Raytheon Systems Company of Tucson, Arizona and General Dynamics, Scottsdale, Arizona. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Australia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 05-22

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The SM-2 Block IIIA Standard missile is a U.S. Navy surface-launched guided missile and is classified Confidential. It is operationally deployed on cruisers, destroyers, and frigates for use against air and surface threats (aircraft, missiles, and ships). The guidance system employs a continuous-wave or interrupted continuous wave radar link for homing to the target. Steering and roll commands from the adaptive auto pilot system provide flight stability via four aft-mounted control surfaces. Propulsion is provided by a solid propellant, dual thrust rocket motor, which is an integral part of the missile airframe. The target-detecting device uses dual radar systems to optimize warhead lethality against a spectrum of target sizes and speeds. The telemeter unit transmits missile performance data to ground stations to be analyzed for accuracy of missile/target scenario. Certain operation frequencies and performance characteristics are classified Secret.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 05–11622 Filed 6–10–05; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 05–13]

36(b)(1) Arms Sales Notification; Correction

AGENCY: Department of Defense, Defense Security Cooperation Agency (DSCA).

ACTION: Notice; Correction.

SUMMARY: DSCA published a document in the **Federal Register** of June 1, 2005, concerning the sale of defense articles and services to Australia. The package contained the wrong cover letter.

FOR FURTHER INFORMATION CONTACT: Paula Murphy, 703–604–6576.

Correction

In the **Federal Register** of June 1, 2005, in FR Doc 05–10829, page 31429, notification package containing the wrong cover letter and should be replaced with this correction.

Dated: June 3, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

23 May 2005

In reply refer to:
I-05/001116

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 05-13, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Australia for defense articles and services estimated to cost $350 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**
3. **Sensitivity of Technology**

Same ltr to: **House Committee on International Relations**
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 05-13

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser: Australia**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$200 million
Other	$150 million
TOTAL	$350 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: three MK 7 AEGIS Weapons Systems, support equipment, testing, computer programs and maintenance support, ship integration, spare and repair parts, supply support, publications and technical data, training, U.S. Government and contractor technical assistance, and other related elements of logistics support.**

(iv) **Military Department: Navy (LCQ)**

(v) **Prior Related Cases, if any: none**

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(viii) **Date Report Delivered to Congress: 23 May 2005**

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Australia – AEGIS Weapons Systems

The Government of Australia has requested a possible sale of three MK 7 AEGIS Weapons Systems, support equipment, testing, computer programs and maintenance support, ship integration, spare and repair parts, supply support, publications and technical data, training, U.S. Government and contractor technical assistance, and other related elements of logistics support. The estimated cost is $350 million.

Australia is an important ally in the Western Pacific. The strategic location of this political and economic power significantly contributes to ensuring peace and economic stability in the region. It is vital to the U.S. national interest to assist the Royal Australian Navy (RAN) in modernizing its surface combatant fleet so as to maintain a strong and ready self-defense capability and contribute to an acceptable military balance in the area. This procurement also aids in maintaining the U.S. Navy (USN) production base and will improve interoperability between RAN and USN forces. This proposed sale is consistent with those objectives, and facilitates burden sharing with our allies.

The proposed sale of AEGIS Weapons Systems to Australia will contribute to U.S. security objectives by providing a coalition partner with significantly improved Air Warfare capability. This will improve the Royal Australian Navy's ability to participate in coalition operations, provides common logistical support with the USN, and enhances the lethality of its Air Warfare Destroyer platform. The RAN can easily integrate the capabilities of the AEGIS Weapons Systems into their concept of operations. Australia will have no difficulty absorbing these systems into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principle contractors will be:

Lockheed-Martin Maritime System and Sensors	**Moorestown, New Jersey**
Raytheon Company, Equipment Division	**Andover, Massachusetts**
General Dynamics, Armament Systems	**Burlington, Vermont**
Lockheed Martin Maritime Systems and Sensors	**Eagan, Minnesota**

There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of up to three U.S. Government and contractor representatives to Australia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 05-13

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex Item No. vii

(vii) Sensitivity of Technology:

1. The AEGIS Weapon System (AWS) hardware is unclassified, with the exception of the RF oscillator used in the Fire Control transmitter, which is classified Confidential. AEGIS documentation in general is unclassified; however, seven operation and maintenance manuals are classified Confidential, and one AEGIS maintenance manual supplement is classified Secret. The manuals and technical documents are limited to those necessary for operational and organizational maintenance.

2. While the hardware associated with the AN/SPY-1D(V) radar is unclassified, the computer programs are classified Secret. It is the combination of the AN/SPY-1D(V) hardware and the computer programs for the AN/SPY-1D(V) radar that constitutes the sensitive technology. The SPY-1D(V) radar hardware design and production data will not be released with this proposed sale. Some computer program documentation at the Secret level explaining the capabilities of the systems will be released to support Australian understanding of U.S. computer program development efforts. No computer program design data will be released at this time. The U.S. Navy will perform life cycle maintenance of the AEGIS weapons system computer programs.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 05–11624 Filed 6–10–05; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0144]

Federal Acquisition Regulation;Information Collection; Payment by Electronic Fund Transfer

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0144).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning payment by electronic fund transfer. This OMB clearance currently expires on September 30, 2005.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before August 12, 2005.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden should be submitted to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy F. Olson, Contract Policy Division, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

The FAR requires certain information to be provided by contractors which would enable the Government to make payments under the contract by electronic fund transfer (EFT). The information necessary to make the EFT transaction is specified in clause 52.232–33, Payment by Electronic Fund Transfer–Central Contractor Registration, which the contractor is required to provide prior to award, and clause 52.232–34, Payment by Electronic Fund Transfer–Other Than Central Contractor Registration, which requires EFT information to be provided as specified by the agency to enable payment by EFT.

B. Annual Reporting Burden

Respondents: 14,000.
Responses Per Respondent: 10.
Annual Responses: 140,000.
Hours Per Response: .5.
Total Burden Hours: 70,000.
OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0144, Payment by Electronic Fund Transfer, in all correspondence.

Dated: June 6, 2005.

Julia B. Wise,

Director, Contract Policy Division.

[FR Doc. 05–11642 Filed 6–10–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Meeting; Correction

AGENCY: Department of Defense.

ACTION: Notice; correction.

SUMMARY: The Department of Defense published a document in the **Federal Register** on May 31, 2005, concerning a meeting on June 15–16, 2005, of the Independent Review Panel to Study the Relationships between Military Department General Counsels and Judge Advocates General. The Panel has decided to cancel the meeting scheduled for June 16.

FOR FURTHER INFORMATION CONTACT: James R. Schwenk, 703 697–9343.

Correction

In the **Federal Register** of May 31, 2005, in FR Doc. 05–10872, on page 30934, in the second column, correct the meeting date in the **SUMMARY**, ''Purpose'' and **DATES** captions to read: ''June 15''.

In the third column, correct the **FOR FURTHER INFORMATION CONTACT** caption to read:

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning this meeting or wishing to submit written comments may contact: Mr. James R. Schwenk, Designated Federal Official, Department of Defense Office of the General Counsel, 1600 Defense Pentagon, Arlington, Virginia 20301–1600, Telephone: (703) 697–9343, Fax: (703) 693–7616, *schwenkj@dodgc.osd.mil.*

Interested persons may submit a written statement for consideration by the Panel at any time prior to June 11, 2005.

Dated: June 3, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–11623 Filed 6–10–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Independent Review Panel To Study the Relationships Between Military Department General Counsels and Judge Advocates General—Open Meeting

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), Public Law 96–463, notice is hereby given that the Independent Review Panel to Study the Relationships between Military Department General Counsels and Judge Advocates General will hold an open meeting at the Hilton Crystal City, 2399 Jefferson Davis Highway, Arlington, Virginia 22202, on June 28–29, 2005, from 8:30 a.m. to 11:30 a.m. and 1 p.m. to 4 p.m.

Purpose: The Panel will meet on June 28–29, 2005, from 8:30 a.m. to 11:30 a.m. and 1 p.m. to 4 p.m., to hear testimony of current and former Defense Department officials and the public and to conduct deliberations concerning the relationships between the legal elements of their respective Military Departments. These sessions will be open to the public, subject to the availability of space. In keeping with the spirit of FACA, the Panel welcomes written comments concerning its work from the public at any time. Interested citizens are encouraged to attend the sessions.

DATES: June 28–29, 2005: 8:30 a.m.–11:30 a.m., and 1 p.m.–4 p.m.

Location: Hilton Crystal City, 2399 Jefferson Davis Highway, Arlington,Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning this meeting or wishing to submit written comments may contact: Mr. James R. Schwenk, Designated Federal Official, Department of Defense Office of the General Counsel, 1600 Defense Pentagon, Arlington, Virginia 20301–1600, Telephone: (703) 697–9343, Fax: (703) 693–7616; *schwenkj@dodgc.osd.mil.*

Interested persons may submit a written statement for consideration by the Panel at any time prior to June 24, 2005. Persons desiring to make an oral presentation or submit a written statement to the Task Force must notify the point of contact listed above no later than 5 p.m., June 23, 2005. The Panel will hear oral presentations by members of the public on June 28, 2005, from 8:30 until 11:30 a.m. and from 1 p.m. until 4 p.m. The number of presentations made will depend on the number of requests received from members of the public, and oral presentation will be limited based upon the number of presentations from the public. Each person desiring to make an oral presentation must provide the above-listed point of contact with one (1) written copy of the presentation by 5 p.m., June 23, 2005.

Dated: June 6, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–11635 Filed 6–10–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency.

ACTION: Notice to add a system of records.

SUMMARY: The Defense Logistics Agency proposes to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on July 13, 2005 unless comments are received that

would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on June 3, 2005, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: June 6, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

S700.30

SYSTEM NAME:

Operational Accounting Records for Civilian Employee-Based Expenditures.

SYSTEM LOCATION:

Financial Systems Modernization (J–88), Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 6238, Fort Belvoir, VA 22060–6221.

Lockheed Martin Enterprise Information Systems, 1401 Del Norte Street, Denver, CO 80221–6910.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Defense Logistics Agency (DLA) civilian employees and civilian employees of other DoD Components who receive accounting support from DLA under an administrative support agreement.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number, activity code, home address, Country Code, Electronic Fund Transfer waiver, Financial Institution, Bank Routing Number, Bank Account Number, Account Type, gross pay data (date paid, disbursing officer voucher number, disbursing station symbol number, pay period ending date, pay system code, work schedule, temporary position code, gross reconciliation code, job order number, hours extended, hours paid, and earnings/employer contributions amount), and reconciliation or error data (if applicable).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 31 U.S.C. 3512, Executive agency accounting and other financial management reports and plans, as amended by Pub. L. 104–208, Federal Financial Management Improvement Act of 1996; and E.O. 9397 (SSN).

PURPOSE(S):

Records are used to initiate reimbursements to enable the Defense Finance and Accounting Service (DFAS) to distribute payments to DLA employees for certain miscellaneous out-of-pocket expenses (training, tuition, Permanent Change of Station, etc). Records are also used to identify employee-related costs associated with reimbursable orders received by DLA and to enable accurate billing of those reimbursable orders.

Records are used to create a general ledger file containing the accounts necessary to reflect DLA operational costs. Operations costs consist of operating accounts, liability accounts, budgetary accounts, and statistical accounts, maintained for the purposes of establishing, in summary form, the status of the DLA accounts and to provide an audit trail to verify accuracy of reports.

Records are used by financial management offices to validate and accurately record employee-labor operational expenses.

Records are used to determine DLA civilian payroll budgetary requirements.

Records are used by internal DLA/DoD auditors to conduct audits or investigations into the DLA accounting process.

Records are used by the DoD Components who receive accounting support from DLA under an administrative support agreement for accounting purposes.

Records devoid of personal identifiers are used for extraction or compilation of data and reports for management studies and statistical analyses for use internally or externally as required by DoD or other government agencies.

Statistical data, with all personal identifiers removed, may be used by management for program evaluation, review, or oversight purposes.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Office of Management and Budget for the purposes of conducting reviews, audits, or inspections of agency practices.

The DoD 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

Policies and practices for storing, retrieving, assessing, retaining, and disposing of records in the system.

STORAGE:

Records are maintained on both paper and electronic media.

RETRIEVABILITY:

Records are retrieved by individual's name and Social Security Number.

SAFEGUARDS:

Physical entry is restricted by the use of locks, guards, and administrative procedures. Access to personal information is restricted by access profiles to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of passwords that are changed periodically.

RETENTION AND DISPOSAL:

General ledger postings are cutoff at the end of the fiscal year and are maintained for 6 years and 3 months, and then destroyed.

Reconciliation or error records are destroyed when no longer needed (not to exceed 2 years).

Ready to pay file disposition is pending. Until the National Archives and Records Administration has approved the retention and disposal of ready to pay files, treated them as permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Financial Systems Modernization (J–88), Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 6238, Fort Belvoir, VA 22060–6221.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Defense Logistics Agency,

ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221, or the Privacy Act Officer of the particular DLA field activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individuals should provide their full name, Social Security Number, current address, telephone number, and office or organization where currently assigned, if applicable.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221, or the Privacy Act Officer of the particular DLA field activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individuals should provide their full name, Social Security Number, current address, telephone number, and office or organization where currently assigned, if applicable.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Existing DLA and DFAS databases.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–11634 Filed 6–10–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Grants to States To Improve Management of Drug and Violence Prevention Programs

AGENCY: Office of Safe and Drug-Free Schools, Department of Education.

ACTION: Notice of final priorities and requirements.

SUMMARY: The Assistant Deputy Secretary for Safe and Drug-Free Schools announces priorities and requirements under the Safe and Drug-Free Schools and Communities Act (SDFSCA) National Programs for Grants to States to Improve Management of Drug and Violence Prevention Programs. We may use one or more of these priorities and requirements for competitions in fiscal year (FY) 2005 and later years. We take this action to focus Federal financial assistance on an identified national need. We intend the priorities and requirements to facilitate the development, enhancement, or expansion of the capacity of States and other entities that receive SDFSCA State Grants program funds to collect, analyze, and use data to improve the management of drug and violence prevention programs.

DATES: Effective Date: These priorities and requirements are effective July 13, 2005.

FOR FURTHER INFORMATION CONTACT: Maria Worthen, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E234, Washington, DC 20202–6450. Telephone: (202) 205–5632 or via Internet: *maria.worthen@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: States and their local communities are implementing a variety of programs, activities, and strategies designed to prevent youth drug use and violence in schools. Just as policymakers, education professionals, and parents seek reliable information about student academic progress, stakeholders also need sufficient information and data to assess the nature of youth drug and violence prevention problems in their communities, select research-based approaches to preventing these problems, and determine whether these prevention efforts are successful.

The U.S. Department of Education currently requires States to collect and report data on youth drug and violence prevention problems and prevention efforts through a uniform management information and reporting system (UMIRS) that States must establish under section 4112(c)(3) of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA) (20 U.S.C. 7112(c)(3)). States also need to use objective data about school safety to meet the Unsafe School Choice Option (USCO) requirements in section 9532 of the ESEA.

States and local communities face several challenges in implementing these requirements and, in turn, operating and managing effective drug and violence prevention programs. These challenges may include:

- Lack of standardized collection instruments and definitions both within and across States;
- Lack of expertise related to collecting data about youth drug use and violence;
- Lack of time and other resources to support high-quality data collection and analysis in these areas;
- Unfavorable community and media reaction to high rates of youth drug use and violence that discourages full and accurate reporting; and
- Negative consequences for administrators whose schools have high rates of drug use or violent incidents.

The Department proposed the priorities and requirements announced in this notice to provide support to States to explore strategies that help them address each of these challenges so that they can enhance their capacity to collect and use data to assess and improve implementation of their drug and violence prevention programs.

We published a notice of proposed priorities and requirements for this program in the **Federal Register** on March 9, 2005 (70 FR 11623).

Except for minor technical revisions, and a change to the requirements described in the *Analysis of Comments and Changes* section, there are no differences between the notice of proposed priorities and requirements and this notice of final priorities and requirements.

Analysis of Comments and Changes

In response to our invitation in the notice of proposed priorities and requirements, three parties submitted comments on the proposed priorities and requirements. An analysis of the comments and of any changes in the priorities and requirements since publication of the notice of proposed priorities and requirements follows.

Generally, we do not address technical and other minor changes or any suggested changes that the Secretary is not authorized to make under the applicable statutory authority.

Comment: One commenter recommended that Federal agencies, including the U.S. Department of Education and the Substance Abuse and Mental Health Services Administration (SAMHSA) in the U.S. Department of Health and Human Services, that share common program goals should develop a common set of outcome measures for drug and violence prevention programs

that could be used by all Federal agencies that implement these programs.

Discussion: While we find merit in the commenter's suggestion and are working with other Federal agencies, including SAMHSA, on the issue of common outcome measures, we believe that the recommendation is beyond the scope of this program. The Grants to States to Improve Management of Drug and Violence Prevention Programs initiative is specifically designed to help States meet the UMIRS requirements. These provisions require each State to develop an information management and reporting system for its schools and communities and to define alcohol and drug-related offenses in a manner consistent with each State's criminal code. While common outcome measures are a desirable goal, we do not believe that we can mandate specific outcome measures that would apply to all States or to all Federal agencies implementing drug and violence prevention programs through these priorities and requirements.

Change: None.

Comment: One commenter recommended that the requirement concerning a Memorandum of Understanding between the authorized representatives for the State educational agency (SEA) and the State agency receiving the Governor's portion of SDFSCA State Grants program funds be streamlined. The commenter suggested that a letter from the SEA and State Agency indicating their agreement to conduct the activities proposed in the application, including the roles and responsibilities of each agency would assume, would be sufficient.

The commenter also expressed a concern that sufficient resources available under this grant program might not be provided to permit a State to meet all of the requirements of the absolute priority and recommended that States be allowed to focus on a subset of these requirements if available resources are not sufficient to fully address all of the grant goals.

Discussion: The requirement for a Memorandum of Understanding is not intended to impose a significant additional burden on applicants. Instead, the requirement is designed to ensure that necessary participants for the project participate in project development, agree upon their roles and responsibilities, and have the support of senior leadership for the project. We agree, however, that the approach suggested by the commenter may make development of an application simpler for some applicants.

In response to the commenter's second concern, language in the priority provides applicants with some flexibility in developing their projects. Specifically, the priority provides for the support of projects to ''develop, enhance, or expand capacity''. Thus an applicant could focus on one, or more of these areas. Applicants should plan projects that reflect their existing efforts in the area and, while projects must address the six required sub-elements, the balance between the level of effort focused on required activities may be very different among successful applicants, depending on the previous investments made by an applicant.

Changes: In response to this comment, we have modified the requirement concerning a Memorandum of Understanding for this competition to permit applicants to submit a memorandum of understanding, letters, or other documentation that contains the required information. No change concerning the scope of the priority was made in response to this comment.

Comment: One commenter proposed that, in addition to requirements contained in the notice of proposed priority and requirements, applicants also be required to (1) list methods by which the applicant can address the issue of irregular reporting of UMIRS data collection; (2) document methods for assisting local educational agencies in standardizing the reporting of intervention data; (3) describe methods of reporting interventions for persistent student attendance and behavior problems, and methods used to address challenges for standardizing these data; (4) describe a plan for persuading local educational agencies about the value of high-quality truancy and intervention data for analysis; and (5) describe methods for motivating local educational agencies to make appropriate referrals for students at risk due to severe attendance or behavior problems. These proposed modifications would be consistent with the commenter's State laws and procedures concerning truancy and interventions designed to address truancy, and could potentially support that State's approach to this issue by providing needed funding.

Discussion: While the commenter's underlying concerns parallel many of the more general requirements that were included in the notice of proposed priority and requirements for the program (such as using data collected under the UMIRS system to assess need, selecting appropriate interventions, monitoring progress toward performance measures, and disseminating information about youth drug use and violence to the public), we do not have any basis to request that all applicants meet all of these requirements. Applicants, however, are free to include this information to support their applications.

The additional requirements recommended may support the existing statutory and regulatory framework in the commenter's State, but there is tremendous variation across the States in terms of how school attendance information is collected and used. In developing priorities and requirements for a grant competition that is designed to benefit all States, we believe that the more general approach that we have taken establishes appropriate core requirements that are still flexible enough to address needs in any of the States.

The commenter's concerns also focused heavily on a single aspect of the UMIRS requirements—truancy rates, and related interventions. While school attendance information is an important component of any statewide data collected to support the management of youth drug and violence prevention programs, focusing too heavily on this one aspect of the significantly more comprehensive system that is required would detract from the program's core goals.

Change: None.

Note: This notice does not solicit applications. In any year in which we choose to use one or more of these priorities or requirements, we invite applications through a notice in the **Federal Register**. When inviting applications, we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105)(c)(1)).

Priorities and Requirements

Absolute Priority—Developing, Enhancing, or Expanding the Capacity of States and Other Entities That Receive SDFSCA State Grants Funds To Collect, Analyze, and Use Data To Improve the Management of Drug and Violence Prevention Programs

This priority supports projects to develop, enhance, or expand the capacity of States and other entities that receive SDFSCA State Grants program funds to collect, analyze, and use data to improve the management of drug and violence prevention programs. At a minimum, applicants must propose projects to develop, enhance, or expand the capacity of the State educational agency (SEA), the State agency administering the Governor's funding under the SDFSCA State Grants program, and local educational agencies and community-based organizations that receive SDFSCA State Grants program funding.

Specifically, projects must be designed to:

(a) Include activities designed to expand the capacity of local recipients of SDFSCA funds to use data to assess needs, establish performance measures, select appropriate interventions, monitor progress toward established performance measures, and disseminate information about youth drug use and violence to the public;

(b) Collect data that, at a minimum, meet the requirements of the Uniform Management Information and Reporting System (UMIRS) described in section 4112(c)(3) of the ESEA;

(c) Operate with the aid of a technology-based system for analyzing and interpreting school crime and violence data;

(d) Be consistent with the State's Performance-Based Data Management Initiative (PBDMI) strategy and produce data that can be transmitted to the U.S. Department of Education via the Department's Education Data Exchange Network (EDEN) project, which facilitates the transfer of information from State administrative records to the Department to satisfy reporting requirements for certain programs administered by the Department, including the SDFSCA State Grants program;

(e) Be an enhancement to, or capable of merging data with, the State's student information system if such exists or if the State does not yet have a statewide, longitudinal student data system, the project should include the capacity to merge with such a system in the future; and

(f) Include validation and verification activities at the State and sub-State recipient levels designed to ensure the accuracy of data collected and reported.

Competitive Preference Priority—Use of Uniform Crime Reporting (UCR) Definitions

The collection of incident data for projects under the absolute priority will be done in a manner consistent with the definitions and protocols developed under the Federal Bureau of Investigation's UCR program.

Requirements

Eligibility of Applicants: Eligible applicants for this program are limited to State educational agencies (SEAs) or other State agencies administering the SDFSCA State Grants program.

Memorandum of Understanding or Other Documentation of Participation: Applicants must include documentation in the form of a memorandum of understanding or a letter in their application that outlines project roles and responsibilities of the participants and that contains:

1. The signatures of:

a. The authorized representative(s) for the SEA, and

b. The authorized representative(s) for the State agency (or agencies) receiving the Governor's portion of SDFSCA State Grants program funding for the State.

2. Evidence that the proposal has been reviewed by, and has the approval of, the State's chief information officer (CIO) and/or chief technology officer (CTO). The CIO and/or CTO may sign the required memorandum of understanding, or may provide a letter including the required assurance.

Technology-Based System: Each application is required to include a proposal for a technology-based system for collecting, analyzing, and interpreting school crime and violence data. Grant funds may be used in a variety of ways to support this system, including updating an existing infrastructure, conducting basic planning, and capacity building.

Executive Order 12866

This notice of final priorities and requirements has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of final priorities and requirements are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of final priorities and requirements, we have determined that the benefits of the proposed priorities justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program. *Electronic Access to This Document:* You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

You may also view this document in text or PDF at the following site: *http://www.ed.gov/programs/dvpstatemanagement/applicant.html.*

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*

(Catalog of Federal Domestic Assistance Number 84.184R Grants to States to Improve Management of Drug and Violence Prevention Programs)

Program Authority: 20 U.S.C. 7131.

Dated: June 8, 2005.

Deborah A. Price,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. 05–11653 Filed 6–10–05; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools; Overview Information; Grants to States to Improve Management of Drug and Violence Prevention Programs; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.184R

Dates: Applications Available: June 13, 2005.

Deadline for Transmittal of Applications: July 22, 2005.

Deadline for Intergovernmental Review: August 22, 2005.

Eligible Applicants: State educational agencies (SEAs) or other State agencies administering the Safe and Drug-Free Schools and Communities Act (SDFSCA) State Grants program.

Estimated Available Funds: $3,000,000. Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2006 from the list of unfunded applications from this competition.

Estimated Range of Awards: $350,000-$500,000.

Estimated Average Size of Awards: $425,000.

Estimated Number of Awards: 7.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: This program provides Federal financial assistance to support the development, enhancement, or expansion of the capacity of States and other entities that receive SDFSCA State Grants funds to collect, analyze, and use data to improve the management of drug and violence prevention programs.

Priorities: These priorities are from the notice of final priorities and requirements for this program, published elsewhere in this issue of the **Federal Register**.

Absolute Priority: For FY 2005 and any subsequent year in which we make awards based on the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is: *Developing, Enhancing, or Expanding the Capacity of States and Other Entities that Receive SDFSCA State Grants Funds to Collect, Analyze, and Use Data to Improve the Management of Drug and Violence Prevention Programs.*

This priority supports projects to develop, enhance, or expand the capacity of States and other entities that receive SDFSCA State Grants program funds to collect, analyze, and use data to improve the management of drug and violence prevention programs. At a minimum, applicants must propose projects to develop, enhance, or expand the capacity of the State educational agency (SEA), the State agency administering the Governor's funding under the SDFSCA State Grants program, and local educational agencies and community-based organizations that receive SDFSCA State Grants program funding.

Specifically, projects must be designed to:

(a) Include activities designed to expand the capacity of local recipients of SDFSCA funds to use data to assess needs, establish performance measures, select appropriate interventions, monitor progress toward established performance measures, and disseminate information about youth drug use and violence to the public;

(b) Collect data that, at a minimum, meet the requirements of the Uniform Management Information and Reporting System (UMIRS) described in section 4112(c)(3) of the ESEA;

(c) Operate with the aid of a technology-based system for analyzing and interpreting school crime and violence data;

(d) Be consistent with the State's Performance-Based Data Management Initiative (PBDMI) strategy and produce data that can be transmitted to the U.S. Department of Education via the Department's Education Data Exchange Network (EDEN) project, which facilitates the transfer of information from State administrative records to the Department to satisfy reporting requirements for certain programs administered by the Department, including the SDFSCA State Grants program;

(e) Be an enhancement to, or capable of merging data with, the State's student information system if such exists or if the State does not yet have a statewide, longitudinal student data system, the project should include the capacity to merge with such a system in the future; and

(f) Include validation and verification activities at the State and sub-State recipient levels designed to ensure the accuracy of data collected and reported.

Competitive Preference Priority: For FY 2005 and any subsequent year in which we make awards based on the list of unfunded applications from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 10 points to an application, depending on the extent to which the application meets this priority.

This priority is: *Use of Uniform Crime Reporting (UCR) Definitions.*

The collection of incident data for projects under the absolute priority will be done in a manner consistent with the definitions and protocols developed under the Federal Bureau of Investigation's UCR program.

Program Authority: 20 U.S.C. 7131.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, 99, and 299.

(b) The notice of final priorities and requirements, published elsewhere in this issue of the **Federal Register**.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $3,000,000. Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2006 from the list of unfunded applications from this competition.

Estimated Range of Awards: $350,000–$500,000.

Estimated Average Size of Awards: $425,000.

Estimated Number of Awards: 7.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* State educational agencies (SEAs) or other State agencies administering the SDFSCA State Grants program.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.184R.

You may also download the application from the Department of Education's Web site at: *http://www.ed.gov/fund/grant/apply/grantapps/index.html*.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

The public can also obtain applications directly from the program office by contacting: Maria Worthen, U.S. Department of Education, 400 Maryland Avenue, SW., FB–6, room 3E324, Washington, DC 20202–6450. Telephone: (202) 205–5632 or by e-mail: *maria.worthen@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

2. *Content and Form of Application Submission:*

a. *Memorandum of Understanding or Other Documentation of Participation:* Applicants must include documentation in the form of a memorandum of understanding or a letter in their application that outlines project roles and responsibilities of the participants and that contains:

1. The signatures of:

a. The authorized representative(s) for the SEA, and

b. The authorized representative(s) for the State agency (or agencies) receiving the Governor's portion of SDFSCA State Grants program funding for the State.

2. Evidence that the proposal has been reviewed by, and has the approval of, the State's chief information officer (CIO) and/or chief technology officer (CTO). The CIO and/or CTO may sign the required memorandum of understanding, or may provide a letter including the required assurance.

b. *Technology-Based System:* Each application is required to include a proposal for a technology-based system for collecting, analyzing, and interpreting school crime and violence data. Grant funds may be used in a variety of ways to support this system, including updating an existing infrastructure, conducting basic planning, and capacity building.

c. *Other Requirements:* Other requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

3. *Submission Dates and Times:*

Applications Available: June 13, 2005.

Deadline for Transmittal of Applications: July 22, 2005.

Applications for grants under this competition may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants system, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: August 22, 2005.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

If you choose to submit your application to us electronically, you must use the e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov*.

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- Your participation in e-Application is voluntary.
- You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this competition after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Any narrative sections of your application should be attached as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgement that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the ED 424 to the Application Control Center after following these steps:

(1) Print ED 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time

between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under *For Further Information Contact* (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of the Department's e-Application system. If the e-Application system is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgement of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:
U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.184R),
400 Maryland Avenue, SW.,
Washington, DC 20202–4260
or
By mail through a commercial carrier:
U.S. Department of Education,
Application Control Center—Stop 4260, Attention: (CFDA Number 84.184R), 7100 Old Landover Road,
Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.184R), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Eastern Time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we will notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* If funded, you are expected to submit an annual performance report, which includes reporting on expenditures, as specified by the Secretary in 34 CFR 75.720. You are also expected to collect data on the key Government Performance and Results Act (GPRA) performance measures for this program and report those data annually to the Department. At the end of your project period, you must submit a final performance report that includes financial and evaluation information, as directed by the Secretary.

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of Grants to States to Improve Management of Drug and Violence Prevention Program:

a. The proportion of local recipients of SDFSCA State Grants Program funding that are using data related to youth drug and violence to manage youth drug, alcohol, and violence prevention programs by: Incorporating these data in needs assessment processes; using the data to develop performance measures for their SDFSCA program funds; considering the data in selecting schools, and where applicable, community-based interventions for implementation; monitoring the success of interventions in reducing drug and alcohol use and violence and in building stronger communities; and sharing data with their leadership and the public;

b. The proportion of local recipients of SDFSCA State Grants Program funding that have received training about collecting, analyzing, and using data to manage and improve drug and violence prevention programs; and

(c) The proportion of local recipients of SDFSCA State Grants Program funding that submit complete responses to data collections.

These three measures constitute the Department's indicators of success for this program. Consequently, applicants for a grant under this program are advised to give careful consideration to these three measures in conceptualizing the approach and evaluation of their

proposed project. If funded, applicants will be asked to collect and report data in their performance and final reports about progress toward these measures.

VII. Agency Contact

For Further Information Contact: Maria Worthen, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E324, Washington, DC 20202–6450. Telephone: (202) 205–5632 or by e-mail: *maria.worthen@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: June 8, 2005.

Deborah A. Price,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. 05–11654 Filed 6–10–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–365–000]

ANR Pipeline Company; Notice of Tariff Filing

June 7, 2005.

Take notice that on June 1, 2005 ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Fourth Revised Sheet No. 191A, to become effective July 2, 2005.

ANR states that it is making the instant filing to remove from its tariff provisions that were included to implement the CIG/Granite State discounting policy.

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. E5–3033 Filed 6–10–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–366–000]

ANR Pipeline Company; Notice of Tariff Filing

June 7, 2005.

Take notice that on June 1, 2005 ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective July 2, 2005:

Fourth Revised Sheet No. 101A
Second Revised Sheet No. 101B
First Revised Sheet No. 101C
First Revised Sheet No. 101D
Original Sheet No. 101E
Fourth Revised Sheet No 162.01
First Revised Sheet No. 192D

ANR states that it has submitted these sheets to provide provisions addressing open season postings for uncontracted-for capacity, including interim capacity, and additional flexibility associated with contract reduction options.

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. E5–3034 Filed 6–10–05; 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

June 7, 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:* 659–013.

c. *Date Filed:* April 26, 2005.

d. *Applicant:* Crisp County Power Commission, Georgia.

e. *Name of Project:* Lake Blackshear Project.

f. *Location:* The project is located on the Flint River in Dooley, Crisp, Lee and Sumter Counties, Georgia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Steve Rentfrow, Crisp County Power Commission, P.O. Box 1218, Cordele, GA 31010.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Eric Gross at (202) 502–6213, or e-mail address: *eric.gross@ferc.gov.*

j. *Deadline for filing comments and/or motions:* July 8, 2005.

k. *Description of Request:* Crisp County Power Commission, licensee, proposes to amend the project Lake Blackshear Project's boundary to include a 3.2 acre increase in the lake surface in association with a proposed subdivision on Lincolmpinch Cove. The proposed subdivision would include 16 lots and would extend Lincolmpich Cove to provide lake frontage to the proposed lots. The licensee proposes to maintain the project boundary at the 237-foot contour, and extend the boundary along this contour to encompass the additional area that would be excavated in association with the construction of the subdivision.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the 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 website 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. 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 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'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. 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. E5–3026 Filed 6–10–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Soliciting Comments, Motions To Intervene, and Protests

June 7, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands.

b. *Project No:* 2692–037.

c. *Date Filed:* May 3, 2005.

d. *Applicant:* Duke Power.

e. *Name of Project:* Nantahala Hydroelectric Project.

f. *Location:* The proposed facility is located in Jackson County, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Joe Hall, Lake Management Representative, Duke Power, a division of Duke Energy Corp., P.O. Box 1006, Charlotte, North Carolina 28201–1006, (704) 382–8576.

i. *FERC Contacts:* Any questions on this notice should be addressed to Ms. Shana High at (202) 502–8674, or e-mail address: *shana.high@ferc.gov.*

j. *Deadline for filing comments and or motions:* July 8, 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–2692–037) 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 under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Request:* The application seeks Commission approval to lease 0.31 acre of project land to Glenville Masonic Lodge, Inc. to construct one cluster dock with ten boat docking locations. The proposed facility will be used by the general public.

l. *Location of the Applications:* The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''eLibrary'' link. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

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 application. A copy 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.

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. E5–3025 Filed 6–10–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER05–734–000; ER05–734–001; ER05–734–002]

Energy Investments, LLC; Notice of Issuance of Order

June 6, 2005.

Energy Investments, LLC (Energy Investments) filed an application for market-based rate authority, with an accompanying rate tariff. The proposed rate tariff provides for the sales of capacity and energy at market-based rates. Energy Investments also requested waiver of various Commission regulations. In particular, Energy Investments requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Energy Investments.

On June 2, 2005, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Energy Investments 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 protest is July 5, 2005.

Absent a request to be heard in opposition by the deadline above, Energy Investments 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 Energy Investments, 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 Energy Investments 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. E5–3021 Filed 6–10–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–364–000]

Questar Southern Trails Pipeline Company; Notice of Cost and Revenue Study

June 7, 2005.

Take notice that on May 31, 2005, Questar Southern Trails Pipeline Company (Southern Trails) tendered for filing its cost and revenue study for the 12-month period ended March 31, 2005, in compliance with the Commission order, issued October 15, 1999, in Docket No. CP99–163–000.

Southern Trails states that copies of the filing were served on parties on the official service list in the above-captioned 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 on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Intervention and Protest Date: 5 p.m. Eastern Time June 14, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–3032 Filed 6–10–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–363–000]

Texas Gas Transmission, LLC; Notice of Proposed Changes in FERC Gas Tariff

June 7, 2005.

Take notice that on June 1, 2005, Texas Gas Transmission, LLC (Texas Gas) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective July 3, 2005:

Fourth Revised Sheet No. 201
First Revised Sheet No. 280
Second Revised Sheet No. 283
First Revised Sheet No. 284
Sheet No. 285

Texas Gas is proposing to add a new section 33 to the General Terms and Conditions (GT&C) of its tariff to permit the reservation of capacity for future expansion/extension projects and to clarify the contract term extension rights for limited-term shippers under GT&C section 32. Texas Gas states that the proposed modifications regarding the reservation of capacity for future periods and limited extension rights for limited-term shippers will promote the efficient use and allocation of capacity on Texas Gas' system, while preserving the rights of expansion/extension shippers.

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. E5–3028 Filed 6–10–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–106–010]

TransColorado Gas Transmission Company; Notice of Revenue Sharing Report

June 7, 2005.

Take notice that on June 1, 2005, TransColorado Gas Transmission Company (TransColorado) tendered for filing its revenue sharing report in accordance with the provisions of the settlement in Docket No. RP99–106 and the Commission's Order dated April 24, 2002.

TransColorado states that a copy of this filing has been served upon all parties listed on the official service list in this proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible 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.

Protest Date: 5 pm Eastern Time on June 14, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–3024 Filed 6–10–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER05–757–000, ER05–757–001 and ER05–757–002]

Victoria International LTD; Notice of Issuance of Order

June 6, 2005.

Victoria International LTD (VIL) filed an application for market-based rate authority, with an accompanying rate tariff. The proposed rate tariff provides for the sales of capacity and energy at market-based rates. VIL also requested waiver of various Commission regulations. In particular, VIL requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by VIL.

On June 3, 2005, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by VIL 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 protest is July 5, 2005.

Absent a request to be heard in opposition by the deadline above, VIL 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 VIL, 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 VIL 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. E5–3020 Filed 6–10–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–107–008]

Williston Basin Interstate Pipeline Company; Notice of Refund Report

June 7, 2005.

Take notice that on June 1, 2005, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing its refund report in compliance with the Commission's April 19, 2005, ''Order on Compliance Filing and Motion for Refunds'' (Commission Order).

Williston Basin states that on May 18, 2005, refunds of amounts owed to shippers were sent by overnight delivery to Williston Basin's shippers. Williston Basin explains that the refunds are related to rates that were in effect for the period June 1, 2000 through April 18, 2005 with interest calculated through May 19, 2005.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible 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.

Protest Date: 5 p.m. Eastern Time on June 14, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–3027 Filed 6–10–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–28–016]

Wyoming Interstate Company, Ltd; Notice of Filing

June 7, 2005.

Take notice that on June 2, 2005, Wyoming Interstate Company, Ltd (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, the following tariff sheets, to become effective June 1, 2005:

Third Revised Sheet No. 108
Fifth Revised Sheet No. 110
First Revised Sheet No. 116
First Revised Sheet No. 118

WIC states that the tariff sheets update four previously approved negotiated rate transactions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an

original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–3035 Filed 6–10–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–115–000]

Xcel Energy Services Inc., Northern States Power Company and Northern States Power Company (Wisconsin), Public Service Company of Colorado and Southwestern Public Service Company; Notice of Institution of Proceeding and Refund Effective Date

June 6, 2005.

On June 2, 2005, the Commission issued an order that instituted a proceeding in Docket No. EL05–115–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, to determine the justness and reasonableness of the market-based rates charged by Xcel Energy Services Inc. (XES), Public Service Company of Colorado (PSCo), and Southwestern Public Service Company's (SPS) (collectively, Xcel) in the SPS and PSCo control areas, and whether Xcel satisfies the Commission's concerns with regard to affiliate abuse. *Xcel Energy Services, Inc., et al.*, 111 FERC ¶ 61,343 (2005).

The refund effective date in Docket No. EL05–115–000, established pursuant to section 206(b) of the FPA, will be 60 days from the date of publication of this notice in the **Federal Register**.

Magalie R. Salas,

Secretary.

[FR Doc. E5–3022 Filed 6–10–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–91–000, et al.]

Elmwood Energy LLC, et al.; Electric Rate and Corporate Filings

June 6, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Elmwood Energy LLC, Prime Power Sales I, LLC, GS Prime Direct Holdings LLC

[Docket No. EC05–91–000]

Take notice that on June 1, 2005, Prime Power Sales I, LLC (PPSI), Elmwood Energy LLC (Elmwood), and GS Prime Direct Holdings, LLC (GS Holdings) (collectively Applicants) filed with the Commission an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby Elmwood will transfer all of its ownership interests in PPSI to GS Holdings. Applicants request confidential treatment of Exhibit B and Exhibit I, pursuant to 18 CFR 388.112 of the Commission's regulations.

Comment Date: 5 p.m. on June 23, 2005.

2. POSDEF Power Company, L.P.

[Docket No. EG04–25–000]

Take notice that on June 2, 2005, POSDEF Power Company, L.P., (Acme POSDEF) with its principal business address at 700 Universe Blvd., Juno Beach, Florida, 33408 filed with the Federal Energy Regulatory Commission a change in status of its ownership.

Acme POSDEF states that the notice of this filing has been sent to the Securities and Exchange Commission, the Florida Public Service Commission and the California Public Utilities Commission.

Comment Date: 5 p.m. on June 23, 2005.

3. American Electric Power Service Corporation, on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Collectively, the ''AEP Companies''; Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc. and The Dayton Power and Light Company

[Docket No. EL05–74–001]

Take notice that on May 27, 2005, American Electric Power Service Corporation, Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc., and Dayton Power and Light Company (collectively, Companies) filed with the Commission a compliance filing including revisions to Schedule 13 of the PJM Interconnection, L.L.C. Open Access Transmission Tariff in compliance with the Commission's May 6, 2005 order in Docket No. EL05–74–000. *American Electric Power Service Corporation*, *et al.*, 111 FERC ¶ 61,180 (2005). Consistent with the May 6 Order, the revised Schedule 13 would be effective as of May 1, 2005.

Comment Date: 5 p.m. Eastern Time on June 27, 2005.

4. Southwest Power Pool, Inc.

[ER05–652–003]

Take notice that on May 27, 2005, Southwest Power Pool, Inc. (SPP) submitted an amendment to its February 28, 2005 filing of its open access transmission tariff to implement a regional transmission cost allocation proposal with regard to new transmission upgrades. SPP states that the February 28 filing was approved by the Commission, subject to certain modifications, on April 22, 2005 Order. SPP requests an effective date of May 5, 2005.

SPP states that it has served a copy of this filing on each of its Members and Customers, as well as on all participants to this proceeding and all affected state commissions.

Comment Date: 5 p.m. on June 17, 2005.

5. Harvard Dedicated Energy Limited

[Docket No. ER05–658–001]

Take notice that on May 31, 2005, Harvard Dedicated Energy Limited (Harvard) submitted a compliance filing pursuant to the Commission's order issued April 20, 2005 in Docket No. ER05–658–000, to incorporate the change of status reporting requirement adopted by the Commission in Order No. 652, *Reporting Requirement for*

Changes in Status for Public Utilities with Market-Based Rate Authority, 110 FERC ¶ 61,097 (2005).

Comment Date: 5 p.m. on June 21, 2005.

6. Entergy Services, Inc.

[Docket No. ER05–1065–000]

Take notice that on May 27, 2005, Entergy Services, Inc. (Entergy) pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824, and section 35 of the regulations of the Commission, 18 CFR 35.13 (2004), Entergy Services, Inc., acting as agent for the Entergy Operating Companies, submits for filing proposed revisions to Entergy's Open Access Transmission Tariff, FERC Electric Tariff Second Revised Volume No. 3. Entergy states that the purpose of this filing is to establish an Independent Coordinator of Transmission for the Entergy transmission system (ICT).

Comment Date: 5 p.m. on June 17, 2005.

Standard Paragraph

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 (19 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 than 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 long on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protests to the Federal Energy Regulatory Commission, 888 First Street, 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 to 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 TYY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–3018 Filed 6–10–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Surrender of Exemption and Soliciting Comments, Motions To Intervene, and Protests

June 7, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Surrender of Conduit Exemption.

b. *Project No.:* 12086–001.

c. *Date Filed:* February 18, 2005.

d. *Applicant:* Trinity Meadows, L.P.

e. *Name of Project:* Hillcrest Hydro.

f. *Location:* On an existing conduit described as the ''Carney Ditch'' or ''Aqueduct'' used for agricultural and domestic purposes on a 200-acre apple ranch. The source of water for the conduit is Hatchet Creek in Shasta County, California near the town of Montgomery Creek. The project would not occupy federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Matthew H. Carter, Trinity Meadows, LP, P.O. Box 993061, Redding, CA 96099, (530) 515–6260.

i. *FERC Contact:* Regina Saizan, (202) 502–8765.

j. *Deadline for filing comments and or motions:* July 8, 2005.

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. 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. Please include the project number (P–12086–001) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Application:* The applicant wishes to surrender the exemption because the project is not economically feasible. There has been no construction.

l. *Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission in the 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 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 of the application may also be obtained by calling the applicant 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'', ''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 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 representative.

Magalie R. Salas,

Secretary.

[FR Doc. E5–3036 Filed 6–10–05; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 8, 2005.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. First National Corporation of Wynne, Wynne, Arkansas; to acquire 100 percent of the voting shares of The Bank of Harrisburg, Harrisburg, Arkansas.

B. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Sixth Bancshares, Inc., Salina, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Geneseo Bancshares, Inc., and thereby indirectly acquire Citizens State Bank, both of Geneseo, Kansas.

Board of Governors of the Federal Reserve System, June 7, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–11608 Filed 6–10–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 9 a.m. (edt), June 20, 2005.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the minutes of the May 16, 2005, Board member meeting.

2. Thrift Savings Plan activity report by the Executive Director.

Parts Closed to the Public

3. Procurement.

4. Personnel.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs. (202) 942–1640.

Dated: June 8, 2005.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 05–11723 Filed 6–9–05; 11:58 am]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Combined Notice of Funding Availability for Programs To Improve Minority Health and Racial and Ethnic Disparities in Health

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of Minority Health.

ACTION: Notice.

Funding Opportunity Titles: This notice of funding availability includes two programs for FY 2005: (1) Technical Assistance and Capacity Development Demonstration Grant Program for HIV/AIDS-Related Services in Minority Communities; and (2) National Umbrella Cooperative Agreement Program.

Announcement Type: Initial Announcement of Availability of Funds.

Catalog of Federal Domestic Assistance Numbers: (1) Technical Assistance and Capacity Development Demonstration Grant Program for HIV/AIDS-Related Services in Minority Communities—93.006; and (2) National Umbrella Cooperative Agreement Program—93.004.

DATES: Application Availability Date: June 13, 2005. Application Deadline: The National Umbrella Cooperative Agreement Program July 13, 2005; and the Technical Assistance and Capacity Development Demonstration Grant Program for HIV/AIDS-Related Services in Minority Communities July 13, 2005.

SUMMARY: This announcement is made by the United States Department of Health and Human Services (HHS or Department), Office of Minority Health (OMH) located within the Office of Public Health and Science (OPHS), and working in a ''One-Department'' approach collaboratively with participating HHS agencies and programs (entities). The mission of the OMH is to improve the health of racial and ethnic minority populations through the development of policies and programs that address disparities and gaps. OMH serves as the focal point in the HHS for leadership, policy development and coordination, service demonstrations, information exchange, coalition and partnership building, and related efforts to address the health needs of racial and ethnic minorities.

As part of a continuing HHS effort to improve the health and well being of racial and ethnic minorities, the Department announces availability of FY 2005 funding for the following two programs: Technical Assistance and Capacity Development Demonstration

Grant Program for HIV/AIDS-Related Services in Minority Communities; and National Umbrella Cooperative Agreement Program.

The purpose of this single announcement is to make it easier for organizations such as community-based organizations, minority-serving organizations, faith-based organizations, and tribal governments and organizations, that meet the eligibility criteria for each program, to identify and apply for FY 2005 OMH funding. As eligibility criteria vary for each program under this announcement, a single notice of funding availability may assist potential applicants to better identify the programs for which they can compete and to target proposals to the program(s) most suitable to the issues faced by their population(s). This announcement should also assist eligible applicants to understand the range of issues that may be supported by the programs and encourage collaborations among organizations that provide services to racial and ethnic minorities.

Interested applicants should note the Notice is organized in the manner below. Each section contains the information for both programs, thus applicants should read each section for the applicable information.

- Sections I (Funding Opportunities), II (Award Information), and III (Eligibility Information) contain program specific information for both of the programs included in this notice of funding availability;
- Sections IV (Application and Submission Information) and V (Application Review Information) contain information that is both program specific and common to both programs:
- Sections VI (Award Administration Information), VII (Agency Contacts) and VIII (Other Information) contain common information that applies to both programs.

SUPPLEMENTARY INFORMATION:

Section I. Funding Opportunities

Authority: These programs are authorized under 42 U.S.C. 300u–6, section 1707 of the Public Health Service Act, as amended.

1. Technical Assistance and Capacity Development Demonstration Grant Program for HIV/AIDS-Related Services in Minority Communities

A. Purpose: The Technical Assistance and Capacity Development Demonstration Grant Program for HIV/AIDS-related Services in Minority Communities (hereinafter referred to as TA/CD Program) seeks to develop and improve effective and durable service delivery capacity for HIV prevention and treatment among organizations closely interfaced with targeted minority populations impacted by HIV/AIDS. The applicant will identify community-based, minority-serving organizations that are well linked with targeted minority populations affected by HIV/AIDS, and which have recognized needs and/or gaps in their capacity to provide HIV/AIDS-related prevention and care services. The applicant will then provide technical assistance and capacity building services to those organizations based on their identified needs.

B. OMH Expectations: It is intended that the TA/CD Program will result in:

- Increased number of community-based, minority-serving organizations with the programmatic capacity to provide appropriate and effective HIV/AIDS services.
- Increased potential for sustainability of those organizations as evidenced by systems change (such as development of operational policies and procedures, clearly defined board roles, and implementation of sound fiscal practices).
- Increased number of community-based, minority-serving organizations with the administrative and programmatic capacity to compete successfully for funding to address the HIV/AIDS epidemic.
- Increased reach of the organizations' services within the community, as evidenced by increased client base, increased utilization rates and increased development of formal partnerships with other organizations.

C. Applicant Project Results: Applicants must identify anticipated project results that are consistent with the overall Program purpose and OMH expectations. Project results should fall within the following general categories:

- Building Capacity.
- Enhancing Infrastructure.
- Systems Change.
- Increasing Access.
- Changing Behavior and Utilization.

D. Project Requirements: Each applicant under the TA/CD Program must propose to:

- Identify the existing capacity for delivering HIV-related services (both HIV prevention and treatment) to targeted minority populations and compare this with available HIV/AIDS surveillance data.
- Identify high risk minority communities where there are recognized gaps in services for targeted minority populations with HIV/AIDS.
- Increase the capacity of existing community-based, minority-serving organizations, in the high risk minority communities identified, to deliver HIV/AIDS prevention and care by:

—Providing administrative technical assistance to improve the fiscal and organizational capacity appropriate to their programmatic responsibilities;
—Providing programmatic technical assistance to improve the planning and implementation of effective HIV/AIDS-related services;
—Establishing mentoring relationships to assist in the development of fiscal and programmatic skills that will allow them to sustain their organizations and successfully compete for federal and other sources of funds; and
—Identifying other sources of programmatic technical assistance and linking appropriate community-based, minority-serving organizations with these resources.

- Work with existing community-based, minority-serving organizations to develop strong linkages with other providers of services to complete a continuum of prevention and treatment services, including substance abuse treatment and mental health services for minority HIV/AIDS populations.

2. National Umbrella Cooperative Agreement Program

A. Purpose: The National Umbrella Cooperative Agreement Program seeks to: (1) Increase the diversity of the health-related work force; (2) reduce health disparities and improve quality of care for targeted minority populations through projects that are of national significance; and (3) improve evaluation procedures and the collection and analysis of data on targeted minority populations. Award(s) will be made in each of the following categories: Work Force Development, Health Disparities and Quality Care, and Data and Evaluation. Over the five-year project period of the cooperative agreement, multiple relevant projects can be supported under each cooperative agreement. Depending upon the category, the following are examples of the types of projects or activities that can be supported: Youth initiatives, health related internships, and fellowships; academic and other support services for students in the educational pipeline; disease prevention/health promotion; health services and behavioral research; health care access, including mental health, and human services support; health information technology and communication; cultural and linguistic competency; health information dissemination; infrastructure

development; data collection and analysis on specific minority populations; development of curricula, toolkits, and other educational/instructional materials; and technical assistance, training (*e.g.*, ''Train-the-Trainer''), and other workshops on project evaluation.

This program uses a cooperative agreement mechanism for the Department and other Federal agencies to collaborate on projects to address the three purposes. In a cooperative agreement, Federal staff are substantially involved with the grantee in the design/implementation of the program. Projects funded under these cooperative agreements will have varying levels of Federal programmatic involvement depending upon the scope of work of each project. Examples of substantive programmatic involvement include:

- Participation in the design or direction of the activities.
- Assistance in the selection of contractors.
- Approval of evaluation plans/tools.
- Review and approval of each stage of a project prior to beginning a subsequent stage.
- Evaluation of progress through routine communication, reports, site visits, etc.

B. OMH Expectations: It is intended that the National Umbrella Cooperative Agreement Program will result in:

- Increased interest of minority youth in pursuing careers in the health arena.
- Increased number of minorities recruited and trained for careers in health fields.
- Increased level of cultural competency of health care providers serving targeted minority populations.
- Increased access to health care services for targeted minority populations.
- Increased utilization of health care services by targeted minority populations.
- Improved collection, analysis, interpretation and dissemination of health data on targeted minority populations.
- Increased number of organizations with the capacity to effectively evaluate project activities.

C. Applicant Project Results: Applicants must identify anticipated project results that are consistent with the overall Program purpose and OMH expectations. Project results should fall within the following general categories:

- Recruiting and Training Minority Health Professionals.
- Increasing Knowledge and Awareness of Minority Health Care Issues.
- Increasing Access.
- Changing Behavior and Utilization.
- Mobilizing Communities, Coalitions, and Networks.
- Changing Systems.
- Building Capacity.
- Strengthening Infrastructure.
- Improving Data and Evaluation.

D. Project Requirements: Each applicant under the National Umbrella Cooperative Agreement Program must:

- Have the capacity to address the issues within the category under which they are applying.
- Have the capacity to implement and manage multiple projects.
- Be able to collaborate with Federal partners.
- Have the ability to work with multiple ethnic and racial populations.
- Have the capacity to collaborate with other organizations that represent targeted minority populations.
- Propose to conduct an initial project of national significance that addresses one of the following categories: Work Force Development, Health Disparities and Quality of Care, or Data and Evaluation (See Section IV, 2B (2) on Application and Submission Information for details).

Section II. Award Information

1. TA/CD Program

Estimated Funds Available for Competition: $5,400,000.

Anticipated Number of Awards: 15–22.

Range of Awards: $250,000 to $350,000 per year.

Anticipated Start Date: September 1, 2005.

Period of Performance: 3 years (September 1, 2005 to August 31, 2008).

Budget Period Length: 12 months.

Type of Award: Grant.

Type of Application Accepted: New.

2. National Umbrella Cooperative Agreement Program

Estimated Funds Available for Competition: $2,000,000.

Anticipated Number of Awards: Up to 7 (2–3 of which focus on Work Force Development; 3–4 on Health Disparities and Quality Care; and 1 on Data and Evaluation).

Range of Awards: $250,000 to $300,000 for the initial project.

Anticipated Start Date: September 1, 2005.

Period of Performance: Umbrella Cooperative Agreement: 5 years (September 1, 2005-August 31, 2010); Project: 1 year (September 1, 2005-August 31, 2006).

Budget Period Length: 12 months.

Type of Award: Cooperative Agreement. (*See* Section I, 3A on Purpose for a description of substantial Federal involvement.)

Type of Application Accepted: New.

Section III. Eligibility Information

1. Eligible Applicants

A. TA/CD Program

To qualify for funding, an applicant must have a minimum of five years experience providing HIV/AIDS-related services and be a:

- Private nonprofit community-based, minority-serving organization (see Definitions) which addresses health and human services; or
- Public (local government) entity which addresses health and human services; or
- Tribal governmental entity which addresses health and human services.

Other entities that meet the definition of private non-profit community-based, minority-serving organization and the above criteria that are eligible to apply are:

- Faith-based organizations.
- Tribal governments and organizations.
- Local affiliates of national, State-wide, or regional organizations.

National, State-wide, and regional organizations, as well as educational institutions including local school systems, high schools, universities, and other schools of higher learning may not apply for these TA/CD Program grants. As the focus of the program is at the local, grassroots level, OMH is looking for organizations that have ties to the local community. National, state-wide, and regional organizations operate on a broader scale and are not as likely to effectively access the targeted minority population in the local neighborhoods and communities. Educational institutions, in general, do not have the mission and local focus as community-based organizations and local government entities and are not as likely to effectively foster the close mentoring relationships with participating community-based, minority-serving organizations, as required for this program. Educational institutions may, however, serve as partners with eligible applicants.

The organization submitting the application will:

- Serve as the lead agency for the project, responsible for its implementation and management; and
- Serve as the fiscal agent for the Federal grant awarded.

B. National Umbrella Cooperative Agreement Program

To qualify for funding, an applicant must be:

• A private, nonprofit national minority-serving organization (see Definitions) with at least 5 years of experience in working with targeted minority populations; or

• An organization that currently has an umbrella cooperative agreement with OMH (see Section VIII, 3).

Examples of national minority-serving organizations that may apply include, but are not limited to:

• Associations/organizations representing community health organizations serving targeted minority populations.

• Associations/organizations that focus on minority health, education, leadership development, and/or community partnerships.

• Associations/organizations that represent minority-focused health professionals.

Faith-based organizations and tribal entities that meet the above criteria are also eligible to apply for these Umbrella Cooperative Agreements.

2. Cost Sharing or Matching

Matching funds are not required for the TA/CD Program or the National Umbrella Cooperative Agreement Program.

3. Other

Organizations applying for funds under the TA/CD Program or the National Umbrella Cooperative Agreement Program must submit documentation of nonprofit status with their applications. If documentation is not provided, the application will be considered non-responsive and will not be entered into the review process. The organization will be notified that the application did not meet the submission requirements.

Any of the following serves as acceptable proof of nonprofit status:

• A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS Code.

• A copy of a currently valid IRS tax exemption certificate.

• A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a nonprofit status and that none of the net earnings accrue to any private shareholders or individuals.

• A certified copy of the organization's certificate of incorporation or similar document that clearly establishes nonprofit status.

• Any of the above proof for a State or national organization and a statement signed by the parent organization that the applicant organization is a local nonprofit affiliate.

If funding is requested in an amount greater than the ceiling of the award range, the application will be considered non-responsive and will not be entered into the review process. The application will be returned with notification that it did not meet the submission requirements.

Applications that are not complete or that do not conform to or address the criteria of this announcement will be considered non-responsive and will not be entered into the review process. The application will be returned with notification that it did not meet the submission requirements.

An organization may submit no more than one application to the TA/CD Program. Organizations submitting more than one proposal for this grant program will be deemed ineligible. The proposal will be returned without comment.

For the National Umbrella Cooperative Agreement Program, an organization may submit up to three applications—one under each of the three categories (*i.e.*, Work Force Development, Health Disparities and Quality Care, and Data and Evaluation). However, no more than one application from an organization will be funded.

Organizations are not eligible to receive funding from more than one OMH grant program to carry out the same project and/or activities.

Section IV. Application and Submission Information

1. Address To Request Application Package

Application kits may be obtained:

• At *http://www.omhrc.gov*.

• By writing to Ms. Karen Campbell, Director, Office of Grants Management, OPHS, Tower Building, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852; or contact the Office of Grants Management at (240) 453–8822. Please specify the OMH program(s) for which you are requesting an application kit.

2. Content and Form of Application Submission

A. Application and Submission for the TA/CD Program

Applicants must use Grant Application OPHS–1. Forms to be completed include the Face Page/Cover Page (SF424), Checklist, and Budget Information Forms for Non-Construction Programs (SF424A). In addition to the application forms, applicants must provide a project narrative.

The project narrative (including summary and appendices) should be no more than 45 pages (55 pages for currently funded grantees). Currently funded OMH grantees (*i.e.*, TA/CD Program grantees) *must* include a Progress Report (maximum of 10 pages) in the appendix.

The narrative must be printed on one side of 8½ by 11 inch white paper, with one-inch margins, double-spaced and 12-point font. All pages *must* be numbered sequentially including any appendices. (Do not use decimals or letters, such as: 1.3 or 2A). Do not staple or bind the application package. Use rubber bans or binder clips.

The narrative description of the project must contain the following:

• Table of Contents: Include with page numbers for each of the following sections.

• Project Summary: Briefly describe key aspects of the Statement of Need, Objectives, Program Plan, Evaluation Plan, and Management Plan. The summary should be no more than 3 pages in length.

• Statement of Need: Describe the HIV/AIDS epidemic in the targeted community. Describe and document (with data) demographic information on the targeted geographic area, and the significance or prevalence of the problem or issues affecting the target minority group(s). Describe the minority group(s) targeted by the project (*e.g.*, race/ethnicity, age gender, educational level/income). Describe the applicant organization's background.

• Objectives: State objectives in measurable terms, including baseline data and time frames for achievement.

• Program Plan: Clearly describe how the project will be carried out. Describe specific activities and strategies planned to achieve each objective. For each activity, describe how, when, where, by whom, and for whom the activity will be conducted. Describe the role of any proposed linkage organization(s) in the project. Describe any products to be developed by the project. Provide a time line chart.

• Evaluation Plan: The evaluation plan must clearly articulate how the applicant will evaluate program activities. It is expected that evaluation activities will be implemented at the beginning of the program in order to capture and document actions contributing to program outcomes. The evaluation plan must be able to produce documented results that demonstrate whether and how the strategies and activities funded under the program made a difference in developing and improving effective and durable service delivery capacity for HIV prevention and treatment among organizations closely interfaced with targeted minority populations impacted by HIV/

AIDS. The plan should identify the expected results for each major objective and activity. The description should include data collection and analysis methods, demographic data to be collected on project participants, process measures describing indicators to be used to monitor and measure progress toward achieving projected results by objectives, outcome measures which will show that the project has accomplished planned activities, and impact measures demonstrating achievement of the objectives to positively affect HIV/AIDS. Discuss the potential for replication.

• Management Plan: Provide a description of proposed program staff, including resumes and job descriptions for key staff, qualifications and responsibilities of each staff member, and percent of time each is committing to the project. Provide a description of duties for proposed consultants. Discuss the applicant organization's experience in managing projects/activities, especially those targeting the population to be served. Include a chart of the organization's structure, showing who reports to whom, and of the project's structure. Describe the background/ experience of any proposed linkage organization and how the organization will interface with the applicant organization.

• Appendices: Include documentation and other supporting information in this section, including Progress Report, and other relevant information. (Appendices count toward the narrative page limit.)

In addition to the project narrative, the application must contain a detailed budget justification (does not count toward the page limitation). The detailed budget justification *must* include a narrative and computation of expenditures for each year in which grant support is requested. The budget request should include funds for key project staff to attend an annual OMH grantee meeting and the OMH Second National Leadership Summit on Eliminating Racial and Ethnic Disparities in Health, scheduled for January 9–11, 2006.

The complete application kit will provide instructions on the content of each of these sections.

B. Application and Submission Information for the National Umbrella Cooperative Agreement Program

Applicants must use Grant Application OPHS–1. Forms to be completed include the Face Page/Cover Page (SF424), Checklist, and Budget Information Forms for Non-Construction Programs (SF424A).

Applications must include two sections: a Capability Statement and a Project Narrative. The Capability Statement should be no more than 10 pages. The Project Narrative (including summary and appendices) should be no more than 45 pages. The Capability Statement and Project Narrative must be printed on one side of 8½ by 11 inch white paper, with one-inch margins, double-spaced and 12-point font. Include a Table of Contents. All pages *must* be numbered sequentially including any appendices. (Do not use decimals or letters, such as: 1.3 or 2A). Do not staple or bind the application package. Use rubber bands or binder clips.

(1) The Capability Statement must support the organization's ability to address the health and quality of life for racial and ethnic minority populations throughout the United States. It must include the following:

• The organization's mission statement.

• An organizational chart indicating the number and location of affiliate organizations, and a narrative describing how the affiliates work with each other and with the parent organization and how this infrastructure will be used to support program activities.

• Evidence of the organization and its partners' ability to address the targeted minority population and its health problems under the selected category; to manage multiple projects; and to collaborate with other non-affiliated organizations.

• Past efforts focusing on health related needs of racial and ethnic minority populations through affiliates, regional, and national organizations for the last five years. Include outcomes and, if ongoing, expected outcomes.

• Evidence that the organization can carry out activities in the area(s) targeted by the proposed project.

• Proof that the organization can collect, analyze and disseminate data on the health of targeted minority populations.

• A description of the proposed staff responsible for monitoring the cooperative agreement. Include resumes and job descriptions of key staff, qualifications and responsibilities of each staff member and percentage of time on the cooperative agreement.

• A description on how the organization plans to evaluate its effectiveness in managing projects.

In addition, the applicant must provide a detailed budget justification for management responsibilities (does not count toward the page limitation). The budget request should include funds for key project staff to attend an annual OMH grantee meeting and the OMH Second National Leadership Summit on Eliminating Racial and Ethnic Disparities in Health, scheduled for January 9–11, 2006.

(2) The Project Narrative must describe a one-year project addressing minority health-related activities in the selected category (Work Force Development; Health Disparities and Quality Care; or Data and Evaluation).

The Section must include the following:

• Project Summary: Briefly describe key aspects of the Statement of Need, Objectives, Program Plan, Evaluation Plan, and Management Plan. The summary should be no more than 3 pages in length.

• Statement of Need: Describe and document (with data) the significance or prevalence of the problem or issues affecting the targeted minority group(s). Describe the minority group(s) targeted by the project (*e.g.*, race/ ethnicity, age gender, educational level/income).

• Objectives: State objectives in measurable terms, including baseline data and time frames for achievement.

• Program Plan: Clearly describe how the project will be carried out and the role(s) of collaborating organizations or subcontractors. Describe specific activities and strategies planned to achieve each objective. For each activity, describe how, when, where, by whom, and for whom the activity will be conducted. Describe any products to be developed by the project. Provide a time line chart.

a. Projects addressing Work Force Development must include at a minimum one of the following:

—National minority youth initiatives which bring together targeted minority high school students to increase their knowledge regarding career opportunities in the health arena and to explore prospects for pursuing health careers.

—Minority internships which provide targeted minority undergraduate and graduate students majoring in health fields with first-hand knowledge of public health programs and agencies, including the federal process, and the opportunity to interact with health-related activities.

—Pipeline activities to increase the pool of minority students interested in health science careers. Such activities can include strengthening math and science skills to better prepare minority students to undertake training for these fields.

—Fellowships to develop needed skills for success in the academic arena, and advance the career development of minority faculty.

Workforce development projects must demonstrate that they have a system in place to track participants and outcomes.

b. Projects addressing Health Disparities and Quality Care may direct efforts to minority individuals/groups as well as health care providers, health planning staff and administrators, and others who serve them in health care settings and/or the community-at-large (*e.g.*, media, local businesses and industries, faith-based organizations, civic associations, community leaders).

These projects must include activities that address, develop and/or improve, at a minimum, one of the following:

—Access to quality health care and appropriate utilization of health services.
—Prevention, education and training programs to improve the health of targeted minority populations.
—Health information technology to improve quality of health care.
—Outreach programs to minority communities.
—Health care needs of rural and isolated communities, including emerging minority communities.
—Cultural and linguistic competency in health care.
—Web-based multi-user systems that can enhance communication between health care providers and their clients.

c. Projects addressing Data and Evaluation must include one of the following:

—Development of strategies for accessing, collecting, and analyzing data on targeted minority populations.
—Identification of ways in which the collection of health data on targeted minority populations could impact the delivery of health care.
—Identification of cultural barriers to data collection efforts, and strategies to overcome them.
—Collection and analysis of health data that is specific to particular ethnic and racial populations.
—Development of technical assistance for potential applicants/grantees on strategies for evaluating their grant programs.
—Development of a ''Train-the-Trainer'' program to develop a pool of individuals to assist minority-serving organizations on the collection and use of data.

• Evaluation Plan: The evaluation plan must clearly articulate how the applicant will evaluate program activities. It is expected that evaluation activities will be implemented at the beginning of the program in order to capture and document actions contributing to program outcomes. The evaluation plan must be able to produce documented results that demonstrate whether and how the strategies and activities funded under the Program made a difference in: (1) Increasing the diversity of the health-related work force; (2) reducing health disparities and improving quality of care for targeted minority populations; or (3) improving evaluation procedures and the collection and analysis of data on targeted minority populations. The plan should identify the expected results for each major objective and activity of the project. The description should include data collection and analysis methods, demographic data to be collected on project participants, process measures describing indicators to be used to monitor and measure progress toward achieving projected results by objectives, outcome measures which will show that the project has accomplished planned activities, and impact measures demonstrating achievement of the objectives to positively affect targeted health issues. Discuss the potential for replication.

• Management Plan: Provide a description of proposed program staff, including resumes and job descriptions for key staff, qualifications and responsibilities of each staff member, and percent of time each is committing to the project. Provide a description of duties for proposed consultants. Include a chart of the project's structure, showing who reports to whom (including consultants and staff of collaborating organizations).

• Appendices: Include documentation and other supporting information. (Appendices count toward the narrative page limit.)

In addition to the project narrative, the applicant must provide a detailed budget justification for project activities.

C. Data Universal Numbering System number (DUNS): Applicants to either of the two programs addressed in this announcement are required to obtain a DUNS number as preparation for doing business electronically with the Federal Government. The DUNS number must be obtained prior to applying for OMH funds.

The DUNS number is a nine-character identification code provided by the commercial company Dun & Bradstreet, and serves as a unique identifier for business entities. There is no charge for requesting a DUNS number, and you may register and obtain a DUNS number by either the following methods: Telephone: 1–866–705–5711, Web site: *https://eupdate.dnb.com/requestoptions.html.* Click on the link that reads, ''DUNS Number Only'' at the left hand, bottom corner of the screen to access the free registration page. Please note that registration via the Web site may take up to 30 business days to complete.

3. Submission Dates and Times

Application Deadline Date: National Umbrella Cooperative Agreement Program July 13, 2005; and TA/CD Program July 13, 2005.

Submission Mechanisms

The Office of Public Health and Science (OPHS) provides multiple mechanisms for the submission of applications, as described in the following sections. Applicants will receive notification via mail from the Office of Grants Management, OPHS, confirming the receipt of applications submitted using any of these mechanisms. Applications submitted to the Office of Grants Management, OPHS, after the deadlines described below will not be accepted for review. Applications which do not conform to the requirements of the grant announcement will not be accepted for review and will be returned to the applicant.

Applications may only be submitted electronically via the electronic submission mechanisms specified below. Any applications submitted via any other means of electronic communication, including facsimile or electronic mail, will not be accepted for review. While applications are accepted in hard copy, the use of the electronic application submission capabilities provided by the OPHS eGrants system or the Grants.gov Web site Portal is encouraged.

Electronic Submissions via the OPHS eGrants System

The OPHS electronic grants management system, eGrants, provides for applications to be submitted electronically. Information about this system is available on the OPHS eGrants Web site, *https://egrants.osophs.dhhs.gov*, or may be requested from the Office of Grants Management, OPHS, at 301–594–0758.

The body of the application and required forms can be submitted using the OPHS eGrants system. In addition to electronically submitted materials, applicants are required to submit a hard copy of the application face page (Standard Form 424) with the original signature of an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award. If required, applicants will also

need to submit a hard copy of the Standard Form LLL and/or certain program related forms with the original signature of an individual authorized to act for the applicant agency or organization. The application will not be considered complete until both the electronic application components submitted via the OPHS eGrants system and any hard copy materials or original signatures are received.

Electronic grant application submissions must be submitted via the OPHS eGrants system no later than 5 p.m. eastern time on the deadline date specified in the **DATES** section of the announcement. All required hardcopy original signatures and mail-in items must be received by the Office of Grants Management, OPHS, no later than 5 p.m. eastern time on the next business day after the deadline date specified in the **DATES** section of the announcement.

Applications will not be considered valid until all electronic application components, hardcopy original signatures, and mail-in items are received by the Office of Grants Management, OPHS, according to the deadlines specified above. Any application submitted electronically after 5 p.m. eastern time on the deadline date specified in the **DATES** section of the announcement will be considered late and will be deemed ineligible. Failure of the applicant to submit all required hardcopy original signatures and required mail-in items to the Office of Grants Management, OPHS, by 5 p.m. eastern time on the next business day after the deadline date specified in the **DATES** section of the announcement will result in the electronic application being deemed ineligible.

As items are received by the Office of Grants Management, OPHS, the electronic application status will be updated to reflect the receipt of mail-in items. It is recommended that the applicant monitor the status of their application in the OPHS eGrants system to ensure that all signatures and mail-in items are received.

Applicants are encouraged to initiate electronic applications early in the application development process, and to submit early on the due date or before. This will aid in addressing any problems with submissions prior to the application deadline.

Electronic Submissions via the Grants.gov Web site Portal

The Grants.gov Web site Portal provides for applications to be submitted electronically. Information about this system is available on the Grants.gov Web site, *http://www.grants.gov.*

The body of the application and required forms can be submitted using the Grants.gov Web site Portal. Grants.gov allows the applicant to download and complete the application forms at any time, however, it is required that organizations successfully complete the necessary registration processes in order to submit the application to Grants.gov.

In addition to electronically submitted materials, applicants may be required to submit hard copy signatures for certain program related forms, or original materials as required by the announcement. It is imperative that the applicant review both the grant announcement, as well as the application guidance provided within the Grants.gov application package, to determine such requirements. Any required hard copy materials, or documents that require a signature, excluding the standard forms included in the Grants.gov application package (*e.g.,* Standard Form 424 Face Page, Standard Assurances and Certifications (Standard Form 424B, and Standard Form LLL) must be submitted separately via mail to the Office of Grants Management, OPHS, and, if required, must contain the original signature of an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

Electronic grant application submissions must be submitted via the Grants.gov Web site Portal no later than 5 p.m. eastern time on the deadline date specified in the **DATES** section of the announcement. All required hardcopy original signatures and mail-in items must be received by the Office of Grants Management, OPHS, no later than 5 p.m. eastern time on the next business day after the deadline date specified in the **DATES** section of the announcement.

Applications will not be considered valid until all electronic application components, hardcopy original signatures, and mail-in items are received by the Office of Grants Management, OPHS, according to the deadlines specified above. Any application submitted electronically via the Grants.gov Web site Portal after 5 p.m. eastern time on the deadline date specified in the **DATES** section of the announcement will be considered late and will be deemed ineligible. Failure of the applicant to submit all required hardcopy original signatures or materials to the Office of Grants Management, OPHS, by 5 p.m. eastern time on the next business day after the deadline date specified in the **DATES** section of the announcement will result in the electronic application being deemed ineligible.

Upon completion of a successful electronic application submission via the Grants.gov Web site Portal, the applicant will be provided with a confirmation page from Grants.gov indicating the date and time (eastern time) of the electronic application submission, as well as the Grants.gov Receipt Number. It is critical that the applicant print and retain this confirmation for their records, as well as a copy of the entire application package.

All applications submitted via the Grants.gov Web site Portal will be validated by Grants.gov. Any applications deemed ''Invalid'' by the Grants.gov Web site Portal will not be transferred to the OPHS eGrants system, and OPHS has no responsibility for any application that is not validated and transferred to OPHS from the Grants.gov Web site Portal. Grants.gov will notify the applicant regarding the application validation status. Once the application is successfully validated by the Grants.gov Web site Portal, applicants should immediately mail all required hard copy materials to the Office of Grants Management, OPHS, to be received by the deadlines specified above. It is critical that the applicant clearly identify the Organization name and Grants.gov Application Receipt Number on all hard copy materials.

Once the application is validated by Grants.gov, it will be electronically transferred to the OPHS eGrants system for processing. Upon receipt of both the electronic application from the Grants.gov Web site Portal, and the required hardcopy mail-in items, applicants will receive notification via mail from the Office of Grants Management, OPHS, confirming the receipt of the application submitted using the Grants.gov Web site Portal.

Applicants are encouraged to initiate electronic applications via the Grants.gov Web site Portal early in the application development process, and to submit early on the due date or before. This will aid in addressing any problems with submissions prior to the application deadline.

Applicants should contact Grants.gov regarding any questions or concerns pertaining to the electronic application process conducted through the Grants.gov Web site Portal.

Mailed or Hand-Delivered Hard Copy Applications

Applicants who submit applications in hard copy (via mail or hand-delivered) are required to submit an original and two copies of the application. The original application

must be signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

Mailed or hand-delivered applications will be considered as meeting the deadline if they are received by the Office of Grants Management, OPHS, on or before 5 p.m. eastern time on the deadline date specified in the **DATES** section of the announcement. The application deadline date requirement specified in this announcement supersedes the instructions in the OPHS–1. Applications that do not meet the deadline will be returned to the applicant unread.

4. Intergovernmental Review

The TA/CD Program is subject to the requirements of Executive Order 12372 which allows States the options of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kits available under this notice will contain a list of States which have chosen to set up a review system and will include a State Single Point of Contact (SPOC) in the State for review. The SPOC list is also available on the Internet at the following address: *http://www.whitehouse.gov/omb/grants/spoc.html.* Applicants (other than federally recognized Indian tribes) should contact their SPOC as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. The due date for State process recommendations is 60 days after the application deadlines established by the OPHS Grants Management Officer. The OMH does not guarantee that it will accommodate or explain its responses to State process recommendations received after that date. (*See* ''Intergovernmental Review of Federal Programs,'' Executive Order 12372, and 45 CFR part 100 for a description of the review process and requirements.)

The TA/CD Program is subject to Public Health Systems Reporting Requirements. Under these requirements, community-based non-governmental applicants must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based organizations within their jurisdictions.

Community-based non-governmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the head of the appropriate State or local health agencies in the area(s) to be impacted: (a) A copy of the face page of the application (SF 424), and (b) a summary of the project (PHSIS), not to exceed one page, which provides: (1) A description of the population to be served, (2) a summary of the services to be provided, and (3) a description of the coordination planned with the appropriate State or local health agencies. Copies of the letters forwarding the PHSIS to these authorities must be contained in the application materials submitted to the OPHS.

5. Funding Restrictions

Budget Request: If funding is requested in an amount greater than the ceiling of the award range, the application will be considered non-responsive and will not be entered into the review process. The application will be returned with notification that it did not meet the submission requirements.

Grant funds may be used to cover costs of:

- Personnel.
- Consultants.
- Equipment.
- Supplies (including screening and outreach supplies).
- Grant-related travel (domestic only), including attendance at an annual OMH grantee meeting.
- Other grant-related costs.

Grants funds may not be used for:

- Building alterations or renovations.
- Construction.
- Fund raising activities.
- Job training.
- Medical care, treatment or therapy.
- Political education and lobbying.
- Research studies involving human subjects.
- Vocational rehabilitation.

Guidance for completing the budget can be found in the Program Guidelines, which are included with the complete application kits.

6. Other Submission Requirements

For applications submitted in hard copy, send an original, signed in blue ink, and two copies of the complete grant application to: Ms. Karen Campbell, Director, Office of Grants Management, OPHS, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852. Information about electronic submissions is available on the Grants.gov Web site. Applications submitted by e-mail, Facsimile transmission (FAX) or any other electronic format will not be accepted.

Section V. Application Review Information

1. Criteria

1a. Criteria for the TA/CD Program

The technical review of the TA/CD Program applications will consider the following five generic factors.

A. Factor 1: Program Plan (35%)

- Appropriateness of proposed approach and specific activities for each objective.
- Logic and sequencing of the planned approaches in relation to the objectives and program evaluation.
- Soundness of the established partnerships (e.g., coalition, linkages).
- Likelihood of successful implementation of the project.

B. Factor 2: Evaluation (20%)

- The degree to which expected results are appropriate for major objectives and activities.
- Appropriateness of the proposed data collection (including demographic data to be collected on project participants), analysis and reporting procedures.
- Suitability of process, outcome, and impact measures.
- Clarity of the intent and plans to assess and document the activities and their outcomes.
- Potential for the proposed project to impact the health status of, and barriers to, health care experienced by the targeted minority.
- Potential for replication of the project for similar target populations and communities.

C. Factor 4: Objectives (20%)

- Merit of the objectives.
- Relevance to the Program purpose, expectations, and stated problem.
- Attainability of the objectives in the stated time frames.

D. Factor 3: Statement of Need (15%)

- Demonstrated knowledge of the problem at the local level.
- Significance and prevalence of the identified health problem(s) or health issue(s) in the proposed community and target population.
- Extent to which the applicant demonstrates access to the target community(ies), and whether it is well positioned and accepted within the community(ies) to be served.
- Extent and documented outcome of past efforts and activities with the target population. (Currently funded OMH grantees [*i.e.*, TA/CD Program grantees] *must* attach a progress report describing project accomplishments and outcomes.)

E. Factor 5: Management Plan (10%)

• Applicant organization's capability to manage and evaluate the project as determined by:

—Qualifications and appropriateness of proposed staff or requirements for ''to be hired'' staff and consultants.
—Proposed staff level of effort.
—Management experience of the applicant.
—The applicant's organizational structure and proposed project organizational structure.

• Appropriateness of defined roles including staff reporting channels and that of any proposed contractors.

• Clear lines of authority among the proposed staff within and between participating organizations.

1b. Criteria for the National Umbrella Cooperative Agreement Program

The technical review of the National Umbrella Cooperative Agreement Program application will consider the following generic factors.

A. Project (65%)

Factor 1: Program Plan (20%)

• Appropriateness of proposed approach and specific activities for each objective.

• Logic and sequencing of the planned approaches in relation to the objectives and program evaluation.

• Likelihood of successful implementation of the project.

Factor 2: Evaluation (20%)

• The degree to which expected results are appropriate for major objectives and activities.

• Appropriateness of the proposed data collection (including demographic data to be collected on project participants), analysis and reporting procedures.

• Suitability of process, outcome, and impact measures.

• Clarity of the intent and plans to assess and document the activities and their outcomes.

• Potential for the proposed project to impact the health status of, and barriers to, health care experienced by the targeted minority.

• Potential for replication of the project for similar target populations and communities.

Factor 3: Objectives (15%)

• Merit of the objectives.

• Relevance to the program purpose, project outcomes and stated problem.

• Attainability of the objectives in the stated time frames.

Factor 4: Management Plan (5%)

• Applicant organization's capability to manage and evaluate the project as determined by:

—Qualifications and appropriateness of proposed staff or requirements for ''to be hired'' staff and consultants.
—Proposed staff level of effort.
—Proposed project organizational structure.

• Appropriateness of defined roles including staff reporting channels and that of any proposed contractors and clear lines of authority among the proposed staff within and (if appropriate) between participating organizations.

Factor 5: Statement of Need (5%)

• Demonstrated knowledge of the problem at the national and/or local level as applicable and the significance and prevalence of the identified health problem(s) or health issue(s) in the proposed target population.

• Extent to which the applicant demonstrates access to the target population, and whether it is well positioned and accepted within the population to be served.

B. Capability Statement (35%)

Factor 1: Management and Organizational Structure (20%)

• Ability of the organization to implement national initiatives.

• Ability of the organization to manage multiple projects.

• Ability to collaborate with other non-affiliated organizations.

• Appropriateness of the organizational mission to address the health issues of the target minority population.

• The applicant's organizational structure.

Factor 2: Experience (15%)

• Demonstrated ability to serve racial and ethnic minority populations.

• Extent and documented outcomes of past efforts and activities with the target population.

• Extent to which the organization demonstrates its ability to collect, analyze and disseminate data on the health of minority populations.

2. Review and Selection Process

Accepted TA/CD Program and National Umbrella Cooperative Agreement Program applications will be reviewed for technical merit in accordance with PHS policies. Applications will be evaluated by an Objective Review Committee (ORC). Committee members are chosen for their expertise in minority health, health disparities, and their understanding of the unique health problems and related issues confronted by the racial and ethnic minority populations in the United States. Funding decisions will be determined by the Deputy Assistant Secretary for Minority Health who will take under consideration:

• The recommendations and ratings of the ORC.

• Geographic and racial/ethnic distribution.

• Health issues to be addressed.

3. Anticipated Award Date

September 1, 2005.

Section VI. Award Administration Information

1. Award Notices

Successful applicants will receive a notification letter from the Deputy Assistant Secretary for Minority Health and a Notice of Grant Award (NGA), signed by the OPHS Grants Management Officer. The NGA shall be the only binding, authorizing document between the recipient and the Office of Minority Health. Notification will be mailed to the Program Director identified in the application.

Unsuccessful applicants will receive a notification letter with the results of the review of their application from the Deputy Assistant Secretary for Minority Health.

2. Administrative and National Policy Requirements

In accepting this award, the grantee stipulates that the award and any activities thereunder are subject to all provisions of 45 CFR parts 74 and 92, currently in effect or implemented during the period of the grant.

A notice providing information and guidance regarding the ''Government-wide Implementation of the President's Welfare-to-Work Initiative for Federal Grant Programs' was published in the **Federal Register** on May 16, 1997. This initiative was designated to facilitate and encourage grantees and their sub-recipients to hire welfare recipients and to provide additional needed training and/or mentoring as needed. The text of the notice is available electronically on the OMB home page at *http://www.whitehouse.gov/omb.*

3. Reporting Requirements

A successful applicant under this notice will submit: (1) Semi-annual progress reports; (2) an annual Financial Status Report; and (3) a final progress report and Financial Status Report in the format established by the OMH, in accordance with provisions of the general regulations which apply under

''Monitoring and Reporting Program Performance,'' 45 CFR part 74–51—74.52, with the exception of State and local governments to which 45 CFR part 92, subpart C reporting requirements apply.

Uniform Data Set: The Uniform Data Set (UDS) system is designed to assist in evaluating the effectiveness and impact of grant and cooperative agreement projects. All OMH grantees are required to report program information, using the Web-based UDS. Training will be provided to all new grantees (including cooperative agreement grantees) on the use of the UDS system, during the annual grantee meeting.

Grantees will be informed of the progress report due dates and means of submission. Instructions and report format will be provided prior to the required due date. The Annual Financial Status Report is due no later than 90 days after the close of each budget period. The final progress report and Financial Status Report are due 90 days after the end of the project period. Instructions and due dates will be provided prior to required submission.

Section VII. Agency Contacts

For questions on budget and business aspects of the application, contact the Office of Grants Management, OPHS, Tower Building, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852, at (240) 453–8822.

For questions related to the TA/CD Program and the National Cooperative Agreement Program or assistance in preparing a grant proposal, contact Ms. Cynthia Amis, Director, Division of Program Operations, Office of Minority Health, Tower Building, Suite 600, 1101 Wootton Parkway, Rockville, MD 20852. Ms. Amis can be reached by telephone at (240) 453–8444.

For additional technical assistance, contact the OMH Regional Minority Health Consultant for your region listed in your grant application kit.

For health information, call the OMH Resource Center (OMHRC) at 1–800–444–6472.

Section VIII. Other Information

1. Healthy People 2010

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2010, a PHS-led national activity announced in January 2000 to eliminate health disparities and improve years and quality of life. More information may be found on the Healthy People 2010 Web site: *http://www.healthypeople.gov* and copies of the document may be downloaded. Copies of the Health People 2010: Volumes I and II can be purchased by calling (202) 512–1800 (cost $70.00 for printed version; $20.00 for CD-ROM). Another reference is the Healthy People 2010 Final Review—2001.

For 1 free copy of the Healthy People 2010, contact: The National Center for Health Statistics, Division of Data Services, 3311 Toledo Road, Hyattsville, MD 20782, or by telephone at (301) 458–4636. Ask for HHS Publication No. (PHS) 99–1256. This document may also be downloaded from: *http://www.healthypeople.gov*.

2. ABC Approach

The Department supports the Administration's ''A-B-C'' approach to HIV prevention—Abstinence, Be faithful, and use Condoms—an approach used in other countries that has had an impact on reducing dramatically the percentage of individuals infected with HIV. The OMH encourages the use of this prevention strategy in its grant programs.

3. Definitions

For purposes of this announcement, the following definitions apply:

Community-Based Organizations—Private, nonprofit organizations that are representative of communities or significant segments of communities where the control and decisionmaking powers are located at the community level.

Community-Based, Minority-Serving Organization—A community-based organization that has a history of service to racial/ethnic minority populations. (*See* Definition of Minority Populations below.)

Cooperative Agreement—A financial assistance mechanism used in lieu of a grant when substantial federal programmatic involvement with the recipient during performance is anticipated by the awarding office.

Health Care Facility—A private nonprofit or public facility that has an established record for providing comprehensive health care services to a targeted, racial/ethnic minority community. A health care facility may be a hospital, outpatient medical facility, community health center, or a mental health center. Facilities providing only screening and referral activities are not included in this definition.

Minority Populations—American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, and Native Hawaiian or Other Pacific Islander. (Revision to the Standards for the Classification of Federal Data on Race and Ethnicity, **Federal Register**, Vol. 62, No. 210, pg. 58782, October 30, 1997.)

National Organizations—Private, nonprofit organizations that have affiliate offices or chapters at the State and/or regional level in five or more geographically distinct communities and that have the capacity and experience to assist their affiliate offices and chapters.

National Minority-Serving Organization—A national organization whose mission focuses on health issues affecting minority communities nationwide and that serves a high concentration of the targeted population(s).

Nonprofit Organizations—Corporations or associations, no part of whose net earnings may lawfully inure to the benefit of any private shareholder or individual. Proof of nonprofit status must be submitted by private nonprofit organizations with the application or, if previously filed with PHS, the applicant must State where and when the proof was submitted. (*See* Section III, 3 Other, for acceptable evidence of nonprofit status.)

Sociocultural Barriers—Policies, practices, behaviors and beliefs that create obstacles to health care access and service delivery.

4. List of Currently Funded Umbrella Cooperative Agreements

American Indian Higher Education Consortium.

ASPIRA Association, Inc.

Asian and Pacific Islander American Health Forum, Inc.

Association of American Indian Physicians.

Association of Asian and Pacific Community Health Organizations.

Auxiliary to the National Medical Association.

Harvard Medical School Minority Faculty Development Program.

Hispanic Association of Colleges and Universities.

Interamerican College of Physicians and Surgeons.

Inter-University Program for Latino Research.

Latino Council on Alcohol and Tobacco.

Meharry Medical College.

Minority Access, Inc.

Minority Health Professions Foundation.

National Association for Equal Opportunity in Higher Education.

National Council of La Raza.

National Hispanic Religious Leaders Partnership.

National Hispanic Medical Association.

National Latino Children's Institute.
National Medical Association.
National Minority AIDS Council.
Quality Education for Minorities.
Summit Health Institute for Research and Education, Inc.
The Hispanic Serving Health Professions Schools.
The National Alliance for Hispanic Health.

Dated: May 27, 2005.

Garth N. Graham,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 05–11650 Filed 6–10–05; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Data Collection for the Fourth National Incidence Study of Child Abuse and Neglect.

OMB No.: New Collection.

Description: The Department of Health and Human Services (HHS) intends to collect data for the next National Incidence Study of Child Abuse and Neglect (NIS). This will be the fourth cycle of this periodic study. NIS–1, mandated under Public Law (Pub. L.) 93–247 (1974), was conducted in 1979 and 1980, and reported in 1981. NIS–2, mandated under (Pub. L) 98–457 (1984), was conducted in 1986 and 1987, and reported in 1988. NIS–3 was mandated under both the Child Abuse Prevention, Adoption, and Family Services Act of 1988 (Pub. L.) 100–294 and the Child Abuse, Domestic Violence, Adoption, and Family Services Act of 1992 (Pub. L.) 102–295, was conducted between 1993 and 1995, and reported in 1996. NIS–4 mandated by the Keeping Children and Families Safe Act of 2003 (Pub. L.) 108–36, will gather data in 2005 and 2006, and be reported in 2008.

NIS is unique in that it goes beyond the abused and neglected children who come to the attention of the Child Protection Services (CPS) system. In contrast to the National Child Abuse and Neglect Data Systems (NCANDS), which rely solely on reported cases, the NIS design assumes that reported children represented only a portion of the children who actually are maltreated. NIS estimates the scope of the maltreated child population by combining information about reported cases with data on maltreated children identified by professionals (called ''sentinels'') who encounter them during the normal course of their work in a wide range of agencies in representative communities. Sentinels are asked to remain on the lookout for children whom they believe are maltreated during the study reference period and to provide information about these children.

Children identified by sentinels and those whose alleged maltreatment is investigated by CPS during the same period are evaluated against standardized definitions, and only children who meet the study standards are used to develop the study estimates. The study estimates are couched in terms of numbers of maltreated children, with data unduplicated so that a given child is counted only once. Confidentiality of all participants is carefully protected through study procedures and with a Certificate of Confidentiality from the National Institutes of Health (NIH).

A nationally representative sample of 122 counties has been selected and all 125 local CPS agencies serving the selected counties have been identified. Plans have been developed to obtain data on cases investigated during the period, September 4, 2005 through January 3, 2006. Sentinels in the selected counties are being identified through samples of agencies in 11 categories: County juvenile probation departments, sheriff (and/or state police) departments, public health departments, public housing departments, municipal police departments, hospitals, schools, day care centers, social service and mental health agencies, and shelters for bettered women or runaway/homeless youth. Over 1,700 sentinel agencies are being selected. Plans are being developed to identify staff in these agencies that have direct contact with children to serve as sentinels during the study by submitting data on maltreated children they encounter during the study reference period.

In addition to the main NIS–4 study to measure the incidence of maltreated children, two related surveys of participating CPS agencies will be conducted to enhanced the interpretability of the findings: (1) *The CPS Screening Records Survey* will collect information on the CPS agencies' screening practices to understand the kinds of reports they would not accept for investigation but would instead screen out or refer for an alternative agency response. (The main NIS–4 will collect data from CPS agencies only on investigated children.) This survey will be conducted through telephone interviews with intake supervisors in the participating CPS agencies serving the NIS–4 counties; and (2) The *Survey CPS Structure and Policies* will collect information on the CPS agency context during NIS–4 to provide a basis for relating jurisdictional differences in the NIS incidence findings to the operational structure and practices of the local CPS agencies. This will be implemented through a mail survey to participating NIS–4 CPS agencies. The survey will be organized into four topical modules (covering administration, screening, investigation, and alternate response policies and practices) and the agencies will be asked to have agency staff with the appropriate expertise complete each module.

Respondents: Nationally Representative CPS Agencies and Nationally Representative Sentinel Agency Staff.

- The CPS Maltreatment Form will collect details from CPS agencies concerning the children and maltreatment events in a sample of cases and will be used in characterizing maltreated children and generating national estimates of their numbers in different categories of abuse and neglect.
- The CPS Summary Data Form will be completed on all non-sampled cases investigated by CPS during the reference period and will be used for unduplicating multiple records on the same child both within the CPS data and between the CPS and sentinel data. The CPS Summary Data Form data will be collected electronically whenever possible.
- The Sentinel Data Form will obtain details from sentinels concerning each maltreated child they encounter during the reference period.
- The *CPS Screening Records Survey* will be administered to CPS agencies as described above.
- The *Survey on CPS Structures and Policies* will be administered to CPS agencies as described above.

NIS–4 ANNUAL BURDEN HOUR ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
CPS Maltreatment Data Form	125	[a] 80	[b] .55	5,500
CPS Summary Forms, hard copy [c]	31	[d] 1,056	[e] .08	2,619
CPS Summary Forms, electronic [c]	94	1	20	[f] 1,880
Sentinel Data Form	12,000	[g] .8	[h] .35	3,360
CPS Screening Records Survey	125	1	[i] 1	125
Survey on CPS Structures and Policies	125	1	[j] 2.89	361

[a] Estimated by dividing 10,000 (estimated number of sampled cases) by 125 (number of CPS agencies). The actual sample sizes within the CPS agencies may diverge from this average of 80.
[b] Based on CPS workers' average estimate of 33 minutes per form.
[c] Assumes that one-fourth of the 125 agencies will only be able to submit hard-copy forms while three-fourths will be capable of submitting the data electronically. (Note: electronic submission will be used with every agency that has the capability to do so.)
[d] Based on NCANDS caseload data, we estimate that we will receive a total of 132,000 CPS Summary Forms, or an average of about 1,056 from each of the 125 agencies.
[e] Based on CPS workers' average estimate of 5 minutes per form.
[f] Based on an estimated 20 hours per agency for working out the specifications, programming, review, and documentation to produce the files with the summary form information.
[g] Using the NIS–3 average of .8 form per recruited sentinel.
[h] Based on sentinels' average estimate of 21 minutes per form.
[i] Based on simulated interviews conducted by contractor staff.
[j] Based on the contractor's estimate of 2.25 hours for the administration, screening, and investigation modules (completed by 100 percent of agencies) and 1 hour for the alternative response module (completed by 64 percent of agencies, based on findings from the Local Agency Survey in the National Study of CPS Systems and Reforms Efforts).

Estimated Total Annual Burden Hours: 13,845.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *grjohnson@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF. E-mail address: *Katherine_T._Astrich@omb.eop.gov.*

Dated: June 7, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–11607 Filed 6–10–05; 8:45 am]

BILLING CODE 9184–01–M

DEPARTMENT OF HEALTH & HUMAN SERVICES

Administration for Children and Families

Administration on Children, Youth and Families, Children's Bureau; Grants and Cooperative Agreements; Availability etc: Abandoned Infants Comprehensive Service Demonstration Projects

Funding Opportunity Title: Abandoned Infants Comprehensive Service Demonstration Projects.

Announcement Type: Initial.

Funding Opportunity Number: HHS–2005–ACF–ACYF–CB–0088.

CFDA Number: 93.551.

Due Date for Applications: Application is due August 12, 2005.

Executive Summary: The purposes of this funding announcement are as follows: (1) To develop and implement programs of comprehensive community-based support services for the target population as described in Public Law 100–505, as amended; (2) to evaluate the implementation and outcomes of these comprehensive support services; and (3) to develop these programs as identifiable sites that other States/locales seeking to implement comprehensive support services for this population can look to for guidance, insight, and possible replication.

I. Funding Opportunity Description

The purposes of this funding announcement are as follows: (1) To develop and implement programs of comprehensive community-based support services for the target population as described in Public Law 100–505, as amended; (2) to evaluate the implementation and outcomes of these comprehensive support services; and (3) to develop these programs as identifiable sites that other States/locales seeking to implement comprehensive support services for this population can look to for guidance, insight, and possible replication.

Definitions

Abandoned and Abandonment—The terms 'abandoned' and 'abandonment,' used with respect to infants and young children, mean that the infants and young children are medically cleared for discharge from acute-care hospital settings, but remain hospitalized because of a lack of appropriate out-of-hospital placement alternatives.

Acquired Immune Deficiency Syndrome—The term 'acquired immune deficiency syndrome' includes infection with the etiologic agent for such syndrome, any condition indicating that an individual is infected with such etiologic agent, and any condition arising from such etiologic agent.

Dangerous Drug—The term 'dangerous drug' means a controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

Natural Family—The term ''natural family'' shall be broadly interpreted to include natural parents, grandparents, family members, guardians, children residing in the household, and individuals residing in the household on a continuing basis who are in a care-

giving situation, with respect to infants and young children covered under this Act.

Priority Area

Abandoned Infants Comprehensive Service Demonstration Projects

1. *Description:* The purposes of this funding announcement are as follows: (1) To develop and implement programs of comprehensive community-based support services for the target population as described in Public Law 100–505, as amended; (2) to evaluate the implementation and outcomes of these comprehensive support services; and (3) to develop these programs as identifiable sites that other States/locales seeking to implement comprehensive support services for this population can look to for guidance, insight, and possible replication.

Legislative Authority

The purposes of Public Law 100–505, the Abandoned Infants Act of 1988, as amended, are to establish a program of local support services projects in order to prevent the abandonment in hospitals of infants and young children, particularly those who have been perinatally exposed to a dangerous drug, those with the human immunodeficiency virus (HIV) or who have been perinatally exposed to the virus, or those who have a life-threatening illness or other special medical need; to identify and address the needs of those infants and children who are, or might be, abandoned; to develop a program of comprehensive support services for these infants and young children and their natural families (*see* Definitions) that include, but are not limited to, foster family care services, case management services, family support services, respite and crisis intervention services, counseling services and group residential home services; and to recruit and train health and social services personnel, foster care families, and residential care providers to meet the needs of abandoned children and infants and children who are at risk of abandonment. The legislation also allows for the provision of a technical assistance training program to support the planning, development and operation of the local comprehensive support services projects. The reauthorized legislation requires the Secretary to give priority to applicants located in States that have developed and implemented procedures for expedited termination of parental rights and placement for adoption of infants determined to be abandoned under State law.

Projects funded under this announcement will be expected to:

1. Have the project fully functioning within 90 days following the notification of the grant award.

2. Participate if the Children's Bureau chooses to do a national evaluation or a technical assistance contract that relates to this funding announcement.

3. Submit all performance indicator data, program and financial reports in a timely manner, in suggested format (to be provided), and submit the final report on disk or electronically using a standard word-processing program.

4. Submit a copy of the final report, the evaluation report, and any program products to the National Clearinghouse on Child Abuse and Neglect Information, 330 C Street, SW., Washington, DC 20447, within 90 days of project end date. This is in addition to the standard requirement that the final program and evaluation report must also be submitted to the Grants Management Specialist and the Federal Project Officer.

5. Allocate sufficient funds in the budget to:

(a) Provide for the project director, the evaluator and other key partners to attend an annual 3-day grantees' meeting in Washington, DC.

(b) Provide for the project director, the evaluator and other key partners to attend an early kickoff meeting for grantees funded under this priority area to be held within the first three months of the project (first year only) in Washington, DC; and

(c) Direct 10–15 percent of the proposed budget to project evaluation.

In addition, projects funded under this announcement agree to the following assurances required by sections 101 (b) through (d) of the Abandoned Infants Assistance Act:

1. Give priority to abandoned infants and young children who are infected with, or have been perinatally exposed to, the human immunodeficiency virus, or have a life-threatening illness or other special medical need; or have been perinatally exposed to a dangerous drug.

2. If programs provide care to infants and young children in foster homes or in other residential non-medical settings away from their parents, assure that for each infant and young child, a case plan (as described in paragraph 1 of section 475 of the Social Security Act [42 U.S.C. 675(1)]) and a case review system (of the type described in paragraph (5) of such section) are in place, to the extent that the infants and young children are not otherwise covered by such a plan or system.

3. Use the funds provided under this announcement only for the purposes specified in the application submitted to and approved by the Secretary.

4. Establish fiscal control and accounting procedures to ensure proper disbursement and accounting of Federal funds.

5. Submit reports on the utilization, cost, and outcome of activities conducted, and services furnished, as described in part VI.3. of this announcement (Award Administration Information.).

Definitions

Abandoned and Abandonment—The terms 'abandoned' and 'abandonment,' used with respect to infants and young children, mean that the infants and young children are medically cleared for discharge from acute-care hospital settings, but remain hospitalized because of a lack of appropriate out-of-hospital placement alternatives.

Acquired Immune Deficiency Syndrome (AIDS)—The term 'acquired immune deficiency syndrome' includes infection with the etiologic agent for such syndrome, any condition indicating that an individual is infected with such etiologic agent, and any condition arising from such etiologic agent.

Dangerous Drug—The term 'dangerous drug' means a controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

Natural Family—The term ''natural family'' shall be broadly interpreted to include natural parents, grandparents, family members, guardians, children residing in the household, and individuals residing in the household on a continuing basis who are in a care-giving situation, with respect to infants and young children covered under this Act.

Program Requirements

The services needed by these infants and their families are many. The needed services are likely to be provided by many different community-based agencies. Applicants must utilize an existing consortium of community-based service providers or develop a consortium for the purpose of implementing this demonstration project. Qualified faith-based and community organizations may be part of the consortium delivering these services. The applicant must take a systemic approach to obtaining and providing a comprehensive set of services to this client population. In order to provide the needed services and efficiently use all the relevant

community resources, the applicant must develop a strong infrastructure of community-based collaboration in delivering the services. This collaborative should recognize and respect individualized care practices and deliver the services and program supports in a culturally competent manner. The role of the cooperating agencies must be specific and delineated in a letter that specifies the level and type of program commitment to the overall effort. A pro forma letter of support will not be considered responsive to this requirement.

In developing its consortium of community-based service providers, the applicant could include the following entities: child welfare, legal services, substance abuse treatment, mental health, parent support programs, caregiver support programs, in-home visiting, respite care, housing assistance, and quality childcare support. In providing the necessary services to this client population, the applicant may also consider the provision of caregiver support services to those relatives who are the caretakers for the children of a substance-abusing and/or HIV/AIDS affected mother. Applicants may also consider the provision of therapeutic recreational services for the young children and their families impacted by HIV/AIDS. Projects should demonstrate shared responsibility for case management (*e.g.*, joint social services-medical case management) and integration of case plans for multiple agencies.

These demonstration projects must address the relevant aspects of the State's Program Improvement Plan developed under the Child and Family Services Review as they provide coordinated services to this population.

Evaluation

The Children's Bureau requires an objective evaluation and recommends a third party evaluation of the project. Projects funded under this announcement must collect descriptive data on characteristics of individuals and families served, types and nature of needs identified and met, the services provided, measures of client outcomes, child development and well-being, client satisfaction, parenting skills, parent/child interaction, cost benefit, service utilization information, and any other such information as may be required by ACYF. Additional information on outcome measures, suggested data collection instruments, and specific data characteristics, can be found at *http://aia.berkeley.edu/direct_service_programs/UMKC.html.*

Projects should also collect process and outcome data for the project. The evaluation component of the application should describe methods of collecting descriptive data on the characteristics of the clients served and the services provided. This evaluation should be designed to collect systematic data to answer questions such as the following: What are the characteristics of families who abandon children? What are the service needs of children, mothers, fathers, and families of drug exposed infants? What are the service needs of HIV-positive infants? What are the barriers to comprehensive case management and to the coordination of service delivery? What changes have been most helpful in improving the delivery of services? What changes/improvements have there been in the child's well-being and the child's development? What changes have there been in the family's stability and ability to function? What are the permanency outcomes for children?

Projects must also submit descriptive data on the clients served and the services provided to the National Abandoned Infants Assistance Resource Center annually. Timeframes for the submission of data on outcome measures will be negotiated within six months after grant award.

II. Award Information

Funding Instrument Type: Grant.

Anticipated Total Priority Area Funding: $2,850,000.

Anticipated Number of Awards: 0 to 6.

Ceiling on Amount of Individual Awards per Budget Period: $475,000.

Average Projected Award Amount: $475,000.

Length of Project Periods: 48 month project with four 12-month budget periods.

Other.

Explanation of Other: In the first budget period, the maximum Federal share of each project is not to exceed $475,000. The projects awarded will be for a project period of 48 months. The initial grant award will be for a 12-month budget period. The award of continuation beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

III. Eligibility Information

1. Eligible Applicants

State governments.

County governments.

City or township governments.

State controlled institutions of higher education.

Native American tribal governments (federally recognized).

Native American tribal organizations (other than federally recognized tribal governments).

Nonprofits having a 501(c)(3) status with the IRS, other than institutions of higher education.

Nonprofits that do not have a 501(c)(3) status with the IRS, other than institutions of higher education.

Private institutions of higher education.

Additional Information on Eligibility:

Collaborative and interdisciplinary efforts are acceptable, but applications should identify a primary applicant responsible for administering the grant.

Faith-based and community organizations that meet all other eligibility requirements are eligible to apply.

2. Cost Sharing/Matching

Yes.

Matching/Cost-Sharing

Grantees must provide at least *10* percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting *$475,000* in Federal funds (based on an award of *$475,000* per budget period) must provide a match of at least *$52,778* (*10* percent of the total approved project costs). Grantees will be held accountable for commitments of non-Federal resources even if over the amount of the required match. Failure to provide the amount will result in disallowance of Federal dollars.

Cost-sharing will not be used as a preference and/or evaluation criterion in the review of applications.

3. Other

All applicants must have a Dun & Bradstreet number. On June 27, 2003 the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires Federal grant applicants to provide a Dun & Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using

the government-wide electronic portal (http://www.Grants.gov). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

Non-profit organizations applying for funding are required to submit proof of their non-profit status.

Proof of non-profit status is any one of the following:

- A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code.
- A copy of a currently valid IRS tax exemption certificate.
- A statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earning accrue to any private shareholders or individuals.
- A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.
- Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

When applying electronically we strongly suggest you attach your proof of non-profit status with your electronic application.

Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms,'' ''Survey for Private, Non-Profit Grant Applicants,'' titled, ''Survey on Ensuring Equal Opportunity for Applicants,'' at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Disqualification Factors

Applications that exceed the ceiling amount will be considered non-responsive and will not be considered for funding under this announcement.

Any application that fails to satisfy the deadline requirements referenced in *Section IV.3* will be considered non-responsive and will not be considered for funding under this announcement.

IV. Application and Submission Information

1. Address To Request Application Package

ACYF Operations Center, c/o The Dixon Group, Inc. Attn: Children's Bureau, 118 Q St., NE., Washington, DC 20002–2132.

2. Content and Form of Application Submission

Each application must contain the following items in the order listed:

Application for Federal Assistance (Standard Form 424). Follow the instructions below and those that accompany the form.

In Item 5 of Form 424, put DUNS number in ''Organizational DUNS:'' box.

In Item 5 of Form 424, include name, phone number, and, if available, e-mail and fax numbers of the contact person.

In Item 8 of Form 424, check 'New.'

In Item 10 of Form 424, clearly identify the *Catalog of Federal Domestic Assistance* (CFDA) program title and number for the program for which funds are being requested as stated in this funding opportunity announcement.

In Item 11 of Form 424, identify the single funding opportunity the application addresses.

In Item 12 of Form 424, identify the specific geographic area to be served.

In Item 14 of Form 424, identify Congressional districts of both the applicant and project.

Budget Information Non-Construction Programs (Form 424A) and Budget Justification.

Follow the instructions provided here and those in Section V. Application Review Information. Note that Federal funds provided to States and services or other resources purchased with Federal funds may not be used to match project grants.

Certifications/Assurances. Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, 'Assurances: Non-Construction Programs.' Applicants must sign and return the Standard Form 424B with their applications. Applicants must provide a certification regarding lobbying when applying for an award in excess of $100,000. Applicants must sign and return the certification with their applications.

Applicants must disclose lobbying activities on the Standard Form LLL when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form to report lobbying. Applicants must sign and return the disclosure form, if applicable, with their applications.

Applicants must make the appropriate certification regarding environmental tobacco smoke. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the applications.

If applicable, applicants must include a completed SPOC certification (Single Point of Contact) with the date of the SPOC contact entered in line 16, page 1 of the Form 424.

In implementing their projects, grantees are expected to comply with all applicable administrative regulations regarding extent or types of costs. Applicable DHHS regulations can be found in 45 CFR part 74 or 92.

Project Abstract/Summary (one page maximum, double spaced). Clearly mark this page with the applicant name as shown on item 5 of the Form 424, identify the competitive grant funding opportunity and the title of the proposed project as shown in item 11 and the service area as shown in item 12 of the Form 424. The summary description should not exceed 300 words.

Care should be taken to produce an abstract/summary that accurately and concisely reflects the proposed project. It should describe the objectives of the project, the approach to be used and the results or benefits expected.

Project Description for Evaluation. Applicants should organize their project description in this sequence: (1) Objectives and Need for Assistance; (2) Approach; (3) Organizational Profiles; (4) Budget and Budget Justification.

Match. Provide a letter of commitment verifying the actual amount of the non-Federal share of project costs (see Section III.2).

Indirect cost rate agreement. If claiming indirect costs, provide documentation that applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Letters of agreement and memoranda of understanding. If applicable, include a letter of commitment or Memorandum of Understanding from each partner and/or sub-contractor describing their role, detailing specific tasks to be performed, and expressing commitment to participate if the proposed project is funded.

General Content and Form Information

The application limit is 90 pages total including all forms and attachments. Pages over this page limit will be

removed from the application and will not be reviewed.

The Children's Bureau strongly prefers that the entire application (including all forms, assurances, and letters of commitment) be sent in one package.

To be considered for funding, each application must be submitted with the Standard Federal Forms (provided at the end of this announcement or through the electronic links provided) and following the guidance provided. The application must be signed by an individual authorized to act for the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

To be considered for funding, each applicant must submit one signed original and two additional copies of the application, including all forms and attachments, to the Application Receipt Point specified in the section titled Deadline at the beginning of the announcement. The original copy of the application must have original signatures.

The application must be typed, double spaced, printed on only one side, with at least ½ inch margins on each side and 1 inch at the top and bottom, using standard 12 Point fonts (such as Times New Roman or Courier). Pages must be numbered.

All copies of an application must be submitted in a single package, and a separate package must be submitted for each funding opportunity. The package must be clearly labeled for the specific funding opportunity it is addressing.

Because each application will be duplicated, do not use or include separate covers, binders, clips, tabs, plastic inserts, maps, brochures, or any other items that cannot be processed easily on a photocopy machine with an automatic feed. Do not bind, clip, staple, or fasten in any way *separate subsections* of the application, including supporting documentation; however, each *complete* copy must be stapled securely in the upper left corner. Applicants are advised that the copies of the application submitted, not the original, will be reproduced by the Federal government for review.

Tips for Preparing a Competitive Application. It is essential that applicants read the entire announcement package carefully before preparing an application and include all of the required application forms and attachments. The application must reflect a thorough understanding of the purpose and objectives of the applicable legislation. Reviewers expect applicants to understand the goals of the legislation and the Children's Bureau's interest in each topic. A ''responsive application'' is one that addresses all of the evaluation criteria in ways that demonstrate this understanding. Applications that are considered to be ''unresponsive'' generally receive very low scores and are rarely funded.

The Children's Bureau's Web site (*http://www.acf.dhhs.gov/programs/cb*) provides a wide range of information and links to other relevant Web sites. Before you begin preparing an application, we suggest that you learn more about the mission and programs of the Children's Bureau by exploring the Web site.

Organizing Your Application. The specific evaluation criteria in Section V of this funding announcement will be used to review and evaluate each application. The applicant should address each of these specific evaluation criteria in the project description. Applicants should organize their project description in this sequence: (1) Objectives and Need for Assistance; (2) Approach; (3) Organizational Profiles; (4) Budget and Budget Justification; and should use the same headings as these criteria, so that reviewers can readily find information that directly addresses each of the specific review criteria.

Project Evaluation Plan. Project evaluations are very important. If you do not have the in-house capacity to conduct an objective, comprehensive evaluation of the project, then the Children's Bureau advises that you propose contracting with a third-party evaluator specializing in social science or evaluation, or a university or college, to conduct the evaluation. A skilled evaluator can assist you in designing a data collection strategy that is appropriate for the evaluation of your proposed project. Additional assistance may be found in a document titled ''Program Manager's Guide to Evaluation.'' A copy of this document can be accessed at *http://www.acf.hhs.gov/programs/opre/other_resrch/pm_guide_eval/reports/pmguide/pmguide_toc.html.*

Logic Model. A logic model is a tool that presents the conceptual framework for a proposed project and explains the linkages among program elements. While there are many versions of the logic model, they generally summarize the logical connections among the needs that are the focus of the project, project goals and objectives, the target population, project inputs (resources), the proposed activities/processes/outputs directed toward the target population, the expected short- and long-term outcomes the initiative is designed to achieve, and the evaluation plan for measuring the extent to which proposed processes and outcomes actually occur. Information on the development of logic models is available on the Internet at *http://www.uwex.edu/ces/pdande/* or *http://www.extension.iastate.edu/cyfar/capbuilding/outcome/outcome_logicmdir.html.*

Use of Human Subjects. If your evaluation plan includes gathering data from or about clients, there are specific procedures which must be followed in order to protect their privacy and ensure the confidentiality of the information about them. Applicants planning to gather such data are asked to describe their plans regarding an Institutional Review Board (IRB) review. If applicable, applicants must include a completed Form 310, Protection of Human Subjects. For more information about use of human subjects and IRB's you can visit these Web sites: *http://www.hhs.gov/ohrp/irb/irb_chapter2.htm#d2* and *http://www.hhs.gov/ohrp/humansubjects/guidance/ictips.htm.*

You may submit your application to us in either electronic or paper format.

To submit an application electronically, please use the *http://www.Grants.gov/Apply* site. If you use Grants.gov, you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. ACF will not accept grant applications via e-mail or facsimile transmission.

Please note the following if you plan to submit your application electronically via Grants.gov.

- Electronic submission is voluntary, but strongly encouraged.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- We recommend you visit Grants.gov at least 30 days prior to filing your application to fully understand the process and requirements. We encourage applicants who submit electronically to submit well before the closing date and time so that if difficulties are encountered an applicant can still send in a hard copy overnight. If you encounter difficulties, please contact the Grants.gov Help Desk at 1–800–518–4276 to report the problem and obtain assistance with the system.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor

Registry (CCR). You should allow a minimum of five days to complete the CCR registration.

• You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.

• You may submit all documents electronically, including all information typically included on the SF 424 and all necessary assurances and certifications.

• Your application must comply with any page limitation requirements described in this program announcement.

• After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application from Grants.gov.

• We may request that you provide original signatures on forms at a later date.

• You may access the electronic application for this program on *http://www.Grants.gov.*

• You must search for the downloadable application package by the CFDA number.

Applicants that are submitting their application in paper format should submit an original and two copies of the complete application. The original and each of the two copies must include all required forms, certifications, assurances, and appendices, be signed by an authorized representative, have original signatures, and be submitted unbound.

Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms,'' ''Survey for Private, Non-Profit Grant Applicants,'' titled, ''Survey on Ensuring Equal Opportunity for Applicants,'' at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Standard Forms and Certifications:

The project description should include all the information requirements described in the specific evaluation criteria outlined in the program announcement under Section V Application Review Information. In addition to the project description, the applicant needs to complete all the standard forms required for making applications for awards under this announcement.

Applicants seeking financial assistance under this announcement must file the Standard Form (SF) 424, Application for Federal Assistance; SF–424A, Budget Information—Non-Construction Programs; SF–424B, Assurances—Non-Construction Programs. The forms may be reproduced for use in submitting applications. Applicants must sign and return the standard forms with their application.

Applicants must furnish prior to award an executed copy of the Standard Form LLL, Certification Regarding Lobbying, when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form, if applicable, with their applications (approved by the Office of Management and Budget under control number 0348–0046). Applicants must sign and return the certification with their application.

Applicants must also understand they will be held accountable for the smoking prohibition included within Pub. L. 103–227, Title XII Environmental Tobacco Smoke (also known as the PRO–KIDS Act of 1994). A copy of the **Federal Register** notice which implements the smoking prohibition is included with the form. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification of their compliance with all Federal statutes relating to nondiscrimination. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification form. Complete the standard forms and the associated certifications and assurances based on the instructions on the forms. The forms and certifications may be found at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Those organizations required to provide proof of non-profit status, please refer to *Section III.3.*

Please see *Section V.1* for instructions on preparing the full project description.

3. Submission Dates and Times

Application is due August 12, 2005.

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.

Deadline: Applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date referenced in Section IV.6. Applicants are responsible for ensuring applications are mailed or submitted electronically well in advance of the application due date.

Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., eastern time, at the address referenced in Section IV.6., between Monday and Friday (excluding Federal holidays).

ACF cannot accommodate transmission of applications by facsimile. Therefore, applications transmitted to ACF by fax will not be accepted regardless of date or time of submission and time of receipt.

Late Applications: Applications that do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Any application received after 4:30 p.m. eastern time on the deadline date will not be considered for competition.

Applicants using express/overnight mail services should allow two working days prior to the deadline date for receipt of applications. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service, or in other rare cases. A determination to extend or waive deadline requirements rests with the Chief Grants Management Officer.

Receipt acknowledgement for application packages will not be provided to applicants who submit their package via mail, courier services, or by hand delivery. However, applicants will receive an electronic acknowledgement for applications that are submitted via *http://www.Grants.gov.*

Checklist: You may use the checklist below as a guide when preparing your application package.

What to submit	Required content	Required form or format	When to submit
Project Abstract	See Sections IV.2 and V.	Found in Sections IV.2 and V	By application due date.

What to submit	Required content	Required form or format	When to submit
Project Description	See Sections IV.2 and V.	Found in Sections IV.2 and V	By application due date.
Budget Narrative/Justification	See Sections IV.2 and V.	Found in Sections IV.2 and V	By application due date.
SF 424	See Section IV.2	See *http://www.acf.hhs.gov/programs/ofs/forms.htm*	By application due date.
SF–LLL Certification Regarding Lobbying.	See Section IV.2	See *http://www.acf.hhs.gov/programs/ofs/forms.htm*	By date of award.
Certification Regarding Environmental Tobacco Smoke.	See Section IV.2	See *http://www.acf.hhs.gov/programs/ofs/forms.htm*	By date of award.
Assurances	See Section IV.2	Found in Section IV	By date of award.
SF 424A	See Section IV.2	See *http://www.acf.hhs.gov/programs/ofs/forms.htm*	By application due date.
SF 424B	See Section IV.2	See *http://www.acf.hhs.gov/programs/ofs/forms.htm*	By application due date.
Proof of Non-Profit Status	See Section III.3	Found in Section III.3	By date of award.
Indirect Cost rate Agreement, if applicable.	See Section IV	Format described in IV	By application due date.
Letters of commitment from partner organizations, if applicable.	See Section IV	Format described in IV	By application due date.
Non-Federal Commitment Letter	See Section III.2	See Section III.2	By date of award.

Additional Forms: Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms,'' ''Survey for Private, Non-Profit Grant Applicants,'' titled, ''Survey on Ensuring Equal Opportunity for Applicants,'' at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

What to submit	Required content	Location	When to submit
Survey for Private, Non-Profit Grant Applicants.	See form	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.

4. Intergovernmental Review

State Single Point of Contact (SPOC): This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of October 1, 2004, the following jurisdictions have elected to participate in the Executive Order process: Arkansas, California, Delaware, District of Columbia, Florida, Georgia, Illinois, Iowa, Kentucky, Maine, Maryland, Michigan, Mississippi, Missouri, Nevada, New Hampshire, New Mexico, New York, North Dakota, Rhode Island, South Carolina, Texas, Utah, West Virginia, Wisconsin, American Samoa, Guam, North Mariana Islands, Puerto Rico, and Virgin Islands. As these jurisdictions have elected to participate in the Executive Order process, they have established SPOCs. Applicants from participating jurisdictions should contact their SPOC, as soon as possible, to alert them of prospective applications and receive instructions. Applicants must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2).

A SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade SW., 4th floor, Washington, DC 20447.

Although the remaining jurisdictions have chosen not to participate in the process, entities that meet the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. Therefore, applicants from these jurisdictions, or for projects administered by federally-recognized Indian Tribes, need take no action in regard to E.O. 12372.

The official list, including addresses, of the jurisdictions elected to participate in E.O. 12372 can be found on the following URL: *http://www.whitehouse.gov/omb/grants/spoc.html.*

5. Funding Restrictions

Grant awards will not allow reimbursement of pre-award costs.

Construction is not an allowable activity or expenditure under this solicitation.

6. Other Submission Requirements

Submission by Mail: An applicant must provide an original application with all attachments, signed by an authorized representative and two copies. *Please see Section IV.3* for explanation of due dates. Applications should be mailed to: ACYF Operations Center, c/o The Dixon Group, Inc., 118 Q St., NE., Washington, DC 20002–2132, Attention: Children's Bureau.

Hand Delivery: An applicant must provide an original application with all attachments signed by an authorized representative and two copies. The

application must be received at the address below by 4:30 p.m. eastern time on or before the closing date. Applications that are hand delivered will be accepted between the hours of 8 a.m. to 4:30 p.m. eastern time, Monday through Friday. Applications should be delivered to: ACYF Operations Center, c/o The Dixon Group, Inc., 118 Q St., NE., Washington, DC 20002–2132, Attention: Children's Bureau.

Electronic Submission: Please see *Section IV.2* for guidelines and requirements when submitting applications electronically via *http://www.Grants.gov*.

V. Application Review Information

The Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average 40 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information.

The project description is approved under OMB control number 0970–0139 which expires 4/30/2007.

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.

1. Criteria

General Instructions

ACF is particularly interested in specific project descriptions that focus on outcomes and convey strategies for achieving intended performance. Project descriptions are evaluated on the basis of substance and measurable outcomes, not length. Extensive exhibits are not required. Cross-referencing should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix. Pages should be numbered and a table of contents should be included for easy reference.

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions while being aware of the specified evaluation criteria. The text options give a broad overview of what your project description should include while the evaluation criteria identifies the measures that will be used to evaluate applications.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Approach

Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished.

When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any ''collection of information that is conducted or sponsored by ACF.''

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners, such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. If the applicant is a non-profit organization, submit proof of non-profit status in its application.

The non-profit agency can accomplish this by providing: (a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code; (b) a copy of a currently valid IRS tax exemption certificate, (c) a statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals; (d) a certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status, (e) any of the items immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Budget and Budget Justification

Provide a budget with line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. Also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

General

Use the following guidelines for preparing the budget and budget

justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. ''Federal resources'' refers only to the ACF grant for which you are applying. ''Non Federal resources'' are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: First column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment

Description: ''Equipment'' means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (**Note:** Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those that belong under other categories such as equipment, supplies, construction, etc. Include third party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant.

Justification: Demonstrate that all procurement transactions will be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000).

Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, upon notification that an award will be made, it should immediately develop a tentative indirect cost rate proposal based on its most recently completed fiscal year, in accordance with the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. When an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Nonfederal Resources

Description: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

Justification: The firm commitment of these resources must be documented and submitted with the application so the applicant is given credit in the review process. A detailed budget must be prepared for each funding source.

Evaluation Criteria

The following evaluation criteria appear in weighted descending order. The corresponding score values indicate the relative importance that ACF places on each evaluation criterion; however,

applicants need not develop their applications precisely according to the order presented. Application components may be organized such that a reviewer will be able to follow a seamless and logical flow of information (*e.g.*, from a broad overview of the project to more detailed information about how it will be conducted).

In considering how applicants will carry out the responsibilities addressed under this announcement, competing applications for financial assistance will be reviewed and evaluated against the following criteria:

Approach (50 Points)

In reviewing the approach, the following factors will be considered: (50 points).

(1) The extent to which the timeline for implementing the proposed project, including major milestones and target dates, is comprehensive and reasonable. The extent to which the proposed project would develop the range of community-based, coordinated, comprehensive support services in a timely manner and conduct a thorough evaluation of its effectiveness within the four-year project period.

(2) The extent to which the proposed project would enhance the capacity to provide community-based, collaborative, comprehensive support services to children and their families affected by substance abuse and/or HIV/AIDS, develop knowledge, enhance skills and abilities of practitioners in providing these types of services and transfer this knowledge into practice. The extent to which specific measurable outcomes will occur as a result of the proposed collaborative, comprehensive services program.

(3) The extent to which the approach establishes an infrastructure of community-based agencies and promotes a lasting change in the delivery of community-based services to this client population. The extent to which the applicant describes the roles and responsibilities of the collaborating agencies, and includes letters of commitment.

(4) The extent to which the applicant demonstrates a thorough understanding of the challenges in providing community-based, collaborative comprehensive services to this target population with such complex needs. The extent to which the applicant provides a sound plan for overcoming these challenges.

(5) The extent to which the applicant will work effectively with terminally ill parent(s), if present in the program, to make permanency planning arrangements, such as, stand-by guardianship or stand-by adoption arrangements for their children to ensure the smooth transition to another caregiver and prevent a possible out-of-home placement.

(6) The extent to which the project will be culturally responsive to the target population.

(7) The extent to which the specific services that would be provided under the proposed project are appropriate and are described in detail. The extent to which the project will be broad and comprehensive and will be implemented in a collaborative manner with other community-based agencies. The extent to which the project will effectively provide the wide range of assistance needed by the target population.

(8) The extent to which the design of the proposed project reflects up-to-date knowledge from the substance-abuse treatment and HIV/AIDS treatment research and literature. The extent to which the proposed project is innovative and involves strategies that build on, or are an alternative to, existing strategies.

(9) The extent to which the applicant describes appropriate procedures for conducting an effective evaluation effort. The extent to which the methods/procedures used will effectively determine the extent to which the program has achieved the stated objectives. The extent to which the proposed evaluation plan would be likely to yield useful findings or results about effective strategies and contribute to and promote evaluation research and evidence-based practices that could be used to guide replication or testing in other settings. The extent to which the application provides a sound plan for collecting this data and securing informed consent. The extent to which the plan includes appropriate procedures for an Institutional Review Board (IRB) review, if applicable.

(10) The extent to which there is a sound plan for developing useful products during the proposed project and a reasonable schedule for developing these products. The extent to which the intended audience (*e.g.*, practitioners) for product dissemination is comprehensive and appropriate. The extent to which the dissemination plan includes appropriate mechanisms and forums that would effectively convey the information and support successful replication by other interested agencies.

(11) The extent to which there is a sound plan for continuing this project beyond the period of Federal funding.

Organizational Profiles (20 Points)

In reviewing the organizational profiles, the following factors will be considered: (20 points).

(1) The extent to which the applicant organization and its staff have sufficient experience in successfully providing comprehensive services to substance-abusing women and women who have HIV/AIDS and their infants and/or young children, and in collaborating effectively with community-based agencies. The extent to which the applicant's history and relationship with the targeted community will assist in the effective implementation of the proposed project. The extent to which the applicant has experience in developing collaborative working agreements with other community-based agencies in planning, developing and delivering services. The extent to which the applicant organization's capabilities and experience relative to this project, including experience with administration, development, implementation, management, and evaluation of similar projects, will enable them to implement the proposed project effectively.

(2) If the applicant represents a consortium of partner agencies, the extent to which their background and experience with children and families impacted by substance abuse and HIV/AIDS will support the planning and implementation of the proposed project. The extent to which there are letters of commitment from each partner authorizing the applicant to apply on behalf of the consortium and agreeing to participate if the proposal is funded.

(3) The extent to which the proposed project director and key project staff possess sufficient relevant knowledge, experience and capabilities to implement and manage a project of this size, scope and complexity effectively. The extent to which the role, responsibilities and time commitments of each proposed project staff position, including consultants, subcontractors and/or partners, are clearly defined and appropriate to the successful implementation of the proposed project.

(4) The extent to which there is a sound management plan for achieving the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines and milestones for accomplishing project tasks and ensuring quality. The extent to which the plan clearly defines the role and responsibilities of the lead agency. The extent to which the plan clearly describes the effective management and coordination of activities carried out by

any partners, subcontractors and consultants (if appropriate). The extent to which there would be a mutually beneficial relationship between the proposed project and other work planned, anticipated or underway with Federal assistance by the applicant.

Objectives and Need for Assistance (20 Points)

In reviewing the objectives and need for assistance, the following factors will be considered: (20 points).

(1) The extent to which the application clearly demonstrates an understanding of the requirements of the Abandoned Infants Assistance Act, as amended, and the extent to which the proposed project will contribute to meeting those requirements. The extent to which the applicant demonstrates a clear understanding of the issues impacting on substance abusing and/or HIV/AIDS-affected women and their children.

(2) The extent to which the applicant presents a clear vision of the proposed comprehensive services project to be developed and implemented. The extent to which the applicant makes a clear statement of the goals (end results of an effective project) and objectives (measurable steps for reaching these goals) for the proposed comprehensive services project. The extent to which these goals and objectives will effectively address a community's need to provide comprehensive support services to children and their families affected by substance-abuse and/or HIV/AIDS by using a collaborative, integrated system of community-based, coordinated support services.

(3) The extent to which the applicant clearly demonstrates a thorough understanding of the need for the program to provide community-based, comprehensive support services to children and their families affected by substance-abuse and /or HIV/AIDS (*e.g.*, sharing the results of a thorough assessment of community needs, including letters of collaboration and letters of support for the proposed program from community-based agencies).

(4) The extent to which the application presents a thorough review of the relevant literature that reflects a clear understanding of the research on best practices and promising approaches as it relates to the proposed project. The extent to which the review of the literature sets a sound context and rationale for the project. The extent to which it provides evidence that the proposed project is innovative and, if successfully implemented and evaluated, likely to contribute to the knowledge base of providing community-based, coordinated, comprehensive support services to children and their families impacted by substance-abuse and/or HIV/AIDS.

(5) The extent to which the applicant clearly identifies the population to be served by the project and thoroughly describes the needs of the target population. The extent to which the proposed project responds appropriately to needs of this target population. The extent to which the estimated number of infants and families to be served by the project is reasonable and appropriate.

(6) The extent to which the geographic location to be served by the project is clearly defined and justified based on factors such as the key socioeconomic and demographic characteristics of the targeted community as they relate to women of childbearing age, the needs of women and families who are affected by substance abuse and HIV/AIDS, and the current availability of needed services that serve substance-abusing and/or AIDS/HIV-infected women and their families in the community.

(7) The extent to which the application describes significant results or benefits that can be expected for substance-abusing women and/or women with HIV/AIDS and their children.

Budget and Budget Justification (10 Points)

In reviewing the budget and budget justification, the following factors will be considered: (10 points).

(1) The extent to which the costs of the proposed project are reasonable and programmatically justified, in view of the targeted population and community, the activities to be conducted and the expected results and benefits. The extent to which the justification includes appropriate community-specific factors closely related to substance abuse and perinatal exposure to drugs or HIV.

(2) The extent to which the applicant's fiscal controls and accounting procedures would ensure prudent use, proper and timely disbursement, and accurate accounting of funds received under this program announcement.

2. Review and Selection Process

No grant award will be made under this announcement on the basis of an incomplete application.

Since ACF will be using non-Federal reviewers in the review process, applicants have the option of omitting from the application copies (not the original) of specific salary rates or amounts for individuals specified in the application budget.

A panel of at least three reviewers (primarily experts from outside the Federal government) will use the evaluation criteria described in this announcement to evaluate each application. The reviewers will determine the strengths and weaknesses of each application, provide comments about the strengths and weaknesses and give each application a numerical score.

The results of the competitive review are a primary factor in making funding decisions. In addition, Federal staff conducts administrative reviews of the applications and, in light of the results of the competitive review, will recommend applications for funding to the ACYF Commissioner. ACYF reserves the option of discussing applications with other funding sources when this is in the best interest of the Federal government. ACYF may also solicit and consider comments from ACF Regional Office staff in making funding decisions. ACYF may take into consideration the involvement (financial and/or programmatic) of the private sector, national, or State or community foundations; a favorable balance between Federal and non-Federal funds for the proposed project; or the potential for high benefit from low Federal investment. ACYF may elect not to fund any applicants having known management, fiscal, reporting, programmatic, or other problems which make it unlikely that they would be able to provide effective services or effectively complete the proposed activity.

With the results of the peer review and the information from Federal staff, the Commissioner of ACYF makes the final funding decisions. The Commissioner may give special consideration to applications proposing services of special interest to the Government and to achieve geographic distributions of grant awards. Applications of special interest may include, but are not limited to, applications focusing on underserved or inadequately served clients or service areas and programs addressing diverse ethnic populations.

In selecting applicants for award under this announcement the ACYF Commissioner will give priority to applicants located in States that have developed and implemented procedures for expedited termination of parental rights and placement for adoption of infants determined to be abandoned under State law.

Approved but Unfunded Applications

Applications that are approved but unfunded may be held over for funding in the next funding cycle, pending the availability of funds, for a period not to exceed one year.

3. Anticipated Announcement and Award Dates

Applications will be reviewed during the Summer 2005. Grant awards will have a start date no later than September 30, 2005.

VI. Award Administration Information

1. Award Notices

The successful applicants will be notified through the issuance of a Financial Assistance Award document which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided, and the total project period for which support is contemplated. The Financial Assistance Award will be signed by the Grants Officer and transmitted via postal mail.

Organizations whose applications will not be funded will be notified in writing.

2. Administrative and National Policy Requirements

Grantees are subject to the requirements in 45 CFR part 74 (non-governmental) or 45 CFR part 92 (governmental).

Direct Federal grants, sub-award funds, or contracts under this program shall not be used to support inherently religious activities such as religious instruction, worship, or proselytization. Therefore, organizations must take steps to separate, in time or location, their inherently religious activities from the services funded under this program. Regulations pertaining to the prohibition of Federal funds for inherently religious activities can be found on the HHS Web site at *http://www.os.dhhs.gov/fbci/waisgate21.pdf.*

3. Reporting Requirements

Program Progress Reports: Semi-Annually.

Financial Reports: Semi-Annually.

Grantees will be required to submit program progress and financial reports (SF 269) throughout the project period. Program progress and financial reports are due 30 days after the reporting period. In addition, final programmatic and financial reports are due 90 days after the close of the project period.

VII. Agency Contacts

Program Office Contact: Pat Campiglia, Children's Bureau, 330 C Street, SW., Washington, DC 20447, Phone: (202) 205–8060, e-mail: *pcampiglia@acf.hhs.gov.*

Grants Management Office Contact: Peter Thompson, Grants Officer, Administration for Children and Families, Children's Bureau, 330 C Street, SW. Room 2070, Washington, DC 20447, Phone: (202) 401–4608, e-mail: *pathompson@acf.hhs.gov.*

VIII. Other Information

Additional information about this program and its purpose can be located on the following Web sites: *http://www.acf.hhs.gov/programs/cb/.*

For general information regarding this announcement please contact: ACYF Operations Center, c/o The Dixon Group, Inc. Attn: Children's Bureau, 118 Q St., NE., Washington, DC 20002–2132, Telephone: 866–796–1591.

Notice: Beginning with FY 2005, the Administration for Children and Families (ACF) will no longer publish grant announcements in the **Federal Register**. Beginning October 1, 2005, applicants will be able to find a synopsis of all ACF grant opportunities and apply electronically for opportunities via: *http://www.Grants.gov.* Applicants will also be able to find the complete text of *http://www.acf.hhs.gov/grants/index.html.*

Please reference *Section IV.3* for details about acknowledgement of received applications.

Dated: June 2, 2005.

Joan E. Ohl,

Commissioner, Administration on Children, Youth, and Families.

[FR Doc. 05–11592 Filed 6–10–05; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Correction

The Office of Community Services Program Announcement HHS–2005–ACF–OCS–EN–0018 was published in the **Federal Register** on June 6, 2005.

On page 32794 of this announcement, the due date for applications is July 21, 2005.

On page 32800 of this announcement, the due date for applications is August 5, 2005.

The correct due date for applications for this announcement is July 21, 2005.

Dated: June 6, 2005.

Josephine B. Robinson,

Director, Office of Community Services.

[FR Doc. 05–11591 Filed 6–10–05; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0217]

Agency Information Collection Activities; Proposed Collection; Comment Request; Cosmetic Product Voluntary Reporting Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the collection of information associated with the Cosmetic Product Voluntary Reporting Program.

DATES: Submit written or electronic comments on the collection of information by August 12, 2005.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests

or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Cosmetic Product Voluntary Reporting Program—21 CFR Part 720 (OMB Control Number 0910–0030)—Extension

Under the Federal Food, Drug, and Cosmetic Act (the act), cosmetic products that are adulterated under section 601 of the act (21 U.S.C. 361), or misbranded under section 602 of the act (21 U.S.C. 362), cannot legally be distributed in interstate commerce. To assist FDA in carrying out its responsibility to regulate cosmetics, FDA requests under part 720 (21 CFR part 720), but does not require, that firms that manufacture, pack, or distribute cosmetics file with the agency an ingredient statement for each of their products. Ingredient statements for new submissions (§§ 720.1 through 720.4) are reported on Form FDA 2512, ''Cosmetic Product Ingredient Statement,'' and on Form FDA 2512a, a continuation form. Amendments to product formulations (§§ 720.3, 720.4, and 720.6) also are reported on Forms FDA 2512 and FDA 2512a. When a firm discontinues the commercial distribution of a cosmetic, FDA requests that the firm file Form FDA 2514, ''Discontinuance of Commercial Distribution of Cosmetic Product Formulation'' (§§ 720.3 and 720.6). If any of the information submitted on or with these forms is confidential, the firm may submit a request for confidentiality under § 720.8.

FDA places cosmetic product filing information in a computer database and uses the information for evaluation of cosmetic products currently on the market. Because filing of cosmetic product formulations is not mandatory, voluntary filings provide FDA with the best information available about cosmetic product ingredients and their frequency of use, businesses engaged in the manufacture and distribution of cosmetics, and approximate rates of product discontinuance and formula modifications. The information assists FDA scientists in evaluating reports of alleged injuries and adverse reactions from the use of cosmetics. The information also is used in defining and planning analytical and toxicological studies pertaining to cosmetics.

Information from the database is releasable to the public under FDA compliance with the Freedom of Information Act. FDA shares nonconfidential information from its files on cosmetics with consumers, medical professionals, and industry.

FDA has developed an electronic submission system for filing Forms FDA 2512, FDA 2512a, and FDA 2514 that will reduce the reporting burden for respondents and FDA. The system is currently undergoing additional beta testing and implementation is anticipated for summer 2005.

FDA estimates the annual burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
720.1 through 720.4 (new submissions)	FDA 2512 and FDA 2512a	112	12.9	1,446	0.5	723
720.4 and 720.6 (amendments)	FDA 2512 and FDA 2512a	112	0.5	52	0.33	17
720.3 and 720.6 (notices of discontinuance)	FDA 2514	112	1	4	0.1	0.4
720.8 (requests for confidentiality)		1	1	1	1.5	1.5
Total						742

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates are based on FDA's experience with the Cosmetic Product Voluntary Reporting Program. The estimated annual total hour burden is 75 percent of the burden reported in 2002 due to decreased submissions. However, the number of respondents doubled, and FDA attributes this to increased interest in the program. FDA expects the number of submissions to increase accordingly in the next 3 years.

Dated: June 6, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–11641 Filed 6–10–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Office for Women's Services; Notice of a Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a Substance Abuse and Mental Health Services Administration's (SAMHSA) Advisory Committee for Women's Services teleconference meeting on June 21, 2005.

The meeting will be open and include discussions on SAMHSA's women's issues as they relate to the Agency's priority matrix. The meeting will also include discussions on the Agency's current administrative, legislative and policy developments.

Attendance by the public 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 and a roster of Committee members may be obtained by accessing the SAMHSA Advisory Council's Web site (*http://www.samhsa.gov*) as soon as possible after the meeting or by communicating with the contact whose name and telephone number are listed below. The transcript for the session will also be available on the SAMHSA Advisory Council Web site as soon as possible after the meeting.

Committee Name: Substance Abuse and Mental Health Services Administration Advisory Committee for Women's Services.

Meeting Date: June 21, 2005, 1 p.m.–3 p.m.

Place: 1 Choke Cherry Road, Conference Room 8–1082, Rockville, MD 20857.

Type: Open.

Contact: Carol Watkins, Executive Secretary, Advisory Committee for Women's Services, 1 Choke Cherry Road, Room 8–1002, Rockville, MD 20857, Telephone: (240) 276–2254, Fax: (240) 276–2252, E-mail: *carol.watkin2@samhsa.gov.*

Dated: June 6, 2005.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 05–11618 Filed 6–10–05; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–21399]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: The Towing Vessel Inspection Working Group of the Towing Safety Advisory Committee (TSAC) will meet to discuss matters relating to those specific issues of towing safety. The meetings will be open to the public.

DATES: The Towing Vessel Inspection Working Group will meet on Wednesday, June 22, 2005 from 1:30 p.m. to 4:30 p.m. and on Thursday, June 23, 2005 from 8:30 a.m. to 2 p.m. The meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before June 15, 2005. Requests to have a copy of your material distributed to each member of the Working Group should reach the Coast Guard on or before June 15, 2005.

ADDRESSES: The Working Group will meet at George Mason University, Arlington Campus, 3301 Fairfax Drive, Arlington, VA 22201. Please bring a government-issued ID with photo (*e.g.*, driver's license). Send written material and requests to make oral presentations to Mr. Gerald Miante, Commandant (G-MSO–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice and related documents are available on the Internet at *http://dms.dot.gov* under the docket number USCG–2004–21399.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald Miante, Assistant Executive Director of TSAC, telephone 202–267–0214, fax 202–267–4570, or e-mail *gmiante@comdt.uscg.mil*.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2 (Pub. L. 92–463, 86 Stat. 770, as amended).

Agenda of Working Group Meetings: The agenda for the Towing Vessel Inspection Working Group tentatively includes the following items:

(1) What proposed equipment standards should be included in a subchapter devoted to the inspection for certification of towing vessels; and

(2) Which standards found in existing regulations, if any, are suitable for inclusion in a subchapter devoted to the inspection for certification of towing vessels?

Procedural

The meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Assistant Executive Director (as provided above in for further information contact) no later than June 15, 2005. Written material for distribution at the meeting should reach the Coast Guard no later than June 15, 2005.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Miante at the number listed in **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Dated: June 3, 2005.

Raymond Petow,

Acting Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 05–11588 Filed 6–10–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

North Mississippi National Wildlife Refuge Complex

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of Availability of the Draft Comprehensive Conservation Plan and Environmental Assessment for the North Mississippi National Wildlife Refuge Complex, which consists of three national wildlife refuges—Coldwater River, Dahomey, and Tallahatchie, as well as a number of Farmers Home Administration tracts in the northern section of the Mississippi Delta.

SUMMARY: The Fish and Wildlife Service announces that a Draft Comprehensive Conservation Plan and Environmental Assessment for the Northern Mississippi National Wildlife Refuge Complex are available for review and comment. The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, requires the Service to develop a comprehensive conservation plan for each national wildlife refuge. The purpose in developing a comprehensive conservation plan is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, the plan identifies wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation.

Significant issues addressed in the draft plan include: threatened and endangered species; waterfowl management; neotropical migratory birds; bottomland hardwood restoration; agriculture; visitor services (*e.g.*, hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation); funding and staffing; cultural resources; land acquisition; and forest fragmentation.

DATES: A meeting will be held to present the plan to the public. Mailings, newspaper articles, and posters will be the avenues to inform the public of the date and time for the meeting. Individuals wishing to comment on the Draft Comprehensive Conservation Plan and Environmental Assessment for the North Mississippi National Wildlife Refuge Complex should do so within 45 days following the date of this notice.

ADDRESSES: Requests for copies of the Draft Comprehensive Conservation Plan and Environmental Assessment should be addressed to the North Mississippi National Wildlife Refuge Complex, 2776 Sunset Drive, Grenada, Mississippi 38901; telephone 662/226–8286. The plan and environmental assessment may also be accessed and download from the Service's Internet Web site *http://southeast. fws.gov/planning/*. Comments on the draft plan may be submitted to the above address or via electronic mail to *mike_dawson@fws.gov*. Please include your name and return address in your Internet 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 addresses from the record, which we will honor to the extent allowable by law.

SUPPLEMENTARY INFORMATION: The Service developed for alternatives for managing the Complex and chose Alternative D as the preferred alternative.

Alternatives

The draft comprehensive conservation plan and environmental assessment evaluates the four alternatives for managing the Complex over the next 15 years. These alternatives are briefly described as follows:

Alternative A. Existing Complex management and public outreach practices would be favored under this alternative. All management actions would be directed towards achieving the Complex's primary purposes, including (1) preserving wintering waterfowl habitat; (2) providing production habitat for wood ducks; (3) meeting the habitat conservation goals of national and international plans; and (4) preserving wetlands, all the while contributing to other national, regional, and state goals to protect and restore migratory birds, threatened and endangered species, and resident species. Refuge management programs would continue to be developed and implemented with limited baseline biological information. Active habitat management would be implemented through water level manipulations and moist-soil, cropland, and forest management designed to provide a diverse complex of habitats that meets the foraging, resting, and breeding requirements for a variety of species. The staff of the Complex would continue to restore and maintain existing wetland, open water, moist-soil, and bottomland hardwood forest habitats. Land would be acquired from willing sellers within the current 47,816-acre acquisition boundary.

Hunting and fishing would continue to be major focuses of the public use program, with no expansion of current opportunities. Current restrictions or prohibitions would remain. Environmental education, wildlife observation, and wildlife photography would be accommodated at present levels. If funding becomes available, a visitor center and headquarters office would be constructed on Highway 82 at the Povall Tract.

Alternative B. This alternative would emphasize significantly more public recreational uses while maintaining current habitat management. Any additional staff, emphasis, and resources would be directed to allow for more public activities. Current moist-soil, cropland, forest, and wetland management would continue. Hunting and fishing opportunities would be increased as funding and personnel allow.

Auto tours, canoe trails, foot trails, interpretive trail(s), and observation towers and blinds would be added for environmental education, wildlife photography, and watchable wildlife programs. Additional staff would be used for developing and presenting both on- and off-site environmental education and interpretation programs. An outreach coordinator would be employed to serve the Complex.

A visitor center and headquarters office would be constructed on Highway 82 at the Povall Tract and jointly shared with the Service's Private John Allen National Fish Hatchery. New sub-headquarters and visitor contact stations would be constructed at Coldwater River, Dahomey, and Tallahatchie Refuges.

Land acquisition within the current acquisition boundaries would continue with emphasis on those lands that could provide additional public use opportunities. Any additional expansions, up to 10 percent of the current acquisition boundary, would focus on public use opportunities.

Alternative C. Under this alternative, refuge lands would be intensively managed to provide high quality habitat for wildlife, particularly migratory birds. Any areas within the Complex with pumping capabilities (wells) and water control structures would be managed for moist-soil vegetation, or would be force-account farmed (with 100 percent of crops left standing) to benefit migratory waterfowl. Cooperative farming fields would be planted in rice, milo, corn, or soybeans (in order of preference) and flooded during the late fall and winter.

The wood duck next box program would be expanded on all three refuges and would extend onto Farmers Home Administration tracts with suitable brood habitat. On sites with permanent water, wood duck brood habitat would be developed to promote brood survival. Boxes would be cleaned and maintained regulatory to allow two and three broods per box per year.

Primary emphasis would be placed on meeting objectives of the various step-

down plans and providing habitat for waterfowl and shorebirds. These habitats and their uses would be monitored on the refuge to ensure that goals and objectives were met. Population and habitat surveys would be conducted throughout the refuges to develop baseline data to determine initial population levels and habitat conditions. Staff would monitor changes over time.

Wildlife-dependent recreation activities (*e.g.,* hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation) would be allowed, but only when and where they do not detract from, or conflict with, wildlife management activities and objectives. Infrastructures on the refuges (*e.g.,* trails and blinds) would be developed primarily to conduct wildlife management activities. A visitor center and headquarters office would be constructed on Highway 82 at the Povall Tract.

Under this alternative, the Complex would continue to seek from willing seller lands within the present acquisition boundary. Highest priority would be given to those lands adjacent to existing refuge tracts and those lands supporting unique habitats. Additionally, the Complex would concentrate all future off-refuge partnerships on promoting more intensive wildlife management on privately owned lands. Personnel priorities would include employing a biologist and/or technician for the Complex and a forester to conduct forest management activities at Dahomey Refuge.

Alternative D. The Service's planning team has identified Alternative D as the preferred alternative. This alternative was developed based on public input and the best professional judgment of the planning team. The objectives and strategies presented in the draft plan were developed as a direct result of the selection of Alternative D.

Alternative D represents a combination and/or compromise between Alternative B (Public Use Emphasis) and Alternative C (Wildlife Management Emphasis). Whereas these two alternatives seek to maximize either expanded public use or expanded wildlife management opportunities, Alternative D seeks to optimize the benefits of the Complex to wildlife and people.

Under Alternative D, refuge lands would be more intensively managed than at present to provide high quality habitat for wildlife, particularly migratory birds. Any areas within the Complex with pumping capabilities (wells) and water control structures would be managed for moist-soil vegetation or would be force-account farmed (with 100 percent of crops left standing) to benefit migratory waterfowl. Cooperative farming fields would be planted in rice, milo, corn, or soybeans (in order of preference) and flooded during the late fall and winter.

The wood duck nest box program would be expanded on all three refuges and may extend onto some Farmers Home Administration tracts that have suitable brood habitat. Boxes would be cleaned and maintained regularly to allow two and three broods per box per year.

Increased emphasis would be placed on meeting objectives of various step-down plans providing habitat for waterfowl and shorebirds. These habitats and their uses would be monitored on the refuge to ensure that goals and objectives were met. Population and habitat surveys would be conducted throughout the refuges to develop baseline data to determine initial population levels and habitat conditions. Staff would monitor changes over time.

This alternative would encourage more public recreational uses even while intensifying current habitat management. Additional staff, emphasis, and resources would be more or less evenly divided between enhancing public use opportunities and wildlife/habitat management. Hunting and fishing opportunities would be increased as funding and personnel allow. Moist-soil, cropland, forest, and wetland management would also intensify to the extent permitted by funding and staffing limits.

An auto tour, a canoe trial, one or more foot trail(s) and/or interpretative trail(s), an observation tower, and one or more blinds would be added for environmental education, photography, and watchable wildlife programs. Staff may be added for developing and presenting both on- and off-site environmental education and interpretation programs.

Under Alternative D, the Complex would continue to seek from willing sellers lands within the present acquisition boundary, expanding Complex acreage by up to an additional 10 percent of the current acquisition boundary. Highest priority would be given to those lands adjacent to existing refuge tracts and those lands supporting unique habitats or offering wildlife-dependent public use opportunities. Additionally, the Complex would concentrate future off-refuge partnerships on promoting more intensive wildlife management on privately owned lands.

Personnel priorities would include employing additional law enforcement offices for the Complex, an outreach coordinator to serve the Complex as a whole, a biologist and/or technician for each refuge to include the Farmers Home Administration tracts, and a forester to conduct forest management activities at Dahomey Refuge.

A visitor center and headquarters office would be constructed on Highway 82 at the Povall Tract and jointly shared with the Service's Private John Allen National Fish Hatchery. New sub-headquarters and visitor contact stations would be constructed at Coldwater River, Dahomey, and Tallahatchie Refuges.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: March 14, 2005.

Cynthia K. Dihner,

Acting Regional Director.

[FR Doc. 05–11617 Filed 6–12–05; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Grand Traverse Band of Ottawa and Chippewa Indians—Sale and Consumption of Alcoholic Beverages

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Grand Traverse Band of Ottawa and Chippewa Indians' Liquor Control Ordinance. The Ordinance regulates and controls the possession, sale and consumption of liquor within the Grand Traverse Band of Ottawa and Chippewa Indians' tribal lands. This Ordinance allows for the possession and sale of alcoholic beverages within the Grand Traverse Band of Ottawa and Chippewa Indians' tribal lands, permits alcohol sales by tribally licensed vendors, and increases the ability of the tribal government to control the tribe's liquor distribution and possession. At the same time, it will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal services.

EFFECTIVE DATE: This Ordinance is effective on June 13, 2005.

FOR FURTHER INFORMATION CONTACT: De Springer, Regional Tribal Operations

Officer, Bureau of Indian Affairs, Midwest Regional Office, Bishop Henry Whipple Federal Building, One Federal Drive, Room 550, Ft. Snelling, MN 55111, Phone 612–713–4400, ext 1125, Fax 612–713–4401; or Ralph Gonzales, Division of Tribal Justice Support, Office of Tribal Services, 1951 Constitution Avenue, NW., Mail Stop 320–SIB, Washington, DC 20240; Telephone (202) 513–7629.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Grand Traverse Band of Ottawa and Chippewa Indians adopted its Liquor Control Ordinance No. 93–114 on November 23, 1993 by Resolution No 93–11.84 on November 24, 1993 and amended by Resolution No. 04–22.1417 on July 28, 2004. The purpose of this Ordinance is to govern the sale, possession and distribution of alcohol within the Grand Traverse Band of Ottawa and Chippewa Indians' tribal lands.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Principal Deputy Assistant Secretary—Indian Affairs.

I certify that this Liquor Ordinance, of the Grand Traverse Band of Ottawa and Chippewa Indians, was duly adopted by the Tribal Council on November 24, 1993 and amended by Resolution No. 04–22.1417 on July 28, 2004.

Dated: June 7, 2005.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

The Grand Traverse Band of Ottawa and Chippewa Indians' Liquor Ordinance reads as follows:

Liquor Control Ordinance—GTB Ordinance No. 93–114, as Amended July 28, 2004

Statement of Purpose: An ordinance to regulate the consumption, possession, delivery and/or sale of alcoholic beverage within Tribal lands of the Grand Traverse Band of Ottawa and Chippewa Indians, for the purpose of protecting the health, safety and welfare of the Tribe and its members as well as the general public.

BE IT ENACTED by the Tribal Council of the Grand Traverse Band of Ottawa and Chippewa Indians the following ordinance:

Section 1. Short Title

This ordinance may be cited as the ''Liquor Ordinance'' of the Grand Traverse Band of Ottawa and Chippewa Indians.

Section 2. Authority

As required by 18 U.S.C. 1161, this ordinance is in conformity with those provisions of State law which are adopted in this ordinance as Tribal law, and is enacted pursuant to Article IV of the Constitution of the Grand Traverse Band of Ottawa and Chippewa Indians.

Section 3. Interpretation

This ordinance shall be deemed an exercise of the police and regulatory powers of the Grand Traverse Band of Ottawa and Chippewa Indians in order to promote Tribal self-determination and to protect the public welfare, and all provisions of this ordinance shall be liberally construed for the accomplishment of these purposes. Nothing in this ordinance may be construed as a waiver of Tribal sovereign immunity.

Section 4. Definitions

In this ordinance, unless the context otherwise requires:

(a) ''Alcoholic beverage'' means any spirituous, vinous, malt or fermented liquor, liquid or compound, whether or not medicated, proprietary, patented, and by whatever name called, containing one-half of one percent (.5%) or more alcohol by volume, and which is commonly used or reasonably adopted to use for beverage purposes.

(b) ''Liquor'' means any alcoholic beverage.

(c) ''Person'' means a natural person, firm, association, corporation, or other legal entity.

(d) ''Premises'' means specified locations within Tribal lands where alcoholic beverages may be sold as described in a license issued by the Tribal Council.

(e) ''Secretary'' means the Secretary of the United States Department of the Interior.

(f) ''State'' means the State of Michigan, which regulates matters pertaining to the consumption, possession, delivery and/or sale of alcoholic beverages within the State through its Liquor Control Commission.

(g) ''Tribal Council'' means the Tribal Council of the Grand Traverse Band of Ottawa and Chippewa Indians.

(h) ''Tribal lands'' means:

(1) Land within the limits of the Grand Traverse Band of Ottawa and Chippewa Indians' reservation, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; and/or

(2) Land over which the Grand Traverse Band of Ottawa and Chippewa Indians exercises governmental power and which is either held in trust by the United States for the benefit of the Grand Traverse Band, or held by the Tribe or by one of its members subject to restriction by the United States against alienation.

(i) ''Tribal license'' means an official action by the Tribal Council which authorizes the sale of alcoholic beverages for consumption either on the premises and/or away from the premises. The sale and/or delivery of alcoholic beverages intended for consumption away from Tribal lands must also comply with those provisions of State law which are adopted as Tribal law in this ordinance.

(j) ''Tribal representative'' means the Tribal Manager, a program director, or manager of a subsidiary enterprise of the Tribe.

(k) ''Tribe'' means the Grand Traverse Band of Ottawa and Chippewa Indians.

(l) ''Vendor'' means a person licensed under this ordinance to sell alcoholic beverages, or a person employed by a vendor to do so.

Section 5. Public Policy Declared

(a) It is the policy of the Tribe that no sale, delivery, or importation of alcoholic beverages shall occur in Tribal lands unless such sale, delivery, or importation is by a person licensed under this ordinance to do so, or by prior written order of the Tribal Council. All alcoholic beverages for sale, use, storage, or distribution in Tribal lands shall originally be purchased by and imported into Tribal lands by a person licensed under this ordinance to do so, or by prior written order of the Tribal Council. This section shall not apply in the case of alcoholic beverages brought into Tribal lands personally by a person of legal age to purchase alcoholic beverages for personal or household use.

Section 6. General Provisions

(a) Except in compliance with this ordinance, no person shall sell, trade, transport, manufacture, use, or possess any alcoholic beverage or any other substance whatsoever which is capable of producing alcohol or other intoxication, intended for consumption on the premises, nor may any person aid or abet another person in any of the foregoing.

(b) No vendor shall permit any person under legal age on premises licensed under this ordinance, unless accompanied by an adult who is the legal guardian or parent of that minor.

(c) No vendor shall sell, serve or allow to be consumed on premises licensed under this ordinance, alcoholic beverages other than during the hours permitted by its license.

(d) Except in compliance with this ordinance, no person shall sell, trade, transport, manufacture, use, or possess any alcoholic beverage or any other substance whatsoever which is capable of producing alcohol or other intoxication, intended for distribution away from the premises, nor may any person aid or abet another person in any of the foregoing.

(e) It shall be a violation of this ordinance for any person, by himself or by his agent or employee, to sell, offer for sale, expose for sale, or possess, any alcoholic beverage which is adulterated or misbranded or any alcoholic beverage in bottles which have been refilled. For the purposes of this section, alcoholic beverages shall be deemed adulterated if they contain any liquid or other ingredient not placed there by the original manufacturer or bottler. For the purposes of this section, alcoholic beverages shall be deemed misbranded when not plainly labeled, marked or otherwise designated. For the purposes of this section, alcoholic beverage bottles shall be deemed to

be refilled when the bottles contain any liquid or other ingredient not placed in the bottles by the original manufacturer.

(f) It shall be a violation of this ordinance for any vendor to sell or furnish any alcoholic beverage to a person unless that person has attained 21 years of age. No vendor may knowingly sell or furnish any alcoholic beverage to a person who is younger than 21 years of age, or fail to make diligent inquiry as to whether the person is 21 years of age. A suitable sign which describes this section and the penalties for violating this section shall be posted in a conspicuous place in each room where alcoholic beverages are sold.

(g) It shall be a violation of this ordinance for any vendor to sell or furnish any alcoholic beverage to any person who is visibly intoxicated at the time, or who is known to the vendor to be a habitual drunkard.

(h) It shall be a violation of this ordinance for any person younger than 21 years of age to purchase, attempt to purchase, possess or consume any alcoholic beverage, or for such a person to misrepresent his age for the purpose of purchasing or attempting to purchase such alcoholic beverage.

(i) Upon attempt to purchase any alcoholic beverage on premises licensed under this ordinance by any person who appears to the vendor to be younger than 21 years of age, that vendor shall demand, and the prospective purchaser upon such demand shall display, satisfactory evidence that he is of legal age. It shall be a violation of this ordinance for any person to present to any vendor falsified evidence as to his age.

(j) No person licensed under this ordinance shall make any delivery of any alcoholic beverage outside the premises described in the license.

(k) No person, directly or indirectly, himself or herself or by his or her clerk, agent or employee shall manufacture, manufacture for sale, sell, offer or keep for sale, barter, furnish, or import, import for sale, transport for hire, or transport, or possess any alcoholic beverage unless that person complies with this ordinance.

(l) In order to retain its alcoholic beverage license under this ordinance, any Tribal operation is required to comply with other applicable Tribal law, as well as with the provisions of this ordinance.

Section 7. Tribal Alcoholic Beverage Licenses

(a) Upon written application by a Tribal representative, the Tribal Council may issue a license authorizing (1) the sale of alcoholic beverages intended solely for consumption on the premises, and/or (2) the sale of alcoholic beverages intended solely for consumption away from the premises.

(b) All such license applications must set forth the purpose for which the license is sought, together with a description of the premises upon which the alcoholic beverage sales are proposed to take place.

(c) In its sole discretion, the Tribal Council shall have the power and authority to determine the numbers and types of alcoholic beverage licenses to be issued pursuant to this ordinance.

Section 8. Complaint of Violation

(a) Any complaint regarding violation of any provision of this ordinance shall be referred to the Tribal Prosecutor, who may cause such complaint to be placed in writing and served personally or by registered mail upon the licensee or other person against whom that complaint is made.

(b) A hearing on any such complaint shall be held by the Tribal Court not less than 7 days nor more than 28 days after service of the complaint upon the licensee or other person against whom that complaint is made.

(c) Any Indian person (defined in Section 3.201 of the Tribe's Criminal Code) who violates any provision of this ordinance may be charged with a misdemeanor criminal offense and may be prosecuted pursuant to Section 3.718 of the Tribe's Criminal Code. If convicted, the Tribal Court may impose a fine of not greater than $1000.00, or imprisonment not exceeding 60 days in the Tribal jail, or by both such fine and imprisonment.

(d) Any non-Indian person who violates any provision of this ordinance may be charged with and prosecuted for a civil offense, and if convicted, may be subject to civil sanctions which the Tribal Council may prescribe, and/or may be excluded from Tribal lands.

(e) Any person under the jurisdiction of the Tribe who violates any provision of this ordinance for which a specific penalty is not provided, shall be subject to a fine of not less than $100.00, nor more than $5000.00, or by imprisonment in the Tribal jail for not more than 60 days, or by both such fine and imprisonment, plus costs.

Section 9. Severability

(a) If any section or provision of this ordinance or the application thereof to any party or class, or to any circumstances, shall be held to be invalid for any cause whatsoever, the remainder of this ordinance shall not be affected thereby and shall remain in full force and effect as though no part thereof had been declared to be invalid.

(b) All prior ordinances and resolutions or provisions thereof which are repugnant to or inconsistent with any provision of this ordinance are hereby repealed.

Section 10. Amendment or Repeal of This Ordinance

This ordinance may be amended or repealed only by majority vote of the Tribal Council in regular session.

Section 11. Effective Date

The effective date of this ordinance shall be the date upon which it is certified by the Secretary or his delegate and published in the **Federal Register** in accordance with Title 18 of the United States Code, Section 1161.

[FR Doc. 05–11609 Filed 6–10–05; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, Water Management Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability.

SUMMARY: The following Water Management Plans are available for review:

- James Irrigation District
- Lindmore Irrigation District
- City of Lindsay
- Southern San Joaquin Municipal Utility District
- Suisan Solano Water Authority
- Tranquillity Irrigation District

To meet the requirements of the Central Valley Project Improvement Act of 1992 (CVPIA) and the Reclamation Reform Act of 1982, the Bureau of Reclamation (Reclamation) has developed and published the Criteria for Evaluating Water Management Plans (Criteria).

Note: For the purpose of this announcement, Water Management Plans (Plans) are considered the same as Water Conservation Plans. The above districts have developed Plans, which Reclamation has evaluated and preliminarily determined to meet the requirements of these Criteria. Reclamation is publishing this notice in order to allow the public to review the Plans and comment on the preliminary determinations. Public comment on Reclamation's preliminary (*i.e.*, draft) determination is invited at this time.

DATES: All public comments must be received by July 13, 2005.

ADDRESSES: Please mail comments to Leslie Barbre, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825, or contact at 916–978–5232 (TDD 978–5608), or e-mail at *lbarbre@mp.usbr.gov.*

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information, please contact Ms. Barbre at the e-mail address or telephone number above.

SUPPLEMENTARY INFORMATION: We are inviting the public to comment on our preliminary (*i.e.*, draft) determination of Plan adequacy. Section 3405(e) of the CVPIA (Title 34 Pub. L. 102–575) requires the Secretary of the Interior to establish and administer an office on Central Valley Project water conservation best management practices (BMPs) that shall * * * develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by Section 210 of the

Reclamation Reform Act of 1982.'' Also, according to Section 3405(e)(1), these Criteria must be developed ''* * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices.'' These Criteria state that all parties (Contractors) that contract with Reclamation for water supplies (municipal and industrial contracts over 2,000 acre-feet and agricultural contracts over 2,000 irrigable acres) must prepare Plans that contain the following information:

1. Description of the District
2. Inventory of Water Resources
3. BMPs for Agricultural Contractors
4. BMPs for Urban Contractors
5. BMP Plan Implementation
6. BMP Exemption Justification

Reclamation will evaluate Plans based on these Criteria. A copy of these Plans will be available for review at Reclamation's Mid-Pacific (MP) Regional Office located in Sacramento, California, and the local area office.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that Reclamation withhold their home address from public disclosure, and we will honor such request to the extent allowable by law. There also may be circumstances in which Reclamation would elect to withhold a respondent's identity from public disclosure, 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 comments. We will make all submissions from organizations, businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses available for public disclosure in their entirety. If you wish to review a copy of these Plans, please contact Ms. Barbre to find the office nearest you.

Dated: May 9, 2005.

Donna E. Tegelman,

Regional Resources Manager, Mid-Pacific Region, Bureau of Reclamation.

[FR Doc. 05–11615 Filed 6–10–05; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 37–TA–541]

In the Matter of Certain Power Supply Controllers and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint filed with the U.S. International Trade Commission on May 9, 2005 under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Power Integrations, Inc. of San Jose, California. A supplement to the complaint was filed on May 24, 2005. The complaint, as supplemented, alleges violation of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain power supply controllers and products containing same by reason of infringement of claims 1, 2, 3, 6, 9, and 17–19 of U.S. Patent No. 6,212,079; claims 1, 2, 3, 5, 6, 24, 28, and 29 of U.S. Patent No. 6,351,398; claims 8 and 12 of U.S. Patent No. 6,366,481, and claims 1, 4, 9–11 13, 17, 19, 20, 22, 23, 26, 27, 30, 31, and 34 of U.S. Patent No. 6,538,908. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and after the investigation, issue a permanent limited exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint and supplement, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing the Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Anne Goodwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2574.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2003).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on June 7, 2005, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain power supply controllers and products containing same by reason of infringement of claims 1, 2, 3, 6, 9, 17, 18, or 19 of U.S. Patent No. 6,212,079; claims 1, 2, 3, 5, 6, 24, 28, or 29 of U.S. Patent No. 6,351,398; claims 8 or 12 of U.S. Patent No. 6,366,481; or claims 1, 4, 9–11, 13, 17, 19, 20, 22, 23, 26, 27, 30, 31, or 34 of U.S. Patent No. 6,538,908, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Power Integrations, Inc., 5245 Hellyer Avenue, San Jose, California 95138.

(b) The respondent is the following company alleged to be in violation of section 337, and is the party upon which the complaint is to be served: System General Corporation, 8F, No. 205–3, Sec. 3, Beishin Road, Shindian City, Taipei, Taiwan.

(c) Anne Goalwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–R, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.13 of the commission's Rules of Practice and

Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: June 8, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–11649 Filed 6–10–05; 8:45 am]

BILLING CODE 7020–02–M

INTERNATIONAL TRADE COMMISSION

[USITC SE–05–024]

Sunshine Act Meeting; Rescheduling of Commission Vote

Agency Holding the Meeting: United States International Trade Commission.

Original Date and Time: June 14, 2005 at 11 a.m.

New Date and Time:

June 21, 2005 at 2 p.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. 701–TA–381 and 382 and 731–TA–797–804 (Review)(Certain Stainless Steel Sheet and Strip from France, Germany, Italy, Japan, Korea, Mexico, Taiwan, and the United Kingdom)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before July 11, 2005.)
5. Outstanding action jackets: none.

In accordance with 19 CFR 201.37, the Commission hereby gives notification of a change in the date of Commission vote in the above subject matter. Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting. Earlier notice of this action was not possible.

Issued: June 9, 2005.

By order of the Commission:

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–11750 Filed 6–9–05; 3:10 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; ControlNet International, Ltd.

Notice is hereby given that, on May 18, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ControlNet International, Ltd. (''ControlNet'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Parker-Hannifin Corporation, Cleveland, OH has been added as a party to this venture. The following member has changed its name: Belden Wire & Cable to Belden CDT Electronics Division, Richmond, IN.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ControlNet intends to file additional written notification disclosing all changes in membership.

On February 3, 2005, ControlNet filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 1, 2005 (70 FR 9979).

Dorothy B. Fountain

Deputy Director of Operations Antitrust Division

[FR Doc. 05–11600 Filed 6–10–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Network Centric Operations Industry Consortium, Inc.

Notice is hereby given that, on May 11, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Network Centric Operations Industry Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, West Virginia High Technology Consortium Foundation, Fairmont, WV; MBL International, Ltd., Annandale, VA; Johns Hopkins University Applied Physics Laboratory, Laurel, MD; Ball Solutions Group Pty, Ltd., Barton, ACT, Australia; Camber Corporation, Huntsville, AL; EFW Incorporated, Fort Worth, TX; Terma A/S, Lystrup, Denmark; EDISOFT S.A., Setubal, Portugal; Rheinmetall Defence Electronics GmbH, Bremen, Germany; SRI International, Menlo Park, CA; Intel Corporation, Santa Clara, CA; and Institute for Defense Analyses, Alexandria, VA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Network Centric Operations Industry Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On November 19, 2004, Network Centric Operations Industry Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 2, 2005 (70 FR 5486).

The last notification was filed with the Department on February 17, 2005. A

notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 14, 2005 (70 FR 12500).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–11601 Filed 6–10–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1933; Open DeviceNet Vendor Association, Inc.

Notice is hereby given that, on May 18, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Open DeviceNet Vendor Association, Inc. (''ODVA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, CDA Systems Ltd., London, Ontario Canada; Power-IO LLC, Naperville, IL, Industrial Control Communication, Inc., The Woodlands, TX; RADIC Technologies Incorporated, Milpitas, CA; ICP DAS Co., Ltd., Kao Hsiung, Taiwan; Mencom Corporation, Gainesville, GA; ATI Industrial Automation, Inc., Apex, NC; Kun Hung Electric Co., Ltd., Seoul, Republic of Korea; AuCom Electronics Ltd., Christchurch, New Zealand; HanYang System, Kyunngi-do, Republic of Korea; Taiyo Electric Wire & Cable Co., Ltd., Osaka City, Japan; PPT Vision, Inc., Eden Prairie, MN; GE Multilin, Markham, Ontario, Canada; SoftDEL Systems Limited, Mumbai, India; Woodhead Software & Electronics France, Caudebec Les Elbeuf, France; Biffi Italia S.r.L., Fiorenzuola d'Arda, Italy; HIMA Paul Hildebrandt GmbH & Co., KG, Bruehl, Germany; Beck IPC GmbH, Pohlheim, Germany; Pilz GmbH & Co., Ostifildern, Germany; Scientific Technologies, Incorporated, Fremont, CA; Jetter AG, Ludwigsburg, Germany; and PMA GmbH, Kassel, Germany have been added as parties to this venture.

Also, Weidmueller Inc., Richmond, VA; Hitachi Cable Ltd., Ibaraki, Japan; Industrial Communication Technologies, Newburyport, MA; Hyde Part Electronics, Inc., Dayton, OH; Alpha Gear Drives, Inc., Elk Grove Village, IL; Trimble AB, Dayton, OH; Livingston & Co., Inc., West Lebanon, NH; AC Technology Corp., Uxbridge, MA; POSCON, Seoul, Republic of Korea; Shin Ho System Co., Ltd., Inchon, Republic of Korea; HANA Information Technology Co., Ltd., Pusan, Republic of Korea; HAN–MI Co., Ltd., Incheon, Republic of Korea; uniNtech, Seoul, Republic of Korea; Worcester Controls Corporation, Cookeville, TN; Lincoln Electric Company, Cleveland, OH; System Controls, Limited, Auckland, New Zealand; ICP Panel-Tec., Inc., Huntsville, AL; Vaccon Company, Inc., Medfield, MA; Bellofram Corporation, Newell, WV; and Holec Holland N.V., Hengelo, The Netherlands have withdrawn as parties to this venture. The following members have changed their names: Belden Wire & Cable to Belden CDT Electronics Division, Richmond, IN; and Tait Control Systems to TCS (NZ) Ltd., Hamilton, New Zealand.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ODVA intends to file additional written notification disclosing all changes in membership.

On June 21, 1995, ODVA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 15, 1996 (61 FR 6039).

The last notification was filed with the Department on October 13, 2004. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 3, 2004 (69 FR 70283).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–11599 Filed 6–10–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum

Notice is hereby given that, on May 10, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Petroleum Environmental Research Forum (''PERF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notification were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Repsol YPF, Móstoles (Madrid), SPAIN has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PERF intends to file additional written notification disclosing all changes in membership.

On February 10, 1986, PERF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 14, 1986 (51 FR 8903).

The last notification was filed with the Department on December 1, 2004. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 5, 2005 (70 FR 920).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–11597 Filed 6–10–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Polyurea Development Association

Notice is hereby given that, on May 9, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Polyurea Development Association (''PDA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is: Polyurea Development Association, Kansas City, MO. The nature and scope of PDA's standards

development activities are: developing and promoting voluntary consensus standards for Polyurea Elastomeric Coating/Lining Systems and Polyurea Elastomeric Joint Sealant/Filler Systems.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–11598 Filed 6–10–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a registration under 21 U.S.C. 952(a)(2)(B) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on April 27, 2005, Boehringer Ingelheim Chemicals, Inc., 2820 N. Normandy Drive, Petersburg, Virginia 23805, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The company plans to import the listed controlled substance to bulk manufacturer amphetamine.

Any manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Attention: DEA Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than July 13, 2005.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance listed in Schedule I or II are, and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: June 6, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–11639 Filed 6–10–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting Notice No. 3–05]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of Commission business and other matters specified, as follows:

Date and Time: Thursday, June 23, 2005, at 11 a.m.

Subject Matter: Issuance of Proposed Decisions in claims against Albania.

Status: Open.

All meetings are held at the Foreign claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616–6988.

Mauricio J. Tamargo,

Chairman.

[FR Doc. 05–11752 Filed 6–9–05; 3:10 pm]

BILLING CODE 4410–01–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,992]

Bosch-Rexroth Corporation; Mobile Hydraulics Division Wooster, OH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 18, 2005 in response to petition filed by the United Automobile, Aerospace, Agricultural Implement Workers of America, Local 1239 on behalf of workers at Bosch-Rexroth Corporation, Mobile Hydraulics Division, Wooster, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 1st day of June, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–3038 Filed 6–10–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,607; TA–W–55,607A]

Creo Americas, Inc., U.S. Headquarters; A Subsidiary of Creo, Inc., Billerica, MA; Including an Employee of Creo Americas, Inc., U.S. Headquarters; A Subsidiary of Creo, Inc., Billerica, MA, Located in New York, NY; Amended Notice of Revised Determination on Remand

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Revised Determination on Remand on April 5, 2005, applicable to workers of Creo Americas, Inc., U.S. Headquarters, a subsidiary of Creo, Inc., Billerica, Massachusetts. The notice was published in the **Federal Register** on April 25, 2005 (70 FR 21247).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that a worker separation occurred involving an employee of the Billerica, Massachusetts facility of Creo Americas, Inc., U.S. Headquarters, a subsidiary of Creo, Inc., located in New York, New York. Mr. Amnon Zerahia provided technical support for the production of professional imaging and software production at the West Virginia and

Washington states facilities of the subject firm.

Based on these findings, the Department is amending this certification to include an employee of the Billerica, Massachusetts facility of Creo Americas, Inc., U.S. Headquarters, a subsidiary if Creo, Inc. located in New York, New York.

The intent of the Department's certification is to include all workers of Creo Americas, Inc., U.S. Headquarters, a subsidiary of Creo, Inc., Billerica, Massachusetts Atlas Textile Company, Inc., Commerce, California who were adversely affected by a shift in production to Canada.

The amended notice applicable to TA–W–55,607 is hereby issued as follows:

All workers of Creo Americas, Inc., U.S. Headquarters, a subsidiary of Creo, Inc., Billerica, Massachusetts (TA–W–55,607), including an employee of Creo Americas, Inc., U.S. Headquarters, a subsidiary of Creo, Inc., Billerica, Massachusetts, located in New York, New York (TA–W–55,607A), who became totally or partially separated from employment on or after September 7, 2003, through April 5, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 27th day of May 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–3023 Filed 6–10–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,891]

F.L. Smidth, Inc., Catasauqua R&D Laboratory, Catasauqua, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 7, 2005 in response to a petition filed by a company official on behalf of workers at F.L. Smidth, Catasauqua R&D Laboratory, Catasauqua, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 26th day of May 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–3031 Filed 6–10–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[A–W–57,150]

Gas Transmission Services, LLC Portland, OR; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 11, 2005 in response to a petition filed on behalf of workers at Gas Transmission Services, LLC, Portland, Oregon.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 25th day of May 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–3039 Filed 6–10–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,200]

The Gillette Company, Duracell Lexington Plant, Lexington, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 18, 2005 in response to a worker petition filed by a company official on behalf of workers at The Gillette Company, Duracell Lexington Plant, Lexington, North Carolina.

The petitioning group of workers is covered by an active certification (TA–W–56,286) which expires on May 19, 2007. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 26th day of May 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–3041 Filed 6–10–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,216]

Gilmour Manufacturing, Division of Robert Bosch Tool Corporation; Somerset, Pennsylvanina; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 19, 2005 in response to a worker petition filed by a company official on behalf of workers at Gilmour Manufacturing, a division of Robert Bosch Tool Corporation in Somerset, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 25th day of May 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–3042 Filed 6–10–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the periods of May 2005.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a) (2) (A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles

produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a) (2) (B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign county of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criteria (a)(2)(A)(I.C.)(increased imports) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W–56,902; Gonzales Technologies, Paris, TN

TA–W–57,098; Monaco Coach Corp., Beaver Facility, Bend, OR

TA–W–56,894; Thor America, Inc., Middleburg, PA

TA–W–56,903; Milwaukee Sign Company, LLC, Grafton, WI

TA–W–56,978; Rycenga Homes, Inc., Spring Lake, MI

TA–W–56,956; Royal Cord, Inc., Thomaston, GA

TA–W–56,937; Uniboard Fostoria, Inc., Fostoria, OH

TA–W–56,925; Osram Sylvania, Inc., General Lighting, St. Mary's PA

TA–W–56,831; Mueller Copper Tube Products, Inc., subsidiary of Mueller Industries, Inc., Wynne, AR

The investigation revealed that criteria (a)(2)(A)(I.B.)(Sales or production, or both, did not decline) and (a) (2) (B) (II.B) (No shift in production to a foreign country) have not been met.

TA–W–56,987; Hitachi Global Storage Technology, San Jose, CA

The investigation revealed that criterion (a)(2)(A)(I.A) and (a)(2)(B)(II.A) (no employment decline) has not been met.

TA–W–56,976; UFE, Inc., Stillwater, MN

TA–W–56,970; Delta Galil USA, Inc., Williamsport, PA

TA–W–56,995; Crotty Corp., Celina Div., Celina, TN

TA–W–56,725; HCP Packaging USA, Formerly Bridgeport Metal Goods, Hinsdale, NH

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–56,885; CTNA Akron Test Center, a subsidiary of Continental Tire North America, Inc., Akron, OH

TA–W–57,100; D&B. Inc., Data Call Center, Greensboro, NC

TA–W–57,162; Gulf Fibers, Inc., Axis, AL

TA–W–56,827; Sara Lee Technical Service, a subsidiary of Sara Lee Global Technical Services, a subsidiary of Sara Lee Corp., Winston-Salem, NC

TA–W–57,055; Integrated Device Technology, Inc., Santa Clara Division, Santa Clara, CA

TA–W–57,065; Galileo International, Div. of Cendant Corp., Centennial, CO

TA–W–56,989; Southwest Marine, Inc., San Pedro Div., Terminal Island, CA

TA–W–56,952; Sierra Health Services, Inc., 111 & 34 Market Place, Baltimore, MD

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

TA–W–56,825; Burns Wood Products, Inc., Granite Falls, NC

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a) (2) (A) (increased imports) of Section 222 have been met.

TA–W–56,913; Modern Case Co., Inc., Ewen, MI: March 24, 2004

TA–W–56,932; The Blind Maker, Inc., Dallas Operations Div., Irvin, TX: March 30, 2004

TA–W–56,916; Addison Shoe Co., a div. of Munro & Company, Inc., Wynne, AR: March 31, 2004

TA–W–56,867; Manual Transmissions of Muncie, LLC, Muncie, IN: March 21, 2004

TA–W–56,909; Scepter Hardwoods, Inc., Sparta, TN: March 31, 2004

TA–W–56,855; General Cable Texas Operations, a subsidiary of General Cable Industries, Inc., Bonham, TX: March 15, 2004

TA–W–56,979; Auburn Foundry, Inc., Plant #2, Auburn, IN: April 7, 2004

TA–W–57,051; Trend Technologies, LLC, Hayward, CA: April 13, 2004

TA–W–56,949; Pemstar, Inc., Taunton, MA: March 11, 2004

TA–W–56,914; Nova Knits, Inc., San Francisco, CA: March 30, 2004

TA–W–57,168; Oxford Automotive, Corporate Office, Troy, MI: May 12, 2004

TA–W–56,924; Lustar Dyeing and Finishing, Inc., Asheville, NC: April 12, 2005

TA–W–57,058; Riddle & Company LLC, including on-site leased workers of Staff Mark and Prime Personnel Resources, Inc., Burlington, NC: April 22, 2004

TA–W–57,133; Sentry Manufacturing Company, including on-site leased workers of Manpower, Chickasha, OK: April 28, 2004

The following certifications have been issued. The requirements of (a) (2) (B) (shift in production) of Section 222 have been met.

TA–W–56,983; C.H. Patrick & Company, Inc., including on-site leased workers of Columbia Staffing, Greenville, SC: April 7, 2004

TA–W–57,109; TRW Automotive, including leased workers of Volt Services, Brighton, MI: May 3, 2004

TA–W–56,877; Don Pluid Logging, Eureka, MT: March 29, 2004

TA–W–56,961; Nortech Systems, Inc., Bemidji, MN: May 15, 2005

TA–W–57,033; Brandon Hosiery, Fort Payne, AL: April 21, 2004

TA–W–56,945 & A; Pentair, Inc., including leased workers of Workforce Personnel and Personnel Plus, Long Beach, CA, Pentair, Inc., including leased workers of Kemco, Adecco Kelly Services and Appleone, Murrieta, CA: April 5, 2004

TA–W–57,011; Eastman Kodak Company, Paper Mill Bldg 319, Div. of Rochester Paper Flow, Rochester, NY: April 13, 2004

TA–W–56,801; ITT Industries, Oscoda, MI: March 21, 2004

TA–W–56,884; Ben Davis Company, San Francisco, CA: March 23, 2004

TA–W–56,901; Chiller Components, Inc., Sutton, MA: April 1, 2004

TA–W–57,006; Ametek, Commercial Motor Div., Racine, WI: May 17, 2005

TA–W–57,027; The Chamberlain Group, Inc., Commercial Products Div., Lake Forest, CA: April 18, 2004

TA–W–57,119; Hafner LLC, a subsidiary of Hafner, Inc, Gordonsville, VA: May 4, 2004

TA–W–57,114; Selkirk, LLC, Logan, OH: May 28, 2005

TA–W–57,071; Makita Corporation of America, including on-site leased workers of Staffing Solutions and Etcon, Buford, GA: April 9, 2005 and Adecco, Dover, DE: April 22, 2004

The following certifications have been issued. The requirement of upstream supplier to a trade certified primary firm has been met.

TA–W–57,021; Plastic Moldings Company, LLC, Cincinnati Plant, including leased workers of Excel Staffing, Cincinnati, OH: April 12, 2004

Negative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

In the following cases, it has been determined that the requirements of Section 246(a)3)ii) have not been met for the reasons specified.

The Department as determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–57,114; Selkirk, LLC, Logan, OH

TA–W–57,071; Makita Corporation of America, including on-site leased workers of Staffing Solutions and Etcon, Buford, GA

TA–W–56,932; The Blind Maker, Inc., Dallas Operations Div., Irving, TX:

TA–W–56,867; Manual Transmissions of Muncie, LLC, Muncie, IN

TA–W–57,133; Sentry Manufacturing Company, including on-site leased workers of Manpower, Chickasha, OK

The Department as determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

None

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

TA–W–56,902; Gonzales Technologies, Paris, TN

TA–W–57,098; Monaco Coach Corp., Beaver Facility, Bend, OR

TA–W–56,894; Thor America, Inc., Middleburg, PA

TA–W–56,903; Milwaukee Sign Company, LLC, Grafton, WI

TA–W–56,978; Rycenga Homes, Inc., Spring Lake, MI

TA–W–56,956; Royal Cord, Inc., Thomaston, GA

TA–W–56,937; Uniboard Fostoria, Inc., Fostoria, OH

TA–W–56,925; Osram Sylvania, Inc., General Lighting, St. Mary's, PA

TA–W–56,831; Mueller Copper Tube Products, Inc., subsidiary of Mueller Industries, Inc., Wynne, AR

TA–W–56,987; Hitachi Global Storage Technology, San Jose, CA

TA–W–56,976; UFE, Inc., Stillwater, MN

TA–W–56,970; Delta Galil USA, Inc., Williamsport, PA

TA–W–56,9895; Crotty Corp., Celina Div., Celina, TN

TA–W–56,725; HCP Packaging USA, formerly Bridgeport Metal Goods, Hinsdale, NH

TA–W–56,885; CTNA Akron Test Center, a subsidiary of Continental Tire North America, Inc., Akron, OH

TA–W–57,162; Gulf Fibers, Inc., Axis, AL

TA–W–56,827; Sara Lee Technical Service, a subsidiary of Sara Lee Global Technical Services, a subsidiary of Sara Lee Corp., Winston-Salem, NC

TA–W–57,055; Integrated Device Technology, Inc., Santa Clara Division, Santa Clara, CA

TA–W–57,065; Galileo International, div. of Cendant Corp., Centennial, CO

TA–W–56,989; Southwest Marine, Inc., San Pedro Div., Terminal Island, CA

TA–W–56,952; Sierra Health Services, Inc., 111 & 34 Market Place, Baltimore, MD

TA–W–56,825; Burns Wood Products, Inc., Granite Falls, NC

Affirmative Determinations for Alternative Trade Ajdustment Assistance

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determinations.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have been met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.

II. Whether the workers in the workers' firm possess skills that are not easily transferable.

III. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

TA–W–56,913; Modern Case Company, Inc., Ewen, MI: March 24, 2004

TA–W–56,916; Addison Shoe Company, a div. of Munro & Company, Inc., Wynne, AR: March 31, 2004

TA–W–56,909; Scepter Hardwoods, Inc., Sparta, TN: March 31, 2004

TA–W–56,855; General Cable Texas Operations, a subsidiary of General Cable Industries, Inc., Bonham, TX: March 15, 2004

TA–W–56,979; Auburn Foundry, Inc., Plant #2, Auburn, IN: April 7, 2004
TA–W–57,051; Trend Technologies, LLC, Hayward, CA: April 13, 2004
TA–W–56,914; Nova Knits, Inc., San Francisco, CA: March 30, 2004
TA–W–56,949; Pemstar, Inc., Taunton, MA: March 11, 2004
TA–W–57,168; Oxford Automotive, Corporate Office, Troy, MI: May 12, 2004
TA–W–56,924; Lustar Dyeing and Finishing, Inc., Asheville, NC: April 6, 2004
TA–W–57,058; Riddle & Company LLC, including on-site leased workers of Staff Mark and Prime Personnel Resources, Inc., Burlington, NC: April 22, 2004
TA–W–56,983; C.H. Patrick & Company, Inc., including on-site leased workers of Columbia Staffing, Greenville, SC: April 7, 2004
TA–W–57,109; TRW Automotive, including leased workers of Volt Services, Brighton, MI: May 3, 2004
TA–W–56,877; Don Pluid Logging, Eureka, MT: March 9, 2004
TA–W–56,961; Nortech Systems, Inc., Bemidji, MN: May 15, 2005
TA–W–57,033; Brandon Hosiery, Fort Payne, AL: April 21, 2004
TA–W–56,945 & A; Pentair, Inc., including leased workers of Workforce Personnel and Personnel Plus, Long Beach, CA and Pentair, Inc., including leased workers of Kimco, Adecco, Kelly Services and Appleone, Murrieta, CA: April 5, 2004
TA–W–57,011; Eastman Kodak Co., Paper Mill Bldg 319, Div. of Rochester Paper Flow, Rochester, NY: April 13, 2004
TA–W–56,884; Ben Davis Company, San Francisco, CA: March 23, 2004
TA–W–56,901; Chiller Components, Inc., Sutton, MA: April 1, 2004
TA–W–57,006; Ametek, Commercial Motor Div., Racine, WI: May 17, 2005
TA–W–57,027; The Chamberlain Group, Inc., Commercial Products Div., Lake Forest, CA: April 18, 2004
TA–W–57,119; Hafner LLC, a subsidiary of Hafner, Inc., Gordonsville, VA: May 4, 2004. Electric, including leased workers of Adecco Personnel, Asheville, NC: May 9, 2005

I hereby certify that the aforementioned determinations were issued during the month of May 2005 Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: June 3, 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–3037 Filed 6–10–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 23, 2005.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 23, 2005.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 7th day of June 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 05/16/2005 and 05/20/2005]

TA-W	Subject firm (petitioners)	Location	Date of institution	Date of petition
57,174	Microsemi Corp. (Comp)	Broomfield, CO	05/16/2005	05/13/2005
57,175	Stat Medical Devices (State)	North Miami, FL	05/16/2005	05/12/2005
57,176	Oneida Ltd. (State)	Lawrenceville, GA	05/16/2005	05/13/2005
57,177	Broyhill Furniture Industries, Inc. (Comp)	Lenoir, NC	05/16/2005	04/29/2005
57,178	C-Tech Industries Hotsy Corp. (Wkrs)	Humboldt, IA	05/16/2005	05/13/2005
57,179	Voith Paper (NPC)	Farmington, NH	05/16/2005	05/13/2005
57,180	Kimball Electronics (Comp)	Auburn, IN	05/16/2005	05/13/2005
57,181	Wilmington Products dba NW Co (Comp)	Ash, NC	05/16/2005	05/11/2005
57,182	AMT Doduco (Comp)	Reidsville, NC	05/16/2005	05/06/2005
57,183	Panasonic Motor Co. (Comp)	Berea, KY	05/16/2005	05/09/2005
57,184	Creative Nail Design (Comp) Nail	Vista, CA	05/17/2005	05/16/2005
57,185	Electronic Data Systems (NPW)	Green Bay, WI	05/17/2005	05/16/2005
57,186	Robinson Manufacturing Co. (Comp)	Oxford, ME	05/17/2005	05/16/2005
57,187	Benteler Mechanical Eng. (Wkrs)	Ft. Wayne, IN	05/17/2005	05/16/2005
57,188	Neat Feet Hosiery Inc. (Comp)	Stoneville, NC	05/17/2005	05/12/2005
57,189	Elliott Co. (USWA)	Jeannette, PA	05/17/2005	04/23/2005
57,190	National Wood Products (Comp)	Oxford, ME	05/17/2005	05/16/2005
57,191A	Intradeco Apparel (NPS)	New York, NY	05/17/2005	05/17/2005

APPENDIX—Continued

[Petitions instituted between 05/16/2005 and 05/20/2005]

TA-W	Subject firm (petitioners)	Location	Date of institution	Date of petition
57,191	Intradeco Apparel (NPS)	Medley, FL	05/17/2005	05/17/2005
57,192	Laser Tool Co. (Wkrs)	Saegertown, PA	05/17/2005	05/17/2005
57,193	DAP Technologies Corp. (Wkrs)	Plattsburgh, NY	05/17/2005	05/12/2005
57,194	Hampden Corp. (Comp)	Chicago, IL	05/17/2005	05/10/2005
57,195	True Value Company (Comp)	Cary, IL	05/17/2005	05/09/2005
57,196	K and T Jewelry Accessories, Inc. (Wkrs)	Providence, RI	05/17/2005	05/09/2005
57,197	Penn Ventilation, Inc. (Wkrs)	Tabor City, NC	05/17/2005	05/06/2005
57,198	Neasi-Weber International (Wkrs)	Houston, TX	05/17/2005	05/04/2005
57,199	AMETEK U.S. Gauge Division (Comp)	Sellerville, PA	05/17/2005	05/06/2005
57,200	Gillette Company (The) (Comp)	Lexington, NC	05/18/2005	05/16/2005
57,201	CDI Business Solutions (Wkrs)	Corvallis, OR	05/18/2005	05/17/2005
57,202	Frederick Cooper Lamps (Comp)	Chicago, IL	05/18/2005	05/17/2005
57,203	Assembly Services and Packaging, Inc. (Comp)	Hudson, WI	05/18/2005	05/17/2005
57,204	Intermark Fabric Corp. (State)	Plainfield, CT	05/18/2005	05/17/2005
57,205	Royal Oak Enterprises (Wkrs)	White City, OR	05/18/2005	05/17/2005
57,206	Motor Components, LLC (Comp)	Elmira, NY	05/18/2005	05/18/2005
57,207	Storage Tek (State)	Brooklyn Park, MN	05/18/2005	05/17/2005
57,208	Wiremold/Legrand (Comp)	Philadelphia, PA	05/19/2005	05/18/2005
57,209	General Dynamics (Wkrs)	Imperial, CA	05/19/2005	04/21/2005
57,210	Printronix, Inc. (State)	Irvine, CA	05/19/2005	05/18/2005
57,211	Aerotek (State)	Portland, OR	05/19/2005	05/18/2005
57,212	TRW Automotive (NPC)	El Paso, TX	05/19/2005	05/18/2005
57,213	Sandisk Corporation (State)	Sunnyvale, CA	05/19/2005	05/18/2005
57,214	Omnova Solutions, Inc. (USWA)	Jeannette, PA	05/19/2005	05/06/2005
57,215	Plastic Dress-up Co. (Comp)	S. Eli Monet, CA	05/19/2005	04/26/2005
57,216	Gilmour Manufacturing (Comp)	Somerset, PA	05/19/2005	05/18/2005
57,217	Wade Manufacturing Co. (Comp)	Wadesboro, NC	05/19/2005	05/18/2005
57,218	Frank L. Wells Co. Wellsco Control Inc. (Wkrs)	Kenosha, WI	05/19/2005	05/19/2005
57,219	Riverside Paper Co. (PACE)	Appleton, WI	05/19/2005	05/19/2005
57,220	Geiger of Austria, Inc. (Comp)	Middlebury, VT	05/19/2005	05/12/2005
57,221	Texas Boot, Inc. (Comp)	Waynesboro, TN	05/19/2005	05/03/2005
57,222	Culp Finishing (Wkrs)	Burlington, NC	05/19/2005	05/12/2005
57,223	Ward Products, LLC (IBEW)	Amsterdam, NY	05/19/2005	05/11/2005
57,224	Meridan Automotive Systems (Wkrs)	Canandaigua, NY	05/19/2005	05/10/2005
57,225	Screen and Stitch, Inc. (Comp)	Park Falls, WI	05/20/2005	05/16/2005
57,226	Danly IEM (State)	Ionia, MI	05/20/2005	05/02/2005
57,227	Black Box Network Services (Wkrs)	Corvallis, OR	05/20/2005	05/18/2005
57,228	St. John Knits (State)	San Ysidro, CA	05/20/2005	05/19/2005
57,229	Renaissance Mart (Wkrs)	Bowling Green, KY	05/20/2005	05/16/2005
57,230	Lear Corporation (UAW)	Monroe, MI	05/20/2005	05/19/2005
57,231	AMI Doduco (Comp)	Reidsville, NC	05/20/2005	05/06/2005

[FR Doc. E5–3040 Filed 6–10–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,633]

Syracuse China, Syracuse, NY; Notice of Revised Determination on Reconsideration of Alternative Trade Adjustment Assistance

By letter dated May 19, 2005, a petitioner requested administrative reconsideration regarding Alternative Trade Adjustment Assistance (ATAA) applicable to workers of the subject firm. The negative determination was signed on March 31, 2005, and was published in the **Federal Register** on May 2, 2005 (70 FR 22712).

The workers of Syracuse China, Syracuse, New York were certified eligible to apply for Trade Adjustment Assistance (TAA) on March 31, 2005.

The initial ATAA investigation determined that the skills of the subject worker group are easily transferable to other positions in the local area.

Upon further contacts with the company official it was confirmed that the skills of the workers at the subject firm are not easily transferable in the local commuting area.

Additional investigation has determined that the workers possess skills that are not easily transferable. A significant number or proportion of the worker group are age fifty years or over. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that the requirements of Section 246 of the Trade Act of 1974, as amended, have been met for workers at the subject firm.

In accordance with the provisions of the Act, I make the following certification:

All workers of Syracuse China, Syracuse, New York, who became totally or partially separated from employment on or after February 8, 2004 through March 31, 2007, are eligible to apply for trade adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 2nd day of June, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–3029 Filed 6–10–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,701]

Twigs & Ivy Boutique, Potosi, MO; Negative Determination Regarding Application for Reconsideration

By application of April 14, 2005, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on May 2, 2005, (70 FR 22710).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, which was filed on behalf of workers at Twigs & Ivy Boutique, Potosi, Missouri engaged in the production of floral arrangements, was denied based on the findings that during the relevant time period, the subject company did not separate or threaten to separate a significant number or proportion of workers, as required by Section 222 of the Trade Act of 1974.

In the request for reconsideration, the petitioner alleges that there was an additional employee of Twigs & Ivy Boutique who was mistakenly omitted from the employment list originally submitted to the Department by the company official.

This alleged employee was contacted by the Department to confirm the above statement. The employee stated that she worked for Twigs & Ivy Boutique, Potosi, Missouri in 2002.

When assessing eligibility for TAA, the Department exclusively considers the relevant employment data for the facility where the petitioning worker group was employed. The relevant period represents four quarters back from the date of the petition, thus data from 2002 is irrelevant in this investigation. As fewer than three workers were impacted at the subject firm during the relevant time period, employment threshold requirement as outlined in Section 222 of the Trade Act of 1974 was not met.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 27th day of May, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–3030 Filed 6–10–05; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 05–105]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Kathy Shaeffer, Mail Suite 6M70, Office of the Chief Information Officer, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Kathy Shaeffer, Acting NASA Reports Officer, Office of the Chief Information Officer, NASA Headquarters, 300 E Street SW., Mail Suite 6M70, Washington, DC 20546, (202) 358–1230, *kathleen.shaeffer-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NASA Johnson Space Center is licensed to collect and maintain records of radioactive material used for space-related research and space vehicles at temporary job sites in the U.S. Information collected includes descriptions, transfer, location, and disposition of materials and records of accountability and responsibility. Respondents are NASA field centers and NASA contractors, subcontractors, and vendors.

II. Method of Collection

NASA collects this information electronically where feasible, but information may also be collected by mail or fax.

III. Data

Title: Radioactive Material Transfer Receipt.

OMB Number: 2700–0007.

Type of review: Extension of a currently approved collection.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; State, local or tribal government.

Estimated Number of Respondents: 25.

Estimated Time Per Response: approximately 30 minutes.

Estimated Total Annual Burden Hours: 10.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Dated: June 6, 2005.

Patricia L. Dunnington,

Chief Information Officer.

[FR Doc. 05–11638 Filed 6–10–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before July 28, 2005. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means (Note the new address for requesting schedules using e-mail): Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001. E-mail: *requestschedule@nara.gov.* FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–3120. E-mail: *records.mgt@nara.gov*.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending (Note the new address for requesting schedules using e-mail)

1. Department of Homeland Security, Transportation Security Administration (N1–560–04–15, 8 items, 8 temporary items). Records accumulated by the Office of Credentialing relating to employee photographic identification, employee and applicant background investigations, and policies regarding background investigations of U.S. transportation workers. Also included are electronic copies of records created using electronic mail and word processing.

2. Department of Transportation, Federal Aviation Administration (N1–237–05–02, 6 items, 4 temporary items). Inputs, outputs, and personal identifiers associated with an electronic information system which is used to collect data about aviation accidents and incidents in the United States. Proposed for permanent retention are master files (excluding pilot personal identifiers) and the system documentation.

3. Department of the Treasury, Treasury Inspector General for Tax Administration (N1–56–05–2, 3 items, 3 temporary items). Records of the Chief Counsel relating to the disclosure or referral of documents to other Government agencies for prosecutorial purposes or in conjunction with judicial or administrative proceedings. Also included are electronic copies of records created using electronic mail and word processing.

4. Broadcasting Board of Governors, Office of Public Affairs (N1–517–05–1, 3 items, 3 temporary items). News leaflets created from various public sources. Also included are electronic copies of records created using electronic mail and word processing.

5. National Aeronautics and Space Administration, Agency Headquarters (N1–255–04–2, 2 items, 2 temporary items). Paper and electronic records relating to the agency's export control program, including such records as export clearance documentation, audit reports, export licensing data, and logs of export control activities. Electronic copies of records created using electronic mail and word processing are also included.

6. Small Business Administration, Office of the Chief Information Officer, Denver Finance Center (N1–309–05–1, 5 items, 5 temporary items). Inputs,

master files, documentation, backups, and electronic mail and word processing copies associated with an electronic system used to maintain summary information concerning disbursements.

7. Small Business Administration, Office of the Chief Information Officer, Denver Finance Center (N1–309–05–2, 5 items, 5 temporary items). Inputs, master files, documentation, backups, and electronic mail and word processing copies associated with an electronic system used to warehouse summary information concerning inter-agency transfers of funds.

8. Small Business Administration, Office of the Chief Financial Officer, Denver Finance Center (N1–309–05–3, 5 items, 5 temporary items). Inputs, master files, documentation, backups, and electronic mail and word processing copies associated with an electronic system used to warehouse summary information concerning collections.

9. Small Business Administration, Office of the Chief Financial Officer, Denver Finance Center (N1–309–05–4, 5 items, 5 temporary items). Outputs, master files, documentation, backups, and electronic mail and word processing copies associated with an electronic system used in connection with reconciled statements of cash activity.

10. Small Business Administration, Office of the Chief Information Officer, Denver Finance Center (N1–309–05–5, 4 items, 4 temporary items). Master files, documentation, backups, and electronic mail and word processing copies associated with an electronic system used to support general ledger reconciliations.

11. Small Business Administration, Agency-wide (N1–309–05–6, 15 items, 15 temporary items). Inputs, outputs, master files, documentation, backups, and electronic mail and word processing copies associated with an electronic system used to maintain general ledgers and create financial statements and reports.

12. Social Security Administration, Office of Disability and Income Security Programs (N1–47–05–2, 14 items, 14 temporary items). Case files and other records relating to Medicare claims. Also included are electronic copies of records created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

Dated: June 6, 2005.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. 05–11621 Filed 6–10–05; 8:45 am]

BILLING CODE 7515–01–U

NATIONAL SCIENCE FOUNDATION

Notice of Intent to Seek Approval to Establish an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and Request for Comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than three years.

DATES: Written comments on this notice must be received by August 12, 2005 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

For Additional Information or Comments: Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or send e-mail to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. You also may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION:

OMB Number: 3145–NEW.

Expiration Date of Approval: Not applicable.

Type of Request: Intent to seek approval to establish an information collection.

Abstract:

Proposed Project:

Task 1

NSF's priority area in Nanoscale Science & Engineering (NS&E) has been funded since FY 2001 and is funded at approximately $335 million in FY 2005. The goals of the NS&E priority area are to support fundamental knowledge creation across disciplinary principles, phenomena, and tools at the nanoscale, and to catalyze synergistic science and engineering research and education in emerging areas of nanoscale science and technology. A NSF contractor will study partnerships and knowledge transfer and innovation activities related to (1) NS&E (Nanoscale Interdisciplinary Research Team (NIRT) and Nanoscale Science and Engineering Center (NSEC) awards made during FY 2001–2004 and (2) NSF awards to two networks that work closely with NS&E—the National Nanotechnology Infrastructure Network (NNIN) and the Network for Computational Nanotechnology (NCN).

Using a standard set of definitions to ensure comparability across awards, the contractor will collect data on patents; licenses; state, local, and industrial partnerships; start-up companies; and other indicators of technology transfer and collaboration with state and local governments and industry. To the extent possible, the contractor will also collect data on state and private investments in activities that complement or build upon the NSF awards. For geographic areas where there has been significant NSF funding under these activities, the contractor may propose to provide an initial assessment of the contribution of these awards to the regional economy. The contractor's data collection shall include, but need not be limited to, gathering information from public and private databases and conducting interviews with NS&E grantees to fill remaining gaps. The data will be integrated into a database with information on each award. The database will be consistent with the database that the EEC Division has constructed for the NSECs.

The analyses will summarize the data overall and by mode of funding (NIRT, NSEC, NNIN, NCN) and identify key topics, if any that are a major focus for knowledge transfer and partnerships.

Task 2

The subcontractor will define and present alternative methodologies for documenting the creation of an interdisciplinary research community in nonotechnology. These methodologies shall provide a means to qualitatively assess the size and scope of the interdisciplinary research community in nanoscience and nanoengineering from the period 2001–2004. This analysis will also provide a basis for determining how collaborations lead to new directions in research and education in nanoscience and engineering. Most of the data for this effort will be gathered directly from the Internet. However, the contractor may contact selected NS&E, NNIN, or NCN awardees to fill data gaps or to confirm data.

Estimate of Burden: task 1–10 hours. Task 2–2 hours.

Respondents: Individuals and not-for-profit organizations.

Number of Respondents: There are approximately 260 recipients and plans call for contacting 50% of them.

Estimated Number of Responses per Survey: One.

Comments: Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents; including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: June 7, 2005.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 05–11606 Filed 6–10–05; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and 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:* Notice of Enforcement Discretion (NOEDs) for Operating Power Reactors and Gaseous Diffusion Plants (GDP).

3. *The form number if applicable:* Not applicable.

4. How often the collection is required: On occasion.

5. *Who will be required or asked to report:* Nuclear power reactor licensees and gaseous diffusion plant certificate holders.

6. *An estimate of the number of annual responses:* 26.

7. *The estimated number of annual respondents:* 11.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 1,991 hours (1810 reporting [121 hours per response] and 181 recordkeeping [16.45 hours per recordkeeper]).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* The NRC's Enforcement Policy addresses circumstances in which the NRC may exercise enforcement discretion. A specific type of enforcement discretion is designated as a Notice of Enforcement Discretion (NOED) and relates to circumstances which may arise where a nuclear power plant licensee's compliance with a Technical Specification Limiting Condition for Operation or with other license conditions would involve an unnecessary plant transient or shutdown, or performance of testing, inspection, or system realignment that is inappropriate for the specific plant conditions, or unnecessary delays in plant startup without a corresponding health and safety benefit. Similarly, for a gaseous diffusion plant, circumstances may arise where compliance with a Technical Safety Requirement or other condition would unnecessarily call for a total plant shutdown, or, notwithstanding that a safety, safeguards or security feature was degraded or inoperable, compliance would unnecessarily place the plant in a transient or condition where those features could be required.

A licensee or certificate holder seeking the issuance of an NOED must provide a written justification, in accordance with guidance provided in NRC Inspection Manual, Part 9900, which documents the safety basis for the request and provides whatever other information the NRC staff deems necessary to decide whether or not to exercise discretion.

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 July 13, 2005. 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 (3150–0136), 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 6th day of June, 2005.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E5–3054 Filed 6–10–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–325 and 50–324]

Carolina Power & Light Company, Brunswick Steam Electric Plant, Units 1 and 2; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License No. DPR–71 and Facility Operating License No. DPR–62 issued to Carolina Power & Light Company (the licensee), for operation of the Brunswick Steam Electric Plant, Units 1 and 2, located in Brunswick County, North Carolina.

The proposed changes replace the existing requirement of Technical Specification (TS) 3.4.5, ''RCS [Reactor Coolant System] Leakage Detection Instrumentation,'' Required Action D.1, to enter Limiting Condition for Operation (LCO) 3.0.3 if required leakage detection systems are inoperable with the requirement to be in Mode 3 within 12 hours and Mode 4 within 36 hours.

The reason for the exigency is to fulfill the NRC's requirement for the request for exigent processing of the proposed amendments as indicated in NRC Inspection Manual Part 9900, ''Operations—Notices of Enforcement Discretion [NOEDs],'' following NRC's granting of a verbal NOED on May 12, 2005 (documented in a letter to the NRC on May 13, 2005).

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change replaces the existing requirement of TS 3.4.5, Required Action D.1 to enter LCO 3.0.3 if required leakage detection systems are inoperable with the requirement to be in Mode 3 within 12 hours and Mode 4 within 36 hours. This is accomplished by deleting Condition D and including the ''all required leakage detection systems inoperable'' statement in Condition C.

The proposed change does not involve physical changes to any plant structure, system, or component. As a result, no new failure modes of the RCS leakage detection systems are being introduced. Additionally, the RCS leakage detection systems have no impact on any initiating event frequency. Therefore, the proposed change cannot increase * * * the probability [of an accident] previously evaluated.

The consequences of a previously analyzed accident are dependent on the initial conditions assumed for the analysis, the behavior of the fuel during the analyzed accident, the availability and successful functioning of the equipment assumed to operate in response to the analyzed event, and the setpoints at which these actions are initiated. The RCS leakage detection systems do not perform an accident mitigating function. ECCS [emergency core cooling system], RPS [reactor protection system], and primary and secondary containment isolation actuations all occur based on high drywell pressure and/or low vessel water level. The proposed change has no impact on any setpoints or functions related to these actuations. Therefore, the proposed change cannot increase * * * the consequences [of an accident] previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change eliminates the unnecessarily restrictive shutdown requirements of entering LCO 3.0.3 when all TS required leakage detection systems are inoperable. No installed equipment is being operated in a different manner. There is no alteration to the parameters within which the plant is normally operated or in the setpoints that initiate protective or mitigative actions. As a result no new failure modes are being introduced. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change maintains the existing level of safety by imposing shutdown requirements that are as conservative as those currently imposed by TS 3.4.4 for actual RCS operational leakage in excess of TS requirements. The net effect of this change is to allow a unit to operate for five additional hours in Mode 1 with no operable TS required leakage detection systems, while exiting the Mode of Applicability for RCS leakage detection instrumentation one hour earlier (i.e., 36 hours to be in Mode 4 versus 37 hours per the existing TS 3.4.5, Required Action D.1). Elimination of the intermediate 7 hours to Mode 2 requirement, imposed by LCO 3.0.3, allows the unit to reach the Mode 3 from full power conditions in an orderly manner and without challenging plant safety systems. Therefore, the proposed change does not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or

by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner/requestor is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petitioner/requestor must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated May 17, 2005, which is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 7th day of June 2005. For The Nuclear Regulatory Commission.

Brenda L. Mozafari,

Senior Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–3050 Filed 6–10–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–333]

Entergy Nuclear Operations, Inc., James A. Fitzpatrick Nuclear Power Plant; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–59, issued to Entergy Nuclear Operations, Inc., (the licensee) for operation of the James A. FitzPatrick Nuclear Power Plant (JAFNPP) located in Oswego County, New York.

The proposed amendment would revise the Technical Specifications (TSs) related to the safety-related battery systems. The revision is based on TS Task Force (TSTF) Change Traveler TSTF–360, Revision 1, ''Direct Current (DC) Electrical Rewrite,'' and would revise TSs for inoperable battery chargers, provide alternative testing criteria for battery charger testing, and revise TSs for battery cell monitoring.

The licensee has requested that this proposed license amendment be processed per Title 10 of the Code of

Federal Regulations (10 CFR) Section 50.91(a)(6), due to exigent circumstances. The exigent circumstances are that spurious intermittent alarms have been received associated with a battery charger. If the battery charger should fail, trouble-shooting activities and maintenance on the battery charger will likely take longer than the TS completion time to restore operability in 8 hours. A temporary battery charger is available to maintain the battery in a fully-charged condition.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The DC Sources and Battery Cell Parameters are not initiators of any accident sequence analyzed in JAFNPP's Updated Final Safety Analysis Report (UFSAR). As such, the proposed changes do not involve a significant increase in the probability of an accident previously evaluated.

The initial conditions of the Design Basis Accident (DBA) and transient analyses in JAFNPP's UFSAR assume Engineered Safety Feature (ESF) systems are operable. The DC electrical power distribution system is designed to provide sufficient capacity, capability, redundancy, and reliability to ensure the availability of necessary power to ESF systems so that the fuel, reactor coolant system, and containment design limits are not exceeded. The operability of the DC electrical power distribution system in accordance with the proposed TS is consistent with the initial assumptions of the accident analyses and is based upon meeting the design basis of the plant. Therefore, the proposed changes do not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not involve any physical alteration of the JAFNPP. The temporary charger, when placed in service, will be powered from an emergency bus and have appropriate electrical isolation. Installed equipment is not being operated in a new or different manner. There are no setpoints at which protective or mitigative actions are initiated that are affected by the proposed changes. The operability of the DC electrical power distribution system in accordance with the proposed TS is consistent with the initial assumptions of the accident analyses and is based upon meeting the design basis of the plant. These proposed changes will not alter the manner in which equipment operation is initiated, nor will the functional demands on credited equipment be changed. No alteration in the procedures, which ensure the unit remains within analyzed limits, is proposed, and no change is being made to procedures relied upon to respond to an off-normal event. As such, no new failure modes are being introduced. The proposed changes do not alter assumptions made in the safety analyses. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The proposed changes will not adversely affect operation of plant equipment. These changes will not result in a change to the setpoints at which protective actions are initiated. Sufficient DC capacity to support operation of mitigation equipment is ensured. The changes associated with the new administrative TS program will ensure that the station batteries are maintained in a highly reliable manner. The equipment fed by the DC electrical power distribution system will continue to provide adequate power to safety-related loads in accordance with analyses assumptions. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or

by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated April 27, 2005, as supplemented June 3, 2005, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 7th day of June 2005.

For The Nuclear Regulatory Commission.

John P. Boska,

Sr. Project Manager, Section 1, Project Directorate 1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–3053 Filed 6–10–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 71–0122, Approval No. 0122, EA–01–164]

In the Matter of J. L. Shepherd & Associates, San Fernando, California; Order Modifying Confirmatory Order Relaxing Order (Effective Immediately)

I

J.L. Shepherd & Associates (JLS&A) was the holder of Quality Assurance (QA) Program Approval for Radioactive Material Packages No. 0122 (Approval No. 0122), issued by the U. S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 71, Subpart H. The approval was previously issued pursuant to the QA requirements of 10 CFR 71.101. QA activities authorized by Approval No. 0122 included: Design, procurement, fabrication, assembly, testing, modification, maintenance, repair, and use of transportation packages subject to the provisions of 10 CFR Part 71. Approval No. 0122 was originally issued January 17, 1980. In addition to having a QA program approved by the NRC to satisfy the provisions of 10 CFR Part 71, Subpart H, to transport or deliver for transport licensed material in a package, JLS&A was required by 10 CFR Part 71, Subpart C, to have and comply with the package's Certificate of

Compliance (CoC) issued by the NRC. Based on JLS&A failure to comply with 10 CFR Part 71, Subpart H, QA Program Approval No. 0122 was withdrawn, by the immediately effective NRC Order dated July 3, 2001 (66 FR 36603, July 12, 2001).

II

The NRC issued the July 3, 2001, Order (July 2001 Order) because the NRC lacked confidence that JLS&A would continue to implement the QA Program approved by the NRC (71–0122, Revision No. 5) in accordance with 10 CFR Part 71, Subpart H, in a manner that would assure the required preparation and use of transportation packages in full conformance with the terms and conditions of an NRC CoC and with 10 CFR Part 71.

On several occasions subsequent to the July 2001 Order, JLS&A has requested, based on its proposed Near-Term Corrective Action Plan (NTCAP), interim relief from the July 2001 Order to allow shipments in U.S. Department of Transportation (DOT) specification packaging designated as 20WC. In response to JLS&A's most recent request for interim relief, and based on a showing of good cause, the NRC issued a Confirmatory Order dated May 30, 2003, (Confirmatory Order Relaxing Order (68 FR 34010, June 6, 2003)), that allowed JLS&A to make shipments through June 1, 2005, and expanded JLS&A's shipment authorization to transportation packaging as authorized by JLS&A implementation of Revision 7 of the conditionally approved QA Program Approval No. 0122. The May 30, 2003, Confirmatory Order Relaxing Order, will expire June 1, 2005, thus withdrawing JLS&A's interim Quality Assurance Program Approval. However, by letter dated April 7, 2005, JLS&A requested the Commission to rescind the Order of July 3, 2001, that withdrew JLS&A's Quality Assurance Program Approval (Docket 71–0122, EA–01–164). The staff's review of JLS&A's request will not be finished by June 1, 2005, thus perhaps unnecessarily withdrawing JLS&A's Quality Assurance Program Approval. Extending the May 30, 2003, Confirmatory Order until July 1, 2005, will maintain JLS&A's Quality Assurance Program Approval until the staff's review of JLS&A's April 7, 2005, request is complete.

III

In a consent form signed on May 31, 2005, JLS&A agreed to all of the commitments described in Section IV below. The Licensee further agreed that this Order would be effective upon the issuance of this Order and that JLS&A waived its right to a hearing on this Order.

This Order only revises the expiration date of the May 30, 2003, Confirmatory Order Relaxing Order, and does not affect the other terms and conditions of the May 30, 2003, Confirmatory Order. Based on JLS&A's assurance that it will remain in compliance with the May 30, 2003, Confirmatory Order, which the Commission granted based on a showing of good cause, this Order is immediately effective upon issuance.

IV

Accordingly, pursuant to Sections 62, 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 71 and 110, *it is hereby ordered, effective immediately, that the May 30, 2003, Confirmatory Order Relaxing Order, is modified as provided:*

1. That the May 30, 2003, Confirmatory Order Relaxing Order, is revised to extend the expiration date of that Order from June 1, 2005, to July 1, 2005.

The Director, Office of Enforcement, or the Director, Office of Nuclear Materials Safety and Safeguards, may in writing, relax or rescind this Order upon a demonstration by the Licensee of good cause.

V

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011 and to JLS&A. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. A request for hearing shall not stay the immediate effectiveness of this Order.

Dated this 1st day of June, 2005.

For the Nuclear Regulatory Commission.

Michael R. Johnson,

Director, Office of Enforcement.

[FR Doc. E5–3059 Filed 6–10–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–14680]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for Merck & Co., Inc. in Rahway, NJ

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability.

FOR FURTHER INFORMATION CONTACT: Betsy Ullrich, Commercial & R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, telephone (610) 337–5040, fax (610) 337–5269; or by e-mail: *exu@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is issuing a license amendment to

Merck & Co., Inc. (Merck) for Materials License No. 29–00117–06, to authorize disposal of soil contaminated with hydrogen-3 (tritium) pursuant to 10 CFR 20.2002. NRC has prepared an Environmental Assessment (EA) in support of this 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. The amendment will be issued following the publication of this Notice.

II. EA Summary

The purpose of the action is to authorize the disposal of 61 cubic meters (80 cubic yards) of solid material (soil) containing 28 megabequerels (756 microcuries) total of tritium pursuant to 10 CFR 20.2002 to an industrial landfill. The licensee provided a dose analysis to justify the disposal. The licensee performed dose assessments of the disposal of this material and determined that such disposal would result in doses of much less than 0.1 millirem in a year to a member of the public.

The NRC staff has prepared an EA in support of the license amendment. The soil was excavated and surveyed prior to the licensee requesting the license amendment. The NRC staff has reviewed the information and performed dose assessments of the disposal of the soil to an industrial landfill, based on the information submitted by the licensee. Based on its review, the staff has determined that such disposal would result in doses of much less than 1 millirem in a year to members of the public. Therefore, the staff concluded that such disposal meets the requirements of 10 CFR Part 20.2002, and 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 dispose of 80 cubic yards of soil contaminated with 756 microcuries of tritium. The NRC staff has evaluated the licensee's request and has concluded that the completed action complies with the criteria of 10 CFR Part 20.2002. On the basis of the EA, the NRC has concluded that the environmental impacts from the action are expected to be insignificant and has determined not to prepare an environmental impact statement for the 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 Agencywide 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 the Environmental Assessment [ML051570224] and the Merck & Co, Inc. amendment request dated February 23, 2004 [ML040711197]. 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 6th day of June, 2005.

For the Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. E5–3058 Filed 6–10–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26906; 812–13197]

The Brazil Fund; Notice of Application

June 7, 2005.

AGENCY: Securities and Exchange Commission (''Commission'').

APPLICANT: The Brazil Fund, Inc. (the ''Fund'').

ACTION: Notice of application for an order under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicant seeks an order that would permit in-kind repurchases of shares of the Fund held by certain affiliated shareholders of the Fund.

FILING DATES: The application was filed on June 7, 2005.

Hearing or Notification of Hearing: An order granting the requested relief 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 June 28, 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, Securities and Exchange Commission, 100 F Street, NE., Washington, DC, 20549–0609. Applicant, Bruce Rosenblum, Esq., c/o Deutsche Investment Management Americas, Inc., 345 Park Avenue, New York, NY 10154.

FOR FURTHER INFORMATION CONTACT: Julia Kim Gilmer, Senior Counsel, at (202) 551–6871, or Janet M. Grossnickle, 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 at the Commission's Public Reference Desk, 100 F Street, NE., Washington, DC, 20549–0102 (tel. 202–551–5850).

Applicant's Representations

1. The Fund, a Maryland corporation, is registered under the Act as a closed-end management investment company. The Fund's investment objective is to provide long-term capital appreciation through investment in securities, primarily equity securities, of Brazilian companies. Applicant states that under normal circumstances it invests at least 70% of its net assets in Brazilian companies listed on one or more Brazilian stock exchanges or traded in over-the-counter markets organized by entities accredited by the Brazilian Securities Commission.[1] Shares of the Fund are listed and trade on the New York Stock Exchange. Deutsche Investment Management Americas Inc. (the ''Investment Manager'') is registered

[1] Applicant states that as of March 31, 2005, approximately 97.5% of its assets were invested in equity securities of Brazilian issuers, all of which were listed on Bolsa de Valores de Sao Paolo.

under the Investment Advisers Act of 1940 and serves as the investment manager to the Fund.

2. The Fund proposes to repurchase up to 50% of its outstanding shares at 98% of net asset value (''NAV'') on an in-kind basis with a *pro rata* distribution of the Fund's portfolio securities (with exceptions generally for odd lots, fractional shares, and cash items) (the ''Initial Repurchase Offer''). The Fund also proposes to conduct six subsequent semi-annual repurchase offers, also on an in-kind basis, each for 10% of the Fund's then outstanding shares at 98% of NAV (''Subsequent Repurchase Offers'' together with the Initial Repurchase Offer, the ''In-Kind Repurchase Offers'').[2] The In-Kind Repurchase Offers will be conducted in accordance with section 23(c)(2) of the Act and rule 13e–4 under the Securities Exchange Act of 1934.

3. Applicant states that the In-Kind Repurchase Offers are designed to accommodate the needs of shareholders who wish to participate in the In-Kind Repurchase Offers and long-term shareholders who would prefer to remain invested in a closed-end investment vehicle. Under the In-Kind Repurchase Offers, only participating shareholders will pay taxes on the gain on appreciated securities distributed in the In-Kind Repurchase Offers. Non-participating shareholders would avoid the imposition of a significant tax liability, which would occur if the Fund sold the appreciated securities to make payments in cash. Applicant further states that the In-Kind Repurchase Offers' in-kind payments will minimize market disruption, while allowing the Fund to avoid a cascade of distributions, required to preserve its tax status, that would reduce the size of the Fund drastically. Applicant requests relief to permit any shareholder of the Fund who is an ''affiliated person'' of the Fund solely by reason of owning, controlling, or holding with the power to vote, 5% or more of the Fund's shares (''Affiliated Shareholder'') to participate in the proposed In-Kind Repurchase Offers.

Applicant's Legal Analysis

1. Section 17(a) of the Act prohibits an affiliated person of a registered investment company, or any affiliated person of the person, acting as principal, from knowingly purchasing or selling any security or other property from or to the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include any person who directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person. Applicant states that to the extent that the In-Kind Repurchase Offers would constitute the purchase or sale of securities by an Affiliated Shareholder, the transactions would be prohibited by section 17(a). Accordingly, applicant requests an exemption from section 17(a) of the Act to the extent necessary to permit the participation of Affiliated Shareholders in the In-Kind Repurchase Offers.

2. Section 17(b) of the Act authorizes the Commission to exempt any transaction from the provisions of section 17(a) if the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of each registered investment company and with the general purposes of the Act. 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 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 policy and provisions of the Act.

3. Applicant asserts that the terms of the In-Kind Repurchase Offers meet the requirements of sections 17(b) and 6(c) of the Act. Applicant asserts that neither the Fund nor an Affiliated Shareholder has any choice as to the portfolio securities to be received as proceeds from the In-Kind Repurchase Offers. Instead, shareholders will receive their *pro rata* portion of each of the Fund's portfolio securities, excluding (a) securities which, if distributed, would have to be registered under the Securities Act of 1933 (''Securities Act''), and (b) securities issued by entities in countries which restrict or prohibit the holding of securities by non-residents other than through qualified investment vehicles, or whose distributions would otherwise be contrary to applicable local laws, rules or regulations, and (c) certain portfolio assets that involve the assumption of contractual obligations, require special trading facilities, or may only be traded with the counterparty to the transaction. Moreover, applicant states that the portfolio securities to be distributed in the In-Kind Repurchase Offer will be valued according to an objective, verifiable standard, and the In-Kind Repurchase Offers are consistent with the investment policies of the Fund. Applicant also believes that the In-Kind Repurchase Offers are consistent with the general purposes of the Act because the interests of all shareholders are equally protected and no Affiliated Shareholder would receive an advantage or special benefit not available to any other shareholder participating in the In-Kind Repurchase Offers.

Applicant's Conditions

Applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. Applicant will distribute to shareholders participating in the In-Kind Repurchase Offers an in-kind *pro rata* distribution of portfolio securities of applicant. The *pro rata* distribution will not include: (a) Securities that, if distributed, would be required to be registered under the Securities Act; (b) securities issued by entities in countries that restrict or prohibit the holdings of securities by non-residents other than through qualified investment vehicles, or whose distribution would otherwise be contrary to applicable local laws, rules or regulations; and (c) certain portfolio assets, such as derivative instruments or repurchase agreements, that involve the assumption of contractual obligations, require special trading facilities, or can only be traded with the counterparty to the transaction. Cash will be paid for that portion of applicant's assets represented by cash and cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements) and other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable). In addition, applicant will distribute cash in lieu of fractional shares and accruals on such securities. Applicant may round down the proportionate distribution of each portfolio security to the nearest round lot amount and will distribute the remaining odd lot in cash. Applicant may also distribute a higher *pro rata* percentage of other portfolio securities to represent such items.

2. The securities distributed to shareholders pursuant to the In-Kind Repurchase Offers will be limited to securities that are traded on a public securities market or for which quoted bid and asked prices are available.

3. The securities distributed to shareholders pursuant to the In-Kind Repurchase Offers will be valued in the same manner as they would be valued for purposes of computing applicant's

[2] Each Subsequent Repurchase Offer would be conducted only if the Fund's shares trade on the New York Stock Exchange at an average weekly discount from NAV greater than 5% during a 13-week measuring period ending the last day of the preceding half-year.

net asset value, which, in the case of securities traded on a public securities market for which quotations are available, is their last reported sales price on the exchange on which the securities are primarily traded or at the last sales price on a public securities market, or, if the securities are not listed on an exchange or a public securities market or if there is no such reported price, the average of the most recent bid and asked price (or, if no such asked price is available, the last quoted bid price).

4. Applicant will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any In-Kind Repurchase Offer occurs, the first two years in an easily accessible place, a written record of such In-Kind Repurchase Offer that includes the identity of each shareholder of record that participated in such In-Kind Repurchase Offer, whether that shareholder was an Affiliated Shareholder, a description of each security distributed, the terms of the distribution, and the information or materials upon which the valuation was made.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–3056 Filed 6–10–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of U.S. Windfarming, Inc.; Order of Suspension of Trading

June 9, 2005.

It appears to the Securities and Exchange Commission that the public interest and the protection of investors require a suspension of trading in the securities of U.S. Windfarming, Inc. (''Windfarming'') because of concerns that Windfarming may have unjustifiably relied on Rule 504 of Regulation D of the Securities Act of 1933 in conducting an unlawful distribution of its securities that failed to comply with the resale restrictions of Regulation D. Questions also have been raised regarding the following company disclosures: (1) Statements regarding the company's president's background that were posted on Windfarming's website; and (2) statements in press releases that remain posted on the company's website regarding financial projections and business agreements that Windfarming purportedly has with other entities. Windfarming, a company that has made no public filings with the Commission or the NASD, is quoted on the Pink Sheets under the ticker symbol USWF.PK.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EDT, June 9, 2005 through 11:59 p.m. EDT, on June 22, 2005.

By the Commission.

John G. Katz,

Secretary.

[FR Doc. 05–11713 Filed 6–9–05; 11:25 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51789; File No. SR–FICC–2005–09]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the Collection of Fees for Services Provided by Other Entities

June 6, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 3, 2005, Fixed Income Clearing Corporation (''FICC'') 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 primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend FICC's rules to allow FICC to collect fees for services provided by unregulated subsidiaries of The Depository Trust and Clearing Corporation (''DTCC'') and by other entities.

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

FICC is a subsidiary of DTCC. Members of FICC and their affiliates may from time to time utilize the services of DTCC subsidiaries that are not registered as clearing agencies with the Commission. Such subsidiaries include Global Asset Solutions LLC and DTCC Deriv/Serv LLC. In addition, members of FICC and their affiliates may utilize the services of other third parties. FICC has determined that it would be more efficient and less costly if the fees that members agree to pay for such services were collected by FICC rather than through independent billing mechanisms that would otherwise have to be established by each subsidiary of DTCC and third party that is not a registered clearing agency.

FICC's rules currently allow for fee collection arrangements with respect to collection of fees from members. The proposed rule change would further clarify this practice and would facilitate collection of fees with respect to affiliates of members.[3] FICC will enter into appropriate agreements with such subsidiaries and others regarding the collection of fees.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because FICC will implement the service in a manner whereby FICC will be able to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

[2] The Commission has modified parts of these statements.

[3] FICC currently has such fee collection arrangements with The Bond Market Association (''TMBA'') pursuant to specific rules provisions. FICC continues to collect fees on behalf of TBMA; however, pursuant to this filing, the existing rules provisions which govern the TBMA arrangement will be replaced with broader language intended to cover all such fee collection arrangements entered into by FICC.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change would have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments relating to the proposed rule change have not been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*), or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FICC–2005–09 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 20549–0609.

All submissions should refer to File Number SR–FICC–2005–09. 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 Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.ficc.com.* 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–FICC–2005–09 and should be submitted on or before July 5, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–3049 Filed 6–10–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51786; File No. SR–NASD–2005–064]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc. Notice of Filing of Proposed Rule Change Relating to the Publication of Any Decision Issued by the National Adjudicatory Council Pursuant to Rule 1015

June 6, 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 May 12, 2005, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend NASD Interpretative Material 8310–2 (''IM–8310–2'') to give NASD authority to release to the public, in unredacted form, information with respect to any decision issued by the National Adjudicatory Council (''NAC'') pursuant to NASD Rule 1015. The text of the proposed rule change is available on NASD's Web site (*http://www.nasd.com*), at NASD's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change will amend IM–8310–2 to give NASD authority to release to the public, in unredacted form, information with respect to any decision issued by the NAC pursuant to Rule 1015. Rule 1015 is part of the Rule 1010 Series governing membership proceedings. These proceedings involve both new member applications and applications for approval of a change in ownership, control, or business operations.

Background. The NAC reviews two types of membership decisions that are adverse to the applicants. Under Rule 1014, NASD's Department of Member Regulation (''Department'') determines whether an applicant meets all of the requisite standards for admission to NASD and serves the applicant with a written decision. Department decisions under Rule 1014 explain the reason for any restriction or, in some cases, denial. Under Rule 1017, the Department considers applications for approval of change in ownership, control, or business operations and renders a decision. Department decisions under Rule 1017 explain the basis for denying

a requested application in whole or in part.

Under Rule 1015, an aggrieved applicant may file a written request for NAC review of the Department's decision issued under Rules 1014 or 1017. Unlike disciplinary appeals conducted pursuant to the Rule 9300 Series, membership appeal hearings before the NAC are trial-level proceedings that usually involve the submission of new exhibits and testimony and are not limited to 30-minute appellate argument. The NAC may affirm, modify, or reverse the Department's decision or remand the membership proceeding with instructions. The NAC's decision will include a description of the Department's decision, including its rationale; a description of the principal issues raised; a summary of the evidence; a statement as to whether the Department's decision is affirmed, modified, or reversed; and a rationale for the decision that references the applicable standards. The NAC's decisions under Rule 1015 are subject to discretionary review by the NASD Board, which may affirm, modify, reverse, or remand the NAC's proposed decision. IM–8310–2 does not currently provide for the release of NAC membership application decisions.[3]

Proposed Rule Change. The proposed rule change would amend IM–8310–2 to give NASD authority to release to the public, information with respect to any decision issued by the NAC pursuant to Rule 1015, including decisions pertaining to new membership applications (Rule 1014) or continuing membership applications (Rule 1017). NASD proposes to release these decisions in unredacted form, except that the decisions would not routinely identify those persons who are not themselves under consideration or review as part of the membership application process. For example, the decisions would not routinely name shareholders of a closely held broker-dealer that is being sold when the decision evaluates the qualifications of the proposed buyers. NASD notes that, if a member appeals the NAC's adverse decision to the SEC, the SEC will make its decision in the matter available to the public, including on the SEC's Web site.

NASD believes that making these decisions available to the public would benefit both potential new members and members that are considering a change in ownership, control, or business operations. Access to these decisions would assist applicants in understanding the standards that must be met under Rule 1014 or 1017, as appropriate, and the manner in which such standards are applied, especially with respect to applicants that are denied membership. Applicants also would be better informed about the membership process and standards and may be deterred from pursing meritless appeals. NASD believes that public investors and persons who are potentially seeking NASD membership should have the opportunity to review the rationale behind the NAC's decisionmaking, including where the NAC denies membership to an applicant. In addition, publishing the NAC's decisions would benefit the NAC members who serve on the subcommittees that conduct the hearing in connection with applications for membership and change in ownership, control, or business operations because their decisions could cite to and build upon earlier NAC precedents.

NASD also believes that public investors will benefit from the availability of information about any limitations placed on members, where such limitations result from proceedings before the NAC. NASD believes that public investors also will benefit from the availability of NAC decisions that describe the factors that have been instrumental in the granting of membership or the expansion of business activities available to the public.

NASD will announce the effective date of the proposed rule change in a *Notice to Members* to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the *Notice to Members* announcing Commission approval. NASD will publish only those NAC decisions issued pursuant to Rule 1015 in which the appeal has been filed on or after the effective date of this proposed rule change.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of with Section 15A(b)(6) of the Act,[4] which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that amending IM–8310–2 to release to the public information with respect to any decision issued by the NAC under Rule 1015, in unredacted form, is in the interest of both member firms and the general public to be able to read these decisions to become better informed about NASD's membership process and standards and the manner in which such standards are applied.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will (A) by order approve such proposed rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File

[3] NASD currently makes the following decisions issued by the NAC available to the public under IM–8310–2 and publishes them on NASD's Web site:

- In unredacted form, any disciplinary decision imposing a suspension, cancellation or expulsion of a member; or suspension or revocation of the registration of an associated person; or suspension or barring of a member or person associated with a member; or imposition of monetary sanctions of $10,000 or more on a member or associated person;
- In redacted form, any disciplinary decision that does not meet the above requirements;
- In redacted form, decisions issued in eligibility proceedings governing the association of a statutorily disqualified person with a member.

[4] 15 U.S.C. 78*o*–3(b)(6).

Number SR–NASD–2005–064 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2005–064. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR–NASD–2005–064 and should be submitted on or before July 5, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–3055 Filed 6–10–05; 8:45 am]

BILLING CODE 8010–01–P

[5] 17 CFR 200.30–3(a)(12)

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51790; File No. SR–NYSE–2004–42]

Self-Regulatory Organizations; New York Stock Exchange, Inc; Order Approving Proposed Rule Change and Amendment No. 1 To Eliminate the Requirement That a Floor Official Approve Certain Transactions on the Exchange's Automated Bond System

June 6, 2005.

I. Introduction

On August 10, 2004, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to eliminate the requirement that an Exchange Floor Official approve transactions in certain bonds on the NYSE's Automated Bond System (''ABS'') that are made two points or more away from the last sale, or more than 30 days after the last sale. The NYSE filed Amendment No. 1 to the proposed rule change on March 30, 2005.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on May 2, 2005.[4] The Commission received one comment from the public supporting the proposed rule change.[5] This Order approves the proposed rule, as amended.

II. Description

The Exchange proposed to eliminate the requirement in NYSE Rule 86(g) that a Floor Official approve any transaction in ABS in non-convertible bonds that would occur at a price two or more points away from the most recent transaction in that bond or more than 30 days after the most recent transaction. The proposal also would eliminate the ability of a Floor Official to ''bid up'' or ''offer down''[6] an order submitted to ABS two or more points away from the last sale in a particular bond or more than 30 days following a sale of that bond before approving a transaction for such order.

The Exchange also proposed to codify in NYSE Rule 86(g) two features the NYSE represents have been programmed into ABS since its inception: (1) The acceptance of priced orders only; and (2) price confirmation, by the entering firm, of orders entered at a price two or more points away from the last sale price.

III. Comment Received

As stated above, the commenter supported the NYSE's proposal.[7] In sum, the commenter stated that he believed that NYSE Rule 86(g) has frustrated trading in ABS, and that he believed that the elimination of Floor Official approval would facilitate an increase in the volume and consistency in the execution of non-convertible bonds on ABS.

IV. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposal, as amended, is consistent with the provisions of Section 6(b)(5) of the Act,[9] which requires, among other

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, which replaced and superceded the original filing in its entirety, the NYSE supplemented its rationale for the proposal by, among other things, describing the process that a Floor Official follows when considering whether to approve a transaction that would occur at a price that is at least two points away or more than 30 days from the last transaction; recounting some of the history of bond trading on the NYSE; explaining that the Exchange has not found it necessary to re-instate the two-point / 30-day provision for convertible bonds since it eliminated its applicability to convertible bonds in 1998; and noting that Exchange Rule 86(g) requires all orders to be entered into ABS at a limit price, and that ABS automatically asks a user to reconfirm the price of an order that is entered at a price two or more points away from the last sale.

[4] *See* Securities Exchange Act Release No. 51613 (April 25, 2005), 70 FR 22736.

[5] *See* e-mail from Joseph P. Riveiro, Investec (US), Inc. to the Commission, dated May 8, 2005 (''Investec e-mail'')

[6] If, for example, an order is entered into ABS to buy 10 XYZ bonds at 93 when the last sale for XYZ occurred at 90, the Floor Official could determine that XYZ bond should be ''bid up'' at a decided price increment away from the limit order for a decided period of time, typically one ''point'' for one minute. The NYSE bond supervisor would then enter the bidding-up starting price, price increment, time increment, and final price into ABS, upon which a message appears on all ABS screens alerting subscribing firms that bidding up in XYZ has commenced. An ABS user could execute against that ''bid'' by entering an order to sell at 91 into the system. If, after one minute, the ''bid'' at 91 generated no interest among ABS users, the order would be bid at 92 for one minute. If that ''bid'' generated no interest, then the order would, after one minute, be bid at 93 or be matched (traded) at 93, depending on whether there was a contra-side order to sell at 93 in the ABS at that point in time. Telephone conversation between Fred Siesel, Consultant, NYSE, and Tim Fox, Attorney, Commission on April 18, 2005.

[7] *See* Investec E-mail *supra* note 5.

[8] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

things, that a national securities exchange's rules be designed, to prevent fraud and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and to perfect the mechanism of a free and open market and a national market system and; in general, to protect investors and the public interest. The Commission believes that the NYSE proposal, as amended, is designed to accomplish these ends by facilitating the efficient and timely execution of orders in non-convertible bonds submitted to ABS. The Commission believes that the proposed codification in NYSE Rule 86 of the existing practice that a subscriber firm confirm an order that is submitted to ABS at a price two or more points away from the last sale should minimize the risk that ABS will execute an order at a price that the user did not intend. The Commission further believes that the proposal to require that orders submitted to ABS be priced is appropriate because it reflects the existing practice on ABS, which the Commission believes promotes the price discovery process.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NYSE–2004–42), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–3057 Filed 6–10–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51788; File No. SR–PCX–2005–70]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Correct a Typographical Error in Its Schedule of Fees and Charges

June 6, 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 May 19, 2005, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the PCX. The Exchange has filed this proposal pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. On May 31, 2005, the Exchange filed an amendment to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to correct a typographical error in the Trade-Related Charges portion of its Schedule of Fees and Charges (''Schedule''). The text of the proposed rule change is available on the Exchange's Web site *(http://www.pacificex.com),* at the PCX's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to correct a typographical error in the Trade-Related Charges portion of the Schedule. On April 27, 2005, the Exchange submitted a rule proposal to eliminate the Market Maker incentive program and to reinstate the $0.21 per contract transaction fee for Market Makers.[6] The Exchange inadvertently deleted the footnote that relates to the transaction fee. The footnote states that the PCX will rebate the fee for PCX executions that result from principal acting as agent orders sent and executed at away market centers. The rebate will be based on the aggregate Market Maker transaction charge and the aggregate Market Maker comparison charge calculated at month-end. The footnote would apply to Market Maker transactions in general and, according to the PCX, was deleted in error with the elimination of the Market Maker incentive program.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(4) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become immediately effective pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and subparagraph (f)(2) of Rule 19b–4 thereunder,[10] in that it establishes or changes a due, fee or other charge imposed by the Exchange. 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,

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Partial Amendment dated May 31, 2005 (''Amendment No. 1''). Amendment No. 1 made minor, technical corrections to the discussion section and the rule text.

[6] *See* Securities Exchange Act Release No. 51672 (May 9, 2005), 70 FR 28347 (May 17, 2005) (SR–PCX–2005–62).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

or otherwise in furtherance of the purposes of the Act.[11]

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–PCX–2005–70 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 20549–0609.

All submissions should refer to File Number SR–PCX–2005–70. 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 Section. Copies of the filing also will be available for inspection and copying at the principal office of the PCX. 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–PCX–2005–70 and should be submitted on or before July 5, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–3051 Filed 6–10–05; 8:45 am]

BILLING CODE 8010–01–P

[11] The effective date of the original proposed rule change is May 19, 2005, and the effective date of the amendment is May 31, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on May 31, 2005, the date on which the Exchange submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51787; File No. SR–PCX–2005–65]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Exchange Fees and Charges

June 6, 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 May 2, 2005, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by PCX. PCX submitted Amendment No. 1 to the proposal on May 13, 2005.[3] The Exchange filed this proposal pursuant to Section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX proposes to amend its Schedule of Fees and Charges in order to modify the list of eligible strategies that apply to Option Strategy Executions. The text of the proposed rule change, as amended, is available on PCX's Web site (*http://www.pacificex.com*), at PCX's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 made a minor clarifying change to the proposal.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(2).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change, as amended, is to modify the list of strategies presently included in the fee that applies to Option Strategy Executions. The PCX proposes to add two strategies. The first is a strategy used to capture short stock interest. The ''short stock interest spread'' is defined as a spread that uses two deep in the money put options followed by the exercise of the resulting long position of the same class in order to establish a short stock interest arbitrage position. The second strategy is used when there is corporate merger activity in an underlying issue. A ''merger spread'' is defined as a transaction executed pursuant to a merger spread strategy involving the simultaneous purchase and sale of options of the same class and expiration date, but with different strike prices followed by the exercise of the resulting long option position. Merger Spreads are executed prior to the date that shareholders of record are required to elect their respective form of consideration, *i.e.* cash or stock. Because the referenced Options Strategy Transactions are generally executed by professionals whose profit margins are generally narrow, the Exchange proposes to cap the transaction fees associated with such executions at $1,000 per strategy execution with a monthly cap of $50,000 per initiating firm. The Exchange believes that by keeping fees low, the Exchange would be able to attract liquidity by accommodating these transactions.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[6]

[6] 15 U.S.C. 78f(b).

in general, and furthers the objectives of Section 6(b)(4) of the Act,[7] in particular, in that it provides for the equitable allocation of dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4 thereunder,[9] because it is concerned solely with the administration of the Exchange. 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, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2005–65 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 20549–0609.

All submissions should refer to File Number SR–PCX–2005–65. 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 Section, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–0609. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2005–65 and should be submitted on or before July 5, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–3052 Filed 6–10–05; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] The effective date of the original proposed rule change is May 2, 2005 and the effective date of the amendment is May 13, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on May 13, 2005, the date on which PCX submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Telesoft Partners II SBIC, L.P.

License No. 09/79–0432; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Telesoft Partners II SBIC, L.P., 1450 Fashion Island Blvd., Suite 610, San Mateo, CA 94404, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Telesoft Partners II SBIC, L.P. proposes to provide equity/debt security financing to Xpedion Design Systems, Inc. The financing is contemplated for working capital and general corporate purposes.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Telesoft Partners II QP, L.P., Telesoft Partners II, L.P., Telesoft Partners IA, L.P. and Telesoft NP Employee Fund, LLC, all Associates of Telesoft Partners II SBIC, L.P., own more than ten percent of Xpedion Design Systems, Inc.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Jaime Guzman-Fournier,

Associate Administrator for Investment.

[FR Doc. 05–11590 Filed 6–10–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5068]

Announcement of Meetings of the International Telecommunication Advisory Committee

SUMMARY: The International Telecommunication Advisory Committee announces a meeting of U.S. Study Group B on July 12, 2005, which will be held to prepare positions for the next meeting of the ITU–T Study Group 16. Members of the public will be admitted to the extent that seating is available, and may join in the discussions, subject to the instructions of the Chair.

The International Telecommunication Advisory Committee (ITAC) will meet on Tuesday, July 12, 2005, to prepare U.S. and company contributions for the ITU–T Study Group 16 meeting, which will take place July 26-August 5, 2005, in Geneva, Switzerland. The U.S. Study Group B meeting will be held at Communication Technologies, Inc. (COMTek) 14151 Newbrook Drive, Suite 400, Chantilly, VA 20151, telephone (703) 961–9080. Those planning to attend should provide their name and organization no later than July 5 to

Marcie Geissinger at *marcie.g@comcast.net* or at (303) 499–2145. Directions to the meeting location are available and conference bridge information (if any) may be obtained from Marcie Geissinger at *marcie.g@comcast.net.*

Dated: June 6, 2005.

Anne Jillson,

Foreign Affairs Officer, International Communications & Information Policy, Department of State.

[FR Doc. 05–11651 Filed 6–10–05; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–31]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 5, 2005.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–200X–XXXXX] by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on June 3, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2002–13734.

Petitioner: Midwest Airlines, Inc.

Section of 14 CFR Affected: 14 CFR 93.123.

Description of Relief Sought: To permit Midwest Airlines, Inc., the use of slot number 1497 at Ronald Reagan Washington National Airport (DCA) to augment its service from DCA to Kansas City, Missouri.

[FR Doc. 05–11587 Filed 6–10–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 2, 2005.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 13, 2005, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1581.

Regulation Project Number: REG–209485–86 Final.

Type of Review: Extension.

Title: Continuation Coverage Requirements Applicable to Group Health Plans.

Description: The statute and the regulations require group health plans to provide notices to individuals who are entitled to elect COBRA continuation coverage of their election rights. Individuals who wish to obtain the benefits provided under the statute are required to provide plans notices in the cases of divorce from the covered employee, a dependent child's ceasing to be a dependent under the terms of the plan, and disability. Most plans will require that elections of COBRA continuation coverage be made in writing. In cases where qualified beneficiaries are short by an insignificant amount in payment made to the plan, the regulations require the plan to notify the qualified beneficiary if the plan does not wish to treat the tendered payment as full payment. If a health care provider contacts a plan to confirm coverage of a qualified beneficiary, the regulations require that the plan disclose the qualified beneficiary's complete rights to coverage.

Respondents: Business or other for-profit, individuals or households, not-for-profit institutions.

Estimated Number of Respondents: 1,800,000.

Estimated Burden Hours Respondent: 14 minutes.

Estimated Total Reporting Burden: 404,640 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 05–11655 Filed 6–10–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 7, 2005.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 13, 2005, to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: New.

Form Number: None.

Type of Review: New collection.

Title: Questionnaire—Methanol Levels and Good Manufacturing Practices for Fruit Brandies.

Description: TTB, in conjunction with FDA, is reviewing the currently permitted level of methanol in fruit brandies. Information is being collected from fruit brandy producers to identify production practices that minimize levels of methanol in fruit brandies.

Respondents: Business of other for-profit.

Estimated Number of Respondents: 43.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: Other (one time).

Estimated Total Recordkeeping Burden: 92 hours.

Clearance Officer: William H. Foster, (202) 927–8210, Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G Street, NW., Washington, DC 20005.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 05–11656 Filed 6–10–05; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 7, 2005.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 13, 2005, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0152.

Form Number: IRS Form 3115.

Type of Review: Extension.

Title: Application for Change in Accounting Method.

Description: Form 3115 is used by taxpayers who wish to change their method of computing their taxable income. The form is used by the IRS to determine if electing taxpayers have met the requirements and are able to change to the method requested.

Respondents: Business or other for-profit, individuals or households, not-for-profit institutions, farms.

Estimated Number of Respondents/Recordkeepers: 25,000.

ESTIMATED BURDEN HOURS RESPONDENT/RECORDKEEPER

Form	Recordkeeping	Learning about the law or the form	Preparing and sending the form to the IRS
3115	38 hr., 29 min	19 hr., 54 min	23 hr., 48 min.
Schedule A	3 hr., 21 min.	1 hr., 51 min.	3 hr., 11 min.
Schedule B	1 hr., 25 min.	30 min.	33 min.
Schedule C	5 hr., 1 min.	45 min.	2 hr., 4 min.
Schedule D	27 hr., 30 min	1 hr., 59 min.	2 hr., 31 min.
Schedule E	3 hr., 49 min.	1 hr., 59 min.	2 hr., 8 min.

Frequency of Response: On occasion, quarterly, other (when needed).

Estimated Total Reporting/Recordkeeping Burden: 1,388,850 hours.

OMB Number: 1545–1633.

Regulation Project Number: REG–209121–89 Final.

Type of Review: Extension.

Title: Certain Asset Transfers to a Tax-Exempt Entity.

Description: The written representation requested from a tax-exempt entity in regulations section 1.337(d)–4(b)(1)(A) concerns its plans to use assets received from a taxable corporation in a taxable unrelated trade or business. The taxable corporation is not taxable on gain if the assets are used in a taxable unrelated trade or business.

Respondents: Business or other for-profit, not-for-profit institutions.

Estimated Number of Respondents: 25.

Estimated Burden Hours Respondent: 5 hours.

Frequency of Response: Other (once).

Estimated Total Reporting Burden: 125 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 05–11657 Filed 6–10–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, July 21, 2005.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 (toll-free), or 718–488–2085 (non toll-free).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be held Thursday, July 21, 2005 from 2 pm to 3 p.m. ET via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. For information or to confirm attendance, notification of intent to attend the meeting must be made with Audrey Y. Jenkins. Ms. Jenkins may be reached at 1–888–912–1227 or (718) 488–2085, send written comments to Audrey Y. Jenkins, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201 or post comments to the Web site: *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance.

The agenda will include various IRS issues.

Dated: June 3, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E5–3013 Filed 6–10–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, July 7, 2005 from 12 p.m.–1 p.m. e.t.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held Thursday, July 7, 2005, from 12 p.m. to 1 p.m. e.t. via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include: Various IRS issues.

Dated: June 3, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E5–3014 Filed 6–10–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Privacy Act of 1974; Systems of Records

AGENCY: United States Mint, Treasury.

ACTION: Notice of systems of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the U.S. Mint, Treasury, is publishing its Privacy Act systems of records.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) and the Office of Management and Budget (OMB), Circular No. A–130, the U.S. Mint has completed a review of its Privacy Act systems of records notices to identify changes that will more accurately describe these records.

The notices have been revised by the addition of a ''purpose(s)'' heading and the associated paragraph. Other revisions include changes under the headings ''Notification procedure,'' ''Record access procedures,'' and ''Contesting record procedures.'' The language under these headings has been updated to reflect the instructions found in 31 CFR part 1, subpart C, appendix H.

Systems Covered by This Notice

This notice covers all systems of records adopted by the U.S. Mint up to May 2, 2005. The systems notices are reprinted in their entirety following the Table of Contents.

Dated: June 2, 2005.

Nicholas Williams,

Deputy Assistant Secretary for Headquarters Operations.

Table of Contents

United States Mint

TREASURY/U.S. MINT .001

SYSTEM NAME:

Cash Receivable Accounting Information System—Treasury/United States Mint.

SYSTEM LOCATION:

(1) United States Mint, 801 9th Street, NW., Washington, DC 20220;

(2) United States Mint, 151 North Independence Mall East, Philadelphia, PA 19106;

(3) United States Mint, 320 West Colfax Avenue, Denver, CO 80204;

(4) United States Mint, 155 Hermann Street, San Francisco, CA 94102;

(5) United States Mint, West Point, NY 10996;

(6) United States Bullion Depository, Fort Knox, KY 40121.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and former employees of the United States Mint. Members of the public and Mint employees who have purchased numismatic items from Mint sales outlets.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Receivables due from Mint employees, former employees and general public for lost Government property, salary overpayments, and cash sales of over-the-counter numismatic items; and (2) Receivables due from Mint employees and former employees who have outstanding travel advances and/or salary advances, and/or leave advances (cash equivalents).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5537 and 31 U.S.C. 5111(a)(3).

PURPOSE(S):

The purpose of this system is to permit the U.S. Mint to track and record the creation and payments of money owed to the United States Mint.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose information to:

(1) Accounting offices, managers, supervisors and government officials pertaining to cash receivables and debts owed the Government;

(2) Appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license;

(3) A Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit;

(4) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a court-ordered subpoena, or in connection with criminal law proceedings;

(5) Foreign governments in accordance with formal or informal international agreements;

(6) A congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(7) The news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(8) Unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114;

(9) Third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents and electronic records.

RETRIEVABILITY:

Name or number substitute.

SAFEGUARDS:

Storage in filing cabinets with access by authorized accounting personnel.

RETENTION AND DISPOSAL:

General records control schedule, GAO rules and regulations, United States Mint Records Control Schedule. Records are destroyed in accordance with National Archives and Records Administration regulations.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Chief Financial Officer, United States Mint, 801 9th Street, NW., Washington, DC 20220;

(2) Financial Manager, United States Mint, 151 North Independence Mall East, Philadelphia, PA 19106;

(3) Financial Manager, United States Mint, 320 West Colfax Avenue, Denver, CO 80204;

(4) Financial Manager, United States Mint, 155 Hermann Street, San Francisco, CA 94102;

(5) Chief, Accounting Division, United States Mint, West Point, NY 10996;

(6) Administrative Officer, United States Bullion Depository, Fort Knox, KY 40121.

NOTIFICATION PROCEDURE:

Requests from individuals wishing to be notified if they are named in this system of records, or seeking access to any record contained in the system of records, or seeking to contest its content, should be addressed to the head of the organizational unit having immediate custody of the records (See ''System Manager(s)'' above). Inquiries may be made in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix H. Inquiries should be addressed to the following official: Disclosure Officer, United States Mint, 801 9th Street, NW., Washington, DC 20220.

The individual must submit a written request containing identification such as: (a) Employee identification; (b) Driver's license; (c) Other means of identification, including social security number and date of birth.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

U.S. Mint employees and appropriate agency officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/U.S. MINT .003

SYSTEM NAME:

Employee and Former Employee Travel and Training Accounting Information System—Treasury/United States Mint.

SYSTEM LOCATION:

(1) United States Mint, 801 9th Street, NW., Washington, DC 20220;

(2) United States Mint, 151 North Independence Mall East, Philadelphia, PA 19106;

(3) United States Mint, 320 West Colfax Avenue, Denver, CO 80204;

(4) United States Mint, 155 Hermann Street, San Francisco, CA 94102;

(5) United States Mint, West Point, NY 10996;

(6) United States Bullion Depository, Fort Knox, KY 40121.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and former employees of the United States Mint who have engaged in travel and training.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Schedule of Payments generated from the Electronic Certification System (ECS) with supporting documents such as: (a) SF 1012 Travel Voucher; (b) SF 1038 Application and Account for Advance of Funds; (2) Travel Authorities; (3) SF–182, Request, Authorization, Agreement and Certification of Training.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Chapters 41 and 57.

PURPOSE(S):

The purpose of this system is to permit the U.S. Mint to track and record the creation and payments of travel and training advances owed to the United States Mint.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose information to:

(1) Accounting offices, managers, supervisors and government officials pertaining to cash receivables and debts owed the Government;

(2) Appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license;

(3) A Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit;

(4) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a court-ordered subpoena, or in connection with criminal law proceedings;

(5) Foreign governments in accordance with formal or informal international agreements;

(6) A congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(7) The news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(8) Unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114;

(9) Third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents and electronic records.

RETRIEVABILITY:

Name or number substitute (social security number, authority number).

SAFEGUARDS:

Stored in filing cabinets with access by authorized accounting personnel.

RETENTION AND DISPOSAL:

General Records Control Schedule, GAO rules and regulations, United States Mint Records Control Schedule are destroyed in accordance with National Archives and Records Administration regulations.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Chief Financial Officer, United States Mint, 801 9th Street, NW., Washington, DC 20220;

(2) Financial Manager, United States Mint, 151 North Independence Mall East, Philadelphia, PA 19106;

(3) Financial Manager, United States Mint, 320 West Colfax Avenue, Denver, CO 80204;

(4) Financial Manager, United States Mint, 155 Hermann Street, San Francisco, CA 94102;

(5) Chief, Accounting Division, United States Mint, West Point, NY 10996;

(6) Administrative Officer, United States Bullion Depository, Fort Knox, KY 40121.

NOTIFICATION PROCEDURE:

Requests from individuals wishing to be notified if they are named in this system of records, or seeking access to any record contained in the system of records, or seeking to contest its content, should be addressed to the head of the organizational unit having immediate custody of the records (See ''System Manager(s)'' above). Inquiries may be made in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix H. Inquiries should be addressed to the following official: Disclosure Officer, United States Mint, 801 9th Street, NW., Washington, DC 20220.

The individual must submit a written request containing identification such as: (a) Employee identification; (b) Driver's license; (c) Other means of identification, including social security number and date of birth.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

United States Mint employees and appropriate agency officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/U.S. MINT .004

SYSTEM NAME:

Occupational Safety and Health, Accident and Injury Records, and Claims for Injuries or Damage Compensation Records—Treasury/United States Mint.

SYSTEM LOCATION:

(1) United States Mint, 801 9th Street, NW., Washington, DC 20220:

(2) United States Mint, 151 North Independence Mall East, Philadelphia, PA 19106:

(3) United States Mint, 320 West Colfax Avenue, Denver, CO 80204:

(4) United States Mint, 155 Hermann Street, San Francisco, CA 94102:

(5) United States Mint, West Point, NY 10996.

(6) United States Bullion Depository, Fort Knox, KY 40121.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

United States Mint employees, former employees and members of the public.

CATEGORIES OF RECORDS IN THE SYSTEM:

Accident/Injury/Illness Records; Motor Vehicle Accident Data; Claims against the Government, and Operators Training/Licensing.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Ch. 81; 29 U.S.C. 668; 29 CFR 1910; E.O. 12196, 28 U.S.C. 2680 *et seq*; 31 U.S.C. 3701 and 3721; and 31 CFR parts 3 and 4.

PURPOSE(S):

The purpose of this system is to permit the U.S. Mint to more effectively and efficiently process and manage claims, and to provide statistics that allow us to focus our resources in order to continually improve the safety of our workforce, work environment, and equipment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose information to:

(1) Appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license;

(2) A Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) A court, magistrate, or administrative tribunal in the course of presenting evidence, including

disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a court-ordered subpoena, or in connection with criminal law proceedings;

(4) Foreign governments in accordance with formal or informal international agreements;

(5) A congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(6) The news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(7) Third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(8) Physicians providing medical services or advice to Mint management and/or employees, or to private physicians of Mint employees, for the purpose of assisting in making medical diagnoses or treatment.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents and electronic records.

RETRIEVABILITY:

By name, social security number, date or location.

SAFEGUARDS:

Locked file cabinets available to authorized personnel only, password required.

RETENTION AND DISPOSAL:

Records are retained in accordance with General Records Control Schedules; DOL, OSHA; EPA; and United States Mint Records Control Schedules; are destroyed in accordance with National Archives and Records Administration rules and regulations.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Assistant Director for Human Resources, Associate Director for Protection, Safety Officer, Treasury Department, United States Mint, 801 9th Street, NW., Washington, DC 20220;

(2) Human Resources Officer and Safety Officer, United States Mint, 151 North Independence Mall East, Philadelphia, PA 19106;

(3) Human Resources Officer, United States Mint, 320 West Colfax Avenue, Denver, CO 80204;

(4) Human Resources Officer and Safety Officer, United States Mint, 155 Hermann Street, San Francisco, CA 94102;

(5) Administrative Officer, United States Mint, West Point, NY 10996;

(6) Administrative Officer, United States Bullion Depository, Fort Knox, KY 40121.

NOTIFICATION PROCEDURE:

Requests from individuals wishing to be notified if they are named in this system of records, or seeking access to any record contained in the system of records, or seeking to contest its content, should be addressed to the head of the organizational unit having immediate custody of the records (See ''System Manager(s)'' above). Inquiries may be made in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix H. Inquiries should be addressed to the following official: Disclosure Officer, United States Mint, 801 9th Street, NW., Washington, DC 20220.

The individual must submit a written request containing identification such as: (a) Employee identification; (b) Driver's license; (c) Other means of identification, including social security number and date of birth.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Employees, supervisors, medical staff, general public, and visitors to the facilities of the United States Mint.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/U.S. MINT .005

SYSTEM NAME:

Employee—Supervisor Performance Evaluation, Counseling and Time and Attendance Records—Treasury/United States Mint.

SYSTEM LOCATION:

(1) United States Mint, 155 Hermann Street, San Francisco, CA 94102;

(2) United States Mint, 320 West Colfax Avenue, Denver, CO 80204;

(3) United States Mint, 801 9th Street, NW., Washington, DC 20220;

(4) United States Mint, 151 North Independence Mall East, Philadelphia, PA 19106;

(5) United States Mint, West Point, NY;

(6) United States Bullion Depository, Fort Knox, KY 40121.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

United States Mint employees and former employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information necessary for managers and supervisors to effectively carry out supervisory responsibilities. Included are such records as: copies of personnel actions, performance appraisal including production and control, disciplinary actions, overtime reports, tardiness reports, work assignments, training reports, applications for employment, home addresses, leave reports, employee awards. (Supervisors maintain varying combinations of the above records. Some supervisors may maintain all or none of the above records depending upon the nature and size of the operation or organization and the number of individuals supervised.)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and FPM Supplement 990—1, Section 3.

PURPOSE(S):

The purpose of this system is to permit the U.S. Mint to: maintain performance records used to support awards, promotions, performance-based actions, training and other personnel actions, and to track and evaluate performance based upon the accomplishments of each employee; and to accurately calculate employee leave accruals, track usage, compensate separating employees with lump sum entitlements, and to bill employees who owe payment for leave taken in excess of their leave balance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose information to:

(1) Appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license;

(2) A Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a court-ordered subpoena, or in connection with criminal law proceedings;

(4) Foreign governments in accordance with formal or informal international agreements;

(5) A congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(6) The news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(7) Third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents maintained in folders and electronic records.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Stored in file cabinets and desks of supervisors.

RETENTION AND DISPOSAL:

Retained as long as employee is under their supervision.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Associate and Assistant Directors and Director's Staff, United States Mint, 801 9th Street, NW., Washington, DC 20220;

(2) Plant Manager, United States Mint, 151 North Independence Mall East, Philadelphia, PA 19106;

(3) Plant Manager, United States Mint, 320 West Colfax Avenue, Denver, CO 80204;

(4) Plant Manager, United States Mint, 155 Hermann Street, San Francisco, CA 94102;

(5) Plant Manager, United States Mint, West Point, NY 10996;

(6) Officer-in-Charge, United States Bullion Depository, Fort Knox, KY 40121.

NOTIFICATION PROCEDURE:

Requests from individuals wishing to be notified if they are named in this system of records, or seeking access to any record contained in the system of records, or seeking to contest its content, should be addressed to the head of the organizational unit having immediate custody of the records (See ''System Manager(s)'' above). Inquiries may be made in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix H. Inquiries should be addressed to the following official: Disclosure Officer, United States Mint, 801 9th Street, NW., Washington, DC 20220.

The individual must submit a written request containing identification such as an employee identification and or driver's license.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Employees, previous employers, and appropriate agency officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/U.S. MINT .007

SYSTEM NAME:

General Correspondence—Treasury/United States Mint.

SYSTEM LOCATION:

United States Mint, 801 9th Street, NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the public, Members of Congress, Mint officials and officials from other Federal agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incoming correspondence and replies pertaining to the mission, function and operation of the United States Mint.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 5131 and 5132.

PURPOSE(S):

The purpose of this system is to permit the U.S. Mint to respond effectively and in a timely manner to the correspondence that the agency receives on many issues from its various stakeholders, including Members of Congress and the general public.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose information to:

(1) Appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license;

(2) A Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a court-ordered subpoena, or in connection with criminal law proceedings;

(4) Foreign governments in accordance with formal or informal international agreements;

(5) A congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(6) The news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(7) Third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents and electronic records.

RETRIEVABILITY:

By name (limited retrievability by subject and/or control number).

SAFEGUARDS:

Maintained in limited access area available only to appropriate agency officials.

RETENTION AND DISPOSAL:

In accordance with the National Archives and Records Administration's General Records Control Schedule and the United States Mint Records Control Schedule. Destroyed in accordance with National Archives and Records Administration regulation.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Executive Secretariat, United States Mint, 801 9th Street, NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Requests from individuals wishing to be notified if they are named in this system of records, or seeking access to any record contained in the system of records, or seeking to contest its content, should be addressed to the head of the organizational unit having immediate custody of the records (See ''System Manager(s)'' above). Inquiries may be made in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix H. Inquiries should be addressed to the following official: Disclosure Officer, United States Mint,

801 9th Street, NW., Washington, DC 20220.

The individual must submit a written request containing his or her name.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

The general public, Members of Congress and Federal officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/U.S. MINT .008

SYSTEM NAME:

Employee Background Investigations Files—Treasury/United States Mint.

SYSTEM LOCATION:

United States Mint, 801 9th Street, NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Mint employees and members of the public suspected of criminal misconduct against the United States Mint.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of individual, location of Mint facility, and reports by security personnel of the U.S. Mint Police.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 18 U.S.C.

PURPOSE(S):

The purpose of this system is to permit the U.S. Mint to collect and maintain background investigation records on potential applicants, and current Mint employees and contractors for issuance of security clearances, access to Mint facilities or other administrative reasons.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

These records may be used to disclose information to:

(1) Appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license;

(2) A Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a court-ordered subpoena, or in connection with criminal law proceedings;

(4) Foreign governments in accordance with formal or informal international agreements;

(5) A congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(6) The news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(7) Third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Files are kept in a combination locked file cabinet in an area accessible to authorized agency officials.

RETENTION AND DISPOSAL:

Retained in accordance with United States Mint Records Control Schedule; are destroyed in accordance with National Archives and Records Administration rules and regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Protection, United States Mint, 801 9th Street, NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Requests from individuals wishing to be notified if they are named in this system of records, or seeking access to any record contained in the system of records, or seeking to contest its content, should be addressed to the head of the organizational unit having immediate custody of the records (See ''System Manager(s)'' above). Inquiries may be made in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix H. Inquiries should be addressed to the following official: Disclosure Officer, United States Mint, 801 9th Street, NW., Washington, DC 20220.

The individual must submit a written request containing identification such as: (a) Employee identification; (b) Driver's license; (c) Other means of identification, including social security number and date of birth.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

United States Mint and other law enforcement officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

As authorized by 5 U.S.C. 552a (k)(2); this system is exempt from the following provisions, subsections (c)(3), (d), (e)(1); (e)(4) (G), (H), and (I) and (f) of 5 U.S.C. 552a.

TREASURY/U.S. MINT .009

SYSTEM NAME:

Mail-order and Catalogue Sales System (MACS), Customer Mailing List, Order Processing Record for Coin Sets, Medals and Numismatic Items, and records of undelivered orders, product descriptions, availability and inventory-Treasury/United States Mint.

SYSTEM LOCATION:

United States Mint, 801 9th Street, NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the public.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, addresses, order history of customers purchasing numismatic items and of individuals who wish to receive notification of numismatic offerings by the Mint.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 5111, 5112, 5132 and 31 CFR part 92.

PURPOSE(S):

The purpose of this system is to permit the U.S. Mint to: Maintain a mailing list of customers to provide continuous communication about existing and upcoming numismatic product offerings and activities; record and maintain records of customer and order information and to capture orders through each stage of the order life cycle; research and resolve orders that were not successfully delivered to customers; and maintain a list of its products and to monitor and maintain product inventory levels to meet customer demand while remaining within legislatively-mandated mintage limits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose information to:

(1) Accounting offices, managers, supervisors and government officials pertaining to cash receivables and debts owed the Government;

(2) Appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license;

(3) A Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit;

(4) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a court-ordered subpoena, or in connection with criminal law proceedings;

(5) Foreign governments in accordance with formal or informal international agreements;

(6) A congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(7) The news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(8) Third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents and electronic records.

RETRIEVABILITY:

Name, customer number or order number.

SAFEGUARDS:

CRT, password protection; only designated persons may request computer generated reports. Access to any information pertaining to any individual is limited to only those individuals requiring the information to accommodate handling of transactions with the customers. Separation of functions; source documents maintained in one division and programming systems in another.

RETENTION AND DISPOSAL:

In accordance with the National Archives and Records Administration General Records Control Schedule and the United States Mint Records Control Schedule; are destroyed in accordance with National Archives and Records Administration regulations. Customer names and addresses are maintained as long as they are active.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director for Sales and Marketing, United States Mint, 801 9th Street, NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Requests from individuals wishing to be notified if they are named in this system of records, or seeking access to any record contained in the system of records, or seeking to contest its content, should be addressed to the head of the organizational unit having immediate custody of the records (See ''System Manager(s)'' above). Inquiries may be made in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix H. Inquiries should be addressed to the following official: Disclosure Officer, United States Mint, 801 9th Street, NW., Washington, DC 20220.

The individual must submit a written request containing the order number as provided on the order card or copy of both sides of canceled check; customer number which appears on pre-printed order cards or on face of check.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Members of the public and appropriate government officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/U.S. Mint .012

SYSTEM NAME:

Grievances. Union/Agency Negotiated Grievances; Adverse Performance Based Personnel Actions; Discrimination Complaints; Third Party Actions—Treasury/United States Mint.

SYSTEM LOCATION:

(1) United States Mint, 801 9th Street, NW., Washington, DC 20220;

(2) United States Mint, 151 North Independence Mall East, Philadelphia, PA 19106;

(3) United States Mint, 320 West Colfax Avenue, Denver, CO 80204;

(4) United States Mint, 155 Hermann Street, San Francisco, CA 94102;

(5) United States Mint, West Point, NY 10996.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and former employees of the United States Mint.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information or documents relating to union or agency grievances filed under provisions of negotiated grievance procedures and employee grievances filed under the provisions of administrative grievance procedures; such grievances may relate to adverse actions, performance-based actions and other personnel matters, and include the decisions of third parties where applicable. The system also includes records relating to discrimination complaint procedures, including decisions of appropriate third parties where applicable.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7701 and 7702; 5 U.S.C. Ch. 75; and 5 U.S.C. Ch. 71. Executive Orders 11491, 11616, 11636, 11838, 11901, 12027, 12107; 29 CFR 1613; negotiated agreements between the United States Mint and exclusively recognized labor unions.

PURPOSE(S):

The purpose of this system is to permit the U.S. Mint to: support actions fall under Title 5, United States Code (U.S.C.), Chapter 43; track and maintain discrimination complaints; and enforce judgments ordered, and to maintain historical reference to ensure consistency of all personnel actions that may be subject to third party review.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose information to:

(1) Appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license;

(2) A Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or

the bureau's hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a court-ordered subpoena, or in connection with criminal law proceedings;

(4) A congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) The news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(6) Unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114;

(7) Third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents and electronic records.

RETRIEVABILITY:

These records are filed by the names of the individuals on whom they are maintained or by the subject of the action.

SAFEGUARDS:

Access to and use of these records are limited to those agency officials whose official duties require such access.

RETENTION AND DISPOSAL:

Retained in accordance with the United States Mint Records Control Schedules; are destroyed in accordance with National Archives and Records Administration rules and regulations.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Assistant Director for Human Resources, United States Mint, Department of the Treasury, 801 9th Street, NW., Washington, DC 20220.

(2) Human Resources Officer, United States Mint, 151 North Independence Mall East, Philadelphia, PA 19106.

(3) Human Resources Officer, United States Mint, 320 West Colfax Avenue, Denver, CO 80204.

(4) Human Resources Officer, United States Mint, 155 Hermann Street, San Francisco, CA 94102.

(5) Human Resources Officer, United States Mint, West Point, NY 10996.

NOTIFICATION PROCEDURE:

Individuals who have filed a grievance, appeal, or complaint about a decision or determination made by an agency or about conditions existing in an agency already have been provided a copy of the record. The contest, amendment, or correction of a record is permitted during the prosecution of the action to whom the record pertains. However, after a case has been closed requests from individuals wishing to be notified if they are named in this system of records, or seeking access to any record contained in the system of records, or seeking to contest its content, should be addressed to the head of the organizational unit having immediate custody of the records (See ''System Manager(s)'' above).

Inquiries may be made in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix H. Inquiries should be addressed to the following official: Disclosure Officer, United States Mint, 801 9th Street, NW., Washington, DC 20220.

The individual must submit a written request with information sufficient to verify the identity of the requester such as full name, date of birth, a brief description of the grievance and the approximate date of submission.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

The sources of these records are as follows: (a) Individual to whom the record pertains; (b) Agency officials; (c) Affidavits or statements from employee(s); (d) Testimonies of witnesses; (e) Official documents and correspondence relating to the grievance.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–11636 Filed 6–10–05; 8:45 am]

BILLING CODE 4810–37–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0519]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine locality pay rates for nurses at VA facilities.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 12, 2005.

ADDRESSES: Submit written comments on the collection of information to Ann W. Bickoff (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *ann.bickoff@hq.med.va.gov.* Please refer to ''OMB Control No. 2900–0519'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann W. Bickoff at (202) 273–8310 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Locality Pay System for Nurses and Other Health Care Personnel, VA Form 10–0132.

OMB Control Number: 2900–0519.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 10–0132 is used to collect data from the Bureau of Labor

Statistics or other third party industry surveys to determine locality pay system for certain health care personnel. VA medical facility Directors use the data collected to determine the appropriate pay scale for registered nurses, nurse anesthetists, and other health care personnel.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 338 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 450.

By direction of the Secretary.

Dated: June 3, 2005.

Cindy Stewart,

Program Analyst, Records Management Service.

[FR Doc. E5–3047 Filed 6–10–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Office of Research and Development; Government Owned Invention Available for Licensing

AGENCY: Office of Research and Development, Department of Veterans Affairs.

ACTION: Notice of Government owned invention available for licensing.

SUMMARY: The invention listed below is owned by the U.S. Government as represented by the Department of Veterans Affairs (VA), and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 or Cooperative Research and Development Agreements (CRADA) Collaboration under 15 U.S.C. 3710a to achieve expeditious commercialization of results of Federally-funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on the invention may be obtained by writing to: Saleem J. Sheredos, Department of Veterans Affairs, Acting Director Technology Transfer Program, Office of Research and Development, 810 Vermont Avenue, NW., Washington, DC 20420; fax: (410) 962–2141; e-mail at: *saleem@vard.org.* Any request for information should include the Number and Title for the relevant invention as indicated below. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The invention available for licensing is: US Provisional Patent Application No. 60/555,625 ''Cardioprotective Effect of Recombinant Human Erythropoietin.''

Dated: June 7, 2005.

R. James Nicholson,

Secretary, Department of Veterans Affairs.

[FR Doc. E5–3045 Filed 6–10–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974, Addition of Routine Use to System of Records Compensation, Pension, Education and Rehabilitation Records—VA

AGENCY: Department of Veterans Affairs.

ACTION: Notice; addition of routine use.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e)(4), notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records ''VA Compensation, Pension, Education and Rehabilitation Records—VA'' (58VA21/22) by adding a new routine use to the system to disclose identifying information on VA beneficiaries who have been adjudicated incompetent to the Attorney General or his/her designee for entry into the National Instant Criminal Background Check System (NICS).

DATES: If no public comment is received during the 30-day review period allowed for public comment, or unless otherwise published in the **Federal Register** by VA, the amended system of records is effective July 13, 2005.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed amended routine use statement to the Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or fax to (202) 273–9026; or e-mail to *VAregulations@mail.va.gov.* All relevant material received before July 13, 2005, will be considered. All written comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Pamela C. Liverman, Consultant, Compensation and Pension Service, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 273–7228.

SUPPLEMENTARY INFORMATION: The Brady Handgun Violence Prevention Act, Pub. L. 103–159, mandated the establishment of the National Instant Criminal Background Check System (NICS). The Brady Act authorizes the Attorney General to secure information from Federal agencies on seven categories of persons who are ineligible to receive firearms under the Criminal Code, 18 U.S.C. 922(g) and (n), for entry into the NICS. The only relevant category for purposes of this routine use is ''persons adjudicated as mentally incompetent.'' The Brady Act requires Federal agencies to furnish the information on these individuals to NICS upon request of the Attorney General. VA proposes to add a new routine use to 58VA21/22 under which to disclose identifying information on VA beneficiaries who have been adjudicated incompetent under 38 CFR 3.353 to the Attorney General or his/her designee for entry into the NICS. VA has determined that the release of information for this purpose is appropriate and necessary because the Brady Act requires VA to furnish such information to the NICS after receiving a request from the Attorney General.

An altered system of records report and a copy of the revised system notice have been sent to the House of Representatives Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB), as required by 5 U.S.C. 552a(r) and guidelines issued by OMB (65 FR 77677, December 12, 2000).

The proposed new routine use number 64 will be added to the system of records entitled ''VA Compensation, Pension, Education and Rehabilitation Records—VA'' (58VA21/22), as published at 41 FR 924 (March 3, 1976), and last amended at 66 FR 47725 (September 13, 2001), with other amendments as cited therein.

Approved: June 7, 2005.

R. James Nicholson,

Secretary of Veterans Affairs.

Notice of Amendment to System of Records

The system identified as 58VA21/22 ''Compensation, Pension, Education, and Rehabilitation Records,'' published at 41 FR 924 (March 3, 1976), and last amended at 66 FR 47725 (September 13, 2001), with other amendments as cited therein, is revised to add a new routine use number 64 as follows:

58VA21/22

SYSTEM NAME:

Compensation, Pension, Education and Rehabilitation Records-VA.

* * * * *

64. The name and address of a VA beneficiary, and other information as is reasonably necessary to identify such beneficiary, who has been adjudicated as incompetent under 38 CFR 3.353, may be provided to the Attorney General of the United States or his/her designee, for use by the Department of Justice in the National Instant Criminal Background Check System (NICS) mandated by the Brady Handgun Violence Prevention Act, Pub. L. 103–159.

* * * * *

[FR Doc. E5–3046 Filed 6–10–05; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 70, No. 112

Monday, June 13, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–244–AD; Amendment 39–14116; AD 2005–11–14]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 50 and 900 Series Airplanes, and Model Falcon 2000 and 900EX Series Airplanes

Correction

In rule document 05–11052 beginning on page 33340 in the issue of Wednesday, June 8, 2005, make the following correction:

§39.13 [Corrected]

On page 33342, in §39.13, in the third column, after amendatory instruction 2., in the next line, ''**2005-11-140**'' should read ''**2005-11-14**''.

[FR Doc. C5–11052 Filed 6–10–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
June 13, 2005

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 35

Standardization of Small Generator Interconnection Agreements and Procedures; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM02–12–000; Order No. 2006; 111 FERC 61,220]

Standardization of Small Generator Interconnection Agreements and Procedures

Issued: May 12, 2005

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations under the Federal Power Act to require public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce to amend their open access transmission tariffs to include standard generator interconnection procedures and an agreement that the Commission is adopting in this order and to provide interconnection service to devices used for the production of electricity having a capacity of no more than 20 megawatts. A non-public utility that seeks voluntary compliance with the reciprocity condition of an open access transmission tariff may satisfy this condition by adopting these procedures and agreement.

DATES: *Effective Date:* This Final Rule will become effective August 12, 2005.

FOR FURTHER INFORMATION CONTACT:

Kumar Agarwal (Technical Information), Office of Market, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8923.

Bruce Poole (Technical Information), Office of Market, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8468.

Kirk Randall (Technical Information), Office of Market, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8092.

Patrick Rooney (Technical Information), Office of Market, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–6205.

Abraham Silverman (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–6444.

SUPPLEMENTARY INFORMATION:

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

I. Introduction

1. This Final Rule requires all public utilities [1] to adopt standard rules for interconnecting new sources of electricity no larger than 20 megawatts (MW). It continues the process begun in Order No. 2003 of standardizing the terms and conditions of interconnection service for Interconnection Customers of all sizes.[2] It will reduce interconnection time and costs for Interconnection Customers and Transmission Providers,[3] preserve reliability, increase energy supply, lower wholesale prices for customers by increasing the number and types of new generation that will compete in the wholesale electricity market, facilitate development of non-polluting alternative energy sources, and help remedy undue discrimination, as sections 205 and 206 of the FPA require.[4] Public utilities must amend [5] their open access transmission tariffs (OATTs) to include a Small Generator Interconnection Procedures document (SGIP—Appendix E to this Preamble) and a Small Generator Interconnection Agreement (SGIA—Appendix F to this Preamble).

2. The SGIP contains the technical procedures the Interconnection Customer and Transmission Provider (the Parties) must follow once the Interconnection Customer requests interconnection of its Small Generating Facility. It provides three ways to evaluate the Interconnection Request. They are the default Study Process that could be used by any Small Generating Facility, and two procedures that use technical screens to evaluate proposed interconnections: (1) The Fast Track Process for a certified Small Generating Facility no larger than 2 MW [6] and (2) the 10 kW Inverter Process for a certified inverter-based Small Generating Facility no larger than 10 kW.[7] All three are designed to ensure that the proposed interconnection will not endanger the safety and reliability of the Transmission Provider's Transmission System.

3. The SGIA contains contractual provisions appropriate for the interconnection of a Small Generating Facility, including provisions for the payment for modifications made to the Transmission Provider's Transmission System to accommodate the interconnection. The SGIA is signed by the Parties after they have successfully completed the evaluation of a proposed interconnection under the SGIP Study Process or Fast Track Process. The SGIA

[1] For purposes of this Final Rule, a public utility is a utility that owns, controls, or operates facilities used for transmitting electric energy in interstate commerce, as defined by the Federal Power Act (FPA). 16 U.S.C. 824(e) (2000). A non-public utility that seeks voluntary compliance with the reciprocity condition of an open access transmission tariff may satisfy that condition by adopting these procedures and agreement.

[2] Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, 68 FR 49845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003) (Order No. 2003), *order on reh'g,* Order No. 2003–A, 69 FR 15932 (Mar. 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004) (Order No. 2003–A), *order on reh'g,* Order No. 2003–B, 70 FR 265 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2005), *reh'g pending* (Order No. 2003–B). *See also* Notice Clarifying Compliance Procedures, 106 FERC ¶ 61,009 (2004). We refer to the large generator interconnection rulemaking as Order No. 2003 throughout this document. The Order No. 2003 Large Generator Interconnection Agreement and Large Generator Interconnection Procedures, as amended by Order Nos. 2003–A and 2003–B, are referred to in this Final Rule as the LGIA and the LGIP, respectively.

[3] Capitalized terms used in this Final Rule have the meanings specified in the Glossaries of Terms or the text of the Small Generator Interconnection Procedures (SGIP) or the Small Generator Interconnection Agreement (SGIA). Small Generating Facility means the device for which the Interconnection Customer has requested interconnection. The owner of the Small Generating Facility is the Interconnection Customer. The utility entity with which the Small Generating Facility is interconnecting is the Transmission Provider. A Small Generating Facility is a device used for the production of electricity having a capacity of no more than 20 MW. The interconnection process formally begins with the Interconnection Customer submitting an application for interconnection, called an Interconnection Request, to the Transmission Provider.

We are omitting from the SGIP and SGIA glossaries terms that are defined through their use in the documents themselves or are in such common use in the industry that a definition is unnecessary. Many terms that were capitalized in the Small Generator Interconnection Notice of Proposed Rulemaking are therefore not capitalized in this Preamble, SGIP, and SGIA.

The documents put forward in the Small Generator Interconnection NOPR are called the ''Proposed SGIP'' and the ''Proposed SGIA'' in this Preamble. The documents that are being adopted in this Final Rule for inclusion in a Transmission Provider's OATT are called simply the SGIP and SGIA. Provisions of the SGIP are referred to as ''sections'' and provisions of the SGIA are referred to as ''articles.''

[4] 16 U.S.C. 824d and 824e (2000).

[5] Compliance procedures are discussed in Part II.I, below.

[6] A Small Generating Facility equipment package is considered certified if it has been submitted, tested, and listed by a nationally recognized testing and certification laboratory. The Small Generator Interconnection NOPR used the term ''precertified'' to describe such a facility. We adopt in this Final Rule the term ''certified'' to be consistent with industry usage. To avoid further confusion, we also use ''certified'' when describing the Small Generator Interconnection NOPR. *See* the SGIP, especially Attachments 3 and 4.

[7] An inverter is a device that converts the direct current voltage and current of a DC generator to alternating voltage and current. For example, the output of a solar panel is direct current. The solar panel's output must be converted by an inverter to alternating current before it can be interconnected with a utility's alternating current electric system.

does not apply to requests to interconnect submitted under the 10 kW Inverter Process, however, which uses a simplified all-in-one application form/procedures/terms and conditions document that is included in SGIP Attachment 5.

4. We conclude that general consistency between the Commission's interconnection procedures document and interconnection agreement adopted in this Final Rule and those of the states will be helpful to removing roadblocks to the interconnection of Small Generating Facilities. To a large extent, this Final Rule harmonizes state and federal practices by adopting many of the best practices interconnection rules recommended by the National Association of Regulatory Utility Commissioners (NARUC). By doing so, we hope to minimize the federal-state division and promote consistent, nationwide interconnection rules. We hope that states that do not currently have interconnection rules for small generators will look to the documents presented in this Final Rule and NARUC as guides for their own. In particular, the ''Fast Track Process'' and the ''10 kW Inverter Process'' should go a long way towards harmonizing state-federal interconnection practices.

5. Finally, the application of this Final Rule is the same as with Order No. 2003 for Large Generating Facilities. Specifically, this Final Rule applies only to interconnections with facilities that are already subject to the Transmission Provider's OATT at the time the Interconnection Request is made.

6. The SGIP and SGIA include separate definitions for ''Transmission System'' and ''Distribution System'' to account for the distinct engineering and cost allocation implications of an interconnection with a Distribution System. The SGIP and SGIA, like Order No. 2003, define ''Transmission System'' as ''[t]he facilities owned, controlled or operated by the Transmission Provider or the Transmission Owner that are used to provide transmission service under the Tariff.'' Any interconnection with a Transmission System (under an OATT) by a Small Generating Facility is subject to this Final Rule.

7. The SGIP and the SGIA, like Order No. 2003, also use the term ''Distribution System.'' ''Distribution System'' is defined as ''[t]he Transmission Provider's facilities and equipment used to transmit electricity to ultimate usage points such as homes and industries directly from nearby generators or from interchanges with higher voltage transmission networks which transport bulk power over longer distances. The voltage levels at which Distribution Systems operate differ among areas.'' If a Small Generating Facility proposes to interconnect with a portion of the Distribution System subject to an OATT for the purpose of making wholesale sales, then this Final Rule would apply.[8] However, an interconnection to a portion of a Distribution System that is not already subject to an OATT would not be subject to this Final Rule.

8. ''Distribution'' is a vague term, usually used to refer to non-networked, often lower-voltage facilities, that carry power in one direction. Commission-jurisdictional facilities with these characteristics are referred to as ''Distribution Systems subject to an OATT'' throughout this Final Rule. This Final Rule's use of the term ''Distribution System'' has nothing to do with whether the facility is under this Commission's jurisdiction; some ''distribution'' facilities are under our jurisdiction and others are ''local distribution facilities'' subject to state jurisdiction.[9] This Final Rule does not violate the FPA section 201(b)(1) provision that the Commission does not have jurisdiction over local distribution facilities ''except as specifically provided * * *.''[10] This is because the Final Rule applies only to interconnections to facilities that are already subject to a jurisdictional OATT at the time the interconnection request is made and that will be used for purposes of jurisdictional wholesale sales. Because of the limited applicability of this Final Rule, and because the majority of small generators interconnect with facilities that are not subject to an OATT, this Final Rule will not apply to most small generator interconnections. Nonetheless, our hope is that states may find this rule helpful in formulating their own interconnection rules.

A. Background

9. This Final Rule responds to business and technology changes in the electric industry. Where the electric industry was once primarily the domain of vertically integrated utilities generating power at large centralized plants, advances in technology have created a burgeoning market for small power plants that may offer economic, reliability, or environmental benefits.

10. With these developments in mind, the Commission continues in this rulemaking to work to encourage fully competitive bulk power markets. The effort took its first significant step with Order No. 888,[11] which required public utilities to provide other entities comparable access to their Transmission Systems. The effort continued with Order No. 2000,[12] which began the process of developing Regional Transmission Organizations (RTOs). Most recently, the Commission established a standard Large Generator Interconnection Procedures document (LGIP) and a standard Large Generator Interconnection Agreement (LGIA) for generating facilities larger than 20 MW.[13]

11. The Commission, pursuant to its responsibility under sections 205 and 206 of the FPA to remedy undue discrimination, is requiring all public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce to append to their OATTs the SGIP and SGIA we are adopting in this Final Rule. These documents provide just and reasonable terms and conditions of interconnection service. They also strike a reasonable balance between the competing goals of uniformity and flexibility while ensuring safety and reliability are protected.

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[8] *See Detroit Edison* v. *FERC*, 334 F.3d 48 (DC Cir. 2003) (*Detroit Edison*). There, the court explained that:

> When a local distribution facility is used to delivery [sic] energy to an unbundled retail customer, FERC lacks any statutory authority, and the state has jurisdiction over that transaction. By contrast, when a local distribution facility is used in a wholesale transaction, FERC has jurisdiction over that transaction pursuant to its wholesale jurisdiction under FPA Section 201(b)(1). In sum, FERC has jurisdiction over all interstate transmission service and over all wholesale service, but FERC has no jurisdiction over unbundled retail distribution service—*i.e.*, unbundled retail service over local distribution facilities.

Id. at 51 (citations omitted).

[9] *See Detroit Edison*, 334 F.3d at 51. (''For our purposes, the most important result of these jurisdictional determinations is that customers can take any FERC-jurisdictional service under a utility's open access tariff, which the utility is required to file with FERC. Customers must take non FERC-jurisdictional service, such as unbundled retail distribution, under a state tariff.'')

[10] 16 U.S.C. 824 (2000).

[11] Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities: Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888–A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in part sub nom. Transmission Access Policy Study Group* v. *FERC*, 225 F.3d 667 (DC Cir. 2000), *aff'd sub nom. New York* v. *FERC*, 535 U.S. 1 (2002) (*TAPS* v. *FERC*).

[12] Regional Transmission Organizations, Order No. 2000, 65 FR 810 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000–A, 65 FR 12088 (Mar. 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Public Util. Dist. No.* 1 v. *FERC*, 272 F.3d 607 (DC Cir. 2001).

[13] *See* Order No. 2003 *passim*.

B. Need for a Standard Generator Interconnection Procedures and Agreement

12. In fulfilling its responsibilities under sections 205 and 206 of the FPA, the Commission is required to remedy undue discrimination. The Commission must also ensure that the rates, contracts, and practices affecting jurisdictional transmission service do not reflect an undue preference or advantage for Transmission Providers and their affiliates and are just and reasonable. The Commission's regulatory authority under the FPA ''clearly carries with it the responsibility to consider, in appropriate circumstances, the anticompetitive effects of regulated aspects of interstate utility operations* * *.'' [14]

13. The record underlying Order No. 888 showed that public utilities owning or controlling jurisdictional transmission facilities had the incentive to engage in, and had engaged in, unduly discriminatory transmission practices.[15] The Commission in Order No. 888 thoroughly discussed the legislative history and case law involving sections 205 and 206, concluded that it has the authority and responsibility to remedy the undue discrimination it found by requiring open access, and decided to do so through a rulemaking on a generic, industry-wide basis.[16] The Supreme Court affirmed the Commission's decision to exercise this authority by requiring non-discriminatory (comparable) open access as a remedy for undue discrimination.[17] However, Order No. 888 did not specifically address interconnection service.[18]

14. In *Tennessee Power*,[19] the Commission clarified that interconnection is a critical component of open access transmission service and thus is subject to the requirement that utilities offer comparable service under the OATT. The Commission encouraged, but did not require, each Transmission Provider to revise its OATT to include interconnection procedures, including a standard interconnection agreement and specific criteria, procedures, milestones, and timelines for evaluating applications for interconnection.[20]

15. As discussed in Order No. 2003, interconnection is a critical component of transmission service, and having a standard interconnection procedures and a standard agreement applicable to Small Generating Facilities will (1) limit opportunities for transmitting utilities to favor their own generation, (2) remove unfair impediments to market entry for small generators by reducing interconnection costs and time, and (3) encourage investment in generation and transmission infrastructure, where needed.[21] We expect the SGIP and SGIA adopted here will resolve most disputes, minimize opportunities for undue discrimination, foster increased development of economic Small Generating Facilities, and protect system reliability.

C. The Large and Small Generator Interconnection Rulemaking Proceedings

16. In the Advance Notice of Proposed Rulemaking (ANOPR) issued in Docket No. RM02–1–000, the Commission initiated a collaborative process where members of the public, electric industry participants, and federal and state agencies (collectively, stakeholders) were invited to draft proposed generator interconnection procedures and a generator interconnection agreement.[22] The stakeholders filed their consensus documents in January 2002. The Commission then issued a Notice of Proposed Rulemaking (Large Generator Interconnection NOPR) [23] proposing standard interconnection procedures and a standard interconnection agreement that generally followed the consensus documents. The Large Generator Interconnection NOPR also proposed solutions to issues left unresolved in the consensus documents.

17. Although the Large Generator Interconnection NOPR provided special treatment for Small Generating Facilities, some commenters urged the Commission to initiate a separate proceeding to develop standard interconnection procedures and agreements that addressed the unique concerns of Small Generating Facilities.[24] They proposed one set of simplified interconnection rules for Small Generating Facilities no larger than 2 MW, and another for facilities larger than 2 MW but no larger than 20 MW. Persuaded that different procedures and agreements were indeed needed, the Commission severed Small Generating Facilities from the Large Generator Interconnection proceeding and issued a Small Generator Interconnection Advance Notice of Proposed Rulemaking (ANOPR) in August 2002.[25] The Small Generator Interconnection ANOPR proposed two SGIPs and two SGIAs (ANOPR SGIPs and SGIAs) using 2 MW as a breakpoint. It encouraged stakeholders to pursue consensus on the ANOPR SGIPs and SGIAs. To that end, the Commission convened a series of public meetings designed to enable them to discuss and reach as much consensus as possible.

18. The negotiating parties, who we refer to collectively as Joint Commenters, then filed SGIPs and SGIAs (Joint Commenters' SGIPs and SGIAs) with the Commission.[26] While Joint Commenters reached consensus on some issues, many remained unresolved. Joint Commenters' SGIPs included two procedures for evaluating whether a proposed Small Generating Facility could be interconnected safely and without degrading reliability. The first was a standard Study Process that

[14] *Gulf States Utils. Co.* v. *FPC*, 411 U.S. 747, 758–59 (1973); *see City of Huntingburg* v. *FPC*, 498 F.2d 778, 783–84 (DC Cir. 1974) (noting the Commission's duty to consider the potential anticompetitive effects of a proposed interconnection agreement).

[15] Order No. 888 at 31,679–84; Order No. 888–A at 30,209–10.

[16] Order No. 888 at 31,668–73, 31,676–79; Order No. 888–A at 30,201–12; *TAPS* v. *FERC* at 687–88.

[17] *New York* v. *FERC*, 535 U.S. 1 (2002).

[18] Order No. 888–A, FERC Stats. & Regs ¶ 31,048 at 30,230–31.

[19] Tennessee Power Co. (*Tennessee Power*), 90 FERC ¶ 61,238 at 61,761 (2000), *reh'g denied*, 91 FERC ¶ 61,271 (2000).

[20] *See*, *e.g.*, Commonwealth Edison Co., 91 FERC ¶ 61,083 (2000).

[21] Order No. 2003 at P 10.

[22] Standardizing Generator Interconnection Agreements and Procedures, Advance Notice of Proposed Rulemaking, 66 FR 55140 (Nov. 1, 2001), FERC Stats. & Regs. ¶ 35,540 (2002).

[23] Standardization of Generator Interconnection Agreements and Procedures, Notice of Proposed Rulemaking, 67 FR 22250 (May 2, 2002), FERC Stats. & Regs. ¶ 32,560 (2002).

[24] Those commenters included the Solar Energy Industries Association, the U.S. Fuel Cell Council, the American Solar Energy Society, the U.S. Combined Heat and Power Association, the International District Energy Association, and the American Wind Energy Association.

[25] Standardization of Small Generator Interconnection Agreements and Procedures, Advance Notice of Proposed Rulemaking, 67 FR 54749 (Aug. 26, 2002), FERC Stats. & Regs. ¶ 35,544 (2002).

[26] This group refers to itself as the Coalition. However, in this Final Rule we shall refer to the group as ''Joint Commenters'' to distinguish it from the similarly named Small Generator Coalition. With the exception of these early references to Joint Commenters' comments submitted in response to the ANOPR, all references in the remainder of this Preamble to Joint Commenters are to its supplemental comments. Joint Commenters did not file initial comments in response to the Small Generator Interconnection NOPR, only supplemental comments. Joint Commenters is a diverse group of stakeholders that includes:

- Over 25 small generator trade groups, promoters, and equipment manufacturers, who refer to themselves collectively as the ''Small Generator Coalition,''
- State regulatory agencies represented by the National Association of Regulatory Utility Commissioners,
- American Public Power Association (which did not participate in the filing of Joint Commenters' supplemental comments), and
- Transmission Providers represented by Edison Electric Institute (EEI) and National Rural Electric Cooperative Association (NRECA)

A list of commenter acronyms may be found in Appendix A.

used a scoping meeting and three technical studies to evaluate a proposed interconnection. The second was a streamlined procedure that used technical screens to identify those proposed interconnections that clearly would not jeopardize the safety and reliability of the Transmission Provider's electric system. Public comments on the Small Generator Interconnection ANOPR were filed shortly thereafter.

19. In July 2003, the Commission issued Order No. 2003, which established standard procedures and an interconnection agreement for the interconnection of large generators and explained the Commission's jurisdiction over interconnections. The Commission simultaneously issued the Small Generator Interconnection NOPR.[27] Certain provisions in the Large Generator Interconnection Final Rule as well as Joint Commenters' SGIPs/SGIAs influenced the Small Generator Interconnection NOPR.[28] The Commission asked commenters to address whether Small Generating Facilities should be treated differently from Large Generating Facilities under the LGIP and LGIA adopted in Order No. 2003.

20. Sixty-five entities submitted initial comments in response to the Small Generator Interconnection NOPR. The comments generally support the Commission's effort to remove barriers to the development of Small Generating Facilities. Following the issuance of the Small Generator Interconnection NOPR and the initial comment due date, NARUC in October 2003 updated its own interconnection procedures and agreement, referred to here as the NARUC Model. NARUC stated that the NARUC Model is based on the best practices of the state regulatory agencies that have interconnection procedures for small generators. NARUC encouraged state regulators to use the NARUC Model as a basis for developing their interconnection procedures and suggested that the Commission's documents reflect these ''best practices.'' On July 7, 2004, the Commission staff added to the record in this proceeding the latest version of the NARUC Model.[29] A few commenters favor terminating this proceeding or, in the alternative, adopting the NARUC Model.

21. The Commission then issued a Notice of Request for Supplemental Comments, observing that the small generator industry had continued to evolve since the Commission first received comments in this proceeding.[30] In the notice, the Commission observed that several states had recently adopted new guidelines for small generator interconnections, and that the stakeholders who participated in the Commission's ANOPR process were continuing to work toward resolving various SGIP and SGIA issues. The Commission invited joint supplemental comments describing new consensus positions but discouraged resubmissions of prior positions.

22. Joint Commenters, which as noted above represents a diverse group of small generator interests, Transmission Providers, and state regulators who participated in the ANOPR process, was the only group to file a consensus position. Some Joint Commenters—Small Generator Coalition, NRECA, and NARUC—filed their own supplemental comments as well. Ten other entities (mostly state regulatory commissions[31]) submitted supplemental comments.[32]

23. In its supplemental comments, Joint Commenters endorsed a single SGIP and single SGIA for Small Generating Facilities no larger than 20 MW. Joint Commenters recommended several revised provisions in areas where they had not been able to reach consensus during the ANOPR process. These included dispute resolution, confidentiality, insurance, equipment certification, and technical screens, among others. Joint Commenters, which includes NARUC, also endorsed a greatly simplified all-in-one application form/procedures/terms and conditions document for the interconnection of certified inverter-based Small Generating Facilities no larger than 10 kW.

24. In Order No. 2003–A, the Commission determined that the LGIP and LGIA were designed around the needs of traditional synchronous technology generators and that generators relying on non-synchronous technologies, such as wind plants, may find that a specific requirement is inapplicable or that a different approach is needed.[33] Accordingly, the Commission added a blank Appendix G (Requirements of Generators Relying on Non-Synchronous Technologies) to the LGIA as a placeholder for requirements specific to non-synchronous technologies.[34] At a September 24, 2004 technical conference on the interconnection requirements of non-synchronous technologies, panelists were asked whether Appendix G type requirements should apply to Small Generating Facilities. They responded that special capabilities, such as low voltage ride-through, simply were not needed for any Small Generating Facility, whether wind powered or not. As a result, the Wind NOPR issued shortly thereafter applies only to the interconnection of wind powered generators 20 MW or larger.[35] In its supplemental comments, National Grid asks the Commission to implement standards for Small Generating Facilities that are similar to those proposed for Large Generating Facilities in the Wind NOPR. This Final Rule does not include such standards. The wind generating facilities that will interconnect under this Final Rule will be small and will have minimal impact on the Transmission Provider's electric system. The reliability requirements proposed for wind powered Large Generating Facilities are not needed for small wind generating facilities.

25. In crafting this Final Rule, we considered all of the comments received throughout the course of this proceeding, including the initial documents submitted by Joint Commenters in response to the ANOPR, the Small Generator Interconnection NOPR and the comments filed in response, the NARUC Model, and the supplemental comments. We considered all comments filed in response to the Small Generator Interconnection NOPR before April 29, 2005, and they are part of the record in this proceeding.[36]

II. Discussion

26. Part A of this discussion (Descriptions of the SGIP and SGIA) describes in general terms the interconnection procedures document (SGIP) and interconnection agreement

[27] Standardization of Small Generator Interconnection Agreements and Procedures, Notice of Proposed Rulemaking, 60 FR 49974 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 32,572 (2003) (Small Generator Interconnection NOPR).

[28] See, *e.g.*, Proposed SGIA articles 4.1, 5.1.2, 5.1.2.1, 5.2, 6.1–6.9, 6.12–6.20, 7, and 8.

[29] NARUC members had participated in the ANOPR discussions fostered by the Commission; there was much similarity between the provisions of the NARUC Model and the Small Generator Interconnection NOPR.

[30] *See* Notice of Request for Supplemental Comments, 69 FR 51024 (Aug. 17, 2004). The Commission then granted two extensions of time at the request of Joint Commenters. *See* Notices issued on September 30, 2004 and November 30, 2004 in Docket No. RM02–12–000.

[31] CT DPUC, Minnesota PUC, and Massachusetts DTE submitted copies of their recently enacted small generator interconnection rules.

[32] The supplemental commenters are listed in Appendix A.

[33] Order No. 2003–A at P 407, n. 86.

[34] *Id.*

[35] Interconnection for Wind Energy and Other Alternative Technologies, Notice of Proposed Rulemaking, 70 FR 4791 (Jan. 31, 2005) (*Wind NOPR*).

[36] Comments addressing issues filed in other dockets (for instance, the Wind NOPR) are not part of this proceeding even if they were cross-filed in Docket No. RM02–12–000.

(SGIA) we are adopting in this Final Rule.

27. Part B (Overview of the Interconnection Process for Small Generating Facilities) describes the processes that the Interconnection Customer and the Transmission Provider must follow to interconnect the Small Generating Facility with the Transmission Provider's Transmission System.

28. Part C (Issues Related to Both the SGIP and the SGIA) addresses issues that are common to the interconnection procedures and agreement documents.

29. Part D (Issues Related to the Interconnection Request) addresses issues related to the Interconnection Request (application form) that the Interconnection Customer submits to the Transmission Provider to request interconnection of its Small Generating Facility.

30. Part E (Issues Related to the SGIP) addresses issues related only to the interconnection procedures document.

31. Part F (Issues Related to the SGIA) addresses issues related only to the interconnection agreement.

32. Part G (The 10kW Inverter Process) describes the simplified all-in-one application form/procedures/terms and conditions document for the interconnection of certified inverter-based Small Generating Facilities no larger than 10 kW.

33. Part H (Other Significant Issues) addresses the pricing of Interconnection Facilities and Upgrades, jurisdictional issues, variations from the Final Rule, the availability of waivers for small entities, the effect of this Final Rule on the OATT reciprocity provisions, and others.

34. Finally, Part I (Compliance Issues) addresses issues pertaining to the requirement that a Transmission Provider file conforming amendments to its existing OATT, the treatment to be accorded to existing interconnection agreements (grandfathering), and how a Transmission Provider is to file executed and unexecuted interconnection agreements.

A. Descriptions of the SGIP and SGIA

35. In Order No. 2003, the Commission adopted two documents that are to be used for the interconnection of Large Generating Facilities—the Large Generator Interconnection Procedures document and the Large Generator Interconnection Agreement. The LGIP describes how the Interconnection Customer's Interconnection Request (*i.e.*, application) is to be evaluated from an engineering perspective using a four-step process. These are the scoping meeting, the feasibility study, the system impact study, and the facilities study. The purpose of the evaluation is to determine the impact the proposed interconnection will have on the Transmission Provider's electric system and identify new equipment and modifications needed to accommodate the interconnection. The LGIA, which is signed after the proposed interconnection has been successfully evaluated using the provisions contained in the LGIP, describes the legal relationships of the Parties, including who pays for equipment modifications to the Transmission Provider's electric system.

36. The SGIP and SGIA we adopt in this Final Rule serve the same purposes as the LGIP and LGIA. The SGIP includes the same four-step process for evaluating an Interconnection Request as does the LGIP, except that it is simplified in several aspects and includes timelines to accelerate the interconnection of Small Generating Facilities. In the SGIP, this procedure is termed the ''Study Process.'' The SGIP also includes special procedures for evaluating two subgroups of Small Generating Facilities, (1) a ''Fast Track Process'' that uses technical screens to evaluate a certified Small Generating Facility no larger than 2 MW, and (2) a ''10 kW Inverter Process'' that uses the same technical screens to evaluate a certified inverter-based Small Generating Facility no larger than 10 kW. The SGIA serves the same purpose for the interconnection of a Small Generating Facility as the LGIA does for a Large Generating Facility. It describes the legal relationships of the Parties, including who will pay for equipment modifications to the Transmission Provider's electric system.

37. The Commission received many comments proposing modifications to the Proposed SGIP and Proposed SGIA, which helped greatly to shape this Final Rule. NARUC argued that the Commission should adopt portions of its Model to harmonize federal interconnection rules with those found in states with interconnection rules. Small Generator Coalition recommended that the Commission in this proceeding adopt the NARUC Model instead of the Proposed SGIP and Proposed SGIA. Some of the provisions proposed by Joint Commenters (which includes NARUC representation) in its supplemental comments also followed the NARUC Model. We are adopting in this Final Rule many of these consensus provisions as well as those proposed by NARUC because they are just and reasonable and serve the twin goals of removing barriers to the development of small generation while preserving the safety and reliability of the nation's electric system.

38. The SGIP, while relying heavily on NARUC's and Joint Commenters' proposals, is not a significant departure from the Proposed SGIP. Both use nearly identical interconnection study processes (''Study Process'') to evaluate Interconnection Requests that do not qualify for special handling. Regarding special handling, both use technical screens to identify Small Generating Facilities no larger than 2 MW that can be interconnected with no adverse impact on safety or reliability. The SGIP we adopt in this Final Rule, however, includes two such special procedures, the Fast Track Process and the 10 kW Process. The choice of which one the Interconnection Customer may use depends on the size and technology of the Small Generating Facility. The SGIP also includes the Interconnection Request (application form) that is to be used by all Interconnection Customers except those eligible to use the 10 kW Process, and feasibility study, system impact study, and facilities study agreements that are to be used in the Study Process.[37]

39. The SGIA is to be used for the interconnection of all Small Generating Facilities subject to this Final Rule, with the exception of certain very small inverter-based generators that use an all-in-one application form/procedures/terms and conditions document (the 10 kW Inverter Process document). The Proposed SGIA included several provisions that were similar to those contained in the LGIA that was issued concurrent with the Small Generator Interconnection NOPR. Some commenters complained that the Proposed SGIA was too long and complex for owners of Small Generating Facilities, who may be small businesses or operators of small farms, for example. We are streamlining and simplifying the SGIA in many ways to address these concerns. We are adopting Joint Commenters' proposals submitted in its supplemental comments where appropriate and have given consideration to the recommendations contained in the NARUC Model and those suggested by other commenters. In particular, the SGIA does away with the requirement that Interconnection Customers maintain multiple kinds of insurance, instead requiring only that they maintain a reasonable amount based on the specific characteristics of

[37] Note that the scope and payment provisions of the feasibility, system impact, and facilities studies are contained in the actual study agreements which are included as Attachments 6, 7, and 8 to the SGIP, not section 3 of the SGIP.

the interconnection. We also adopt a streamlined dispute resolution provision designed to resolve disputes as quickly and inexpensively as possible. We have also shortened the contract termination provisions and the various liability related provisions.

40. We adopt in the SGIA the same pricing policy for Network Upgrades to the Transmission Provider's Transmission System as in Order No. 2003. For a Small Generating Facility interconnecting with a non-independent entity such as a vertically integrated utility, the Interconnection Customer initially funds the cost of any required Network Upgrades (*i.e.*, Upgrades to the Transmission System at or beyond the Point of Interconnection) and it is then subsequently reimbursed for this upfront payment by the Transmission Provider. However, we expect that, for most interconnections of Small Generating Facilities, there will be no Network Upgrades. We also allow more pricing flexibility for a Transmission System that is operated by an independent entity such as an RTO or Independent System Operator (ISO). The costs of Distribution Upgrades are directly assigned to the Interconnection Customer.

41. In conclusion, we encourage the standardization of interconnection practices across the nation, using as a starting point the SGIP and SGIA found in this Final Rule. We hope to foster seamless interconnection procedures for Interconnection Customers and Transmission Providers. Equipment manufacturers will have compatible technical specifications to meet. New generation will be located on the basis of what works best for the Interconnection Customer and the Transmission Provider, not jurisdictional differences in interconnection rules.

B. Overview of the Interconnection Process for Small Generating Facilities

42. Before submitting its Interconnection Request, the Interconnection Customer may informally discuss the proposed interconnection with the Transmission Provider.[38] The Interconnection Customer then submits an Interconnection Request to the Transmission Provider and the Transmission Provider assigns the Interconnection Customer's project a Queue Position based on the date and time the Interconnection Request is received by the Transmission Provider. The Interconnection Request must be accompanied by a deposit that goes toward the cost of the feasibility study, unless it is submitted under the Fast Track Process or the 10 kW Inverter Process, which have small processing fees.

43. As noted above, an Interconnection Request can be evaluated in one of three ways. The Study Process is the default method; it relies on the scoping meeting and standard feasibility, system impact, and facilities studies to evaluate the safety and reliability of the proposed interconnection. It is identical in concept to the evaluation procedure that is used for the interconnection of Large Generating Facilities. Two optional methods are available to Interconnection Customers whose Small Generating Facilities are certified and no larger than 2 MW. The 10 kW Inverter Process is available for owners of inverter-based Small Generating Facilities no larger than 10 kW and the Fast Track Process is available for owners of any kind of Small Generating Facility no larger than 2 MW.

44. The Study Process normally consists of a scoping meeting, a feasibility study, a system impact study, and a facilities study. At the scoping meeting, the Parties discuss the proposed interconnection and review any existing studies that could aid in the evaluation of the proposed interconnection. The feasibility study is a preliminary technical assessment of the proposed interconnection. The system impact study is a more detailed assessment of the effect the interconnection would have on the Transmission Provider's electric system and Affected Systems. The facilities study determines what modifications to the Transmission Provider's electric system are needed, including the detailed costs and scheduled completion dates for these modifications. These studies identify adverse system impacts[39] that need to be addressed before the Small Generating Facility may be interconnected and any equipment modifications required to accommodate the interconnection. The Interconnection Customer pays the Transmission Provider's actual cost of performing the studies. Once the Interconnection Customer agrees to fund any needed Upgrades, the Parties execute an SGIA that, among other things, formalizes responsibility for construction and payment for Interconnection Facilities and Upgrades.[40]

45. A Fast Track Process is available for certified Small Generating Facilities no larger than 2 MW. Under this process, in place of the scoping meeting and three interconnection studies, technical screens are used to quickly identify reliability or safety issues. If the proposed interconnection passes the screens, the Transmission Provider offers the Interconnection Customer an SGIA. If the proposed interconnection fails the screens, but the Transmission Provider determines that the Small Generating Facility may nevertheless be interconnected without affecting safety and reliability, the Transmission Provider also offers the Interconnection Customer an SGIA. However, if the Transmission Provider is concerned that the interconnection could degrade the safety and reliability of its electric system, the Parties may conduct a customer options meeting to discuss how to proceed. In that meeting, the Transmission Provider must offer to perform a supplemental review of the proposed interconnection, paid for by the Interconnection Customer, to identify Upgrades needed to accommodate the interconnection. Once the Interconnection Customer agrees to pay for any Upgrades called for in the supplemental review, the Parties execute an SGIA. If, after the supplemental review, the Transmission Provider still is unsure whether the proposed interconnection will degrade the safety and reliability of its electric system, the Interconnection Request is evaluated using the Study Process described above; *i.e.*, scoping meeting, feasibility, system impact, and facilities studies, followed by the execution of an SGIA.

46. Finally, the 10 kW Inverter Process is available for the interconnection of certified inverter-based generators no larger than 10 kW. The all-in-one 10 kW Inverter Process document includes a simplified application form, interconnection procedures, and a brief set of terms and conditions (akin to an interconnection agreement). The 10 kW Inverter Process uses the same technical screens to evaluate the safety and reliability of the proposed interconnection as the Fast Track Process. Unless the Transmission Provider demonstrates that the Small Generating Facility cannot be

[38] Flowcharts depicting interconnection procedures are presented in Appendices B (Study Process), C (Fast Track Process), and D (10 kW Inverter Process).

[39] An adverse system impact means that technical or operational limits on conductors or equipment are exceeded under the interconnection, which may compromise the safety or reliability of the electric system.

[40] The Study Process is similar to the LGIP. However, we expect that the interconnection of a Small Generating Facility will take substantially less time and cost substantially less than a Large Generating Facility.

interconnected safely and reliably based on the results of an analysis using the screens, the Transmission Provider approves the application. Once the Interconnection Customer certifies that equipment installation is complete and upon a satisfactory inspection by the Transmission Provider, the Transmission Provider authorizes the interconnection. To further simplify the interconnection process, what would normally be considered a separate interconnection agreement has been distilled into a terms and conditions document that the Interconnection Customer agrees to at the time the Interconnection Request is submitted to the Transmission Provider. The all-in-one 10 kW Process document is included in Attachment 5 to the SGIP.

C. Issues Related to Both the SGIP and the SGIA

47. This discussion, and those that follow, addresses the evolution of the SGIP and SGIA from the Proposed SGIP and Proposed SGIA. As is the custom in most Commission rulemakings, we use the Small Generator Interconnection NOPR as our point of reference, discussing each issue in turn, describing the comments addressed to the topic, and closing with the Commission conclusion. There are differences between the Proposed SGIP and SGIA and the documents we adopt in this Final Rule that reflect the helpful comments filed in this rulemaking. For example, we have in some instances adopted terminology more compatible with that used in state interconnection documents. This should make for simpler, more easily understood documents for small generators that are compatible across jurisdictions for both Interconnection Customers and Transmission Providers. However, the SGIP and SGIA also need to be interpreted in the broader context of the entire collection of generator interconnection documents that will appear in a Transmission Provider's OATT, including the LGIP and LGIA. Thus, there are some instances where consistency among generator interconnection documents within a single tariff makes it necessary to adopt Large Generator Interconnection terminology or policy. The Commission asked for comments in the Small Generator Interconnection NOPR addressing this topic, and it is the first to be addressed in the discussion that follows.

48. Many of the issues in this rulemaking also arose in the Large Generator Interconnecting rulemaking and we will not address them again here at any great length. Where there is no compelling reason to depart from prior precedent, we affirm the Commission's prior decisions without detailed discussion. Therefore, this order focuses on those issues needing a small-generator-specific resolution.

49. Finally, we note that the 10 kW Inverter Process for certified inverter-based Small Generating Facilities is an all-in-one application form/procedures/terms and conditions document that does not lend itself easily to the separate discussions of the Proposed SGIP/SGIA and the SGIP and SGIA discussions that follow. We will address it in the separate Part G discussion, below. We emphasize, however, that the intent of this Final Rule is that the 10 kW Inverter Process fits within the framework of the SGIP and SGIA, and it is for that reason that we encourage Interconnection Customers and Transmission Providers to use this Preamble, the SGIP, and the SGIA for assistance in interpreting the 10 kW Inverter Process should a dispute arise.

Consistency Between the Large Generator and Small Generator Documents

50. In the Small Generator Interconnection NOPR, the Commission asked commenters to address the need for consistency between the provisions of the LGIP/LGIA and the SGIP/SGIA.

Comments

51. NARUC argued that the Small Generator Interconnection NOPR was too complicated for most small generator interconnections. Instead, the Commission should adopt portions of the NARUC Model or otherwise simplify the interconnection process. NARUC pointed out that many Small Generating Facilities (including most inverter-based generators) will interconnect with low voltage facilities, whether Commission-jurisdictional or state-jurisdictional. Thus, this Final Rule should be as consistent with state interconnection rules as possible to encourage national consistency and discourage forum-shopping. Joint Commenters also supports this outcome.

52. AEP supports consistency between the large and small generator documents. However, it notes that Joint Commenters developed consensus positions on many issues during the ANOPR process. Where such agreement was reached, AEP proposes that the Commission adopt that position.

53. Midwest ISO argues that the Commission should ensure consistency between the large and small generator documents, wherever possible, because all stakeholders will benefit from a consistent approach to the interconnection of generation facilities.

54. PJM, on the other hand, proposes that the Commission simply use the LGIA for all interconnections, arguing that having different rules for large and small generator interconnections would be overly burdensome. PJM also states that its own interconnection rules take this approach and are hailed as being very successful.

55. Baltimore G&E argues that the Commission should require the same terms for all generators, regardless of size, unless there is a specific reason not to do so. Therefore, it requests that the Commission provide a clear explanation wherever these Final Rule provisions differ from those in Order No. 2003. Southern Company agrees, arguing that Large and Small Generating Facilities should be treated similarly ''because both can have * * * significant impacts upon the Transmission Provider's electric system.'' [41]

56. BPA argues that the procedures and technical requirements applicable to large generators ''should not apply to the interconnection of small generators that have minimal impacts on a transmission grid.'' [42] However, where the Commission does use ''substantially similar or consistent procedures, contract terms, and other requirements'' for both Large and Small Generating Facilities, ''the Commission should strive to provide consistency between its large and small generator rules.'' [43]

57. Nevada Power also supports the concept of having the provisions applicable to Small Generating Facilities similar to those in Order No. 2003. According to Nevada Power, ''[t]hese commonalities will avoid the confusion of differing terminologies, facilitate consistent and fair implementation, and minimize the need for separate, parallel administrative processes to administer the agreements.'' [44] However, Nevada Power also argues that consistency should not compromise the goals of simplifying and expediting the interconnection of Small Generating Facilities. Instead, this Final Rule should be designed to ''enable a common language and common administrative procedures to be implemented and still maintain appropriate distinctions between the small generators and the large generators.'' [45] Nevada Power argues that the benefits of consistency are illustrated by Proposed SGIA article

[41] Southern Company at 19.

[42] BPA at 3.

[43] *Id.*

[44] Nevada Power at 4.

[45] Nevada Power at 4–5.

5.1.2.1, which specifies the refund process for advances made by the Interconnection Customer for Network Upgrades. By having the same refund process for the amounts advanced for Network Upgrades in the SGIA and the LGIA, the Transmission Provider can set up one system, instead of two separate systems, to track and make any such refunds.

58. In their supplemental comments, NARUC and the other Joint Commenters proposed SGIP and SGIA provisions that balance the need for simplicity with the need of Transmission Providers to ensure the safety and reliability of the Transmission Provider's electric system. In addition, Joint Commenters also proposed a process for certified inverter-based Small Generating Facilities no larger than 10 kW that can also be used as a model for the states.

Commission Conclusion

59. Unless expressly changed in this Final Rule, the Commission's existing interconnection precedent and Order No. 2003 are relevant to this Final Rule and should be used as guidance for interpretation and implementation. We have tried to be consistent between the rules for Large and Small Generating Facilities, unless there is a specific reason to do otherwise, while considering NARUC's call for federal-state consistency and the recommendations of other commenters.

60. We note Joint Commenters' proposal of much simpler interconnection procedures and agreement for inverter-based generators no larger than 10 kW.[46] Taking these extremely small units out of the mix has allowed us to adopt standard rules for larger Small Generating Facilities. According to NARUC, the process of interconnecting with a state-jurisdictional facility should not be substantially different from the process for interconnecting with a Commission-jurisdictional facility. Standard interconnection procedures are especially important for Interconnection Customers and manufacturers of off-the-shelf generating equipment.

61. In general, we are including standard contractual provisions in the SGIA that are consistent with their counterparts in the LGIA. However, in many cases commenters stressed the need to simplify those provisions to avoid burdening Small Generating Facilities. Many commenters offered ways to shorten and simplify those provisions. Where possible, we accept those proposals. These streamlined provisions adequately protect the Parties while lowering the transaction costs of entering into an interconnection agreement. The SGIP closely tracks the revised NARUC Model but adopts the single screen that NARUC and the other Joint Commenters later proposed in supplemental comments. Last, we have ensured that provisions common to the SGIP and SGIA (such as dispute resolution and confidentiality) are consistent.

62. Definitions of Terms Used in the SGIP and SGIA—NARUC and others propose that the Commission use the defined terms in the NARUC Model instead of those found in the Small Generator Interconnection NOPR. We conclude that several of the terms defined in the Proposed SGIP and SGIA are either unnecessary or add complexity to the interconnection process. We are simplifying the SGIP and SGIA by deleting those definitions. Comments on specific terms are discussed below.

63. Emergency Condition—The Proposed SGIA defined Emergency Condition as a situation that, in the judgment of the Party making the claim, is imminently likely to (1) endanger life or property, (2) have an adverse impact on the safety or reliability of the Transmission Provider's or an affected third party's electric system (Affected System), or (3) have a material adverse effect on the safety or operation of the Interconnection Customer's facilities. If there is an Emergency Condition, the Transmission Provider may take necessary and appropriate actions to protect the safety and reliability of its electric system, including interrupting, suspending, or curtailing interconnection service. While system restoration and black start are considered Emergency Conditions, the Small Generating Facility is not obligated to have black start capability.

Comment

64. Bureau of Reclamation objects to the provision that the Small Generating Facility is not obligated by the SGIA to have black start capability. Black start capability is an issue best handled by the control area rather than the Transmission Provider and that mentioning black start here raises the question of by whom and when black start capability could be required of the Small Generating Facility. In addition, Bureau of Reclamation proposes that the definition of Emergency Condition also include a ''threat or danger to the environment.''

Commission Conclusion

65. We see no need to modify the definition of Emergency Condition. The SGIA does not interfere with the control area's ability to establish a voluntary restoration plan, including black start. The SGIA requires the Parties to adhere to all Applicable Laws and Regulations relating to pollution and protection of the environment or natural resources. Therefore, Bureau of Reclamations' proposed revision is not necessary.

66. Network Upgrades—Comments concerning the definition of Network Upgrades are addressed in Part II.H (Pricing/Cost Recovery for Interconnection Facilities and Upgrades).

67. Use of Calendar Days v. Business Days—The Proposed SGIP and Proposed SGIA used both calendar days and Business Days to establish deadlines for particular activities.

Comments

68. Ameren, EEI, and NYTO request that all references to calendar day be changed to ''Business Day.'' Ameren and EEI state that doing so would make the SGIP and SGIA consistent. They also state that this is particularly important for the three and five day time limits, especially where the Transmission Provider may not have sufficient staff to respond within the required time. Ameren and NYTO argue that using both calendar days and Business Days is confusing. NYTO further notes that using Business Days rather than calendar days gives the Parties more time to meet deadlines. In addition, NYTO states that using calendar days does not account for normal business delays, including those caused by storm emergencies.

Commission Conclusion

69. We agree that references to the passage of time should be consistent. Accordingly, we are changing calendar days to Business Days throughout the SGIP and SGIA, with two exceptions. First, using calendar days is proper in the SGIA's billing and payment provisions because these activities are traditionally tied to calendar days. Second, SGIA article 7.6.1 Default provisions are stated in terms of calendar days to be consistent with the Commission's regulations that require at least 60 calendar days notice of a proposed cancellation or termination of a contract. Where we have replaced calendar days with Business Days, we have adjusted the number of days to reflect about the same passage of time. Arguments relating to the amount of time a Party has to complete an action are discussed below.

[46] The 10 kW Inverter Process is largely based on the work of the Massachusetts DTE and its stakeholders group.

70. Maximum Size of a Small Generating Facility—In the Small Generator Interconnection NOPR, the maximum size of a Small Generating Facility is 20 MW. Where there is more than one unit generating power at a particular site, the Commission proposed to aggregate the total capacity of all generation units using the same Point of Interconnection. The Commission sought comments on a circumstance when the Interconnection Customer desires to increase the capacity of an existing generating facility. The Commission proposed that the total size of the facility would be determined by the sum of the existing and the incremental capacity. Thus, a 10 MW addition to an existing 15 MW facility would be treated as a 25 MW facility. The Commission also sought comments on how to evaluate an Interconnection Request that specifies a level of capacity below the maximum rating of the Small Generating Facility. Finally, the Commission invited comments on whether Small Generating Facilities with multiple Points of Interconnection should be treated separately for queuing and interconnection study purposes.

Comments

Revising the Maximum Size of a Small Generating Facility

71. Ameren, EEI, and NRECA ask the Commission to reduce the maximum size of a Small Generating Facility from 20 MW to 10 MW. They argue that the lower size limit would help ensure safety and reliability of the Transmission Provider's electric system. They also note that it would also be consistent with IEEE Standard 1547,[47] and argue that the 20 MW size limit is particularly challenging for Transmission Providers because of the types of analyses required to evaluate their interconnection and the restrictive time limits placed on performing them.

72. EEI similarly argues that many states have adopted 10 MW as the maximum size of a Small Generating Facility and that the Commission should follow suit. It argues that a 10 MW size limit is better suited to the Small Generating Facility configurations most likely to be proposed under the Final Rule. While reducing the size limit to 10 MW creates a gap between the Large and Small Generating Facility interconnection provisions, that gap can be easily remedied by making the LGIP and LGIA applicable to generating facilities larger than 10 MW.

73. NRECA notes in its initial comments that 10 MW is the upper limit for small generators in Texas, California, New York, and Ohio, and that no state currently has rules that apply to the interconnection of generators larger than 10 MW. According to NRECA, the Commission's statement in the Small Generator Interconnection NOPR that the 20 MW maximum size would ''encourage the development of a greater number of small generators and promote the development of innovative small generation technologies'' is not supported by engineering reality and industry practice. NRECA participated with Joint Commenters in developing consensus provisions for the SGIP and SGIA that were submitted in Joint Commenters' supplemental comments. Based on those provisions, and in particular the technical screens contained in the SGIP, NRECA states that, ''while it still believes that 20 MW is too large a generator to be considered 'small,' * * * [Joint Commenters'] SGIA and SGIP will work for all generators up to that size.'' [48]

74. Cummins argues that the 20 MW size limit would result in more widespread use of on-site Small Generating Facilities.

Commission Conclusion

75. We agree with commenters that generator size does matter when evaluating the effect of the Small Generating Facility on the Transmission Provider's electric system. However, we are keeping the 20 MW size limit for Small Generating Facilities because the interconnection studies and screens will identify any safety and reliability problems. In particular, the screens we adopt in the SGIP are supported by small generators, state regulators, and Transmission Provider representatives such as EEI and NRECA, as being appropriate to evaluate the safety and reliability of interconnections of Small Generating Facilities that are eligible for screening. We believe the higher threshold will remove barriers to the development of a greater number of Small Generating Facilities and promote the development of innovative small generation technologies.

Increasing the Capacity of an Existing Small Generating Facility

76. The Small Generator Interconnection NOPR proposed to evaluate increases in capacity to existing Small Generating Facilities using the total capacity of the modified facility, and the Commission invited comments on whether the proposal was reasonable.

Comments

77. Several Transmission Providers [49] support the NOPR's proposal. They add that if, for example, the capacity of an existing 18 MW Small Generating Facility were to be increased by 5 MW, the resulting 23 MW facility should be evaluated under the LGIP. This would keep the Interconnection Customer from gaming the system by incrementally increasing the size of an existing Small Generating Facility so that the capacity addition does not exceed the 20 MW maximum, even though the ultimate capacity of the facility does. BPA and ISO New England state that processing the Interconnection Request for such an expansion on the basis of the total capacity would better protect the safety and reliability of the Transmission Provider's electric system. Tangibl, on the other hand, argues that evaluating the Interconnection Request based on the total increased capacity of the Small Generating Facility would discourage such increases and hinder the increased entry of generators into the energy markets.

Commission Conclusion

78. We are persuaded by BPA and ISO New England that when an existing Small Generating Facility is expanded, the Interconnection Request should be evaluated based on the total capacity of the facility as opposed to the incremental amount of the expansion. Similarly, an existing Large Generator seeking to increase its capacity by less than 20 MW would also have to follow the Large Generator rule, because the total capacity of the expanded facility would be more than 20 MW. Section 4.10.1 of the SGIP reflects this conclusion.

Evaluating the Generating Facility Based on Less Than Its Maximum Rated Capacity

79. In the Small Generator Interconnection NOPR, the Commission sought comments on whether the maximum capacity of the Small Generating Facility should be used to evaluate the Interconnection Request

[47] IEEE Standard 1547, approved in June 2003, is the Institute of Electrical and Electronics Engineers' standard for interconnecting distributed resources with electric power systems. The standard applies only to generating equipment no larger than 10 MW.

[48] NRECA Supplemental Comments at 5. NRECA also ''believes that the screens adopted for review of generators up to 2 MW in capacity reasonably consider the impact that generators of those sizes will have on distribution systems.'' *Id.* The technical screens of which NRECA speaks are the same screens adopted in this Final Rule.

[49] *E.g.,* BPA, ISO–New England, NRECA, NYTO, PG&E, and Western.

when the Interconnection Customer specified an output level below the facility's maximum capability. For example, the Commission asked whether an Interconnection Request for a generating facility with a maximum capacity of 22 MW but seeking an interconnection for only 20 MW (and agreeing to restrict delivery to the Transmission Provider's Transmission System to that level) should be evaluated under the SGIP or the LGIP.

Comments

80. Several Transmission Providers [50] argue that the Interconnection Request should be evaluated on the basis of the maximum capacity of the Small Generating Facility to ensure that safety and reliability are not jeopardized. They argue that the Commission should not allow a 22 MW generator to be treated as a 20 MW generator based on a promise by the Interconnection Customer that it will never generate more than 20 MW. This would result in an additional administrative burden on the Commission or market monitors. They also argue that evaluating the Small Generating Facility at less than its maximum rated capacity would not ensure that Interconnection Facilities and Upgrades are properly designed and installed.

81. BPA argues that evaluating a Small Generating Facility on the basis of maximum rated capacity would prevent gaming by an Interconnection Customer and would prevent it from submitting a request to interconnect its Small Generating Facility at a lower capacity when it really intend to operate the facility at a higher capacity. Further, evaluating a Small Generating Facility based on its maximum operational capacity would avoid the need to perform a reevaluation each time the Interconnection Customer seeks to operate at a higher output level.

82. Likewise, NYTO claims that even if a Small Generating Facility supplies local load and delivers only half of its output, it still contributes its full fault current to the electric system if there is an electrical fault. Also, stability analysis is based on the full physical characteristics of the facility, such as maximum power capability and rotation inertia. It further argues that if the Commission adopts a value other than the maximum capability of the Small Generating Facility, the Interconnection Customer could ''forum shop'' between the Large and Small Generating Facility interconnection provisions to get the ''best deal.''

83. On the other hand, Allegheny states that if the Interconnection Customer is willing to accept the economic risks of its decision to limit the output of its generating facility, the Interconnection Request should be evaluated at the lower capacity.

84. American Forest, Cummins, Nevada Power, NRECA, and Tangibl also state that the Interconnection Request should be evaluated on the basis of requested capacity, not the maximum capability of the generator, if the Interconnection Customer commits to restrict the output. American Forest says that this is important for generators that consume most of their electrical output on-site in various manufacturing processes and export only a small fraction of their output. In its supplemental comments, Small Generator Coalition proposes a special set of tests that could be used to determine whether these kinds of configurations jeopardize safety and reliability.

Commission Conclusion

85. We are persuaded that the Interconnection Request should be evaluated based on the Small Generating Facility's maximum rated capacity. We agree with commenters that evaluating the proposed interconnection at less than the maximum rated capacity of the generating facility does not ensure that proper protective equipment is designed and installed and the safety and reliability of the Transmission Provider's electric system can be maintained.

86. Nevada Power and other commenters propose that the Interconnection Request be evaluated on the basis of requested capacity if the Interconnection Customer agrees to restrict the output of its facility. We agree with NYTO, however, that even if the Small Generating Facility delivers only a portion of its capability, it still contributes its full fault current to the Transmission Provider's electric system if there is an electrical fault. Therefore, the maximum capacity of the Small Generating Facility should be used to evaluate the Interconnection Request (*See* section 4.10.3 of the SGIP).

Evaluating Small Generating Facilities With Multiple Points of Interconnection

87. The Small Generator Interconnection NOPR invited comments on whether Small Generating Facilities with multiple Points of Interconnection (such as for a wind farm or an industrial cogeneration project serving multiple facilities) should be treated as separate projects or as a single project for queuing and interconnection study purposes.

Comments

88. BPA, CA ISO, ISO New England, and Tangibl argue that Small Generating Facilities with multiple Points of Interconnection should be treated as a single project for queuing and interconnection study purposes. BPA states that this promotes greater efficiency and accuracy because the effects of all the generators can be evaluated in one study. According to commenters, evaluating each Point of Interconnection as a discrete facility may not account for the aggregate effects when multiple generation resources are interconnected.

89. Tangibl recommends adopting PJM's approach of one Interconnection Request for each Point of Interconnection. Tangibl states that the Interconnection Customer should aggregate the capacity of the multiple wind or solar projects that lie in close proximity to one another. However, for geographically dispersed wind or solar projects, it recommends that the project developer be able to ask the Transmission Provider to treat each project individually for interconnection study purposes.

90. Central Maine, Idaho Power, and others argue that evaluating Interconnection Requests based upon a single Point of Interconnection may produce flawed results because it may identify Upgrades incorrectly.

91. NYTO recommends that the Transmission Provider have the option, subject to Good Utility Practice, to either treat such projects separately for queuing and interconnection study purposes, or as a single Point of Interconnection. This is because each proposed Point of Interconnection presents numerous technical, operational, and reliability issues.

Commission Conclusion

92. We adopt NYTO's proposal for the reasons cited by NYTO. The Transmission Provider's evaluation of a project with multiple Points of Interconnection should be performed, using Good Utility Practice, based on the project's unique engineering and geographic needs.

93. Dispute Resolution (Proposed SGIA Article 8 and Proposed SGIP Section 2.11) [51]—The Commission

[50] *E.g.,* AEP, Ameren, Avista, BPA, CA ISO, Central Maine, MidAmerican, MISO, NYTO, PG&E, SoCal Edison, and Western.

[51] In the remainder of this Preamble, ''Proposed SGIA Article xxx'' refers to a numbered article in the Small Generator Interconnection NOPR, not the SGIA adopted in this Final Rule. The same follows

Continued

proposed adopting the same dispute resolution procedures contained in the LGIA and LGIP. This was a departure from Joint Commenters' proposal submitted in response to the ANOPR which obliged the Commission to supply technical experts to resolve disputes between the Parties.

Comments

94. Commenters were split as to which type of dispute resolution procedures should be adopted by the Commission. Small generator proponents generally support allowing either Party to require binding arbitration, while Transmission Providers generally oppose such provisions. However, all commenters stress the need for quick and cost-effective dispute resolution.

95. CT DPUC argues that the procedures in the Small Generator Interconnection NOPR are too cumbersome and that state commissions are best positioned to resolve disputes in a fair manner, especially disputes over dual use facilities.

96. NRECA and BPA support adopting the dispute resolution procedures in the LGIA. However, BPA opposes binding arbitration and asserts that the Parties should keep whatever appeal rights they have.

97. Small Generator Coalition argues that most Interconnection Customers that own Small Generating Facilities do not have the resources to enter into protracted dispute resolution procedures with the larger Transmission Provider. It argues that complex dispute resolution procedures may discourage Small Generating Facilities from seeking to interconnect with Commission-jurisdictional facilities. Small Generator Coalition questions why the Commission would propose retreating from the ANOPR consensus result. It fears that Transmission Providers will simply refuse to submit to arbitration, forcing an Interconnection Customer to engage in expensive and undefined litigation. This is particularly true for owners of Small Generating Facilities no larger than 2 MW.

98. AEP proposes that either Party be able to require binding arbitration. It states that this approach is consistent with the consensus reached during the ANOPR process. Cummins agrees, asserting that otherwise one Party can obstruct the process. It points out that Interconnection Customers often lack the financial resources to pursue their rights before the Commission or in court, and need access to low-cost, binding dispute resolution procedures.

99. American Forest proposes allowing the Parties to agree on other arbitration procedures if they want to further tailor the procedures to the needs of the specific Parties. It claims that this is the approach common in the industry.

100. Midwest ISO recommends that where an RTO has Commission-approved dispute resolution procedures, it be allowed to apply those procedures to interconnection disputes.

101. NARUC requests that the Commission adopt the dispute resolution provisions found in its Model. It argues that ''[e]ach State already has in place a variety of avenues for dispute resolution oriented to protect the interests of the retail customer, ranging from a simple phone call to a State commission or consumer advocate 'consumer hotline' to a full-blown complaint proceeding conducted by the State Commission.''[52] Specifically, the NARUC Model states that ''[i]f a dispute arises at any time during these procedures [the Parties] may seek immediate resolution through complaint procedures available'' through the state regulatory commission.[53] The Model (1) states that the Interconnection Customer's Queue Position is not to be affected by its decision to pursue dispute resolution, (2) allows either Party to require binding arbitration, (3) allows the Parties to request that the state regulatory agency appoint a ''technical master'' to conduct the dispute resolution process, and (4) states that ''where possible, dispute resolution will be conducted in an informal, expeditious manner in order to reach resolution with minimal costs and delay. When appropriate and available, the dispute resolution may be conducted by phone or through Internet communications.'' [54]

102. Joint Commenters, in its supplemental comments, proposes that the Commission's Dispute Resolution Service (FERC DRS) assist Parties in resolving their disputes. Under Joint Commenters' proposal, one Party would give the other Party written notice that they have reached an impasse. As soon as two days afterwards, either Party may consult with FERC DRS for guidance on how best to resolve the dispute. FERC DRS may provide the Parties with a neutral venue to work out their dispute or may recommend alternative avenues of dispute resolution including, but not limited to, mediation, settlement judge talks, early neutral evaluation, or arbitration. The Parties could agree to make such outcomes binding, but would not be required to so agree, or even to participate in alternative dispute resolution procedures before FERC DRS.

Commission Conclusion

103. We are adopting a dispute resolution provision for both the SGIP and SGIA that closely resembles the consensus recommendation of Joint Commenters. As the widely disparate recommendations show, different types of interconnection disputes require different types of dispute resolution procedures. Small Generator Coalition and others emphasize the need to avoid expensive and time consuming arbitration provisions. According to these commenters, if a project is forced to go to arbitration, it will likely never be built. Instead, Joint Commenters reached consensus on a set of principles designed to encourage the Transmission Provider and the Interconnection Customer to use fast and low cost alternative dispute resolution procedures to work through their differences.

104. Because the nature of the disputes that may arise are so varied, this approach will allow FERC DRS to make specific recommendations to the Parties designed to resolve the dispute quickly and inexpensively. In some cases, FERC DRS may simply provide the Parties a neutral venue to discuss their differences. In other cases, FERC DRS may recommend that the Parties put their case before a settlement judge or technical master for either mediation or arbitration. The Parties are free to specify whether the outcome of this alternative dispute resolution is binding.

105. As recommended by Joint Commenters, we will not mandate that the Parties use the FERC DRS' resources. Alternative dispute resolution is, by its nature, a collaborative and voluntary process. However, both Parties must work in good faith to resolve their disputes. Additionally, the provision specifies that each Party is responsible for paying one-half of the cost of a neutral third-party employed to assist in settling the dispute.

106. We agree with CT DPUC, NARUC, and Joint Commenters (in its supplemental comments) that a state regulatory agency may often be the best place to quickly resolve a dispute. As mentioned above, the FERC DRS is well-equipped to recommend to Parties the best avenue for resolving a dispute. In many cases, that may be a state

for references to the Proposed SGIP. This is because the numbering of the SGIP and SGIA does not follow the Proposed SGIP and SGIA.

[52] NARUC at 12–13.

[53] NARUC Model at F.

[54] *Id.*

regulatory agency, if that body is willing to mediate or arbitrate the dispute.[55]

107. While we are allowing Parties to select a dispute resolution process, we count on FERC DRS to ensure that both Parties are treated fairly. Thus, we disagree with American Forest that the Parties should be able to deviate from the established dispute resolution procedures without Commission guidance or oversight. While flexibility is important, as many commenters have pointed out, the Parties are rarely on an equal footing. Thus, we will scrutinize the process to ensure that Interconnection Customers are treated fairly, especially by non-independent Transmission Providers.

108. In response to Midwest ISO's request to include ISO-specific dispute resolution rules, under the independent entity variation, it and other independent Transmission Providers may propose such a plan in their compliance filings.

109. Confidentiality (Proposed SGIA Article 7 and Proposed SGIP Section 2.11)—These provisions detailed the rights and responsibilities of each Party to keep any Confidential Information shared during the interconnection process.

Comments

110. Avista and Idaho Power assert that the confidentiality provisions should give state regulators conducting an investigation the same access to confidential information as is provided to the Commission when it conducts an investigation. Avista also requests that the Commission address recent rulings by the Internal Revenue Service applicable to confidential transactions. Similarly, NARUC is concerned that the proposed confidentiality provisions might prevent state regulators from getting the information they need in the course of conducting an investigation. The NARUC Model SGIP includes a confidentiality provision that is similar to that proposed in the Small Generator Interconnection NOPR. The NARUC Model SGIA simply leaves a place holder to be filled in by the Parties.

111. Southern Company argues that Proposed SGIA article 7.1 should specify that information supplied ''as part of this [interconnection] agreement'' be confidential rather than information supplied ''prior to execution of this agreement.'' It also says that Proposed SGIA article 7.12 allows a broader class of information to qualify for confidential treatment than does article 7.1, and proposes deleting article 7.12. Finally, article 7.4 should be revised to prohibit the Interconnection Customer from sharing Confidential Information with ''potential purchasers or assignees of the Interconnection Customer.''

112. In its supplemental comments, Joint Commenters propose the following provision in lieu of the proposal:

> Confidential Information is as defined in this Agreement but does not include information previously in the public domain, required to be publicly submitted or divulged by Governmental Authorities (after notice to the other party and after exhausting any opportunity to oppose such publication or release), or necessary to be divulged in an action to enforce this agreement. Each party receiving Confidential Information shall hold such information in confidence and shall not disclose it to any third party nor to the public without the prior written authorization from the party providing that information, except to fulfill obligations under this agreement, or to fulfill legal or regulatory requirements. Each party shall employ at least the same standard of care to protect Confidential Information obtained from the other party as it employs to protect its own Confidential Information. Each party is entitled to equitable relief, by injunction or otherwise, to enforce its rights under this provision to prevent the release of Confidential Information without bond or proof of damages, and may seek other remedies available at law or in equity for breach of this provision.

Commission Conclusion

113. We are adopting confidentiality provisions in both the SGIP and SGIA that closely resemble those proposed by Joint Commenters. While the provisions we adopt here are shorter than those in the LGIP and LGIA, they are similar in content.

114. To clarify the Commission's right to otherwise Confidential Information during an investigation, we include an SGIA provision similar to LGIA article 22.1.10.[56] This addition also clarifies that a Party is not prohibited from disclosing Confidential Information to a state regulatory body where the state regulatory body has the authority to request the information.

115. We deny Southern Company's request to remove proposed language allowing the Interconnection Customer to share Confidential Information with potential assignees and financers. The Interconnection Customer must be able to share such information to secure financing and remain competitive. However, we are modifying the provision to specify that any such person receiving Confidential Information agree to abide by the same confidentiality rules as the Parties.[57] We agree with Southern Company that confidentiality should apply to all information shared between the Parties; however, its proposal is obviated by the new language.

116. Keeping the Small Generator Interconnection Rules Current—The Small Generator Interconnection NOPR did not envision that the SGIP and SGIA would be periodically revised.

Comment

117. In its supplemental comments, Small Generator Coalition asks the Commission to adopt a mechanism to allow periodic revisiting of its interconnection rules as the industry evolves. It proposes that the Commission encourage or charter a stakeholder committee to meet periodically to consider and recommend consensus proposals for changes.

Commission Conclusion

118. We commend the persistence of the Joint Commenters who met on numerous occasions over the duration of this proceeding to aid the Commission in its decision-making. As one can see in the contents of this Final Rule, those negotiations have been very successful. We believe Small Generator Coalition's proposal has merit. We ask the Joint Commenters to take the lead in this process, and encourage interested entities to continue to work together on small generator interconnection issues. We are asking this informal group to meet biennially, beginning two years from the issuance of this order, to consider and recommend consensus proposals for changes in the Commission's rules for small generator interconnection. The Commission will provide appropriate resources to facilitate the process. To the extent that this group identifies needed changes, they may file a petition to amend the Commission's regulations. The Commission will review the petition and, if appropriate, notice that petition for public comment.

D. Issues Related to the Interconnection Request

119. The Interconnection Request is the application form that the Interconnection Customer uses to start the process of interconnecting its Small Generating Facility with the Transmission Provider's Transmission System. The issues discussed below either did not arise in the Large

[55] The Commission does not require states to serve a dispute resolution function; it lacks the statutory authority to do so. However, because commenters argue that state participation could be beneficial, we encourage states that have the expertise, resources, and interest to help resolve these disputes as they arise.

[56] *See* Order No. 2003–A at P 486.

[57] *Id.* at P 490.

Generator Interconnection proceeding or we conclude that a different conclusion should apply to Small Generating Facilities.

120. Processing Fees and Study Deposits—The Proposed SGIP set out a fixed processing fee schedule for processing all Interconnection Requests. The amount of the fee was to be tied to the size of the Small Generating Facility. Small Generating Facilities no larger than 2 MW in size would be charged the greater of (1) $0.50/kVA rating, or $100 for single phase generators no larger than 25 kVA or (2) $500 for generators larger than 25 kVA. The fee for a Small Generating Facility larger than 2 MW but no larger than 10 MW would be $1,000, and the fee for one larger than 10 MW would be $2,000. In addition, if the Small Generating Facility was to be evaluated using the interconnection studies, the Interconnection Customer would pay a deposit prior to each study that would be applied to the Transmission Provider's actual costs of performing the study.

Comments

121. NARUC urges that the processing fee be cost-based so that there is no subsidization by either the Transmission Provider or the Interconnection Customer.

122. NRECA generally supports a fixed processing fee approach, but says that the proposed fees are unrelated to the actual cost of conducting the analysis under the screens. It asks the Commission to let each Transmission Provider file fees that are designed to recover the actual cost of conducting the analysis under the screens.

123. NYTO asks the Commission to clarify that the proposed fee covers administrative and engineering costs not covered by other fees. PacifiCorp states that it does not appear that the owner of a Small Generating Facility no larger than 2 MW would pay any fee other than the fee to conduct the analysis under the screens. It asks the Commission to require the owner of such a generator to pay the actual cost of interconnection, if any, beyond the processing fee.

124. Southern Company states that the proposed processing fee schedule conflicts with the deposit provisions of the proposed interconnection study agreements. It argues that a Small Generating Facility interconnecting at the transmission level should submit an interconnection feasibility study deposit rather than the application fee because it appears that the processing fee is a charge for conducting the analysis under the screens. Southern Company also states that evaluating an Interconnection Request for a non-certified Small Generating Facility requires time and effort, and the Interconnection Customer should pay twice the processing fee assessed to the owner of a certified Small Generating Facility.

Commission Conclusion

125. Under this Final Rule, the Interconnection Customer shall submit with its Interconnection Request a processing fee or feasibility study deposit, but not both, depending on how the Interconnection Request is to be evaluated. If it is to be evaluated using the Study Process, which usually includes a scoping meeting and feasibility, system impact, and facilities studies, the Interconnection Customer shall make a deposit towards the cost of the feasibility study at the time the Interconnection Request is submitted to the Transmission Provider. The amount of the deposit is the lesser of 50 percent of the good faith estimated feasibility study costs or $1,000. If the Interconnection Request is to be evaluated using the Fast Track Process, it is to be accompanied by a $500 processing fee. If the Interconnection Request is to be evaluated using the 10 kW Inverter Process, it is to be accompanied by a $100 processing fee.

126. The purpose of the $100 and $500 processing fees is to recover the Transmission Provider's costs of evaluating Interconnection Requests under the 10 kW Inverter Process and Fast Track Process, respectively. This approach to fees is simple, easy to administer, and gives many Interconnection Customers the cost certainty they need to move forward with their projects. However, because administratively fixed fees will sometimes either under- or over-recover a particular Transmission Provider's costs, we will allow the Transmission Provider to charge a cost-based fee for processing Interconnection Requests if it has first made an appropriate rate filing with appropriate detailed cost justification under FPA section 205.[58] If the Transmission Provider decides to revise its processing fee schedule through a rate filing, the revised fees would, of course, apply prospectively to all new Interconnection Requests under the Fast Track Process or the 10 kW Inverter Process. Otherwise, the processing fees in the SGIP will serve as a default.

127. Given our concerns about the need for many Interconnection Customers to know beforehand the costs they will incur for the evaluation of their Interconnection Request under the screens, we will disallow formula rates or true up provisions in any rate submission. The cost support for the filed fixed processing fee schedule (designed in a manner similar to the processing fees in the SGIP) shall reflect the Transmission Provider's costs for processing Interconnection Requests under the Fast Track and the 10 kW Inverter Processes, as it would for the embedded cost based pricing of any other jurisdictional service.

128. Southern Company's first comment highlights an unintended inconsistency in the NOPR. To clarify, the fixed processing fee schedule delineated above is only for submissions under the10 kW Inverter Process and the Fast Track Process which use the technical screens. A submission under the Study Process instead will include a deposit towards the Transmission Provider's cost of performing the feasibility study, not both a deposit and a processing fee. However, an Interconnection Customer whose proposed interconnection fails the Fast Track Process or the 10 kW Inverter Process and is then evaluated under the Study Process would pay both the fixed processing fee with the initial submission and then a feasibility study deposit before the Study Process begins.

129. Receipt Confirmation and Requests for Additional Data—Proposed SGIP sections 3.2 and 4.2 govern the submission and receipt of the Interconnection Customer's Interconnection Request.

Comments

130. Central Maine argues that the Transmission Provider should be able to use alternative methods to mail, such as fax and overnight delivery services, to tell the Interconnection Customer that it has received the Interconnection Request. It also asks that the Commission increase the Transmission Provider's notification time period from ten to fifteen Business Days. Central Maine and EEI note that the Interconnection Customer does not have a deadline to supply missing information. They recommend that the Commission establish ten Business Days as the deadline and to state that failure to provide such information within that time will result in the Interconnection Request being deemed withdrawn.

Commission Conclusion

131. We agree that the Transmission Provider may use alternate methods of confirming receipt of the Interconnection Request. The notification requirement is needed

[58] 16 U.S.C. 824d (2000); *see also* 18 CFR § 35.12 (2004).

because it provides a date certain for affirming that the Transmission Provider has received the Interconnection Request. We also decline to increase the time by which the Interconnection Customer must be told whether the Interconnection Request is complete. Ten Business Days is sufficient time for the Transmission Provider to make an initial assessment as to whether the requisite information has been provided; an in-depth evaluation of the project is not required during this period. However, we agree with Central Maine and EEI that the Proposed SGIP does not address when the Interconnection Customer must furnish the missing information. Accordingly, the SGIP provides that the Interconnection Customer has ten Business Days after receipt of the notice to submit the missing information or to provide an explanation as to why extension of time is needed to provide such information. If the Interconnection Customer does not provide the missing information or a request for an extension of time within the deadline, the Interconnection Request shall be deemed withdrawn.

132. Interconnection Products and Service Options—The Proposed Interconnection Request would have directed the Interconnection Customer to state whether it intends to participate as a ''Network Resource,'' ''Energy-Only Resource,'' ''Non-Exporting Resource Participating in a Wholesale Market,'' or ''Other.''

Comments

133. Alabama PSC, EEI, Mississippi PSC, Southern Company, and others are concerned that the Interconnection Request could be construed to mean that a Small Generating Facility is eligible for the same Network Resource Interconnection Service that Order No. 2003 makes available to Large Generating Facilities. They argue that this service should not be provided to a Small Generating Facility. For example, Alabama PSC and Mississippi PSC argue that a Small Generating Facility does not meet the basic prerequisites to receive a ''network'' type of service. They state that Small Generating Facilities almost universally interconnect with either ''distribution'' or sub-transmission facilities that are not ''networked'' but are radial in nature. The costs to make such facilities networked to provide such a service would be prohibitive. Southern Company asks that the references to resource options be deleted. TAPS states that the Small Generator Interconnection NOPR correctly dispenses with Order No. 2003's Network Resource Interconnection Service, which TAPS claims is incompatible with Network Integration Transmission Service under the OATT.

134. Taking the opposite view, National Grid states that the Commission should establish two interconnection products for Small Generating Facilities, arguing that Energy Resource Interconnection Service and Network Resource Interconnection Service are just as important for a Small Generating Facility as they are for a Large Generating Facility. National Grid states that Network Resource Interconnection Service has important market implications for new resources, because only generating facilities that meet this interconnection standard should qualify for installed capacity credits. It argues that Small Generating Facilities should have the option of being studied as deliverable network resources so that they may be eligible for such credits. If the Commission does not mandate two separate interconnection products for Small Generating Facilities, National Grid requests that, at a minimum, the single interconnection product ensure deliverability of generating facility output, consistent with the Commission's ruling in New England with respect to large generator interconnections.[59]

135. NARUC asks the Commission to remove the category ''non-exporting resource participating in a wholesale market'' from the Interconnection Request. It notes that the Interconnection Request instructs the Interconnection Customer to declare its intention to sell electricity at wholesale in interstate commerce. However, the phrase ''non-exporting resource participating in a wholesale market,'' which is used nowhere else in the Small Generator Interconnection NOPR, raises unnecessary questions and extends its reach far beyond its stated intention.

136. PacifiCorp states that none of these service categories is defined in the Proposed SGIP and that the significance of each designation is unknown. It argues that the different service options must be defined in the SGIP and that the additional information needed to permit a Transmission Provider to conduct studies must be provided. PacifiCorp asks the Commission to explain the significance of ''Non-Exporting Resource Participating in a Wholesale Market'' and ''Other.'' It adds that there should be an opportunity for comment on the workability of these proposals and on what information a Transmission Provider may need to provide this kind of interconnection service.

137. SoCal Edison seeks clarification that, to interconnect a Small Generating Facility with a Distribution System, the Transmission Provider must study deliverability[60] on the system, even if no delivery service is sought on either the Transmission or Distribution System. In studying distribution-level interconnections, the Small Generating Facility is assumed to be running at maximum output and the power is flowing onto the directly attached distribution facility. SoCal Edison argues that there is no way to study an interconnection with the Distribution System without assuming power flows on that Distribution System.

138. SoCal Edison further argues that, unlike an energy resource on a Transmission System, the generator cannot for safety and reliability reasons opt to generate only when distribution ''capacity'' is available because the characteristics of a Distribution System (*i.e.*, radial) differ from those of a Transmission System (*i.e.*, network). Given how a Distribution System operates, the provision of distribution interconnection service in the absence of a wholesale distribution service request is a meaningless exercise, and there are considerable efficiencies in requesting and studying the two services at the same time. Also, SoCal Edison is concerned that some Interconnection Customers may not realize that a separate rate may be charged to use the Distribution System in addition to the Transmission System. It states that the Commission should clarify that both interconnection and wholesale delivery service may be required. Although SoCal Edison does not believe that the Commission needs to require that wholesale distribution service and distribution-level interconnection service be provided only on a bundled basis, it asks the Commission to permit ''bundled'' applications like those under SoCal Edison's Wholesale Distribution Access Tariff.

Commission Conclusion

139. We clarify that the resource options listed in the Small Generator Interconnection NOPR's Interconnection Request are not interconnection service options. Rather, they are merely the possible ways the Interconnection Customer may use its Small Generating

[59] New England Power Pool (*New England*), 109 FERC ¶ 61,155 at P 43–44 (2004).

[60] Deliverability refers to the ability of the electric system to accept the Small Generating Facility's output without regard to the ultimate point of delivery.

Facility once delivery service begins. The purpose of this information is to give the Transmission Provider an early indication of how the Small Generating Facility is likely to operate. The one interconnection service that the Commission proposed to make available to the Small Generating Facility is similar to the Energy Resource Interconnection Service that is offered under the LGIA. Nevertheless, based on the comments, we are concerned that requesting service-related information in the Interconnection Request could lead to misunderstanding. Because the information is related to the delivery component of transmission service, not interconnection service, it is not needed in the SGIP's Interconnection Request form. Therefore, we are removing this information from the Interconnection Request. This should address the concerns of most commenters.

140. In response to National Grid, we note that the LGIA's more expansive Network Resource Interconnection Service is intended to give the Interconnection Customer broad access to the backbone of the Transmission Provider's Transmission System. In essence, it allows the generating facility to pre-qualify as a Network Resource for any Network Customer on the Transmission System and, as National Grid notes, may make it eligible for installed capacity credits. Because Network Resource Interconnection Service entails high technical standards, we expect that an Interconnection Customer, particularly one interconnecting at a lower voltage, would rarely find this service to be efficient or practical. Nevertheless, we do not want to preclude it from choosing this option. If it wishes to interconnect its Small Generating Facility using Network Resource Interconnection Service, it may do so. However, it must request interconnection under the LGIP and execute the LGIA.

141. In response to SoCal Edison's request for clarification, we note that the SGIP lets the Transmission Provider study the potential impacts of the proposed interconnection on the Distribution System. Also, we clarify that nothing in this Final Rule (which concerns interconnection service only) prevents the Transmission Provider from evaluating the Interconnection Request and requests for wholesale distribution service and transmission delivery service simultaneously. However, the Transmission Provider may not require the Interconnection Customer to request wholesale distribution service or transmission delivery service as a condition for granting a request for interconnection service. We expect the Transmission Provider to explain to the Interconnection Customer what delivery services may be needed to meet its needs.

142. Ministerial Changes to the Interconnection Request—The Proposed Interconnection Request was crafted largely by Joint Commenters in response to the ANOPR. It is similar in many respects to the NARUC Model. Joint Commenters in its supplemental comments submitted ministerial changes to the Proposed Interconnection Request. Other commenters [61] also seek changes to the Interconnection Request, most reflecting misplaced or missing technical information. The Interconnection Request we adopt in this Final Rule largely tracks the NARUC Model version and also reflects many of the changes proposed by the commenters.

E. Issues Related to the SGIP

143. Using Voltage Level to Determine Which Procedures Apply—The Proposed SGIP divided Interconnection Requests into two groups for initial processing based on the voltage level of the interconnection. Interconnections to High-Voltage (at or above 69 kV) would be evaluated using the interconnection studies. Interconnection to Low-Voltage (below 69 kV) would be processed differently depending upon the size and the certification status of the Small Generating Facility as explained below. An Interconnection Request for a certified Small Generating Facility no larger than 2 MW interconnecting at Low-Voltage would be evaluated using super-expedited screening criteria; an Interconnection Request for a Small Generating Facility no larger than 10 MW interconnecting at Low-Voltage would be evaluated using expedited screening criteria; and an Interconnection Request for a Small Generating Facility larger than 10 MW but no larger than 20 MW interconnecting at Low-Voltage would be evaluated using the interconnection studies. If an Interconnection Request did not pass the super-expedited screening criteria or expedited screening criteria, it would be evaluated using interconnection studies.

Comments

144. Several commenters [62] object to using voltage level to distinguish which review process initially applies to an Interconnection Request. They argue that the distinction should be based on whether the Small Generating Facility is being interconnected with distribution or transmission facilities. The decision should be consistent with the physical facilities and operational realities of the electric system. They also contend that electric system configurations vary widely in terms of voltage levels and that the effect of an interconnection is not necessarily determined by voltage, but also by location and size of the Small Generating Facility. In addition, they state that this distinction was not a part of the ANOPR proposal and that using voltage to distinguish which set of procedures applies is confusing.

145. In its supplemental comments, Joint Commenters propose using whether the proposed interconnection is with a transmission line (*i.e.*, interconnections with transmission lines may not be evaluated using the technical screens) to determine whether screens may be used to evaluate the proposed interconnection.

Commission Conclusion

146. For the reasons given above, we agree with commenters that interconnection voltage should not be used as a determinative factor for whether the Interconnection Request may be evaluated using the technical screens. Instead, we are adopting the technical screens proposed by Joint Commenters in its supplemental comments. The SGIP specifies that an Interconnection Request for a certified Small Generating Facility no larger than 2 MW shall be evaluated using the technical screens, either under the Fast Track Process or the 10 kW Inverter Process, whichever applies. Under the first provision of the screens, SGIP section 2.2.1.1, the proposed Small Generating Facility's Point of Interconnection must be on a portion of the Transmission Provider's Distribution System that is subject to the Tariff.[63]

147. Certification of the Small Generating Facility (Proposed SGIP Section 3.1)—In the Small Generator Interconnection NOPR, the Commission proposed that Interconnection Requests for certified generators no larger than 2

[61] *E.g.*, Bureau of Reclamation, Central Maine, Cummins, EEI, Joint Commenters, Northwestern Energy, NYTO, PacifiCorp, PG&E, and Small Generator Coalition.

[62] *E.g.*, CA ISO, EEI, Idaho Power, PG&E, PSE&G, SoCal Edison, and Southern Company.

[63] As noted above, ''transmission'' is both an engineering term of art and a term used in the FPA. As used in the technical screens, ''transmission'' is used in the engineering sense, not in a jurisdictional sense. Likewise, references in other technical screens to ''radial distribution circuits,'' ''3-phase primary distribution lines,'' and other uses of the word distribution are used in an engineering sense, not in a jurisdictional sense. In no case do we intend that this Final Rule applies to non-Commission-jurisdictional facilities.

MW would be reviewed using the super-expedited screening criteria that employed technical screens. The Commission also noted that Joint Commenters (in its response to the ANOPR) preferred that the Commission itself implement a single, uniform, nationwide process for the certification of Small Generating Facility equipment packages no larger than 2 MW.[64] The Commission proposed, however, that this function instead be performed by an industry-recognized testing organization. In addition, the Commission requested comments as to whether IEEE 1547 (Standard for Interconnecting Distributed Resources with Electric Power Systems), together with other technical industry documents, could be the basis for a national certification standard.

Comments

148. Commenters generally agree with the value of having a certification process for Small Generating Facilities. They believe that such a process can speed interconnection and eliminate the need to ''reinvent the wheel'' each time an interconnection is made. In general, commenters agree that IEEE 1547, in conjunction with other standards, could be the basis for a certification standard.

149. NYTO requests that the Commission adopt the process and registry proposal described in the November 12, 2002 Joint Commenters filing. That would have the Commission maintain a list of certified equipment and to centralize the registry function. It claims that this would provide certainty to the industry as to which equipment has been certified and would avoid the development of competing and potentially inconsistent lists of certified equipment, which could lead to disputes and slow down the interconnection process.

150. The NARUC Model certification provision relies on Nationally Recognized Testing Laboratories (NRTL) to test and certify the safety of electrical equipment used for the production of electricity. That provision, which was developed for use by state regulators, requires that the NRTL be used by the state regulatory authority or approved by the U.S. Department of Energy.

151. American Forest and others state that if the Commission chooses not to certify and maintain a registry of equipment, it should establish and oversee a stakeholder process for the development of certification criteria. Without the Commission's involvement, the process of establishing certification standards will languish.

152. Cummins and others, however, argue that a nationally recognized testing laboratory and agencies like the Department of Energy should oversee the certification process. They also note that a national testing laboratory, such as Underwriter Laboratories, typically not only tests and verifies the performance of prototype equipment, but also provides follow-up services to verify that production equipment is designed and manufactured to the same standards as the tested equipment.

153. Ameren and others complain that the NOPR does not explain what industry operational and safety standards are applicable. Likewise, the NOPR does not specify what is needed to qualify as a national testing laboratory. They claim that leaving these issues open could lead to unnecessary or improper testing. They recommend that the Commission (1) adopt a specific set of standards for operation and safety requirements that are continually updated to meet current safety and reliability requirements set forth by NERC or the regional reliability councils, and (2) maintain a list of qualified national testing laboratories.

154. Allegheny Energy argues that certification guarantees the safety and reliability of the equipment in a stand-alone mode only, but not safety and reliability when the equipment becomes part of an integrated system.

155. Joint Commenters, in its supplemental comments, proposes a consensus equipment certification provision that it states was developed under a stakeholder process convened by the U.S. Department of Energy's Office of Electric Transmission and Distribution. The participants in the process included Joint Commenter members representing small generator interests, state regulators, and Transmission Providers, as well as experts from the electrical equipment manufacturing industry and testing laboratories. Joint Commenters' proposed certification provision provides that Small Generating Facility equipment shall be considered certified if (1) it has been tested in accordance with industry standards for continuous utility interactive operation in compliance with the appropriate codes and standards by any NRTL recognized by the United States Occupational Safety and Health Administration to test and certify interconnection equipment pursuant to the relevant codes and standards, (2) it has been labeled and is publicly listed by such NRTL at the time the Interconnection Request is made, and (3) such NRTL makes readily available for verification all test standards and procedures it utilized in performing such equipment certification and, with consumer approval, the test data itself.

Commission Conclusion

156. We agree with Cummins that nationally recognized laboratories should oversee the certification process and maintain registries of certified equipment. A NRTL not only tests and verifies the performance of prototypes, but it provides follow-up services to verify that production equipment is designed and manufactured to the same standards as the tested equipment. In this Final Rule, we are adopting Joint Commenters' proposal. This certification provision was vetted by a diverse group of stakeholders and is fundamentally consistent with the Proposed SGIP as well as the provision contained in the NARUC Model. We are especially encouraged by the report from Joint Commenters that one well-known NRTL intends to begin the certification of equipment as soon as the summer of 2005. This should hasten the development of certified Small Generating Facilities no larger than 2 MW under the Fast Track and 10 kW Inverter Processes. The certification provision we adopt in this Final Rule is contained in Attachments 3 and 4 of the SGIP.

157. Finally, we acknowledge Allegheny Energy's concerns. Electric system safety and reliability issues are to be addressed when the proposed interconnection of the certified equipment is evaluated under the Fast Track Process or the 10 kW Inverter Process.

158. Super-Expedited Procedures (Proposed SGIP Section 3) and Expedited Procedures (Proposed SGIP Section 4.3)[65]—In the NOPR, proposed SGIP section 3 stated that if the proposed Small Generating Facility is certified, no larger than 2 MW, and the interconnection is with Low-Voltage facilities, the interconnection would be evaluated using super-expedited screens. Proposed SGIP section 4.3 stated that if the proposed Small Generating Facility is no larger than 10 MW and the interconnection is with Low-Voltage facilities, the

[64] A ''certified'' Small Generating Facility is one that has been certified by a nationally recognized laboratory before the Interconnection Request is submitted to the Transmission Provider. Such a facility is said to be ''certified'' for purposes of the interconnection process.

[65] In the Small Generator Interconnection NOPR, the term Super-Expedited Procedure referred to the process that used the super-expedited screens and Expedited Procedure referred to the process that used the expedited screens. In this Final Rule, we are adopting only one set of screens, which are used in both the Fast Track Process and the 10 kW Inverter Process.

interconnection would be evaluated using expedited screens. Proposed SGIP section 4.3 also provided that the expedited screens would be used to evaluate proposed interconnections that failed the super-expedited screens.

159. The NOPR proposed that if the Transmission Provider determines that the proposed interconnection fails the super-expedited screens and is not satisfied that the Small Generating Facility can be interconnected safely and reliably, the Interconnection Customer can pay for an additional review. The review would not exceed six hours and would determine whether minor modifications to the Transmission Provider's electric system (*e.g.*, changing meters, fuses, relay settings) could enable the interconnection to be made safely and reliably. If the results of the review were positive and the Interconnection Customer agreed to pay for these minor modifications, the Transmission Provider would tender an executable SGIA to the Interconnection Customer.

Comments

160. Joint Commenters, Small Generator Coalition, and NARUC recommend that the Commission require the use of screens to evaluate Interconnection Requests. NARUC and Small Generator Coalition initially proposed using two sets of screens. However, Joint Commenters (which includes both NARUC and Small Generator Coalition) now recommends adopting a single set of screens that serves the same purpose as the two initially proposed.

161. Several commenters [66] asked that the screens be clarified, modified, or eliminated. EEI recommended that the screens be available only for interconnection with radial facilities.

162. Cinergy, EEI, Idaho Power, NYTO, and others maintain that even if the Small Generating Facility is certified and passes the screens, there is no assurance that safety and reliability or the quality of service is not degraded as a result of the interconnection. Cinergy and EEI argue the rule should require a showing that the interconnection does not degrade safety and reliability.

163. BPA and Central Maine oppose limiting the additional review to six hours, arguing that each interconnection is unique.

164. PJM argues that the Final Rule should not allow screens to be used in lieu of the feasibility study. It claims that while screens allow a project to be expedited, they do not necessarily provide the type of information needed by the Interconnection Customer to determine whether the project is viable (*e.g.*, information concerning the estimated cost of interconnection or the effects on other projects).

165. BPA claims that it is unreasonable to hold the Transmission Provider to stringent deadlines without establishing corresponding deadlines for the Interconnection Customer. MISO and BPA contend that the timelines do not give the Transmission Provider sufficient time to review the Interconnection Request. MISO proposes that the Transmission Provider be permitted to notify the Interconnection Customer if it is unable to meet the target date, along with the reasons for delay.

166. NRECA and others ask the Commission to reduce the maximum size of a facility that may be evaluated under the screens to as small as 3 kW. In its supplemental comments, Small Generator Coalition argues against imposing any size limits.

167. Southern Company argues that certain base case assumptions are necessary for an accurate representation of the electric system when an Interconnection Request is evaluated under screens. It would like the evaluation to include all pending higher-queued Interconnection Requests because only then could the effect of an Interconnection Request be truly determined.

Commission Conclusion

168. In SGIP section 2.2.1, we are adopting a single set of screens submitted by Joint Commenters in its supplemental comments, with minor editorial changes. These are the screens that would be applied in the Fast Track and the 10 kW Inverter Processes. We are adopting only one set of screens rather than the two in the NARUC Model and the Small Generator Interconnection NOPR. The individual screening criteria in this set are very similar to those in the NARUC Model and closely track both those contained in the Small Generator Interconnection NOPR and those proposed by Joint Commenters in the ANOPR process.

169. The NOPR did not contain a screen that would permit interconnection with a secondary network [67] and Joint Commenters were unable to agree on one. We are also not adopting any additional screen that would permit interconnection with a secondary network in this Final Rule.

170. We are deleting ''and must comply with all requirements of approved industry standards for interconnection technical specifications and requirements'' from one of Joint Commenters' proposed screens because this language is redundant; a Small Generating Facility that is being evaluated under the Fast Track Process or 10 kW Inverter Process must meet the codes, standards, and certification requirements of Attachments 3 and 4 of the SGIP.

171. Concerns raised by commenters that screens do not accurately reflect the true effect of the interconnection on safety and reliability are unfounded. We believe the thresholds used in the screens to be conservative and that there is negligible chance that a proposed interconnection could pass the screens and actually impact the safety and reliability of the Transmission Provider's electric system. These thresholds have been vetted by Transmission Providers, small generator developers, and representatives of state regulators alike.

172. We reject Small Generator Coalition's argument that there should be no size restrictions for Small Generating Facilities whose interconnections may be evaluated using the screens. We are retaining the proposed 2 MW threshold for certified generators as a critical eligibility criterion for using the screens. It helps ensure the safety and reliability of the Transmission Provider's electric system. Small Generator Coalition, together with a number of Transmission Providers and representatives of state regulatory agencies, vetted the threshold when submitting the package of screens through Joint Commenters' supplemental comments.

173. In response to objections to the NOPR's expedited screening procedures, the Final Rule SGIP does not include any screens for Small Generating Facilities larger than 2 MW. Accordingly, only a request to interconnect a certified Small Generating Facility no larger than 2 MW shall be evaluated using the screens. A request to interconnect a Small Generating Facility larger than 2 MW or a Small Generating Facility of any size that is not certified shall be evaluated using the Study Process.

174. BPA and others oppose limiting the additional review to six hours. We

[66] *E.g.,* ameren, BPA, Bureau of Reclamation, Central Maine, Cinergy, EEI, Exelon, MISO, NRECA, NYPSC, NYTO, PR&E, PJM, and Southern Company.

[67] A secondary network is a type of distribution system that is generally used in large metropolitan areas that are densely populated in order to provide high reliability of service to multiple customers. (Source: Standard Handbook for Electrical Engineers, 11th edition, Donald Fink, McGraw Hill Book Company).

are eliminating this restriction.[68] The SGIP includes a customer options meeting where the Transmission Provider may propose modifications to the proposed interconnection or the Small Generating Facility itself, or perform a supplemental review if the Interconnection Customer agrees to pay for it. This allows the Transmission Provider to determine the modifications needed to accommodate the interconnection without the need for detailed and more costly interconnection studies.

175. Southern Company and Joint Commenters (in its supplemental comments) argue that the Transmission Provider should be allowed to consider the effects of all pending higher-queued Interconnection Requests when evaluating the Interconnection Request under the screens. We agree.

176. Queuing Priority (Proposed SGIP Section 4.4)—In the NOPR, the Commission proposed that each Transmission Provider maintain a single queue per geographic area. A queue lists Interconnection Requests in the order in which they are received. The Queue Position determines the order of performing interconnection studies, if required, and the Interconnection Customer's cost responsibility for any Upgrades to the Transmission Provider's electric system. In Order No. 2003, the Commission decided that the Transmission Provider should maintain a single integrated queue per geographic region. However, RTOs and ISOs have flexibility to propose queues and queuing rules designed to meet their regional needs.[69] We are adopting the same provision here, for the same reasons. Accordingly, there is no need to separately address again the same comments raised in this proceeding on that issue.

Comments

177. Small Generator Coalition requests that the Commission establish separate queues for Large and Small Generating Facilities. Failing that, the Commission should clarify that the interconnection study periods identified in the SGIP are binding without regard to the Queue Position of other generating facilities. Alternatively, Small Generating Facilities should be clustered for study purposes within a given time frame (*e.g.*, 90 days). It states that requiring a single queue for all generating facilities undercuts whatever progress has been made in interconnecting Small Generator Facilities. Small Generator Coalition, Solar Turbines, and others state that, in light of their relatively simple interconnection requirements, use of off-the-shelf equipment, and minimal effects on the Transmission Provider's electric system, Small Generating Facilities should be able to be interconnected quickly. They complain that the interconnection can be delayed by higher-queued Large Generating Facilities that require longer, more frequent, and more expensive interconnection studies and restudies.

Commission Conclusion

178. We disagree with Small Generator Coalition that a single queue is unfavorable to Small Generating Facilities. Although Queue Position determines the order of the interconnection studies and the cost responsibility for the Network Upgrades necessary to accommodate the interconnection, it does not determine the order in which the interconnections are completed.

179. For many Transmission Providers, the requirement to maintain two queues could actually delay, rather than speed up, the interconnection process. Thus, we are requiring a Transmission Provider to use a single queue for all Generating Facilities, regardless of size. Also, the SGIP allows Small Generating Facilities to be interconnected without going through the Study Process if they pass the screens. However, under the independent entity variation available to RTOs and ISOs under this Final Rule, such entities may propose multiple queues in their compliance filings.[70]

180. Small Generator Coalition is correct that a non-clustering Transmission Provider must meet all deadlines established in the SGIP without regard to queue position or queue-related delays.

181. We reiterate that clustering is the Commission's preferred method for conducting interconnection studies, and should be seriously considered by all Transmission Providers.[71] Clustering of studies allows the Transmission Provider to study multiple Interconnection Requests simultaneously, thereby maximizing the effectiveness of its staff. Clustering may also reduce interconnection study and Upgrade costs; for example, multiple Interconnection Customers can share the cost of Upgrades.

182. Scoping Meeting (Proposed SGIP Section 4.5)—Proposed SGIP section 4.5 would require the Parties to hold a scoping meeting within ten Business Days after the Interconnection Request is deemed complete by the Transmission Provider. The purpose of the meeting is to review the characteristics of the Transmission Provider's electric system, discuss the technical aspects of the proposed interconnection, and review existing studies and the results of the application of the technical screens, if applicable. If the Parties agree that a feasibility study is needed, the Transmission Provider would provide the Interconnection Customer with a feasibility study agreement.

Comments

183. Central Maine asks that the Transmission Owner also be included in the scoping meeting. Small Generator Coalition asks that the provision be revised to allow the Parties to conduct the scoping meeting by telephone.

Commission Conclusion

184. In the SGIP, Transmission Provider is defined to include both the Transmission Provider and Transmission Owner, when they are separate entities. Accordingly, the Transmission Owner may attend the scoping meeting. Also, there was nothing in the Proposed SGIP that mandates that the scoping meeting be held face-to-face. We encourage the Parties to conduct the interconnection process in the most expeditious manner possible and to take advantage of telephone, fax, and e-mail. Finally, as in Order No. 2003–A, we are requiring that any scoping meeting between the Transmission Provider and an affiliate be announced publicly and transcribed, with the transcripts made available upon request for a period of three years.[72] While the Transmission Provider may redact portions of the transcripts deemed to be commercially sensitive or containing Critical Energy Infrastructure Information, the Commission will decide which redacted portions are to be made public.

185. Interconnection Studies (Proposed SGIP Sections 4.6, 4.7, and 4.8)—Proposed SGIP sections 4.6, 4.7, and 4.8 and the associated study agreements described the feasibility, system impact, and facilities studies (collectively, interconnection studies) and the Interconnection Customer's cost responsibility for each study. For a Small Generating Facility larger than 2 MW but no larger than 10 MW interconnecting at Low-Voltage, the Proposed SGIP would first evaluate the

[68] In the Proposed SGIP, the Commission termed this ''additional review.'' In the SGIP, we adopt the NARUC Model's term ''supplemental review.''

[69] Order No. 2003 at P 147.

[70] *See* Order No. 2003 at P 185.

[71] *Id.* at P 155.

[72] Order No. 2003–A at P 101–107.

proposed interconnection using expedited screens. However, if the Transmission Provider believed that the interconnection would undermine safety and reliability even though the proposed interconnection passed the screens, the Transmission Provider would pay for the feasibility study if that study subsequently identified no adverse system impact. The cost of the system impact and facilities studies, however, would always be paid by the Interconnection Customer.

Comments—Study Cost Obligations

186. Central Maine, Exelon, and PacifiCorp argue that the Interconnection Customer should always pay for interconnection studies, regardless of the conclusions reached. Small Generator Coalition maintains that the Transmission Provider should pay for the feasibility study only if it shows no adverse impact.

Commission Conclusion

187. The Interconnection Customer should pay for all of the interconnection studies, regardless of the conclusions reached, because it is unreasonable to shift this cost to other transmission customers that do not benefit from the studies, which is what would occur if the Transmission Provider were to pay for them. The Transmission Provider should, of course, use existing studies instead of performing additional analyses to reduce costs for the Interconnection Customer, whenever possible. The Interconnection Customer is not to be charged for such existing studies; however, it is responsible for costs associated with any new study and any modification to an existing study that is reasonably necessary to evaluate the proposed interconnection.

Comments—Study Requirements

188. PJM and Southern Company argue that a system impact study should always be performed to detect adverse impacts that may not have been detected in the feasibility study. Small Generator Coalition argues that in many situations only a feasibility study or a system impact study is needed, but not both; Parties should be able to agree to skip the feasibility study. PacifiCorp states that, for a small project, the feasibility study is not much different from the system impact study and recommends that the former be eliminated. SoCal Edison argues that the provisions of the SGIP dealing with interconnection studies should refer to the distribution provider, if applicable, and the Transmission Provider. Bureau of Reclamation asks the Commission to clarify that the Transmission Provider should perform flicker and voltage drop studies.

Commission Conclusion

189. We agree that, on occasion, there may be some overlap between the feasibility study and the system impact study. For a small project, the distinction may not be enough to require that both studies be performed. In such cases, it may be reasonable to skip the feasibility study entirely. Therefore, as the Commission did for Large Generating Facilities in Order No. 2003–A, we are allowing the Parties to skip the feasibility study upon mutual agreement. As to SoCal Edison's comment, we do not see any need to include the term ''distribution provider'' when referring to SGIP provisions. Transmission Provider is already defined as ''[t]he public utility (or its designated agent) that owns, controls, or operates transmission or distribution facilities used for the transmission of electricity in interstate commerce and provides transmission service under the Tariff.'' As to Bureau of Reclamation's request for clarification, voltage drop, voltage limit violation, and grounding studies are indeed included in the study process.

Comments—Study Deadlines and Restudy

190. Southern Company, PG&E, and others contend that the proposed interconnection study deadlines are too short. NARUC proposes giving the Transmission Provider 30 Business Days to complete the feasibility study, 30 Business Days to complete the distribution system impact study, 45 Business Days to complete the transmission system impact study, 30 Business Days to complete the facilities study when no Upgrades are required, and 45 Business Days to complete the facilities study when Upgrades are required.

191. PacifiCorp states that a restudy provision should be included in the SGIP so that the Interconnection Request could be restudied if a higher-queued Interconnection Customer drops out. It argues that the LGIP included a restudy provision for each of the three studies.

Commission Conclusion

192. We are adopting the deadlines proposed by NARUC and incorporating them in the interconnection study agreements. They strike a good balance, allowing sufficient time to complete the studies while ensuring that Small Generating Facilities can be interconnected within a reasonable time. Also, as noted above, with the exception of payment provisions, we are replacing ''calendar days'' with ''Business Days'' in the SGIP and SGIA. However, where appropriate, we are revising the number of days to correspond to the actual passage of time.

193. We disagree that a restudy provision is needed in the SGIP. The very purpose of the Small Generator Final Rule is to expedite interconnections of Small Generating Facilities by removing unnecessary delays. While a restudy provision in the LGIP context is meaningful because system conditions may change between completion of a particular study and the Parties' signing the LGIA, it is unlikely that any significant change in system conditions will occur that was not foreseen by the Transmission Provider at the time of study because the SGIP has a much shorter timeline.

Comments—Post-Operational Evaluation of the Interconnection

194. PacifiCorp argues that, after the Small Generating Facility is operational, an interconnection may cause problems that were unforeseen when the project was initially evaluated. For example, wind generators may need to fine tune their reactive power output. Also, because the certification and screening processes are new, the Transmission Provider should be permitted to perform post-interconnection reviews and adjustments, including additional Upgrades, if necessary, to be paid for by the Interconnection Customer.

Commission Conclusion

195. The purpose of the evaluation processes in the SGIP is to determine the effect the interconnection will have on the Transmission Provider's electric system. Such evaluations are also performed to ascertain the Interconnection Customer's cost responsibility for Interconnection Facilities and Upgrades. We reject PacifiCorp's proposal because accepting it would make determination of cost responsibility open-ended and create uncertainty for the Interconnection Customer. Should unforeseen problems arise, the Parties may make a filing with the Commission and request expedited consideration.

196. Execution of the SGIA—Although the Proposed SGIP required the Transmission Provider to deliver an executable SGIA to the Interconnection Customer within a time certain, the Interconnection Customer had no deadline to sign and return the document to the Transmission Provider.

Comment

197. In its supplemental comments, Joint Commenters propose that the Interconnection Customer have 30 Business Days to sign and return the SGIA.

Commission Conclusion

198. We adopt Joint Commenters' proposal. The Transmission Provider needs to know whether the proposed project will go forward. Giving the Interconnection Customer a deadline within which to act gives the Transmission Provider the certainty it needs for system planning purposes. The SGIP states that, after receiving an interconnection agreement from the Transmission Provider, the Interconnection Customer shall have 30 Business Days or another mutually agreeable timeframe to sign and return the SGIA, or request that the Transmission Provider file an unexecuted SGIA with the Commission. If that is not done, the Interconnection Request shall be deemed withdrawn.

F. Issues Related to the SGIA

199. Responsibilities of the Parties (Proposed SGIA Article 2.2)—Article 2.2 of the Proposed SGIA set out each Party's responsibilities under the SGIA. It included the obligation of the Interconnection Customer to interconnect, operate, and construct its facilities in a safe manner and to follow Good Utility Practice. It would similarly require the Transmission Provider to operate its electric system in a safe and reliable manner.

Comments

200. BPA asserts that Proposed SGIA article 2.2 should require the Interconnection Customer to abide by national and regional reliability rules, such as those developed by NERC and the Western Electricity Coordinating Council, that are generally applicable to all generators in a control area or geographic region. Furthermore, according to BPA, the interconnection agreement should require the Interconnection Customer to abide by any technical requirements established by the Transmission Provider to govern the safe interconnection of generating facilities.

201. NARUC offers alternative language laying out the responsibilities of the Parties, consistent with its Model. Specifically, NARUC proposes replacing article 2.2 with the following:

> Each Party will, at its own cost and expense, operate, maintain, repair, and inspect, and shall be fully responsible for the facility or facilities which it now or hereafter may own or lease unless otherwise specified in Exhibit A. Maintenance of Interconnection Customer's Small Resource and interconnection facilities shall be performed in accordance with the applicable manufacturer's recommended maintenance schedule.
>
> The Parties agree to cause their facilities or systems to be constructed in accordance with specifications provided by the National Electrical Safety Code, the National Electric Code, and as approved by the American National Standards Institute, and interconnected in accordance with the Institute of Electrical and Electronics Engineers standards where applicable.
>
> Interconnection Provider and Interconnection Customer shall each be responsible for the safe installation, maintenance, repair and condition of their respective lines and appurtenances on their respective sides of the Point Of Common Coupling. The Interconnection Provider or the Interconnection Customer, as appropriate, shall provide interconnection facilities that adequately protect the Interconnection Provider's distribution system, personnel, and other persons from damage and injury. The allocation of responsibility for the design, installation, operation, maintenance and ownership of the Interconnection Facilities shall be made part of this agreement as Exhibit C.

202. Avista states that ''the Interconnection Customer should be required not only to construct its generating facility in accordance with operating requirements to be set forth in Appendix 4 to the Proposed SGIA, but also to maintain and operate its [Small Generating Facility] in accordance with such operating requirements.'' [73]

203. Nevada Power asserts that the IEEE 1547 standards referred to in Proposed SGIA article 2.2.4 were never designed to be applied to generating facilities larger than 10 MW and that in fact ''there is no extant national standard that can be reasonably applied to govern the Interconnection Facilities for Generating Facilities greater than ten megawatts.'' [74] Instead, Nevada Power proposes that until a national standard is developed to address this 10–20 megawatt gap, the Commission modify article 2.2.4 to read:

> Interconnection Customer agrees to cause its facilities or systems to be constructed in accordance with applicable specifications that meet or exceed those provided by the National Electrical Safety Code, the American National Standards Institute, IEEE, Underwriter's Laboratory, Operating Requirements*, and, where the Generating Facility will have a capacity greater than ten megawatts, the Transmission Provider's applicable Interconnection Facility standards* in effect at the time of construction * * *.[75]

204. PacifiCorp notes that the Proposed SGIA assumes that the Interconnection Customer and the Transmission Provider are each responsible for the maintenance of equipment on its side of the point of change of ownership. But as a practical matter, more flexibility is needed because non-utility companies cannot usually maintain certain equipment, such as communications equipment, that is critical to the protection of the Transmission Provider's electric system. Moreover, the Transmission Provider often owns and maintains revenue meters on the customer's side of the point of change of ownership. Therefore, argues PacifiCorp, the SGIA should clarify that unless provided otherwise in an attachment, each Party is responsible for the equipment on its side of the point of change of ownership.

205. Small Generator Coalition requests that the Commission restrict the ability of the Transmission Provider to impose additional technical requirements on the Small Generating Facility. Otherwise, it fears that Interconnection Customers will be subjected to additional requirements under the guise of reliability rules that make it difficult to interconnect in a cost-effective manner. On the other hand, Southern Company contends that the standards for operating in parallel should be codified in the SGIA. This way, the Transmission Provider can then confirm that all the requirements are met before granting the authorization to operate.

206. In its supplemental comments, Joint Commenters recommends several changes to Proposed SGIA article 2.2. Specifically, Joint Commenters recommend clarifying that the Transmission Provider must *coordinate* with an Affected System operator to complete the interconnection, but need not *negotiate* on behalf of the Interconnection Customer. Joint Commenters also propose changing the last sentence of proposed article 2.2.4 to read:

> Interconnection Customer agrees to design, install, maintain, and operate, or cause the design, installation, maintenance, and operation of the Generating Facility and *Interconnection Customer Interconnection Facility* so as to reasonably minimize the likelihood of a disturbance, originating on *such* equipment affecting or impairing the system or equipment of Transmission Provider, or Affected Systems.[76]

[73] Avista at 14.

[74] Nevada Power at 15.

[75] *Id.* (Emphasis added to show the new language proposed by Nevada Power.)

[76] Emphasis added to show the language proposed by the Joint Commenters.

Commission Conclusion

207. We are adopting a version of this provision that is based on the NARUC Model and Joint Commenters' proposals. Redrafting article 2.2 as requested by commenters clarifies the rights and responsibilities of the Parties and aids them in better understanding their roles in the interconnection process.

208. Several commenters also ask the Commission to clarify the right of the Transmission Provider to include supplemental ''Interconnection Guidelines,'' either in the SGIA or as an attachment to it. As the Commission stated in Order No. 2003-A, the Transmission Provider may include supplemental interconnection requirements if (1) they are authorized by the applicable reliability council and (2) the Transmission Provider imposes such requirements on itself and all other Interconnection Customers, including its affiliates.[77] We see no reason to depart from this standard. The Commission has consistently held that an Interconnection Customer must adhere to established reliability practices within the control area with which it is interconnecting.[78] The same would be true for including supplemental guidelines for generators larger than 10 MW, as requested by Nevada Power.

209. In response to Nevada Power's comments about the applicability of the IEEE 1547 standard to generating facilities no larger than 10 MW, we note that the SGIA states that this standard is required only ''where applicable.''

210. The SGIA also addresses PacifiCorp's concerns over using the point of change of ownership as the basis for establishing the Parties' respective roles and allows the Parties to specify their respective roles in SGIA Attachment 2.

211. Metering (Proposed SGIA Article 2.4)—Proposed SGIA article 2.4 would specify that the Interconnection Customer is responsible for the Transmission Provider's reasonable cost for the purchase, installation, operation, maintenance, testing, repair, and replacement of any metering and data acquisition equipment. It also would require that the Interconnection Customer's metering equipment conform to applicable industry rules and operating requirements.

Comment

212. CA ISO argues that Proposed SGIA article 2.4 should require any Small Generating Facility larger than 1 MW to provide real-time telemetry to the Transmission Provider to better maintain reliability and meet regional requirements.

Commission Conclusion

213. We are not requiring Small Generating Facilities to provide real-time telemetry because doing so may hamper their development and we are not convinced that it is necessary in every instance. However, if regional reliability requirements dictate real-time telemetry for Small Generating Facilities, we expect the Interconnection Customer to meet such requirements.

214. Equipment Testing and Inspection (Proposed SGIA Article 3.1)—Proposed SGIA article 3.1 described the pre-operational testing and inspection requirements for the Small Generating Facility.

Comments

215. Central Maine argues that the Interconnection Customer should periodically test the Small Generating Facility and Interconnection Facilities after they achieve commercial operation and that the Transmission Provider should be allowed to witness such testing. The purpose of such testing is to ensure that the Interconnection Customer's equipment is operating properly. Southern Company argues that the Interconnection Customer should pay the Transmission Provider's expenses for such pre-operational testing.

Commission Conclusion

216. We decline to expand the provisions of this article to require generically that every Interconnection Customer perform periodic testing of its Small Generating Facility, regardless of circumstances. To so do would be burdensome on the Interconnection Customer, costly, and potentially allow a self-interested Transmission Provider to impose multiple rounds of costly testing on competing generators. However, should the Transmission Provider believe in good faith that the Small Generating Facility or the Interconnection Facilities is affecting safety and reliability, the Transmission Provider may, upon advance written notice, require the Interconnection Customer to perform reasonable additional post-operational testing. The Transmission Provider may witness such testing. The Transmission Provider and the Interconnection Customer shall be responsible for their own staff, equipment, and other costs associated with the testing and inspection.

217. Right of Access (Proposed SGIA Article 3.3)—The Proposed SGIA would give the Transmission Provider access to land owned or controlled by the Interconnection Customer to construct Interconnection Facilities or for other specified purposes.

Comment

218. NARUC urges the Commission to adopt the following right of access provision from its Model:

> Upon reasonable notice, the Interconnection Provider may send a qualified person to the premises of the Interconnection Customer at or immediately before the time the Small Resource first produces energy to inspect the interconnection, and observe the commissioning of the Small Resource (including any required testing), startup, and operation for a period of up to no more than three days after initial start-up of the unit. In addition, the Interconnection Customer shall notify the Interconnection Provider at least seven days before conducting any on-site Verification Testing of the Small Resource. Following the initial inspection process described above, at reasonable hours, and upon reasonable notice, or at any time without notice in the event of an emergency or hazardous condition, Interconnection Provider shall have access to Interconnection Customer's premises for any reasonable purpose in connection with the performance of the obligations imposed on it by this Agreement or if necessary to meet its legal obligation to provide service to its [customers].

Commission Conclusion

219. We largely adopt NARUC's proposal. It uses the concepts found in the Small Generator Interconnection NOPR, but shortens and simplifies the provisions. However, we are adding that each Party is responsible for its own staff, equipment, and other costs in carrying out this provision.

220. Term of Agreement (Proposed SGIA Article 4.2)—Proposed SGIA article 4.2 would require that the interconnection agreement remain in effect for ten years, or longer by request, and that it can be automatically renewed for each successive one year period thereafter.

Comments

221. BPA argues that the interconnection agreement should remain in effect as long as the Small Generating Facility remains interconnected, subject to the termination provision of the SGIA or as agreed to by the Parties. The article unnecessarily requires the Parties to negotiate a follow-on agreement after ten years.

222. Central Maine requests that the SGIA terminate after a set number of

[77] Order No. 2003–A at P 399.

[78] *See, e.g.*, Order No. 2003-A at P 44, Order No. 2003 at P 823, and Order No. 888 at 31,770.

years agreed to by the Parties. It states that the provision is unacceptable because it allows the Interconnection Customer to unilaterally select the term of the interconnection agreement.

Commission Conclusion

223. We deny BPA's and Central Maine's requests to revise the term of the interconnection agreement. These issues were addressed in Order No. 2003, and neither commenter raises any new arguments here.[79]

224. Termination (Proposed SGIA Article 4.3) and Default (Proposed SGIA Article 6.17)—Proposed article 4.3.1 would grant the Interconnection Customer the right to terminate the SGIA at any time by giving 30 days written notice. Proposed article 4.3.2 would allow the Transmission Provider to terminate the interconnection agreement if a material change in law or regulations would either prevent performance of the interconnection agreement or impose on the Transmission Provider substantial additional costs that are not reimbursed by another entity. Proposed article 6.17 described when a Default takes place and the Parties' right to cure upon notice of a Default. Because these provisions are closely related, we discuss them together.

Comments

225. Several commenters ask the Commission to grant the Transmission Provider termination rights comparable to those given the Interconnection Customer.[80] PG&E and Southern Company request that the Transmission Provider have the right to terminate the interconnection agreement if the Small Generating Facility is either shut down or abandoned. Southern Company asks that the Transmission Provider be allowed to terminate the agreement if the Small Generating Facility either does not begin commercial operation or is inactive for three years. Absent changes to this provision, the only remedy available to the Transmission Provider is to file an application to terminate with the Commission.

226. Central Maine, Joint Commenters, and PacifiCorp ask that if the Interconnection Customer terminates the SGIA, neither the Transmission Provider nor its customers should have to pay the costs of termination, including the cost of site restoration. Central Maine says these costs should be paid by the Interconnection Customer if it defaults on the interconnection agreement. PacifiCorp requests that the SGIA require the Interconnection Customer to pay any outstanding costs under the SGIP or SGIA during the 30 day notice period, or else termination shall not become effective. Joint Commenters also propose including a provision specifying that a Party remains liable for expenses incurred under the SGIA even after it has terminated. Central Maine states that certain critical provisions, such as access, confidentiality, invoicing, limitation of liability, and indemnification, should survive any expiration or earlier termination of an agreement.

227. NARUC urges the Commission to adopt its Model interconnection agreement, which allows the Interconnection Customer to terminate the agreement for any reason, including default, provided 60 days' written notice is given. Alternatively, the Transmission Provider may terminate the agreement if the Small Generating Facility does not generate energy in parallel with the Transmission Provider's Transmission System by the later of two years from the date of the agreement or 12 months after interconnection is completed.

228. NARUC also requests clarification that the Transmission Provider may terminate the interconnection agreement for Default. Both NARUC and Joint Commenters propose adding a provision specifying that a Transmission Provider may terminate the SGIA if there is a material change in a rule or statute concerning interconnection and parallel operation of the Small Generating Facility that would impose additional costs on the Transmission Provider. Finally, the NARUC Model clarifies that termination does not relieve either Party of its obligations to the other Party.

229. Central Maine and NYTO ask the Commission to clarify the difference between ''Default'' and ''Breach,'' as it did in the LGIA. Specifically, Central Maine states that a Breach, if uncured, becomes a Default and may result in termination.

Commission Conclusion

230. As Order No. 2003 stated, there is no reason to allow the Transmission Provider to terminate the interconnection agreement if the Interconnection Customer has met all its obligations.[81] As we have noted elsewhere in this Final Rule, the interests of a Transmission Provider may be adverse to those of the Interconnection Customer, and it has an incentive to discriminate against the Interconnection Customer. The Interconnection Customer's business decision not to operate its Small Generating Facility for an extended period of time should not result in the loss of its rights under the SGIA.

231. We adopt NARUC's proposal that a Party be given 60 calendar days in which to cure a Default once notified that it is in Default. If at the end of the 60 calendar days, the Default continues to exist, the non-defaulting Party may terminate the interconnection agreement. This is consistent with the Commission's regulations that require an entity to notify the Commission of the proposed cancellation or termination of a contract at least 60 calendar days before the cancellation or termination is proposed to take effect. However, to allow for situations where 60 calendar days are not sufficient time to cure the default, the SGIA allows up to six months in which to cure the Default so long as the Party ''continuously and diligently'' works towards curing the Default.

232. Joint Commenters and Central Maine propose provisions that address the cost responsibility of the Parties if the SGIA is terminated. Both the Termination and Default provisions now clarify that the Parties' financial obligations and other responsibilities survive the termination of the SGIA. The SGIA also addresses PacifiCorp's concern that the Interconnection Customer would be able to terminate the interconnection agreement and escape financial responsibility for costs it has already incurred.

233. The Proposed SGIA included a provision allowing the Transmission Provider to terminate the SGIA should there be a regulatory change that would impose additional costs on the Transmission Provider. Consistent with the LGIA, we are not including such a provision in the SGIA. Should a significant regulatory change take place, the Transmission Provider may request termination of the interconnection agreement under section 205 of the FPA.

234. Central Maine and NYTO are correct that the term ''breach'' does not appear in the SGIA. Upon discovering a Default, the non-defaulting Party gives notice of the Default to the defaulting Party. The defaulting Party then has time to cure the Default. If it does not do so, the SGIA may then be terminated. We are revising the SGIA accordingly.

235. Emergency Conditions (Proposed SGIA Article 4.4.1)—Proposed SGIA article 4.4.1 would give the Transmission Provider the right to immediately suspend interconnection service and temporarily disconnect the

[79] Order No. 2003 at P 302–304.

[80] *See, e.g.*, BPA, Central Maine, PG&E, and Southern Company.

[81] Order No. 2003 at P 313.

Small Generating Facility under Emergency Conditions.

Comment

236. SoCal Edison proposes adding the term ''Distribution Provider's Distribution System'' to each place where the definition of Emergency Condition says ''Transmission Provider's Transmission System.'' [82]

Commission Conclusion

237. The owner of the Commission-jurisdictional facility with which the Interconnection Customer interconnects is the ''Transmission Provider'' regardless of how the facility may be classified by the Transmission Provider. As defined by this Final Rule, ''Transmission Provider'' means ''the public utility * * * that owns, controls, or operates transmission *or* distribution facilities used for the transmission of electricity in interstate commerce and provides transmission service under the Tariff'' (emphasis added). The change suggested by SoCal Edison would be redundant.[83]

238. Temporary Disconnection—Routine Maintenance, Construction, and Repair (Proposed SGIA Article 4.4.2) and Forced Outages (Proposed SGIA Article 4.4.3)—Proposed SGIA article 4.4.2 would require that the Transmission Provider give five Business Days' notice before interrupting interconnection service, curtailing the output of the Small Generating Facility, or temporarily disconnecting the Small Generating Facility for routine maintenance, construction, and repairs. Proposed SGIA article 4.4.3 would give the Transmission Provider the right to suspend interconnection service to make repairs during forced outages. It would also require the Transmission Provider to give the Interconnection Customer written documentation to explain the circumstances of the disconnection if prior notice was not given. Both provisions would require the Transmission Provider to use its best efforts to coordinate disconnections, curtailments, and forced outages with the Interconnection Customer.

Comments

239. PG&E states that it has thousands of small solar projects interconnected with its ''Distribution System'' and requests that the five Business Day notice requirement be waived for distribution level generators because it would interfere with a Distribution System owner's ability to work on its facilities.

240. Empire District argues that it should not take five days to shut down a Small Generating Facility. If some minimum notice is required, it should apply only to Small Generating Facilities larger than 2 MW. Empire District also questions the need for an ''individual notice'' to every generator and whether it is really necessary to notify the operators of small certified units under 100 kW in size. If individual notifications are required, the Interconnection Customer should have a method in place whereby ''nearly instantaneous, two-way communication'' (notification and verification of receipt of notice) can be made within 24 hours.

241. EEI, PacifiCorp, and Southern Company ask that the term ''reasonable efforts'' be used instead of ''best efforts'' in Proposed SGIA articles 4.4.2 and 4.4.3, noting that ''reasonable efforts'' was used in the ANOPR consensus document.

242. EEI and PacifiCorp ask the Commission to clarify that the Transmission Provider must provide written documentation to the Interconnection Customer only when the latter requests it.

Commission Conclusion

243. We are not convinced that a five Business Day notice is unduly burdensome to the Transmission Provider or that it should apply only to Small Generating Facilities larger than 2 MW. Even if PG&E has thousands of small solar projects interconnected with its Distribution System subject to an OATT, as it states, it is highly unlikely that it will ever have to provide notice to all of them simultaneously.

244. We agree that the term ''reasonable efforts'' should be used instead of ''best efforts'' in the SGIA. We are making this change throughout the SGIA.

245. Finally, we are persuaded that written documentation need be provided only upon request by the Interconnection Customer, and the SGIA reflects this change.

246. Temporary Disconnection—Adverse Operating Effects (Proposed SGIA Article 4.4.4)—Proposed SGIA article 4.4.4 said that after being notified that its Small Generating Facility may degrade the reliability of the Transmission Provider's electric system, the Interconnection Customer must be given reasonable time to make necessary corrections. If it does not make the corrections within that time, the Transmission Provider must provide a second notice to the Interconnection Customer stating that the Small Generating Facility may be disconnected in five Business Days.

Comments

247. Several commenters [84] contend that the five day notice period is unreasonable, restricts the Transmission Provider's ability to respond to reliability concerns, and could be misinterpreted to mean that an Interconnection Customer whose Small Generating Facility is causing adverse operating conditions has priority over other customers.

248. EEI recommends that the last sentence of Proposed SGIA article 4.4.4 be revised to read: ''Transmission Provider shall provide Interconnection Customer notice of such disconnection within a reasonable time period, unless the provisions of article 4.4.1 [Emergency Conditions] apply.''

249. National Grid states that some form of advance notice and the ability to cure is generally reasonable before disconnection; however, such steps cannot be mandated all the time. It proposes language giving the Transmission Provider the right to take unilateral action to avoid service disruptions to other customers or damage to facilities caused by the Small Generating Facility.

250. According to Small Generator Coalition, the Transmission Provider should notify the Interconnection Customer if, based on sound engineering judgment, it concludes that adverse operating conditions exist.

Commission Conclusion

251. This article applies only if the Transmission Provider determines that the Small Generating Facility may adversely affect its electric system and the Interconnection Customer has failed to take the necessary remedial action within the time specified by the Transmission Provider. We are not convinced that the notice period is too long, could endanger reliability or safety, or unnecessarily expose the Transmission Provider to liability claims when damage and disruption to its electric system is imminent. There could be legitimate reasons for the Interconnection Customer not to make the necessary corrections within the allotted time (*e.g.*, replacement parts are on back order). SGIA article 3.4.1 provides that the Transmission Provider

[82] SoCal Edison does not give any rationale for its proposed change, only modified tariff sheets.

[83] If the Small Generatiing Facility is interconntected with nonjurisdictional lines, then this Final Rule does not reach the issue of whether a jurisdictional Transmission Provider may disconnect the Small Generating Facility in an emergency. The Transmission Provider would have to deal with the non-jurisdictional utility.

[84] *E.g.,* Ameren, EEI, National Grid, PacifiCorp, PG&E, and Southern Company.

may declare an emergency and disconnect the Small Generating Facility if there is an imminent threat to its electric system, which provides the Interconnection Customer with ample incentive to promptly resolve any adverse operating effects. Accordingly, we reject the request to eliminate the notification period from this article. However, we are revising this provision to specify that no notice is necessary in order to resolve an Emergency Condition.

252. We agree with Small Generator Coalition that the Transmission Provider should immediately notify the Interconnection Customer when operation of the Small Generating Facility may cause disruption or deterioration of service to other customers and that this finding must be based on and supported by sound engineering principles. We also stress that all documentation supporting the problem must be provided to the Interconnection Customer upon request.

253. Temporary Disconnection—Modification of the Generating Facility (Proposed SGIA Article 4.4.5)—Proposed SGIA article 4.4.5 would require the Interconnection Customer to secure written authorization from the Transmission Provider before making any material modification to the Small Generating Facility, or it can be disconnected.

Comment

254. EEI recommends that the phrase ''material modification'' be replaced with ''modification.'' This revised language is used in LGIA article 5.19.2.

Commission Conclusion

255. We agree with EEI that the term ''material modification'' could be ambiguous. Accordingly, we are revising this article to provide that Transmission Provider written approval is required before the Interconnection Customer may modify its Small Generating Facility in such a way that could materially impact the safety or reliability of the Transmission Provider's electric system. We are also requiring that any modifications be done according to Good Utility Practice.

256. Temporary Disconnection—Reconnection (Proposed SGIA Article 4.4.6)—Proposed SGIA article 4.4.6 would require the Parties to cooperate with each other to restore the Small Generating Facility, the Interconnection Facilities, and the Transmission Provider's electric system to their normal operating state as soon as reasonably practicable following any temporary disconnection.

Comments

257. Southern Company contends that this article should state that restoration is required only when the events causing the temporary disconnection are over. Small Generator Coalition asks that the provision use ''interruption and curtailment'' instead of ''reduction.''

258. In its supplemental comments, Joint Commenters propose the following alternative language: ''the Parties shall cooperate with each other to restore the Generating Facility, Interconnection Facilities, and Transmission Provider's Transmission System to their normal operating state as soon as reasonably practicable following a temporary disconnection.''

Commission Conclusion

259. We are adopting the proposed language submitted by Joint Commenters because it removes unnecessary jargon and simply requires that the Parties work to restore normal interconnection service as quickly as possible. This language addresses Southern Company's and Small Generator Coalition's concerns as well.

260. Financial Security Arrangements (Proposed SGIA Article 5.2)—Proposed SGIA article 5.2 provided that the Interconnection Customer provide financial security to the Transmission Provider for the construction of Interconnection Facilities or Upgrades through a guarantee, surety bond, letter of credit, or other form of credit that meets certain standards. The type of financial security arrangement and issuing entity would have to be reasonably acceptable to the Transmission Provider and have (1) terms and conditions that guarantee payment up to an agreed upon amount, (2) a reasonable date of expiration, (3) be issued at least 20 days before construction, and (4) be consistent with the Uniform Commercial Code of the jurisdiction where the Point of Interconnection is located.

Comments

261. PacifiCorp argues that this article does not refer to design costs. It asserts that this could lead to unnecessary confusion over whether design costs should be included with procurement, resulting in the burden of design costs falling on the Transmission Provider and its customers.

262. Southern Company offers proposed changes to provide protection for the Transmission Owner and the Transmission Provider. It asks the Commission to delete any references to surety bonds as an acceptable form of payment on the grounds that they are not specifically mentioned in the OATT and are not generally accepted as a form of payment. It also requests that the SGIA state clearly that the terms of any letter of credit, guarantee or other security must be reasonably acceptable to the Transmission Provider.

263. In an effort to avoid fraudulent conveyance issues or problems with the enforcement of any guarantee through bankruptcy procedures, Southern Company proposes that the parent of the Interconnection Customer (if any) serve as the source of any guarantee, specifically excluding affiliates from proposing any guarantee. Additionally, any proposed guarantor should have a credit rating of BBB+ to protect against rapid credit downgrades.

264. Southern Company also argues that the dollar-for-dollar reduction of security as payments are made to the Transmission Provider is arbitrary and capricious and imposes risks under bankruptcy and fraudulent conveyance law upon the Transmission Provider. At a minimum, the Commission should not require that security be reduced until the expiration of any potential bankruptcy preference period. Southern Company also asks the Commission to clarify that credit support is not to be reduced by payments made to the Transmission Provider that are unrelated to the actions designated in this article. It also proposes the expansion of credit to cover all other obligations of the Interconnection Customer under the interconnection agreement.

265. Finally, NYTO proposes that the Interconnection Customer demonstrate its creditworthiness in its Interconnection Request.

Commission Conclusion

266. We agree with PacifiCorp that design costs are a part of the development process that should be covered and are including such a provision in the SGIA.

267. While Southern Company opposes using surety bonds as an acceptable form of payment, we are following in this Final Rule the same approach taken in the LGIA, which states that the Interconnection Customer has the right to select a form of security that is acceptable to the Transmission Provider and consistent with commercial practices.[85] Because SGIA article 6.3 grants the Transmission Provider the discretion to reject a form of security (if it is reasonable to do so), we reject Southern Company's proposal to eliminate the surety bond as an acceptable form of credit. Giving the

[85] Order No. 2003 at P 597.

Interconnection Customer a choice of security is not unreasonable.[86] Furthermore, granting the Transmission Provider absolute discretion on what forms of security to allow would provide too great an opportunity to erect hurdles to new small generation.[87]

268. For the same reasons, we reject Southern Company's proposals to (1) limit the source of any guarantee to a parent of the Interconnection Customer and (2) require any proposed guarantor to have a credit rating of BBB+. These are hurdles that could be exploited to discourage Small Generating Facilities. The SGIA grants the Transmission Provider the discretion to reject a form, source, or issuing entity of security only if doing so is reasonable. Giving the Transmission Provider absolute discretion on these choices would create too great an opportunity for exploitation.

269. We are requiring the reduction of the security amount on a dollar-for-dollar basis as payments are made because this protects the Interconnection Customer against providing too much security while ensuring that the Transmission Provider is sufficiently protected against its real cost exposure.[88] We recognize that reducing the security as the Interconnection Customer pays its bills may cause a small increase in risk to the Transmission Provider, but the chilling effect of requiring the Interconnection Customer to maintain the full security during the length of the interconnection process would seriously discourage new small generation.

270. We clarify that credit support is not to be reduced by payments made to the Transmission Provider that are unrelated to the actions listed in this article. In response to NYTO, we note that the Interconnection Customer is already required to give appropriate financial guarantees before the Transmission Provider begins construction. Thus, the Interconnection Customer need not demonstrate its creditworthiness when it submits its Interconnection Request.

271. Milestones (Proposed SGIA Article 5.3)—Proposed SGIA article 5.3 stated that the Parties are to agree on milestones that each Party is responsible for meeting. These milestones are part of the interconnection agreement. Article 5.3 further specified that if either Party does not meet a milestone, it must compensate the other Party for its losses (*i.e.*, pay liquidated damages).

Comments

272. Several commenters ask the Commission to remove references to liquidated damages from the SGIA. Others claim that the Commission lacks the legal authority to impose liquidated damages.

273. EEI seeks the elimination of this article entirely. The provision is vague and confusing because conflicting milestone requirements appear in other areas of the Proposed SGIA and Proposed SGIP. NYTO contends that Appendix 3 of the Proposed SGIA, which requires the Parties to list agreed upon milestones, is unnecessary.

274. Midwest ISO requests that the Commission adopt the same liquidated damages clause as in the LGIA. It states that this will make the large and small generator tariff provisions consistent.

275. PacifiCorp requests that Proposed SGIA articles 5.3.1 and 5.3.2 be deleted. It contends that the accomplishment of milestones should be subject to a ''reasonable efforts'' or ''good faith efforts'' standard rather than liquidated damages being applied. As a matter of policy, good faith efforts should not be penalized, since the Transmission Provider does not profit from interconnections.

276. In its supplemental comments, Joint Commenters suggest replacing this provision in its entirety. The proposed replacement requires the Parties to agree to extend milestone deadlines if the milestone was missed in ''reasonable good faith.'' However, the Party affected by the failure to meet a milestone is not required to agree to an extension if:

(1) It will suffer significant uncompensated economic or operational harm from the delay and believes that the delay is not or was not unavoidable, (2) attainment of the same milestone has previously been delayed, or (3) it has reason to believe that the delay in meeting the milestone is intentional or unwarranted notwithstanding the circumstances explained by the party proposing the amendment.

277. Joint Commenters also suggest making the provision bilateral and removing the monetary penalty for missing a milestone. Additionally, Joint Commenters would require the Party missing the milestone to fully explain to the other Party why the milestone was missed. Finally, Joint Commenters propose adding a statement that any dispute as to this provision should be resolved according to the dispute resolution portions of the SGIA.

Commission Conclusion

278. This Final Rule adopts many concepts proposed by Joint Commenters, including the notice provisions and the preference that the Parties agree to extend deadlines instead of declaring that the other Party has defaulted on the SGIA.

279. Regarding Joint Commenters' proposal to add a statement regarding dispute resolution, such a statement is not needed because the SGIA's dispute resolution provision applies to the entire document.

280. We reject PacifiCorp's proposal to delete SGIA milestone provisions. These provisions provide a single reference to the relevant milestones. They will assist the Parties and will minimize disagreements. Removing them would create uncertainty for the Parties.

281. Because we are not imposing in this Final Rule a financial penalty on the Transmission Provider for missing milestones, there is no need to discuss commenters' arguments on that issue.

282. Billing and Payment (Proposed SGIA Article 5.4)—Proposed SGIA article 5.4 would provide that billing and payment obligations are to be performed under the terms of the SGIA.

Comments

283. PacifiCorp requests that this article be revised to include billing and payment requirements for Distribution Upgrades or Network Upgrades. It also states that billing and payment for miscellaneous costs, such as restudy costs, should be addressed.

Commission Conclusion

284. We agree with PacifiCorp in part and are revising this article to clarify that billing and payment requirements are for Distribution Upgrades and Network Upgrades. However, we see no need to identify specific miscellaneous costs because the obligations listed in SGIA article 6.1 are for services rendered, which already includes such costs.

285. Billing Procedure for Interconnection Facilities Construction (Proposed SGIA Article 5.4.1) and Final Accounting (Proposed SGIA Article 5.4.2)—Under Proposed SGIA article 5.4.1, the Transmission Provider would bill monthly for expenditures for the design, engineering and construction of, or for other charges related to, Interconnection Facilities. The Interconnection Customer would remit payment within 30 calendar days after receipt of the bill.

286. Proposed SGIA article 5.4.2 would require that the Transmission

[86] *See* Florida Power & Light Company, 98 FERC ¶ 61,226 at 61,893–94, *reh'g granted in part on other grounds,* 99 FERC ¶ 61,318 (2002); Florida Power & Light Company, 98 FERC ¶ 61,324 at 62,358–59 (noting that the Transmission Provider's practice of limiting interconnection customers to a letter of credit is unreasonable), *reh'g rejected as moot,* 100 FERC ¶ 61,094 (2002).

[87] Southwest Power Pool, Inc., 100 FERC ¶ 61,096 at P 12 (2002).

[88] *See* Order No. 2003 at P 264.

Provider submit a final accounting report to the Interconnection Customer within 45 calendar days after installing the Transmission Provider's Interconnection Facilities.

Comments

287. PacifiCorp suggests that Proposed SGIA article 5.4.1 also include procurement costs. Small Generator Coalition argues that alternative arrangements for payment of the bill should be allowed if the Parties agree. With respect to Proposed SGIA article 5.4.2, numerous commenters [89] argue that 45 calendar days is not enough time for the Transmission Provider to prepare a final accounting report. They offer an array of alternative deadlines ranging from 60 Business Days to 90 days after the Small Generating Facility begins commercial operation. BPA complains that there is not a similar deadline for any additional payments owed by the Interconnection Customer. It proposes that any unpaid bill must be paid within 30 days after the bill is submitted by the Transmission Provider.

Commission Conclusion

288. We agree with PacifiCorp that procurement costs should be included. We are also revising the provision to allow the Parties to make other reasonable payment arrangements should they agree to do so, as requested by Small Generator Coalition.

289. While we agree with commenters that the proposed deadline for submitting the final accounting report may be too short, tying it to commercial operation of the Small Generating Facility is unrealistic because that event may happen long after construction is complete. A more realistic deadline, and one that provides sufficient time for the Transmission Provider to compile the expenditures and process the final accounting report, is three months from the date construction of the facilities is completed. We are so revising this provision.

290. BPA is correct that proposed SGIA article 5.4.2 did not include a deadline for the Interconnection Customer to pay its final accounting bill. We are including in the SGIA 30 calendar days for the Interconnection Customer to make payment to the Transmission Provider.

291. Finally, we are consolidating Proposed LGIA articles 5.2, 5.3, and 5.4 because they are so closely related. The new article is entitled ''Billing, Payment, Milestones, and Financial Security.''

292. Assignment (Proposed SGIA Article 6.5)—Proposed SGIA article 6.5 would allow the Parties to assign their rights under the interconnection agreement to others under certain circumstances.

Comments

293. Southern Company contends that the proposed assignment provision unreasonably allows one Party to freely assign its rights to an affiliate without consent from the other Party. It argues that this subjects the Transmission Provider to unnecessary risk from which it cannot protect itself by requiring that the assignee have a credit rating equivalent to that of the assignor; Transmission Providers typically rely on guarantees or letters of credit, which are personal to the obligor and would likely not cover the assignee. Bureau of Reclamation emphasizes that its policies allow assignment of an interconnection agreement only if both Parties agree to the assignment and the assignor agrees to remain bound by the original terms of the SGIA.

294. Southern Company also argues that it is unreasonable to make the Transmission Provider get the Interconnection Customer's agreement before it can assign the interconnection agreement as collateral, while at the same time allowing the Interconnection Customer to assign the interconnection agreement as collateral without the Transmission Provider's permission. Southern Company contends that such assignments could unfairly deprive the Transmission Provider of the right to require the assignee or purchaser in foreclosure to assume the obligations of the assignor and to fulfill performance. In addition, the Transmission Provider could lose the right to require collateral assignees to cure Defaults of the assignor, thereby allowing assignees or purchasers in foreclosure to gain greater rights under the interconnection agreement than would have been permitted to the original Interconnection Customer. The requirement that notice of collateral assignment be provided by the secured party, trustee, or mortgagee is unworkable, as there would be no enforceable penalties for breach of this obligation. Not only do these parties lack contractual privity with the Transmission Provider, but they are also not typically subject to Commission jurisdiction.

295. Southern Company contends that this article should provide Transmission Providers and Transmission Owners indemnification rights for any losses, costs, and expenses they may incur in connection with assignments or foreclosures. In addition, Southern Company seeks clarification of the conditions under which the Transmission Provider must recognize foreclosure rights and assignments. The provision as written could expose the Transmission Provider to uncompensated risks, forcing its native load to bear the costs.

296. Small Generator Coalition requests that this article allow the Interconnection Customer to assign its rights and obligations under the interconnection agreement without consent of the Transmission Provider if the Interconnection Customer sells or transfers the Small Generating Facility and the real property on which it is located.

297. NARUC urges adoption of its Model interconnection agreement language, which allows assignment by the Interconnection Customer in two situations. First, assignment may be made to a corporation or other limited liability entity upon the consent of the Transmission Provider. Such consent is not to be withheld unless the Transmission Provider ''can demonstrate that the corporate entity is not reasonably capable of performing the obligations of the assigning Interconnection Customer.'' Second, the Interconnection Customer may assign the interconnection agreement to a person who is either the ''owner, lessee, or is otherwise responsible for the Small [Generating Facility].''

298. In its supplemental comments, Joint Commenters recommend two changes to the Proposed SGIA: (1) Deleting the sentence requiring the assignee to notify the other Party before exercising its assignment rights and (2) requiring the assigning Party to give the other Party 15 days to object to an assignment.

Commission Conclusion

299. The assignment provision proposed by Joint Commenters is similar to the provision in the Small Generator NOPR. However, Joint Commenters propose two minor changes that we will adopt. First, Joint Commenters propose to remove a very technical sentence relating to financing from the provision that is not well suited to smaller projects. Second, Joint Commenters require that a Party seeking to assign the SGIA merely inform the other Party of the pending assignment. Should the Party not object, the assignment may go forward. If the Party does object, then the remainder of the provision will apply. Making these changes to the assignment provision should reduce the administrative

[89] *E.g.*, BPA, Central Maine, NYTO, PGE, and Southern Company.

burden on the Parties without diminishing their substantive rights.

300. In Order No. 2003–A,[90] the Commission modified the assignment provision of the LGIA in order to address Southern Company's concerns relating to protecting native load customers. We make corresponding changes here, clarifying that (1) an Interconnection Customer assigning its rights under the SGIA is required to notify the Transmission Provider of the assignment and (2) an assignee is responsible for meeting the same insurance and financial security obligations as a normal Interconnection Customer upon exercising its right of assignment.[91] This is in addition to a sentence specifying that ''an assignment under this provision shall not relieve a Party of its obligations * * *.'' We also make various editorial changes that make the provision easier to read. Southern also requests that a Transmission Provider be allowed to assign the interconnection agreement as collateral. We reject that request for the same reasons discussed in Order No. 2003–A.[92]

301. Insurance (Proposed SGIA Article 6.16)—In the Small Generator Interconnection NOPR, the Commission asked whether insurance should be required for Small Generating Facility interconnections and if so, how much. While the Proposed SGIA itself contained insurance provisions, the Commission did not specify dollar amounts and requested proposals from commenters. The Commission also requested comments on three specific issues. First, should insurance coverage vary with the size of the facility? Should, for example, a 20 MW Small Generating Facility be subject to higher coverage amounts than a 10 MW facility, which itself would be subject to higher coverage amounts than a 5 MW facility? Second, should coverage types and amounts vary according to the type of generator so that, for example, solar or wind facilities would require different insurance coverage than gas-fired facilities? Third, should there be a size cutoff that would exempt certain facilities from some insurance requirements?

Comments

302. The NARUC Model, while not requiring insurance, proposes that state regulators recommend that every Interconnection Customer ''protect itself with insurance or other suitable financial instrument sufficient to meet its construction, operating and liability responsibilities * * *.'' [93]

303. NARUC argues that the Commission's proposal to require seven different types of insurance is excessive and makes federal interconnection rules incompatible with state rules. The very act of requiring insurance would drive up prices because insurance companies would then have a captive market that must have insurance. Workers' compensation and automobile insurance are already required by state law; accordingly, they should not be mandated by the federal government. NARUC also asserts that state regulators will have more flexibility to assure low insurance rates if this Final Rule does not require insurance. Finally, NARUC reports that while California requires insurance for most projects, the majority of other states (including New York, Texas, and Ohio) do not. Therefore, requiring insurance would be inconsistent with the practice in most states.

304. NYPSC reports that its own efforts to establish minimum insurance requirements were unsuccessful. While it recognizes the risk Small Generating Facilities pose to the Transmission Provider, mandatory insurance ''created a substantial barrier to the proliferation of distributed generation units.'' [94] The biggest barrier to entry is not the cost of insurance (though that is a factor), but the fact that insurance is unavailable at any price in many situations. Insurance companies are not yet familiar with the risks posed by the interconnection of Small Generating Facilities and often will not insure them. NYPSC instead proposes allowing the market to determine insurance requirements. It reports that the market has at least partially responded to this need, creating insurance pools to spread the risk to multiple entities. It also notes that manufacturers sometimes bundle insurance coverage along with the equipment.

305. ISO New England recognizes that smaller generators generally pose less risk than larger ones, but argues that the level of risk should be evaluated on a case-by-case basis. This Final Rule should let an independent Transmission Provider waive the insurance requirement if it determines that the project poses little risk to its electric system. For many smaller facilities, the liability, indemnity, and insurance requirements typically required of larger facilities may cost too much. Likewise, MISO supports making the amount of insurance required a function of the risk of the particular interconnection. However, MISO also supports establishing minimum standard insurance requirements (although it does not offer specific amounts).

306. Some Transmission Providers [95] want the Commission to keep the proposed insurance limits. Central Maine and NYTO, among others, point out that most small projects would not have the financial resources to pay any judgment against them and argue that insurance is necessary to protect the interests of the Transmission Provider, and ultimately, its customers. EEI favors using the same insurance limits as the LGIA.

307. AEP also argues that there is no reason why standard insurance provisions should be different for a 1 MW facility than for a 20 MW facility. Likewise, Allegheny Energy, Central Maine, NYTO, and others argue that even a very small generating facility can damage the Transmission Provider's electric system.

308. Empire District, Nevada Power, NRECA, and PG&E assert that the amount of insurance required should vary with generator size. As NRECA puts it, ''a residential consumer installing a 3 kW Small Generating Facility should not have to acquire $1 million in insurance * * *.'' [96] Even so, NRECA states that it would oppose any attempt to create a minimum megawatt threshold below which insurance would not be required.

309. PG&E states that California has long required insurance for all projects larger than 10 kW and that this requirement has not noticeably dampened the market for on-site Small Generating Facilities.

310. While Nevada Power agrees that solar and wind projects present less risk than does a traditional gas-fired generator, it opposes insurance requirements that differ by fuel type. The market already recognizes these reduced risks by charging proportionately less for some types of insurance than others. NRECA also opposes distinguishing between different fuel types, arguing that this is only one of many factors that determine a project's risk.

311. In contrast, Tangibl supports basing the required amount of insurance on the type of generator being interconnected. It argues that the risks posed by Small Generating Facilities are largely environmental, such as fuel

[90] *See* Order No. 2003–A at P 470.

[91] *See Id.* P 471.

[92] *See Id.* P 475.

[93] NARUC Model—Interconnection Agreement at article 7.

[94] NYPSC at 9.

[95] *E.g.,* AEP, Allegheny Energy, Avista, BPA, Central Maine, Cinergy, EEI, NRECA, NYTO, and Southern Company.

[96] NRECA at 34.

spills. Tangibl also argues that Small Generating Facilities pose less risk than do large generators because the former need smaller amounts of fuel to be stored on site. This risk is even less for renewable sources such as wind or solar.

312. Nevada Power says that knowing how much insurance is going to be required at the outset of the project is important to its success.

313. While AEP supports including standard insurance terms in this Final Rule, the Parties should be able to negotiate additional terms if warranted by the physical characteristics of the project. NRECA argues for permitting the Transmission Provider to determine the necessary level of insurance on a case-by-case basis.

314. Cinergy also argues for increased flexibility. It would let the Transmission Provider reduce or eliminate the required insurance provisions on a case-by-case basis if it believes in good faith that the full amount of insurance is not required to safeguard its interests. Cinergy also argues that this Final Rule should provide a mechanism for dealing with insurance requirements that simply do not apply to a given generator, such as requiring workers' compensation insurance for a generator that does not have any on-site employees.

315. National Grid proposes that the Commission not set required levels of insurance, and instead leave it to the Transmission Provider and state law. It points out that several states have, or are in the process of developing, specific insurance requirements for Small Generating Facilities. The Commission should not second-guess the attempt of various states to encourage on-site Small Generating Facilities. Specifically, National Grid points to a proposal developed by a working group of the Massachusetts Public Utilities Commission that proposes varying levels of insurance depending on the capacity of the project.[97]

316. NYTO makes a similar request, arguing that the Transmission Provider should be allowed to fill in specific insurance amounts based on state law, established local practice or, absent those, its own business judgment.

317. Avista states that the Parties should be allowed to negotiate alternative mechanisms such as self-insurance. It argues that even a Transmission Provider facing financial difficulty can always raise rates to cover any potential liability. Southern Company also proposes revisions to clarify the meaning of this article.

318. NRECA, while it supports the Commission's insurance proposal, opposes making the provision bilateral. It argues that the Transmission Provider's operation of its electric system does not create any greater risk to the Interconnection Customer than to any other customer. The interconnection of the Small Generating Facility, on the other hand, increases the risks to the Transmission Provider. Furthermore, according to NRECA, most Transmission Providers are already required to either self-insure or otherwise carry insurance sufficient to cover any liability that may arise from operation of their electric systems, so requiring further insurance is duplicative.

319. Empire District supports requiring the Transmission Provider to be named as an additional insured for generators larger than 5 or 10 kW, while Avista opposes such a size-related requirement.

320. Avista notes that workers' compensation requirements vary significantly by state. It argues that the Commission should not attempt to federally preempt these long-standing practices. According to Avista and Nevada Power, the interconnection agreement should simply require compliance by each Party with the applicable state workers' compensation laws.

321. Cinergy states that while insurance may be a significant barrier to entry for some Interconnection Customers, the Commission should heed the insurance market's independent assessment of the risk of a particular project. Fundamental economic principles require Interconnection Customers to bear the costs of the risks they impose on third parties, and there is no sound basis for the Commission to shift that cost to the Transmission Provider and its customers. Nevada Power and NRECA make similar arguments. NRECA also argues that if Interconnection Customers do not have insurance, insurance companies will be forced to raise the cost of insurance for Transmission Providers, and that in turn will be paid by all users of the Transmission System.

322. Small Generator Coalition, like most commenters representing Small Generating Facilities, argues that purchasing insurance is a business decision and that the level and nature of the insurance should be established by each business according to its needs, not mandated by the federal government. It argues that requiring insurance would create a major barrier to small generator interconnections and would prevent utility customers (as opposed to commercial generation projects) from pursuing interconnection because the administrative and financial barriers to entry would simply be too great. It asserts that the insurance requirements for a small wind turbine should be less than for a nuclear power plant or other large generator. Small Generator Coalition is particularly vehement in its opposition to insurance requirements for projects under 2 MW in size. Overall, Small Generator Coalition supports NARUC's comments and asks the Commission to use the NARUC Model in lieu of the Proposed SGIA.

323. Small Generator Coalition states that if the Commission does include insurance requirements in its Final Rule, it should exempt facilities no larger than 2 MW and require only $1 million in general liability insurance for projects 2 MW or larger.

324. In general, Transmission Providers support requiring an insurance regime with larger policy limits and a broad array of coverage. Interconnection Customers and NARUC generally support requiring smaller amounts of insurance or none at all. Southern Company proposes revisions to Proposed SGIA article 6.16.11 to clarify the conditions under which one Party must notify the other of accidents and injuries arising out of the interconnection agreement.

325. Central Maine proposes requiring the following policies: $1 million in employer's liability and workers' compensation insurance; $1 million in Commercial General Liability Insurance (with a $2 million aggregate combined limit); comprehensive automobile liability insurance of $1 million (with a $2 million aggregate combined limit); and an additional $1 million in excess public liability insurance (with a $5 million aggregate cap).

326. Nevada Power proposes requiring $1 million in general liability coverage from projects greater than or equal to 200 kW and $500,000 if the project is no larger than 200 kW. It also proposes requiring excess public liability insurance of $10 million if the facility is greater than or equal to 10 MW in size ($10 million aggregate); $5

[97] The proposal requires no insurance for projects smaller than 10 kW; $500,000 for projects between 10 kW and 100 kW ($500,000 aggregate); $1 million for projects between 100 kW and 1 MW ($1 million aggregate); $2 million for projects larger than 1 MW and no larger than 5 MW ($5 million aggregate); and $5 million for projects larger than 5 MW ($5 million aggregate). *See* National Grid Comments, Appendix A (citing Tariff to Accompany Proposed Uniform Standards for Interconnecting Distributed Generation in Massachusetts, Submitted by the Distributed Generation Interconnection Collaborative to the Massachusetts Department of Telecommunications and Energy in Compliance with DTE Order No. 02–38-A (May 15, 2003)).

million for projects between 5 and 10 MW ($5 million aggregate); $2 million for projects between 200 kW and 5 MW ($2 million aggregate); and none for projects less than 200 kW.

327. Southern Company is in favor of requiring a flat level of coverage for all Small Generating Facilities, regardless of size, and proposes requiring $1 million workers' compensation insurance ($1 million aggregate); $2 million general liability insurance ($6 million aggregate); $2 million comprehensive automobile liability insurance; and $10 million excess public liability insurance ($10 million aggregate).

328. Tangibl proposes differing levels of insurance requirements based on both size and type of the generator. For solar or wind generators, Tangibl proposes requiring $2 million in insurance for facilities larger than 10 MW; non-solar or wind facilities larger than 10 MW would maintain $4 million. However, for facilities no larger than 10MW, Tangibl proposes $500,000 in workers' compensation insurance; $1 million Commercial General Liability Insurance ($2 million aggregate); $1 million comprehensive automobile insurance ($1 million aggregate); and $5 million excess public liability insurance ($5 million aggregate).

329. SoCal Edison urges the Commission to adopt the same insurance requirements that the California Public Utilities Commission (CPUC) requires, asserting that California's extensive experience with small generators should serve as a model for the Commission. Specifically, California's Rule 21 requires general liability coverage in the amount of $2 million for projects larger than 100 kW; $1 million for projects larger than 20 kW and no larger than 100 kW; and $500,000 for projects no larger than 20 kW. Rule 21 also creates a special reduced insurance requirement of $200,000 for facilities no larger than 10 kW associated with a retail customer. Rule 21 exempts some classes of solar and wind generators from its insurance requirements entirely, and provides for waiver of the insurance requirements for some small residential interconnections if insurance is not easily obtainable.

330. In its supplemental comments, Joint Commenters propose requiring the Interconnection Customer to maintain insurance in an amount ''sufficient to insure against all reasonably foreseeable direct liabilities given the size and nature of the generating equipment being interconnected, the interconnection itself, and the characteristics of the system to which the interconnection is made.'' It also specifies that the provision shall not require the Interconnection Customer to obtain additional insurance if the insurance it already has is sufficient. The Interconnection Customer is required to document its insurance coverage no later than ten days before the anticipated commercial operation date of the Small Generating Facility, and afterwards as requested by the Transmission Provider. The proposed provision also allows the Interconnection Customer to self insure when appropriate and requires the Transmission Provider to maintain insurance ''consistent with the Transmission Provider's commercial practice.'' While Joint Commenters were able to reach consensus on the insurance requirement for most Small Generating Facilities, they were not able to reach consensus on the issue of insurance requirements for inverter-based generators no larger than 10 kW.

Commission Conclusion

331. The wide range of insurance recommendations points out the difficulties in establishing a set dollar amount or type of insurance appropriate to every Small Generating Facility. Insurance can add significant costs to a Small Generating Facility and may affect the project's economic feasibility. Nevertheless, a mismanaged interconnection can harm the Transmission Provider's electric system and affect power customers, potentially subjecting the Parties to liability.

332. We adopt in its entirety Joint Commenters' proposal, which reflects appropriate compromises regarding this diversity of insurance needs. We are pleased that such a diverse group of stakeholders could reach consensus on this difficult issue.

333. The level of risk in interconnecting a 50 kW photovoltaic system with the Transmission Provider's Transmission System is very different from the risk involved in interconnecting a 10 MW generator. Mandating that the Interconnection Customer maintain a reasonable amount of insurance based on the specific characteristics of its interconnection avoids the one-size-misfits-all problem and addresses the differing needs of different Interconnection Customers and Transmission Providers.

334. Joint Commenters, however, could not reach consensus on any insurance provision for certified inverter-based generators no larger than 10 kW. Commenters have convinced us that the risk of interconnecting these small inverter-based generators is low and we therefore decline to impose a generic insurance requirement in this Final Rule.[98] Instead, we adopt the approach proposed by NARUC which is that each Party be required to ''follow all applicable insurance requirements imposed by the state in which the Point of Interconnection is located. All insurance policies must be maintained with insurers authorized to do business in that state.'' Given that most generators of this size and type will be interconnecting with state-jurisdictional facilities, it makes sense to coordinate our approach with the approach recommended by NARUC. This will also avoid forum shopping. This is also similar to the approach adopted in Order No. 2003–A, which deferred to state insurance laws rather than imposing specific dollar amounts for these types of insurance.[99]

335. However, because any uninsured risk will fall squarely on the Transmission Provider's customers, who would effectively subsidize the costs of the interconnection, we reject proposals that we completely waive insurance requirement. Several commenters also advise the Commission to leave the issue of insurance to state regulators. While this makes sense for small inverter-based generators, for larger Small Generating Facilities, having insurance requirements vary by state would hamper our effort to promulgate national small generator interconnection standards.

336. Cinergy asks that the Transmission Provider be allowed to waive or reduce insurance requirements for a given project if it concludes that it poses little risk to its electric system. The provision proposed by Joint Commenters would allow this type of flexibility. If the Parties agree that the interconnection is safe, then they can agree that insurance is not necessary. However, Transmission Providers must waive or reduce the insurance requirements on a non-discriminatory basis that does not favor affiliated facilities.

337. We also clarify that an RTO or ISO may propose additional or different insurance requirements under the independent entity variation provision contained in this Final Rule.

338. Reservation of Rights (Proposed SGIA Article 6.20)—Some commenters pointed out that Proposed SGIA article 6.20 contained a typographical error, which we are correcting.

339. Signatures and Parties to the SGIA (Proposed SGIA Article 9)—

[98] *See, e.g.*, Cinergy, Empire District, ISO New England, NRECA, NYPSC, PG&E, and Small Generator Coalition. *But see, e.g.*, AEP, Central Maine, EEI, NYTO, and Southern Company.

[99] *See* Order No. 2003–A at P 462.

Proposed SGIA article 9 required both the Transmission Provider and the Transmission Owner to sign the interconnection agreement. This is the same approach taken in Order No. 2003.[100] In an RTO or ISO where the Transmission Provider is not the Transmission Owner, the RTO's or ISO's compliance filing may propose a modified interconnection agreement that provides the Transmission Provider and Transmission Owner different rights and obligations.

Comments

340. ISO New England supports the approach taken in Order No. 2003, allowing Transmission Owners and Transmission Providers to propose a modified interconnection agreement when the Transmission Provider is an entity distinct from the Transmission Owner. It contends that this approach is necessary if the Commission wishes to establish a single interconnection agreement for a region encompassed by an RTO or ISO.

341. NYISO argues that the SGIA should assign certain basic responsibilities to either the Transmission Owner or Transmission Provider.

342. Midwest ISO asserts that it is the RTO's role as an independent entity ''to ferret out unnecessary studies or inappropriate contingencies.''[101] However, it argues that the ''NOPR's failure to fully distinguish between a transmission provider and transmission owner belies the independence of the RTO,'' [102] and both it and other commenters [103] request clarification of the respective roles of the RTO and the Transmission Owner.

343. National Grid argues that defining ''Transmission Provider'' to include both the Transmission Provider and the Transmission Owner confuses the issue and adds ambiguity into the interconnection process. The Commission should clearly define the role of each Party. National Grid also notes that the Small Generator Interconnection NOPR did not account for the role of stand-alone distribution companies.

344. Central Maine asks the Commission to clarify that the Transmission Owner (or distribution company, where applicable) must sign the interconnection agreement and to clarify whether the Transmission Provider needs to be a Party to the agreement. It asserts that the division of functions between the Transmission Owner and the Transmission Provider varies by region and depends on the role that the RTO or ISO plays in the region. A request for interconnection with a Distribution System may require that a distribution company be a Party to the interconnection agreement, in lieu of a Transmission Owner or Transmission Provider. Central Maine concludes that the standard interconnection agreement resulting from this proceeding must ultimately be a contract between the Interconnection Customer and the entity that owns the Transmission System (*i.e.*, the Transmission Owner or the distribution company).

345. In RTO or ISO regions, if the Commission determines that the Transmission Provider must also sign the interconnection agreement, Central Maine asks the Commission to clarify that, under section 205 of the FPA, the Transmission Owner has the right to file the agreement, consistent with *Atlantic City Electric Co., et al.* v. *FERC*, 329 F.3d 856, 858–59 (D.C. Cir. 2003) (explaining that while an ISO may have certain FPA section 205 rights, the individual utility also has FPA section 205 rights). Central Maine also says that the Transmission Owner, not the Transmission Provider, has the right to file executed or unexecuted interconnection agreements.

346. In lieu of requiring the signatures of both the Transmission Owner and the Transmission Provider, EEI contends that the Commission should require the signature only of the Transmission Owner. Additionally, the Commission should encourage ISOs and RTOs with operational roles that cause this distinction to clearly delineate the rights and responsibilities in their operations agreements and protocols. The interconnection agreement can specifically refer to the OATT already approved by the Commission, thereby eliminating the need to have both a separate agreement between the Transmission Provider and the Interconnection Customer and a three-party agreement.

347. PG&E argues that RTOs and ISOs do not need to become Parties to interconnection agreements for distribution level projects because such entities only operate transmission systems. These entities have very little interest in the smallest projects interconnected with Distribution Systems and therefore, should not be the ones to receive Interconnection Requests or maintain the queue for distribution level interconnections. The Commission should designate the distribution provider to fulfill these roles.

348. NYTO asserts that since an independent RTO or ISO has no right to bind a Transmission Owner, the RTO or ISO should not sign the interconnection agreement.

Commission Conclusion

349. As in Order No. 2003, we are requiring three-party agreements in areas where the Transmission Provider and Transmission Operator are different entities.[104] In other regions of the country where the Transmission Provider and the Transmission Owner are the same entity, there is no need for a second signature block.[105]

350. Given that RTOs and ISOs have distinct characteristics and challenges, we have permitted each RTO or ISO to propose, on compliance, an interconnection procedures document and agreement tailored to its individual needs.[106] Such proposals should allocate to each entity the appropriate rights and obligations. As the Order No. 2003 compliance process demonstrated, the Transmission Provider and Transmission Owner are capable of dividing responsibility among themselves.

351. Finally, Central Maine asks the Commission to specify that, under section 205 of the FPA, the Transmission Owner, not the Transmission Provider, must file the interconnection agreement. This is an issue better resolved on a case-by-case basis through the compliance process. It would be premature to conclude that in all circumstances the Transmission Owner, and not the Transmission Provider, has the right to file the interconnection agreement.

352. Liability—In the Proposed SGIA, the Commission proposed including provisions in the SGIA governing the apportionment of liability between the Parties. These provisions (indemnity, consequential damages, and Force Majeure) were similar to the provisions in the LGIA. The Commission requested comments on whether Small Generating Facilities should be treated differently from Large Generating Facilities with respect to liability. We discuss our general approach to the liability provisions first, followed by a more detailed discussion of each provision.

[100] Order No. 2003 at P 909.

[101] Midwest ISO at 6.

[102] *Id.*

[103] *E.g.,* NYTO and PG&E.

[104] Order No. 2003 at P 909.

[105] We note that whether a public utility characterizes itself as a ''transmission'' provider or a ''distribution'' provider does not matter, since the Transmission Provider is defined to be the ''public utility * * * that owns, controls, or operates transmission or distribution facilities used for the transmission of electricity in interstate commerce and provides transmission service under the Tariff.''

[106] Order No. 2003 at P 909.

General Approach

Comments

353. In general, Transmission Providers support liability provisions similar to those in the LGIA, arguing that interconnecting a Small Generating Facility raises as many safety and reliability issues as interconnecting a Large Generating Facility.[107]

354. Small Generator Coalition and NARUC generally argue that these provisions should be tailored specifically to Small Generating Facilities, arguing that the Proposed SGIA was simply too complicated for many Small Generating Facilities. They first argue that a Small Generating Facility poses less danger to the Transmission Provider's electric system than a Large Generating Facility. Second, they argue that imposing liability provisions similar to those in the LGIA on Small Generating Facilities would be a major financial barrier to entry and deter the development of new Small Generating Facilities. Third, they point out that the Transmission Provider has an incentive to include onerous liability provisions in the SGIA to deter competition.

355. ISO New England similarly argues that Small Generating Facilities do not present the same risks as do Large Generating Facilities. It asks the Commission to permit independent entities to determine, on a case-by-case basis, whether to waive or relax the liability provisions for individual generators.

356. Avista asks the Commission to follow *Midwest Independent System Operator, Inc., et al.*, 100 FERC ¶ 61,144 (2002), which allows the Parties to propose customized liability limitations. It argues that the August 14, 2003 Northeast Blackout is evidence of the need for a comprehensive look at liability limitations. Avista argues that the interconnection agreement should have a savings clause to let an RTO conform the liability and dispute resolution provisions (and possibly others) to the standards and procedures being implemented by the RTO. Otherwise, the Commission's rule could unnecessarily grandfather inconsistent provisions.[108] For example, the Agreement Limiting Liability Among Western Interconnected Systems (''WIS Agreement'')[109] should continue to be an option for generators and utilities. Avista argues that the SGIA should have a savings clause for the WIS Agreement.

Commission Conclusion

357. Many commenters, including NARUC and independent entities like ISO New England, agree that the Commission should modify the proposed liability provisions for Small Generating Facilities in this Final Rule. We agree that the provisions can generally be simplified without increasing the liability of any Party. The liability provisions adopted here use many of the proposals made by NARUC and other commenters. They address the Transmission Provider's need to protect its electric system while removing unreasonable barriers to entry for Interconnection Customers.

358. We agree with ISO New England that an independent Transmission Provider (via the independent entity variation standard) may propose on compliance to evaluate each Interconnection Request on a case-by-case basis and fashion liability requirements that are suitable to that particular entity.

359. We deny Avista's request for caps on the amount of liability the Transmission Provider may be subject to, or that we allow it to develop its own liability rules.[110] The liability rules discussed in the interconnection context are distinct from the liability rules in the rest of the OATT.[111] In the interconnection context, the indemnity provision is two-sided (or three-sided, in the case of an independent Transmission Provider). This means that the indemnity provisions found in the SGIA are very different than the indemnity provisions found in the OATT. Many of Avista's comments have more to do with the liability provisions found in the transmission portions of the OATT than they do with interconnection. While we agree that liability protection is important, this rulemaking is not the place to decide such an issue. We also deny Avista's request to insert a savings clause into the liability provision. Avista has not explained how the Transmission Provider's participation in the WIS Agreement would be affected by this Final Rule. If Avista wishes, it may seek to include such a provision on compliance under the ''consistent with or superior to'' standard.

Consequential Damages (Proposed SGIA Article 6.19)

360. Proposed SGIA article 6.19 used the LGIA consequential damages provision, which states that neither Party is liable to the other for special or consequential damages except as expressly provided for in the interconnection agreement.

Comments

361. Central Iowa Coop is concerned that the phrase ''[o]ther than as expressly provided for in this agreement'' could make the Parties subject to consequential damages when read in conjunction with the indemnification provision in Proposed SGIA article 6.13. It asks the Commission to clarify that the bar against consequential damages applies in all circumstances, except when the Parties have reached an express agreement to the contrary.

362. Central Maine asks the Commission to clarify that indemnity payments to a third party are not consequential damages.

363. NARUC proposes that the Commission adopt its Model language, which is less complicated than the proposed provision. Specifically, NARUC proposes replacing Proposed SGIA article 6.19 with a generic statement at the beginning of the liability article:

> Each Party's liability to the other Party for any loss, cost, claim, injury, liability, or expense, including reasonable attorney's fees, relating to or arising from any act or omission in its performance of this agreement, shall be limited to the amount of direct damage actually incurred. In no event shall either Party be liable to the other Party for any indirect, special, consequential, or punitive damages of any kind whatsoever.

Commission Conclusion

364. We retain the provision as proposed. This is a contractual term and no commenter has convinced us that it is necessary to deviate from the approach taken in Order No. 2003.

365. Several commenters appear to have misunderstood the relationship between the indemnity and consequential damages provisions in the Proposed SGIA. The bar against

[107] For instance, AEP, BPA, EEI, and Nevada Power argue that the LGIA and the SGIA should be consistent. Nevada Power argues that such provisions would not discourage well-run generators from interconnecting with the Transmission Provider.

[108] Avista at 18.

[109] ''The WIS Agreement * * * is a multi-lateral agreement among parties in the Pacific Northwest that operates to limit liability among the signatories.'' *Id.*

[110] In Puget Sound Energy, Inc., 107 FERC ¶ 61,287 (2004), the Commission denied a request by Puget Sound to include the WIS Agreement in its tariff because Puget Sound did not explain why such inclusion was ''consistent with or superior to'' the *pro forma* OATT. However, the Commission did not foreclose the possibility that a WIS Agreement member may be able to make such a showing in a future compliance filing.

[111] Order No. 2003 at P 636 (''Commenters have convinced us that interconnection presents a greater risk of liability than exists for the provision of transmission service and that, therfore, the OATT indemnity provision is not suitable in the interconnection context.'')

consequential damages does not apply in the indemnity context. Instead, the indemnification of one Party by another is comprehensive, and the indemnifying Party is responsible for all of the indemnified Party's costs, regardless of whether those costs are compensatory or punitive. While the consequential damages provision adopted in this Final Rule prevents one Party from seeking consequential damages against another Party, the purpose of the indemnification provision is different; it protects the indemnified Party from liability to third parties (those who are not Parties to the interconnection agreement). Requiring the indemnifying Party to reimburse the indemnified Party for, say, only compensatory damages and not punitive damages would not make the indemnified Party whole. We are adding language to the beginning of the indemnity section to make this clear.

Indemnity (Proposed SGIA Article 6.13)

366. Indemnification is compensating another for a loss suffered due to a third party's act or default.[112] The Proposed SGIA contained indemnity provisions similar to those contained in the LGIA. The proposal would require the Transmission Provider and the Interconnection Customer to indemnify each other for any damages, losses, claims, and obligations by or to third parties arising from performance of the Transmission Provider's or Interconnection Customer's obligations under the interconnection agreement on behalf of the other contracting party. Indemnity protection would include the amount of the indemnified Party's loss, net of any insurance recovery, but would not apply where there is gross negligence or intentional wrongdoing. The proposed provision also set forth detailed procedures for pursuing an indemnity claim and allowed recovery of legal costs in some cases.

Comments

367. AEP, BPA, Idaho Power, and Nevada Power generally agree that Small and Large Generating Facilities should be treated consistently with respect to indemnity protections.

368. Central Iowa Coop, Georgia Transmission, and NYTO request that the Commission replace the mutual indemnity provision with a one-way indemnity provision in favor of the Transmission Provider. They argue that the Transmission Provider receives no benefit from an interconnection, but does face additional safety, reliability, and power quality concerns as a result of it. To require the Transmission Provider to indemnify the Interconnection Customer unfairly shifts the costs and risks to the Transmission Provider's other customers.

369. Central Maine contends that Proposed SGIA article 6.13 should not exclude ''insurance or other recovery'' from amounts owed to an indemnified party. It argues that this is commercially unreasonable and undermines the very intent of the indemnity provision.

370. ISO New England argues that applying the liability provisions contained in the LGIA to Small Generating Facilities is unreasonable because the risks associated with interconnecting the latter are not comparable to those associated with interconnecting Large Generating Facilities. The Commission should permit independent entities such as RTOs and ISOs to determine, on a case-by-case basis, whether a waiver or relaxation of the indemnity provisions used for Large Generating Facilities should be permitted based on the actual risk the Small Generating Facility presents. Permitting this type of flexibility would minimize the cost of interconnection and ensure adequate protection for the Transmission Provider.

371. Southern Company argues that the proposed indemnity provision is not workable. The provision requires each Party to indemnify the other for damages arising out of such other Party's ''performance of obligations under this Agreement on behalf of the indemnifying Party.'' [113] It argues that it is unclear whether the indemnity provision would ever apply because the Parties do not perform obligations on behalf of each other at all. It proposes that each Party indemnify the other from any liabilities or damages resulting from activities on the indemnifying Party's own side of the point of change of ownership. Additionally, each Party should indemnify the other for the indemnifying Party's failure to adhere to operating requirements and for breaches of the interconnection agreement. Southern Company also takes issue with the provision's limitation of expenses paid for the legal defense of an indemnified Party. If an indemnified Party has additional legal defenses, the proposed article requires the indemnifying Party to pay for only one attorney.[114] Southern Company requests that the Commission revise the provision to require the payment of the indemnified party's reasonable legal expenses.

372. In its Model interconnection agreement, NARUC proposes a different approach to indemnity. There, the Transmission Provider and the Interconnection Customer would assume liability and indemnify each other for claims and expenses resulting from their own negligence as it relates to the design, construction, and operation of their facilities. A Party indemnifies the other only for claims brought by claimants who could directly recover from the Party itself. Indemnity for both Parties includes monetary losses, reasonable legal fees for defending a third party action, damages related to the death/injury of a third party, damages to the Party's property or property of a third party, and damages for disruption of a third party's business. Neither the Transmission Provider nor the Interconnection Customer assumes liability for consequential, special, incidental, or punitive damages, and neither is responsible for disruption of the other's business or for the costs and expenses of pursuing legal action against the other.

Commission Conclusion

373. We are adopting a streamlined indemnity provision in this Final Rule.

374. Several commenters appear to have misunderstood the relation between the proposed indemnity provision and the bar against consequential damages provision (now called Limitation of Liability). We are therefore including in the SGIA an explanation that claims under the indemnity provision are exempt from the bar against consequential damages contained in the Limitation of Liability provision.

375. Many of the comments addressing indemnity are identical to those addressed in Order No. 2003 and do not argue that Small Generating Facilities should be treated differently from Large Generating Facilities. We will not repeat the discussion in those orders. For instance, the Commission addressed comments about the bilateral nature of the provision in Order No. 2003 at P 637, and comments on which side of the Point of Interconnection work is conducted in Order No. 2003 at P 638.

376. Because the purpose of indemnification is to pay another for actual losses, the exclusion of ''insurance or other recovery'' from amounts owed to an indemnified Party does not undermine the intent of this provision, as Central Maine argues. Forcing an indemnifying Party to pay

[112] Black's Law Dictionary 772 (7th ed. 1999).

[113] Southern Company at 34.

[114] *See* Proposed SGIA article 6.13.

damages already covered under an insurance policy would allow the indemnified Party to profit at the expense of the indemnifying Party. Excluding insurance and other recoverable amounts avoids overcompensating an indemnified Party.

377. In response to Southern Company's request that the provision cover an indemnifying Party's failure to meet operating requirements or its breach of the SGIA, we note that it covers damages from actions or inactions under the interconnection agreement. However, in response to Southern Company's comments, we are modifying the provision to add: ''arising out of or resulting from the other Party's actions or failure to meet its obligations under this SGIA.''

Force Majeure (Proposed SGIA Article 6.14)

378. Proposed SGIA article 6.14 provided that no Party is considered to be in default with respect to contractual obligations, other than payment of money due, if it is prevented from fulfilling such obligations by a Force Majeure event. The affected Party is to exercise due diligence to remove the disability and provide adequate notice to the other Party. These provisions are consistent with those in the LGIA. The Commission requested comments concerning whether a different approach should be taken for Small Generating Facilities.

Comments

379. AEP, BPA, Idaho Power, and Nevada Power generally agree that all generating facilities should be treated the same with respect to Force Majeure. AEP argues that because Force Majeure can happen for either type of interconnection, there is no reason that the contractual protection should differ according to generator size. Nevada Power contends that consistent treatment does not interfere with having a simplified and expedited interconnection process for Small Generating Facilities.

380. While NARUC's Model and the Proposed SGIA included similar Force Majeure clauses, NARUC recommends that the Commission remove the statement that economic hardship is not considered a Force Majeure Event. It also proposes that the Commission require that an affected Party use ''reasonable efforts'' instead of ''due diligence'' to resume its performance as soon as possible. Additionally, NARUC proposes changing the definition of Force Majeure to include events that ''the affected Party is unable to prevent or provide against by exercising reasonable diligence.'' [115]

Commission Conclusion

381. We agree with NARUC that some modification to the Proposed SGIA is needed and we are adopting a Force Majeure clause that melds the best aspects of NARUC's and the Commission's proposals. For instance, this Final Rule provision allows the Party asserting the Force Majeure Event to call or write to the other Party to make the required notification. Easy notification ensures that both Parties know of a Force Majeure Event as soon as possible.

382. We are not adopting all of NARUC's proposals, however. The NARUC Model would not allow a Party to invoke Force Majeure if it could have prevented the event through the exercise of ''reasonable diligence.'' Our SGIA uses the terms ''negligence'' and ''intentional wrongdoing,'' which are commonly accepted legal terms.

383. Finally, we are moving the definition of Force Majeure Event to the body of the SGIA from an appendix.

384. Reactive Power—The Proposed SGIA did not include a separate provision for reactive power; however, the LGIA does.

Comments

385. CA ISO and Southern Company ask the Commission to include a provision for reactive power in the interconnection agreement. CA ISO argues that this provision is essential for the reliability of the Western Interconnection because the entire region is afflicted by voltage instability. A Small Generating Facility interconnecting at the transmission level should meet the reactive power requirements of the CA ISO tariff and abide by reactive power dispatch instructions from the control area operator. Moreover, a Small Generating Facility interconnecting at the ''distribution'' level should meet reactive power requirements specified in the Wholesale Distribution Access Tariff and abide by any reactive power dispatch instructions from the Distribution System operator.

386. Southern Company notes that the LGIA has a reactive power provision and argues that one should be included in the SGIA as well. Otherwise, a Small Generating Facility could become a burden on the Transmission Provider's electric system. The Transmission Provider should be provided real-time information on the status and output of each generator to ensure safe and reliable operation.

Commission Conclusion

387. We are requiring the Interconnection Customer's Small Generating Facility to maintain a power factor within the range of 0.95 leading to 0.95 lagging, unless the Transmission Provider establishes and the Commission approves different requirements that apply to all similarly situated generators. There is no reactive power requirement for wind powered Small Generating Facilities.

388. Generator Balancing Requirements—The Proposed SGIA did not include a separate generator balancing provision.

Comment

389. Southern Company argues that the SGIA should include provisions for generator balancing service, and presents several arguments in support of its position.

Commission Conclusion

390. In Order No. 2003–A, the Commission determined that generator balancing service is more closely related to delivery service than to interconnection service, and because delivery service requirements are addressed elsewhere in the OATT, the balancing service requirement need not appear in the interconnection agreement. On rehearing, the Commission in Order No. 2003–B did not add a generator balancing service provision to the LGIA, but it did permit the Transmission Provider to include a provision for generator balancing service in individual interconnection agreements. We reach the same conclusion here.[116] Any such provision should be tailored to the Parties' specific circumstances and is subject to Commission approval.

391. Appendices to the SGIA—The Proposed SGIA included five appendices (called attachments in the Final Rule SGIA) that set forth technical and operating information, including: (1) A description and statement of the costs of the Small Generating Facility, Interconnection Facilities, and metering equipment; (2) a one-line diagram depicting the Small Generating Facility, Interconnection Facilities, metering equipment and Upgrades; (3) project milestones; (4) additional operating requirements for the Transmission Provider's electric system and Affected Systems needed to support the Interconnection Customer's needs; and (5) the Transmission Provider's

[115] NARUC Model—Definitions.

[116] Order No. 2003–B at P 72–75.

description of its Network Upgrades and Distribution Upgrades and a best estimate of their costs.

Comments

392. Central Maine and NYTO state that these appendices would require information that is not needed. They ask that the appendices include only: (1) Small Generating Facility description, (2) one-line diagram, (3) description of the Interconnection Facilities, (4) operation and maintenance (O&M) costs, and (5) operating procedures. They state that additional operating procedures may have to be developed with input from the Transmission Owner and the Interconnection Customer to ensure system integrity and reliability.

Commission Conclusion

393. We are not persuaded that any change in the appendices is warranted. With the exception of O&M costs, all the items that Central Maine and NYTO would have us include in the appendices are already there. We agree with Central Maine and NYTO that additional operating procedures with input from both the Transmission Provider and the Interconnection Customer may be needed, and we encourage such efforts. The treatment of O&M costs is discussed in more detail in Part II.H below (Responsibility for Operation and Maintenance Costs).

G. The 10 kW Inverter Process

394. In the Small Generator Interconnection NOPR, the Proposed SGIP included a default interconnection Study Process for Small Generating Facilities and a simplified procedure that used technical screens for certified Small Generating Facilities no larger than 2 MW. The Proposed SGIA, however, would be used for the interconnection of all Small Generating Facilities, up to and including 20 MW in size. The NOPR did not include a separate procedures document or interconnection agreement for very small generators, although some commenters urged, in comments submitted in response to the ANOPR, that 0–50 kW facilities (especially facilities that use inverters to convert the direct current output of the generator to alternating current) need a separate and simpler process than other generators.

Comments

395. Some commenters argue that the Proposed SGIP and Proposed SGIA are too complicated for very small Interconnection Customers. Small Generator Coalition states that unless the Commission is willing to modify the NOPR in fundamental ways, many of its members believe that development of Small Generating Facilities would be better served if the NOPR were simply withdrawn. It claims that, under the Proposed SGIP and Proposed SGIA, the only method by which even a small photovoltaic system, say 10 kW, could interconnect with the Transmission Provider is to follow the same process that would apply to generators 1,000 times larger. It asks the Commission to ''recognize the simplicity of the very smallest generators and [to] include an exception for small inverter-based systems.'' Plug Power, also representing small generator interests, states that a special process should be adopted for very small generators because their interconnection requirements are fundamentally different from those of larger facilities. Moreover, adopting simpler requirements would foster the growth of ''plug and play'' equipment.

396. NRECA, which represents a wide variety of cooperative utilities that interconnect with small generators, states that it has adopted special procedures for evaluating very small generators because they generally interconnect at low voltage and have different technical requirements from larger ones.

397. Some state regulatory authorities already have a simplified process for very small generators. NJ BPU points out that it has adopted simplified procedures for qualified very small inverter-based generators. NARUC, in its updated Model, supports a simplified Interconnection Request (application) for very small generators.

398. Joint Commenters submits in its supplemental comments a streamlined process for certified inverter-based generators no larger than 10 kW. This consists of a simplified Interconnection Request, simplified procedures, and a brief set of terms and conditions (that is essentially a highly simplified interconnection agreement)—all contained in a single document. This Joint Commenter proposal consists of the following steps: (1) The Interconnection Customer completes an abbreviated Interconnection Request and signs the terms and conditions when it submits its Interconnection Request to the Transmission Provider; (2) the Transmission Provider uses the Fast Track Process technical screens to evaluate the Interconnection Request; (3) if the proposed interconnection passes the technical screens, the Transmission Provider approves the application; (4) once the Interconnection Customer's equipment has been installed, it sends a certificate of completion to the Transmission Provider; and (5) the Transmission Provider then inspects the equipment installation and, if satisfied that it is safe for operation, authorizes the interconnection.

Commission Conclusion

399. The comments demonstrate a near universal agreement of the need for special provisions for very small generators, a need that is being met at least in part by some state regulatory authorities. We agree with the commenters who state that the Proposed SGIP and Proposed SGIA are too complicated for very small generators, and we recognize the desire to accommodate their interconnection needs. However, a single document tailored for the needs of the smallest generators would be unsuitable for the interconnection of larger small generators; their technical evaluations and their legal rights and responsibilities must be set out in greater detail.

400. We conclude that a balanced response to the comments is to issue two sets of documents—an SGIP and SGIA that serve the needs of most small generators, and a simplified document that meets the needs of very small generators.

401. Joint Commenters' proposed process for the interconnection of very small generators, which enjoys broad support from a variety of stakeholder interests, is simple to implement while ensuring the safety and reliability of the Transmission Provider's electric system. Accordingly, we are adopting it in this Final Rule with minor modification under the name ''10 kW Inverter Process.'' The simplified 10 kW Inverter Process consists of an Interconnection Request, simplified procedures, and a brief set of terms and conditions applicable to inverter-based 0–10 kW generators. It is included as Attachment 5 to the SGIP. This ''all-in-one'' document combines the attributes of both an interconnection procedures document and an interconnection agreement. We are including it in the SGIP because it is the SGIP that the Interconnection Customer will first encounter in the process of interconnecting its Small Generating Facility with the Transmission Provider. A flowchart showing the 10 kW Inverter Process may be found in Appendix D of this Final Rule.

402. The 10 kW Inverter Process is user friendly and a straightforward interconnection should be accomplished in short order. To accelerate the process, by signing the application at the time of submission,

the Interconnection Customer executes what essentially is an interconnection agreement, in the form of standard terms and conditions with which it agrees. This eliminates the additional step of signing an interconnection agreement if the proposed interconnection passes the screens.

403. The 10 kW Inverter Process, by its very name, applies only to equipment that is interconnected with the Transmission Provider's electric system through an inverter. Inverter-based equipment has a very small likelihood of causing safety and reliability concerns on the Transmission Provider's electric system because it can quickly disconnect from the electric system when a disturbance occurs. Nonetheless, while the 10 kW Inverter Process should facilitate the interconnection of this class of Small Generating Facilities, the technical requirements for interconnection are just as rigid as those for all Small Generating Facilities up to 2 MW in size that elect to use the Fast Track Process. Specifically, they must be certified by a Nationally Recognized Testing Laboratory and the proposed interconnection must pass the technical screens. Consequently, interconnections will not be permitted if they jeopardize the safety and reliability of the Transmission Provider's electric system.

404. Although the Interconnection Customer signs an abbreviated set of terms and conditions when it submits its Interconnection Request under the 10 kW Inverter Process, it is a legal instrument nonetheless. Its provisions are consistent with the SGIA. Should a dispute arise, we encourage the Parties to use this rulemaking for assistance in interpreting the terms and conditions of the 10 kW Inverter Process. Moreover, because the intent of the terms and conditions in this document are the same as those of the SGIA, no separate discussion of them is necessary here again in this Final Rule.

405. The 10 kW Inverter Process is quick, inexpensive, and user friendly. Including it in this Final Rule removes barriers to the development and interconnection of this class of Small Generating Facilities, both at the federal and state jurisdiction levels. Its adoption should promote standardization of interconnection rules across the nation. We encourage states that do not have interconnection procedures for very small generators to consider using this as a model for their own rules.

H. Other Significant Issues

406. A number of issues, such as interconnection pricing policy, variations permitted for independent transmission entities, and legal issues such as liquidated damages, transcend individual provisions of the SGIP and SGIA. Accordingly, we address them below.

Pricing/Cost Recovery for Interconnection Facilities and Upgrades (Proposed SGIA Article 5.1)

407. In the Small Generator Interconnection NOPR, the Commission proposed to retain its then existing pricing policy for the interconnection of a Generating Facility with a Transmission System that is operated by a non-independent entity. That policy, as set forth in Order No. 2003, was to allocate the costs of the new or upgraded transmission facilities based on a locational test: Whether they are at or beyond the Point of Interconnection. Facilities that are on the Small Generating Facility's side of the Point of Interconnection would be considered Interconnection Facilities, while those that are at or beyond the Point of Interconnection would be considered Network Upgrades. The Interconnection Customer would be directly assigned the costs of all Interconnection Facilities because they are sole use facilities. The Interconnection Customer would initially fund the Network Upgrades required for the interconnection unless the Transmission Provider chooses to pay for them itself. However, the Interconnection Customer would be entitled to a refund equal to the total amount paid to the Transmission Provider and the Affected System operator, if any, for Network Upgrades, including any tax-related payments. Order No. 2003 called for these refunds to be paid to the Interconnection Customer, with interest, as credits on a dollar-for-dollar basis for the non-usage sensitive portion [117] of transmission charges, as payments are made under the Transmission Provider's tariff and the Affected System's tariff for any transmission services taken by the Interconnection Customer on the respective systems, whether or not the Generating Facility is the source of the power being transmitted.[118] Order No. 2003 permitted the Interconnection Customer, Transmission Provider, and Affected System operator to adopt any alternative payment schedule that is mutually agreeable provided all amounts paid by the Interconnection Customer for Network Upgrades are refunded, with interest, within five years of the generating facility's commercial operation date.[119] The Interconnection Customer would be allowed to assign its refund rights to any person.

408. Because a Small Generating Facility may interconnect with a Transmission Provider's Distribution System subject to an OATT in order to make a sale of electricity at wholesale in interstate commerce, the Small Generator Interconnection NOPR also addressed cost recovery for Distribution Upgrades at or beyond the Point of Interconnection.[120] Consistent with Order No. 2003, the Commission proposed that the costs of Distribution Upgrades be directly assigned to the Interconnection Customer because Distribution Upgrades do not generally benefit all users.

409. The Commission sought comments on whether this approach should also apply to Small Generating Facilities. The Commission also invited commenters to recount their recent experiences with interconnecting small generators with the ''Distribution System,'' in particular the process for determining whether Distribution Upgrades are necessary, and the cost assignment of those Upgrades.

410. For a Transmission Provider that is an independent entity, such as an RTO or ISO, the Commission's policy, as adopted in Order No. 2003, is to allow more pricing flexibility, subject to Commission approval. Also in Order No. 2003, we permitted a Regional State Committee to establish criteria that an independent entity would use to determine which Network Upgrades should be subject to ''participant funding.'' Order No. 2003 also permitted, for a period of transition to the start of RTO or ISO operations, not to exceed a year, participant funding to be used for Network Upgrades as soon as an independent entity has been approved by the Commission and the affected states. In the Small Generator Interconnection NOPR, the Commission proposed to adopt the same policies for Small Generating Facilities that interconnect with a Transmission System operated by an independent entity. The Commission sought comments on this approach.

[117] Non-usage sensitive transmission charges include all transmission charges except those for items that vary with the amount of power transmitted, such as congestion charges, line losses, and Ancillary Services.

[118] In Order No. 2003–A, this policy was revised to make credits available only for transmission service that has the generating facility as the source of the power transmitted.

[119] The five year refund period was subsequently changed to 20 years in Order No. 2003–B.

[120] The costs of all Interconnection Facilities, whether owned by the Interconnection Customer or the Transmission Provider, are directly assigned to the Interconnection Customer.

411. In the Small Generator Interconnection NOPR, the Commission also proposed certain pricing provisions that are consistent with, but have no direct parallel with, the Order No. 2003 pricing provisions. The Proposed SGIA provided that costs associated with Interconnection Facilities could be shared with other entities that may benefit from such facilities by agreement of the Interconnection Customer, such other entities, and the Transmission Provider. It also proposed that, if the Parties agree that the Small Generating Facility benefits the Transmission Provider's electric system, the Interconnection Customer's cost responsibility for the Transmission Provider's Interconnection Facilities or Upgrades would be reduced. The benefits would have to be measurable and verifiable. Where there are multiple Interconnection Requests and each requires Network Upgrades, Interconnection Customers would be assigned costs or benefits separately if effects can be attributed to different projects. Where such attribution is not possible, Interconnection Customers would share costs or benefits in proportion to their projected Small Generating Facility capacities.

Pricing Comments That the Commission Already Addressed in the Large Generator Interconnection Proceeding

Comments

412. Several commenters object to various features of the Commission's current interconnection pricing policy, presenting arguments that the Commission has addressed in Order No. 2003. For example, Alabama PSC and others argue that prohibiting the direct assignment of the cost of Network Upgrades means that native load customers subsidize the cost of Network Upgrades that benefit only the Interconnection Customer. They argue that this may also cause the Interconnection Customer to make inefficient siting decisions. Mississippi PSC objects to the requirement that the Transmission Provider pay interest on unused credits and that it make a lump sum payment to the Interconnection Customer for credits that remain unused after five years. Alabama PSC argues that transmission credits should be provided only for Network Upgrades that provide a system benefit and only when the Small Generating Facility is the source of power for the transaction.

413. NRECA argues that if a merchant generator has not committed to serve network and native load customers within the Transmission Provider's footprint on a long-term basis, the generator and the Transmission Provider's own generators are not comparable. It asserts that credits are appropriate only where the Small Generating Facility is committed to customers in the Transmission Provider's footprint.

414. Central Maine requests clarification that transmission credits should be required only when the Interconnection Customer is taking and paying for transmission service on the Transmission System on which the Network Upgrade was made for the output of its facility. Central Maine also requests clarification that cost responsibility for Network Upgrades required by an Affected System is consistent with cost responsibility for Network Upgrades required by the Transmission Owner with whom an Interconnection Customer is directly interconnecting; that is, that transmission credits are required only when the Interconnection Customer takes and pays for transmission service from the Transmission Owner or Affected System for the output of its facility. It also asks that the contractual provisions concerning cost responsibility and payment obligations among Affected Systems and Interconnection Customers be in a separate agreement, not in the interconnection agreement.

415. Avista, Alabama PSC, and Mississippi PSC argue that allowing pricing flexibility to an independent Transmission Provider such as an RTO or ISO is unduly discriminatory. They state that this policy penalizes the retail customers of the non-independent Transmission Provider because it forces them to bear the cost of Network Upgrades that benefit only the Interconnection Customer. Idaho Power argues that having different pricing for an independent and a non-independent Transmission Provider is bad public policy, arbitrary and capricious, and discriminatory. TAPS states that the NOPR incorrectly proposes participant funding for Upgrades to a Transmission System operated by an independent entity.

Commission Conclusion

416. All of the comments summarized above relate to the Commission's general pricing policy, and each was discussed in Order No. 2003.[121] We adopt here the general conclusions adopted in those orders. However, those orders did not address the specific question of whether the Commission's general interconnection pricing policy is suitable for Small Generating Facilities. Several commenters raise this question, and we address their comments below.

Applicability of the Commission's Interconnection Pricing Policy to the Interconnection of Small Generating Facilities

Comments

417. Several commenters support the use of the Commission's current interconnection pricing policy. Western supports the Commission's proposal to have the Interconnection Customer initially fund interconnections and associated Transmission System improvements and states that this approach is consistent with the budgetary realities that Western faces. Georgia PSC agrees that Interconnection Facilities are sole use facilities and, accordingly, should be directly assigned to (paid for by) the Interconnection Customer.

418. Nevada Power states that interconnection pricing policies must be consistent for both Small and Large Generating Facilities to avoid the possibility of pricing manipulation. It opposes credits for facilities that do not increase transfer capability, but states that the requirement that the Interconnection Customer initially fund the Network Upgrade costs is an important safeguard to ensure that the Transmission Provider and other customers do not subsidize what would otherwise be an uneconomic project. SoCal Edison states that the Small Generator Interconnection NOPR correctly mirrors the Large Generator Final Rule with respect to the pricing policies for Network Upgrades and sole use Interconnection Facilities. BPA generally supports consistency between pricing for Small and Large Generating Facility interconnections, provided the Commission clearly articulates the physical boundary between Interconnection Facilities and Network Upgrades.

419. AEP and Midwest ISO agree that an independent Transmission Provider should be allowed interconnection pricing policy flexibility, subject to Commission approval. Midwest ISO states that few circumstances would warrant an approach for Small Generating Facilities that differs from the approach that an RTO would establish for a Large Generating Facility. A common approach makes good business sense, assures comparability and makes the interconnection process more effective. Also, BPA generally supports RTO pricing flexibility, provided it does not conflict with an

[121] *See* Order No. 2003 at P 675–750, Order No. 2003–A at P 562–697, and Order No. 2003–B at P 15–57.

RTO's obligations under its governing agreements.

420. Cummins, however, argues that the Commission should adopt different pricing rules for Small Generating Facilities because the Commission's current policy gives the Transmission Provider the discretion to place a huge cost burden on the Small Generating Facility. These costs may even exceed the installation and operating costs of a Small Generating Facility, completely destroying project economics. Cummins argues that this problem can be addressed only by specific performance standards (which Cummins does not describe) that only the Commission can establish. Also, if the Interconnection Customer is deemed to be the only beneficiary of the Upgrade or interconnection, the five year refund mechanism would be of no benefit, as the project would not go forward.

421. The Small Generator Interconnection NOPR asked for specific examples of situations where a Transmission Provider has seemingly applied excessive fees for Upgrades. Cummins describes two examples that highlight its concerns:

> A manufacturer installed a 300 kW synchronous generator and cogeneration system, and provided the interconnection equipment specified by the [Transmission Provider]. The system was approved by the [Transmission Provider] and went into successful operation. When the owner decided to expand the facility to include a second 300 kW generator, they were informed that the distribution system would need upgrades that would cost in excess of $140,000. On further investigation, it was learned that the upgrades included only ''block closing'' provisions on a recloser. This device is effectively a simple voltage sensing relay that would interconnect into the existing infrastructure at a substation. After intensive negotiations and investigations, the customer was able to get the cost reduced to under $50,000, and the project went forward. The $50,000 cost was still far more than the upgrade should have cost, but the customer was forced to pay it because the generator was key to the viability of the customer's business. This represented a 10% increase in the overall project.
>
> In another case, a customer installed a 2 MW synchronous generator with equipment that allowed it to parallel with the utility for 1/10th of a second. The equipment included timer functions that prevented the machine from staying in parallel for more than 1 second, as required by local rules. The [Transmission Provider], unsatisfied with the ''quality'' or ''performance'' of the relay in the customer's device, forced the customer to install a new relay costing over $2,000 for the 1 second time function. This was an excessively expensive piece [of] equipment to perform a simple operation; however the Interconnection Customer needed the equipment to operate, and had to pay the price.

422. Small Generator Coalition argues that the Small Generator Interconnection NOPR's cost allocation provisions appear to guarantee pancaked wheeling charges on energy produced by Small Generating Facilities, contrary to the Commission's goal of eliminating such pancaking.[122]

423. MidAmerican states that a Commission rule requiring a Transmission Provider to pay any interconnection-related costs could supersede state policy and also would affect the ability of states to set retail rates following well-established cost causation principles. MidAmerican argues that the rules should permit the Transmission Provider to directly assign all costs to the Interconnection Customer unless that violates state regulatory policy.

Commission Conclusion

424. We recognize that the Interconnection Facilities, Distribution Upgrades, and Network Upgrades required to interconnect a generator can be costly. Indeed, such costs can be a significant portion of the total project costs. Nevertheless, each Generating Facility, whether large or small, must bear its fair share of the cost of the facilities and Upgrades from which it benefits; otherwise, the facility simply does not make economic sense.

425. To this end, the Small Generator Interconnection NOPR proposed to apply to Small Generating Facility interconnections the same pricing policy that the Commission adopted for Large Generating Facilities in Order No. 2003. Among other things, this means that the Interconnection Customer must bear the cost of necessary Interconnection Facilities and Distribution Upgrades. Also, the Interconnection Customer must initially fund the cost of Network Upgrades, but is entitled to credits against its charges for transmission delivery service equal to the amount funded, plus interest. None of the arguments presented here convinces us that the policies adopted in Order No. 2003 should not also apply to Small Generating Facility interconnections. In particular, contrary to the assertions of Cummins and Small Generator Coalition, we do not view the policy as creating rate pancaking or an undue burden for the Small Generating Facility. Thus, we adopt the Order No. 2003 pricing policies for small generator interconnections in this Final Rule.

426. With regard to Cummins's concern that the Transmission Provider may be able to force the Small Generating Facility to bear unreasonable costs, we note that our principal purpose in adopting a standardized procedures document and agreement for generator interconnections, and making them part of the Transmission Provider's tariff, is to eliminate much of the opportunity for the Transmission Provider to act in this manner. Indeed, adoption of this Final Rule should greatly reduce the likelihood of the two negative experiences that Cummins describes, if indeed the cost were unreasonable.

427. In response to MidAmerican, this Final Rule applies only to generator interconnections that are under the jurisdiction of the Commission. It does not apply where we do not have jurisdiction. Although state regulators or other rate-making authorities may model their own policies after those adopted herein, or the similar NARUC Model, they are free to establish whatever rules for determining cost responsibility that they deem reasonable for interconnections under their jurisdiction.

428. The Commission modified and clarified its pricing policy for Large Generator Interconnections in Order Nos. 2003–A and 2003–B, which were issued after the Small Generator Interconnection NOPR in this proceeding. Upon review of the revisions to the Commission's pricing policy included in those orders, we conclude that they should apply to the interconnection of Small Generating Facilities as well. Therefore, we are revising the Proposed SGIA to reflect our current interconnection pricing policy as modified by Order Nos. 2003–A and 2003–B. (See articles 4 and 5 of the SGIA).

Implementation of the Interconnection Pricing Policy for Small Generating Facilities

Comments

429. Midwest ISO notes that Chart 1 of the Proposed SGIP shows a difference between the Point of Interconnection and the ''point of common coupling'' [123] and says that equipment Upgrades may sometimes be needed between these two points. Midwest ISO asks who is to be responsible for such Upgrades and whether transmission service credits will be provided to the Interconnection Customer if it finances the Upgrades.

430. Empire District agrees that Upgrades that are directly assigned,

[122] By ''pancaking,'' we presume that Small Generator Coalition is referring to the possibility that the Interconnection Customer may be required to pay for Distribution Upgrades and to make an up-front payment for Network Upgrades.

[123] The term ''Point of Common Coupling'' is not used in the SGIP and SGIA.

such as radial extensions to the generator, should not be paid for (or reimbursable to the Interconnection Customer) by the Transmission Provider. In addition, it states that interconnection costs should be treated in a manner similar to the crediting methods used by the Southwest Power Pool (which Empire District does not describe).

431. Many commenters support the Commission's proposal to directly assign the cost of Distribution Upgrades to the Interconnection Customer.[124] For example, AEP states that a Distribution Upgrade that is required to accommodate the proposed generator does not benefit all users; rather, its sole purpose is to accommodate one customer. AEP contends, therefore, that it is entirely reasonable for the Interconnection Customer to be responsible for the cost of the Distribution Upgrade. Cinergy states that such responsibility follows from the radial nature of the Distribution System and is consistent with the LGIA. Baltimore G&E states that the Commission must guarantee that distribution utilities receive full cost recovery from interconnecting Small Generating Facilities to avoid subsidization by retail customers.

432. Nevada Power agrees that the cost of Distribution Upgrades should be directly assigned to the Interconnection Customer, but is concerned that Proposed SGIA article 5.1.3 does not adequately protect the Transmission Provider from having to bear such costs. This article could be construed to say that wholesale transactions by the Interconnection Customer change the segment of the distribution facilities to which the Interconnection Customer connects into transmission facilities. Nevada Power argues that the Proposed SGIA definition of Transmission System illustrates this concern: ''Transmission System shall mean the facilities owned, controlled or operated by the Transmission Provider or Transmission Owner that are used to provide transmission service under the Tariff.'' An inference can be drawn that what was previously a distribution facility is now a transmission facility because it provides transmission service, and is therefore subject to the crediting process. To address this concern, Nevada Power proposes specific changes to Proposed SGIA article 5.1.3.

433. SoCal Edison notes that in the Small Generator Interconnection NOPR, Distribution Upgrades and Network Upgrades are both defined as being at or beyond the Point of Interconnection. Distribution Upgrades are defined as upgrades to the Distribution System, while Network Upgrades are defined as upgrades to the Transmission System. However, ''Transmission System'' is defined to include any facility, be it transmission or distribution, that is subject to an OATT. Therefore, SoCal Edison contends that because ''Transmission System'' is defined to include portions of the Distribution System, the definition of Network Upgrades (in combination with other provisions of the SGIP and SGIA) is confusing. SoCal Edison argues that keeping the terms Transmission System and Distribution System distinct is crucial. For this reason, the definition of Transmission System needs to exclude distribution facilities, which facilities already are included in the term Distribution System.

434. In a similar vein, PacifiCorp argues that the definition of Network Upgrades must be revised to prevent it from being applied to Upgrades to a Transmission Provider's Distribution System. The Proposed SGIA's definition of Network Upgrades could be read to include Upgrades to radial feeders or other facilities that are part of the Transmission Provider's Distribution System. In PacifiCorp's view, Network Upgrades should include only Upgrades to networked transmission or sub-transmission facilities. Any Upgrades to radial feeders or other facilities that make up the Transmission Provider's Distribution System should be paid for by the Interconnection Customer without credits.

435. PSE&G states that the definition of Network Upgrades should be modified as follows: ''[Network Upgrades] shall mean the additions, modifications and upgrades * * * required (strike out ''at or'') beyond the point at which the Interconnection Customer interconnects to the Transmission Provider's or Transmission Owner's or distribution owner's (strike out ''Transmission'' and add ''Distribution'') System to accommodate the Generating Facility * * *.''

436. NRECA states that the Commission has an important role in determining whether facilities are distribution or transmission. The Commission should apply the seven-factor test where there are disputes and should not in doing so give undue deference to state or public utility classifications of facilities. As shown by cases such as *Arkansas Power & Light,*[125] the Commission may conclude that a facility serves a transmission function even if it is lower voltage and serves a few end-use customers, if the predominant use of the facility is to provide wholesale transmission service.

437. In addition, NRECA seeks clarification of the NOPR's statement that ''if a proposed interconnection passes either the super-expedited screening procedures or the expedited screening procedures, the Interconnection Customer would have no cost responsibility for Upgrades.'' NRECA contends that this contradicts article 5.1.3 of the Proposed SGIA (Distribution Upgrades), and thus is inconsistent with the Commission's proposal to require Distribution Upgrades to be directly assigned to the Interconnection Customer. Furthermore, the statement would shift costs from the Interconnection Customer to utilities and their other customers. Also, Cummins says that the proposal runs counter to, or may confuse the application of, screens that would expedite the interconnection process.

438. Small Generator Coalition states that although Proposed SGIA article 5.1.5 gives the Interconnection Customer an opportunity to demonstrate benefits to the Transmission Provider's electric system that would reduce the Interconnection Customer's costs, the NOPR's discussion of Distribution Upgrades at P 72 appears to rule out any cost reductions for Distribution Upgrades. In addition, Small Generator Coalition argues that ambiguous NOPR provisions may permit Transmission Owners to require the Interconnection Customer to pay for Network Upgrades with no compensation to the Interconnection Customer or consideration of network benefits. Because downstream resources can benefit system reliability, Small Generator Coalition argues that the Commission's rule should allocate Upgrade costs according to benefits to all portions of an affected Transmission System, including facilities operating at distribution voltages.

439. Alabama PSC and Mississippi PSC argue that distribution facilities should be directly assigned. However, because the Commission lacks jurisdiction over distribution facilities, cost responsibility for Distribution Upgrades is an issue for state regulators to address.

440. Midwest ISO notes that Proposed SGIA article 5.1.5 provides that if the Parties agree that the Small Generating Facility benefits the Transmission

[124] *See, e.g.,* AEP, Alabama PSC, Baltimore G&E, Central Maine, Cinergy, Consumers, MidAmerican, Mississippi PSC, Nevada Power, NRECA, and SoCal Edison.

[125] *Arkansas Power & Light Co.* v. *FPC,* 368 F. 2d 376 (8th Cir. 1966) (*Arkansas Power & Light*).

Provider's electric system, the Interconnection Customer's cost responsibility may be reduced accordingly. The Small Generator Interconnection NOPR says that, if multiple facilities are involved, pro rata allocation of the costs or benefits must be made. These provisions appear to conflict with the NOPR's proposal at P 71, which allows an RTO flexibility with respect to interconnection pricing.

Commission Conclusion

441. With reference to Chart 1 of the Proposed SGIP, Midwest ISO asks who is responsible for the cost of Upgrades between the point of common coupling and the Point of Interconnection. Chart 1 was in error. The Point of Interconnection is the point identified as the point of common coupling, which is the point in the diagram where the Interconnection Facilities connect to the Transmission Provider's Distribution System subject to an OATT. Thus, the Upgrades to which Midwest ISO refers are in fact Interconnection Facilities, and their cost is directly assigned to the Interconnection Customer.

442. In response to Empire District, we confirm that radial extensions to the Small Generating Facility are to be directly assigned to the Interconnection Customer if they are Interconnection Facilities; that is, if the radial line is a sole use facility located between the Small Generating Facility and the Point of Interconnection, its cost is directly assigned to the Interconnection Customer. Also, Empire District recommends that the Commission adopt a crediting policy that is similar to the methods set forth by the Southwest Power Pool. However, Empire District does not explain how its recommended methods differ from or are better than those proposed in the NOPR.

443. In order to eliminate the confusion expressed by Nevada Power, SoCal Edison and others about the distinction between Distribution Upgrades and Network Upgrades, we are adding the following sentence to the definition of Network Upgrades: ''Network Upgrades do not include Distribution Upgrades.''

444. NRECA seeks clarification of the Small Generator Interconnection NOPR's statement that ''if a proposed interconnection passes either the super-expedited screening procedures or the expedited screening procedures, the Interconnection Customer would have no cost responsibility for Upgrades.'' The issue of who pays for an Upgrade in the case of a proposed interconnection passing all the screens is moot because one of the provisions of SGIP section 2.2.1 is a requirement to pass a screen that the interconnection must not require an Upgrade.

445. Small Generator Coalition is concerned that the Proposed SGIA may assign to the Interconnection Customer cost responsibility for Interconnection Facilities in a way that gives no recognition to the benefits that the Interconnection Facilities may bring to the Transmission Provider's electric system. In response, we clarify that the Interconnection Customer is responsible for the cost of Interconnection Facilities except when such cost is shared with other entities that may benefit from the Interconnection Facilities by agreement of the Interconnection Customer, the other entities, and the Transmission Provider. This provision for cost sharing is included in SGIA article 4.1.1.

446. Small Generator Coalition also asks about sharing cost responsibility for Distribution Upgrades and initial funding responsibility for Network Upgrades. The Interconnection Customer is responsible for the upfront funding of Network Upgrades unless the Transmission Provider elects to provide the upfront funding itself. This payment option is included in SGIA article 5.2. However, we are not adopting the explicit cost sharing provisions of Proposed SGIA article 5.1.5 relating to Distribution Upgrades because they are not consistent with Order No. 2003 which specified that all Distribution Upgrades shall be directly assigned to the Interconnection Customer.[126]

447. In response to Midwest ISO, we clarify that we are allowing flexibility for the pricing that an independent Transmission Provider may propose to adopt, subject to Commission approval, under the ''independent entity'' variation. Accordingly, an independent Transmission Provider may propose a pricing method that differs from what this Final Rule otherwise requires.

448. Alabama PSC and Mississippi PSC assert that cost responsibility for Distribution Upgrades is beyond the scope of the Commission's authority. As explained above, the Commission's assertion of jurisdiction here is no broader than in Order No. 888. This Final Rule applies to interconnections with a Transmission System or with a Distribution System subject to an OATT for the purpose of making wholesale sales. The Commission's authority over such interconnections with Distribution Systems, for the purposes of making a wholesale sale of electricity in interstate commerce, includes allocating the cost of all of the Transmission Provider's Upgrades needed to effect the interconnection. Otherwise, the Commission could not ensure that the costs incurred to provide a jurisdictional service are allocated appropriately. The pricing policy for Distribution Upgrades directly assigns costs to the Interconnection Customer so there is no impact on retail customers of the Distribution System.

Responsibility for Operation and Maintenance Costs

449. Proposed SGIA article 5.1.4 stated that the Interconnection Customer is responsible for the operating and maintenance costs associated with the Interconnection Facilities that it owns as well as those owned by the Transmission Provider. The Proposed SGIA did not assign responsibility for O&M costs associated with Network Upgrades or Distribution Upgrades.

Comments

450. Central Maine and NYTO ask the Commission to clarify that the Interconnection Customer is responsible for ongoing O&M costs associated with Network Upgrades when the Interconnection Customer does not take and pay for transmission service for the output of its Small Generating Facility.

451. Southern Company contends that Proposed SGIA article 5.1.4 contemplates that the Interconnection Customer is responsible for all reasonable expenses associated with operating and maintaining its own Interconnection Facilities and the Transmission Provider's Interconnection Facilities, but it is unclear whether all applicable O&M costs are covered. It notes that LGIA article 10.5 does not limit O&M cost recovery to the Transmission Provider's Interconnection Facilities, but explicitly provides that the Interconnection Customer is responsible for all reasonable O&M costs. Therefore, Southern Company proposes to revise article 5.1.4 to include Distribution Upgrades so as to ensure that all appropriate O&M costs are included.

452. Robert L. Carrey contends that the Interconnection Customer should pay only the O&M costs of the Interconnection Facilities built on its behalf. He argues that the Interconnection Customer should not have to pay for routine O&M costs where no Interconnection Customer and Transmission Provider share the same poles and rights-of-way.

Commission Conclusion

453. The Commission has long held that O&M costs associated with Network

[126] *See* LGIA article 11.3 (''The Interconnection Customer shall be responsible for all costs related to Distribution Upgrades.'')

Upgrades cannot be directly assigned to the Interconnection Customer, because Network Upgrades are part of the integrated transmission system from which all transmission users benefit.[127] Therefore, we deny the requests of Central Maine and NYTO that the Commission require the Interconnection Customer to pay O&M costs associated with Network Upgrades.[128]

454. While the SGIA authorizes the Transmission Provider to collect O&M costs associated with Interconnection Facilities, this Final Rule does not contain a rate recovery mechanism for collecting those costs, because such costs will vary from case to case. Therefore, if a Transmission Provider wishes, it may propose and justify its rate to recover such costs under section 205 of the FPA.[129] In response to Southern Company, a Transmission Provider may make a similar filing to recover from the Interconnection Customer an appropriate share of any Commission-jurisdictional component of the O&M costs of Distribution Upgrades. Absent Commission approval of such a rate schedule, the Transmission Provider may not collect Commission-jurisdictional O&M costs associated with Interconnection Facilities or Distribution Upgrades.

455. In response to Mr. Carrey, the Transmission Provider is free to propose to recover these expenses in any manner it sees fit; however, the Commission will approve the Transmission Provider's proposed rate if it is shown to be just and reasonable and not unduly discriminatory or preferential.

Responsibility for the Construction of Upgrades

456. Proposed SGIA article 5.1.2 stated that the Transmission Provider or Transmission Owner shall design, procure, construct, install, and own the Network Upgrades.

Comments

457. PacifiCorp states that the Parties should be permitted to agree that the Network Upgrades will be built by the Interconnection Customer on its land. This could facilitate a faster interconnection. In addition, Proposed SGIA article 3.3 should be revised to give the Transmission Provider the right to inspect, operate, or maintain Network Upgrades on the Interconnection Customer's land.

458. AMP-Ohio states that, in the region where its members' Distribution Systems are located, the Transmission Provider would be an RTO. It notes that Proposed SGIA article 5.1.3 stated that the ''Transmission Provider or Transmission [Owner] shall design, procure, construct, install, and own the distribution Upgrades * * *'' AMP-Ohio is concerned that this article could be construed to allow the RTO to own and operate piecemeal sections of a member's electric system. The Commission should clarify that one entity cannot assert the right to own a portion of another's electric system.

Commission Conclusion

459. In response to PacifiCorp, neither Proposed SGIA article 5.1.2 nor article 5.1.3 precluded the Parties from agreeing that the Interconnection Customer may construct Network Upgrades or Distribution Upgrades on its own land. Nevertheless, we make this option explicit in SGIA articles 4.2 and 5.2. PacifiCorp's proposed revisions to Proposed SGIA article 3.3 are addressed above in our discussion of that article.

460. In response to AMP-Ohio, we clarify that this Final Rule does not authorize any entity, including the Transmission Provider, to own a portion of another entity's Transmission System without the permission of the Transmission Owner.

Miscellaneous Pricing Issues

Comments

461. PacifiCorp notes that Proposed SGIA article 5.1.2.1 would permit a refund to an Interconnection Customer whose Small Generating Facility does not achieve commercial operation, if another customer uses the Network Upgrades for which the first Interconnection Customer paid. PacifiCorp asks that this provision specify that a refund is available only if the second Interconnection Customer actually requires the Network Upgrades for its Small Generating Facility.

462. TAPS states that the NOPR does not make the Transmission Provider remove its own Interconnection Facilities from rate base.

Commission Conclusion

463. We agree with PacifiCorp that the first Interconnection Customer should not receive a refund of amounts it has advanced for Network Upgrades unless the later Interconnection Customer's Small Generating Facility actually would have required the construction of the Network Upgrades. However we believe that the SGIA, as written, makes this clear. To make a change to this provision would imply that it means something different from the similar provision adopted in the LGIA, and that is not our intent, therefore we decline to accept PacifiCorp's proposed modification.

464. With regard to the issue that TAPS raises, the Commission addressed this matter in Order No. 2003. There the Commission required the Transmission Provider to remove from transmission rates the costs of Interconnection Facilities constructed by the Transmission Provider after March 15, 2000 to interconnect generating facilities owned by the Transmission Provider on the effective date of the Final Rule in the Large Generator Interconnection proceeding.[130] The Commission's conclusion about the need for the Transmission Provider to remove its own Interconnection Facilities from rate base was not intended to be limited to Large Generating Facilities. We clarify here that it applies to all of the Transmission Provider's Interconnection Facilities, regardless of the size of the associated generating facility.

Commission Jurisdiction Under the Federal Power Act

465. Sections 205 and 206 of the FPA require the Commission to remedy undue discrimination by public utilities. In Order No. 888, the Commission found that public utilities owning or controlling jurisdictional transmission facilities had the incentive to engage in, and had engaged in, unduly discriminatory practices.[131] Because interconnection is an element of transmission service that must be provided under the OATT, the Commission in Order No. 2003 established generic interconnection terms and procedures under its authority to remedy undue discrimination under sections 205 and 206.[132] The Small Generator Interconnection NOPR proposed that its jurisdictional reach would be identical to Order No. 2003.

[127] *See, e.g.*, PJM Interconnection, L.L.C., 109 FERC ¶ 61,326 (2004) (holding that O&M costs associated with Network Upgrades may not be directly assigned to the Interconnection Customer). We note, however, that the Transmission Provider may propose to recover the cost of Network Upgrades from the Interconnection Customer through an incremental transmission rate. In that case, the Commission would entertain a proposal to include in the incremental rate O&M costs associated with the Network Upgrades. Order No. 2003–B at P 57.

[128] This issue was discussed at P 421–424 of Order No. 2003–A.

[129] 16 U.S.C. 824d (2000); *see also* 18 CFR 35.12 (2004).

[130] *See* Order No. 2003 at P 744 and Order No. 2003–A at P 663.

[131] Order No. 888 at 31,679–84; Order No. 888–A at 30,209–10.

[132] Order No. 2003 at P 18–20.

Comments

466. NARUC, NRECA, several state regulatory commissions,[133] and others [134] argue that the Small Generator Interconnection NOPR unlawfully encroaches upon the jurisdiction of the states by proposing to regulate interconnections with ''local distribution'' facilities.

467. Many of the commenters opposing the Commission's exercise of jurisdiction over facilities used both for Commission-jurisdictional and for state-jurisdictional transactions (''dual-use'' facilities) cite *Detroit Edison*.[135] They appear to have read *Detroit Edison* as forbidding the exercise of federal jurisdiction over any facilities used to any degree to distribute bundled power to end-users at retail, regardless of whether those facilities are also used for transactions that are under the Commission's jurisdiction.[136] Other commenters, including Small Generator Coalition and SoCal Edison,[137] assert that nothing in *Detroit Edison* prevents the Commission from asserting jurisdiction over all interconnections made to facilitate Commission-jurisdictional activities.

468. Interconnections with ''distribution'' facilities, argues Alabama PSC, should be exclusively state-jurisdictional. It argues that ''the Courts have long recognized and enforced the State's primacy over the regulation of distribution facilities.''[138] CPUC makes a similar argument, stating that:

> federal law was meant to supplement—and not to supplant—state regulation of those utilities. The FPA was enacted to fill in gaps not covered by state regulation, not as a mechanism for avoiding state regulation of public utilities. In enacting the FPA, Congress did not purport to exercise all of the authority it might have exercised under the Commerce Clause, because its intention was to preserve, not override, state regulatory jurisdiction.[139]

469. Alabama PSC, Mississippi PSC, and Southern Company also cite the preemption doctrine (that federal preemption of state law is not to be assumed unless Congress expresses a clear intent to do so) as another reason why the Commission is not permitted to exercise jurisdiction over ''distribution'' facilities. ''To the contrary,'' Alabama PSC argues, ''the FPA expressly provides that FERC does not have such jurisdiction.'' [140]

470. CT PUC asks the Commission to clarify that this Final Rule does not preempt state regulatory authority with respect to electric distribution company regulation, environmental protection (including Clean Air Act permitting), fire and building safety regulation, etc., as these may apply to Small Generating Facility interconnections with ''distribution'' facilities.

471. Idaho Power states that ''[t]he 'dual use' theory leaves the ''distribution'' facility owner that is trying to design an efficient and reliable ''distribution'' system in the untenable position of having two masters attempting to control the same physical line for differing purposes.'' [141]

472. PacifiCorp cites forum shopping concerns and suggests that a Small Generating Facility interconnecting as a Qualifying Facility (QF) to a dual use facility could receive different treatment depending on whether it sells its output to the host utility under the Public Utility Regulatory Policies Act of 1978 (PURPA)[142] or to a customer other than the host utility. In the first instance, the interconnection would be state-jurisdictional; in the second, Commission-jurisdictional. PacifiCorp asserts that this is a confusing outcome and could be avoided if the Commission disclaims jurisdiction over low voltage and dual use facilities.

473. Small Generator Coalition argues that not asserting jurisdiction over all interconnections made to facilitate Commission-jurisdictional activities means adopting a circuit-by-circuit approach to jurisdiction. This would be contrary to the Commission's approach taken in a variety of contexts, including assignment of system losses [143] and recovery of fixed costs [144] on a system-wide basis. Further, if the Commission allows a Transmission Provider to refuse interconnections with the low-voltage ''distribution'' portions of its system not already used for jurisdictional transactions, ''small resource development would be inhibited if not eliminated.'' [145] Transmission Providers could ''pick and choose among interconnection applicants based on any criteria they elected to employ.'' [146] Finally, Small Generator Coalition argues that the Commission adequately recognizes state jurisdiction by claiming jurisdiction over only interconnections with ''distribution'' facilities that are used for wholesale transactions.

474. NRECA argues that, as more and more distributed generators participate in the wholesale market, ''many if not most distribution facilities will carry a few wholesale electrons.'' [147] Indeed, ''many if not most distribution facilities will become subject to Commission jurisdiction. The jurisdictional divide between the Federal Government and the States that Congress clearly intended in the FPA will have collapsed.'' [148] Baltimore G&E asks the Commission to explain how it will avoid a ''chicken and egg'' situation where the jurisdictional status of a particular facility would change after the interconnection takes place.

475. Solar Turbines expresses concern that ''[a] utility apparently need merely deny that a particular line is currently being used for any transmission of power in interstate commerce or for any sales for resale, and can then refuse to accept an application for interconnection to that specific facility'' [149] and requests that the Commission clarify what the Interconnection Customer should do if it finds itself in such a situation.

476. MidAmerican asks whether this Final Rule would apply to a net metering arrangement that allows a Small Generating Facility to net only a portion of its output and resell the remainder to the host utility. It also asks what happens if it sells the non-net metered portion of its output to a third party.

477. Avista asks the Commission to address the effect of *Detroit Edison* on an interconnection for a purpose other than to ''engage in sale for resale in interstate commerce or to transmit electricity in interstate commerce.'' Avista differentiates ''load interconnections'' from ''generator interconnections,'' which are interconnections made to export power. It requests clarification that a load

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[133] *E.g.*, Alabama PSC, CPUC, CT PUC, Florida PSC, Iowa Utilities Board, Mississippi PSC, North Carolina Commission, and NYPSC.

[134] *E.g.*, Baltimore G&E, Central Maine, Consumers, EEI, Idaho Power, PacifiCorp, Progress Energy, and Southern Company.

[135] Shortly before comments were due in this docket, the DC Circuit issued *Detroit Edison* v. *FERC*, 334 F.3d 48 (DC Cir. 2003) (*Detroit Edison*). Since then, the Commission has issued both Order Nos. 2003–A (at P 705 *et seq.*) and 2003–B (at P 14), which discuss *Detroit Edison* at length.

[136] Alabama PSC at 4–5 (*citing* 16 U.S.C. 824(b) (2003), which states that ''[t]he Commission * * * shall not have jurisdiction * * * over facilities used in local distribution * * *.'')

[137] *Id.* at 10 (emphasis in original).

[138] *Id.* at 5 (*citing Southern Co. Services, Inc.* v. *FCC*, 293 F.3d 1338, 1344 (11th Cir. 2002)).

[139] CPUC at 8 (*citing Conn. Light & Power Co.* v. *FPC*, 324 U.S. 515, 529–30 (1945)).

[140] Alabama PSC at 6 (*citing* 16 U.S.C. 824(b)).

[141] Idaho Power at 3.

[142] 16 U.S.C. 824a–3 (2004).

[143] Small Generator Coalition at 37 (*citing Northern States Power Co.* v. *FERC*, 30 F.3d 177 (D. C. Cir. 1994)).

[144] *Id.* (*citing Fort Pierce Utilities Authority* v. *FERC*, 730 F.2d 778, 782 (DC Cir. 1984)).

[145] *Id.* at 39.

[146] *Id.* at 39.

[147] NRECA at 41.

[148] *Id.*

[149] Solar Turbines at 4.

interconnection to a dual use facility is an exclusively state-jurisdictional interconnection ''except if and to the extent there is an OATT on file by the owner of the facilities that makes available new Commission-jurisdictional service over those facilities.'' [150] Absent such a clarification, Avista argues that ''uncontrolled deregulation of service at the distribution level may occur, since any new load can seek to characterize its service as 'wholesale' by inserting a 'sham utility' between the customer and the incumbent utility.'' [151] Avista states that FPA section 212(h) already prohibits ''sham wholesale transactions'' [152] and argues that ''the Commission has determined that Section 212(h) only applies to transmission orders, not interconnection requests.'' [153] Without such a clarification, Avista fears that load interconnections with dual use facilities could be used to force otherwise non-Commission-jurisdictional ''distribution'' facilities into Commission-jurisdictional status.

478. USCHPA and Solar Turbines ask the Commission to exert jurisdiction over all load interconnections. Additionally, many cogeneration projects, USCHPA asserts, make sporadic sales of power when the economics favor doing so. Such projects should not be denied the benefits of standardized interconnection rules simply because their sales into the wholesale energy marketplace are sporadic. Solar Turbines argues that the needs of Small Generating Facilities are different and that there are good reasons to depart from the large generator precedent in this rulemaking. Specifically, Small Generating Facilities are more likely to be near to load, while Large Generating Facilities are more likely to be far from their load.

479. Midwest ISO argues that all interconnections with ''distribution'' facilities within an RTO or ISO to sell power at wholesale should be processed under a single set of rules. This would include both state- and Commission-jurisdictional facilities. Midwest ISO remarks that regardless of ''[w]hether the physical requirements of the interconnection come under the RTO's purview, the generating facility's operation will'' come under the RTO's jurisdiction. Therefore, the RTO should be able to ''evaluate the proposed interconnection with the generating facility's subsequent operation in mind.'' [154]

480. Finally, several comments address whether the use of a 69 kV cutoff in the SGIP affects the Commission's jurisdiction.

Commission Conclusion

481. The Commission's assertion of jurisdiction in this Final Rule is identical to the jurisdiction asserted in Order Nos. 2003 and 888 and upheld by the Supreme Court in *New York* v. *FERC*. Just as the Commission stated in Order No. 2003–A:

> There is no intent to expand the jurisdiction of the Commission in any way; if a facility is not already subject to Commission jurisdiction at the time interconnection is requested, the Final Rule will not apply. Thus, only facilities that already are subject to the Transmission Provider's OATT are covered by this rule. The Commission is not encroaching on the States' jurisdiction and is not improperly asserting jurisdiction over ''local distribution'' facilities.[155]

482. Many commenters seek clarification of issues (particularly related to the Detroit Edison case) that were discussed at length in Order Nos. 2003–A and 2003–B, which were issued after comments on the Small Generator Interconnection NOPR were due.[156] Since the jurisdiction asserted in this Final Rule is identical to that asserted in Order No. 2003, we adopt here our discussion from those orders rather than repeat the same information.

483. However, several commenters focused on how the jurisdictional issues raised by small generator interconnections may differ from those raised in the Large Generator Interconnection rulemaking. Additionally, some commenters raised issues in this proceeding that were not addressed in Order Nos. 2003–A or 2003–B. These issues we discuss in more detail below.

484. We disagree with Alabama PSC, Mississippi PSC, and Southern Company that the Commission is evading FPA section 201(b)(1) or preempting state law. In *New York* v. *FERC*, the U.S. Supreme Court approved the Commission's assertion of jurisdiction in Order No. 888.[157] The applicability of this Final Rule is identical to the applicability of Order No. 888.

485. CT PUC is correct that this Final Rule in no way alters the permitting and other environmental requirements applicable to Interconnection Customers. Nor does this Final Rule affect any other state police powers.

486. NRECA asserts that while there are now relatively few Small Generating Facility interconnections that are Commission-jurisdictional, that number will increase as time passes. Small Generator Coalition complains that the number of lower voltage Commission-jurisdictional facilities is too small. Ultimately, however, the Commission's jurisdiction does not rest on how common dual use facilities may be or how many interconnections are Commission-jurisdictional.

487. Baltimore G&E asks if the jurisdictional status of a facility would change after an interconnection takes place. Whether a facility is subject to this rule depends on whether it is subject to an OATT at the time the Interconnection Request is filed. The use of a facility and thus its inclusion in an OATT can change over time. Nothing in this Final Rule (or Order No. 2003) alters the status of any facility.

488. Avista is correct that some interconnections are made simply to receive power from the electric system. These ''load interconnections'' are not subject to this Final Rule.

489. In response to USCHPA's concern over Interconnection Customers who may wish to make sporadic sales of power into the marketplace, we clarify that there is no requirement that an Interconnection Customer's participation in the wholesale marketplace be constant. An Interconnection Customer is free to request interconnection service and then wait until the economics are favorable before actually making a wholesale sale.

490. In response to Midwest ISO's desire to process all interconnections (whether to Commission-jurisdictional or non-Commission-jurisdictional facilities) under its tariff, we note that the Commission does not have the authority to order states to use Midwest ISO's tariff to process interconnections with state or other non-jurisdictional facilities. However, we encourage the states and others to use the Commission's interconnection rule or the NARUC Model as a starting point for developing their own interconnection rules.

491. Many commenters also address the legality of the Small Generator Interconnection NOPR's proposed use of 69 kV to determine whether portions of

[150] Avista at 9.

[151] *Id.* at 9–10 (citing, *e.g.*, *Snake River Valley Elec. Ass'n* v. *PacifiCorp*, 238 F.3d 1189 (9th Cir. 2001)).

[152] 16 U.S.C. 824k(h) (2000).

[153] Avista at 9–10 (*citing* Laguna Irrigation District, 95 FERC ¶ 61,305 (2001), *aff'd sub nom. Pacific Gas & Electric Co.* v. *FERC*, 44 Fed. Appx. 170 (9th Cir. 2002) (unpublished opinion); *City of Corona* v. *Southern California Edison Co.*, 101 FERC ¶ 61,240 at 62,025–026 (2002)).

[154] Midwest ISO at 6.

[155] Order No. 2003–A at P 700.

[156] *See* Order No. 2003–A at P 698 *et seq.* and Order No. 2003–B at P 12 *et seq.*

[157] *New York* v. *FERC*, 535 U.S. 1 (2002).

the SGIP would apply. Since the Commission has abandoned this distinction in this Final Rule, these arguments are moot.

Arguments that the Commission Should Delay or Abandon the Small Generator Interconnection Rulemaking

492. Several commenters argue that the Proposed SGIP and Proposed SGIA are too complicated for small entities and would create a barrier to entry. Some commenters argue that the Commission should delay issuing a Final Rule and allow the various states and other entities to develop their own model rules. Others disagree.[158]

493. This Final Rule includes several provisions to address these concerns. First, we are adopting a separate application/procedures/terms and conditions document for very small certified inverter-based Small Generating Facilities. This is a big step in facilitating quick interconnections at very little cost, as long as they can be made safely and without harming reliability. We are also simplifying many SGIA provisions at the request of commenters. This Final Rule borrows liberally from NARUC's Model interconnection rules, which are simpler than the Small Generator Interconnection NOPR.

494. We address below specific comments relating to our decision to proceed with this Final Rule. We have divided commenters' arguments into three sections: (1) Arguments that the Commission should defer to the states to deal with small generator interconnections; (2) arguments that the Commission's NOPR is too complex; and (3) arguments that the Commission should adopt a policy statement or model rules instead of a Final Rule.

Arguments in Favor of Deferring to the States on Small Generator Interconnections

Comments

495. NARUC proposes that the Commission adopt its Model, arguing that it ''would offer the greatest possibility of consistency between Federal and State interconnection policies'' [159] It explains that ''the NARUC Model was developed by melding the best practices of existing State distributed generation interconnection programs.'' [160] NARUC argues in its supplemental comments that state programs are successful and that imposing an unnecessary layer of federal regulation will be disruptive to small generator developers and customers. Commission action can only create confusion and impede project development. Because states have better insight into local operating, planning, safety, reliability, and adequacy needs and conditions, they are in the best position to address the interconnection of small generators, regardless of what those generators may do with the output from their facilities or where they are interconnected. At bottom, NARUC urges the Commission to take no action on the Small Generator Interconnection NOPR. In the alternative, if the Commission implements small generator interconnection rules, it should grandfather existing state interconnection programs and the interconnections accomplished under such programs, and include a mechanism for granting deference to future state small generator interconnection programs.

496. CPUC states that California, New York, Ohio, and Texas all have interconnection procedures applicable to their state-regulated utility ''distribution'' systems.[161] Because one third of the country's population already lives in states with standard interconnection rules, there is no need for Commission action. It also contends that (1) existing California interconnection rules meet the needs of small generators seeking to connect to state-jurisdictional utility ''distribution'' systems, (2) California procedures already provide small generators with one-stop shopping, and (3) there is no ''actual or legitimate need for FERC assistance to cover interconnections to state-jurisdictional facilities in states where distributed generation interconnection rules are already in place.'' [162]

497. Furthermore, CPUC argues, only state-specific interconnection rules can account for ''regional practices.'' As an example, CPUC's rules allow it to exempt small Transmission Providers, but the Small Generator Interconnection NOPR lacks such needed flexibility.[163] In sum, CPUC questions the need for the Commission's proposal and asserts that ''there is no legitimate public policy basis for the assertion of FERC jurisdiction over small generators that would result if the FERC proposal were adopted.'' [164]

498. In contrast, Cummins argues that the Commission should assert jurisdiction over all interconnections, regardless of whether the interconnection is with a Commission-jurisdictional facility. Cummins argues that, although Small Generating Facilities often connect at the ''distribution'' level, their effects can be felt on the Transmission System. It explains that, because Small Generating Facilities can relieve congestion on crowded transmission facilities, the effect of even on-site Small Generating Facilities is felt beyond the Point of Interconnection. Thus, it is important that the Commission use all its jurisdictional authority to apply this rule as broadly as possible. And, where the Commission does not have jurisdiction, Cummins encourages state regulators to develop interconnection rules that are consistent with this Final Rule.

499. Plug Power claims that by not proposing standards applicable to interconnections with distribution facilities, the Commission's interconnection rules will not help small generators. Further, the rules proposed in the NOPR are inferior to those already in place in several states.

500. EEI urges the Commission to work with states to better define the state-federal role in small generator interconnections. According to EEI, this approach would provide both Interconnection Customers and Transmission Providers with clear guidance as to which rules apply to which interconnections. Finally, EEI states that, with certain modifications, the interconnection procedures document and agreement could be a model for use by both federal and state authorities to process small generator Interconnection Requests.

501. CT DPUC, while supporting the Commission's efforts, argues that this Final Rule should not lead to a loss of state jurisdiction.

Commission Conclusion

502. We agree with commenters that general consistency between the Commission's interconnection procedures document and agreement and those of the states will be helpful to removing roadblocks to the interconnection of small generators. To a large extent, this Final Rule harmonizes state and federal practices by adopting many of the provisions proposed by NARUC and Joint Commenters. This Final Rule adopts

[158] CT DPUC at 1 (''The CT DPUC generally supports the effort by the Commission to initiate standardization of interconnection agreements and procedures * * * ''); *see also* Cummins at 1 (''We strongly support the Commission's continued work in this area.'')

[159] NARUC at 18.

[160] *Id.* at 8.

[161] Virginia, Massachusetts, and other states also have small generator interconnection rules.

[162] CPUC at 16.

[163] *Id.* at 18.

[164] *Id.* at 15.

interconnection rules that are largely consistent with the ''best practices'' interconnection rules proposed by NARUC. By doing so, we hope to minimize the federal-state division and promote consistent, nationwide interconnection rules.[165] We hope that states that do not currently have interconnection rules for small generators will look to the documents presented in this Final Rule and the NARUC Model as guides for their own rules. To grandfather existing state interconnection programs and grant deference to future state small generator interconnection programs would not fulfill the Commission's statutory mandate to regulate jurisdictional activities, of which generator interconnection is one. However, as discussed elsewhere, the all-in-one document for certified inverter-based generators no larger than 10 kW should go a long way towards harmonizing state-federal interconnection practices for this class of generators.

503. Our hope is that states may find these interconnection rules helpful in formulating their own interconnection processes. In particular, we hope the Fast Track and 10 kW Inverter Processes will prove helpful as starting points from which to develop their own procedures and agreements.

504. The concerns of CPUC and several other commenters that the Commission is claiming jurisdiction over interconnections with non-Commission jurisdictional facilities are addressed elsewhere in more detail.

Arguments That the NOPR Is Too Complex

Comments

505. CPUC argues that the Proposed SGIA and Proposed SGIP are too complicated for small Interconnection Customers, especially the smallest, to use. Small Generator Coalition argues that unless the Commission is willing to modify the NOPR in fundamental ways, many of its members believe that development of Small Generating Facilities would be better served if the NOPR were simply withdrawn. According to Small Generator Coalition, the NOPR's framing of

> interconnection issues as a competition between maintaining system reliability and encouraging small resources is wholly inappropriate, and it gives disproportionate weight to the reliability 'concerns' of transmission/distribution owners with generating units of their own. That system reliability must not be compromised goes without saying, but the need for system reliability does not compete with the goal of encouraging small resource development via affordable and clear interconnection terms and conditions. The compatibility of small resources with the grid was proven long ago—there are literally thousands of such small resources in place and operating in the United States, safely interconnected with the grid (such as the solar array on the roof of the Commission's own office building).[166]

506. Small Generator Coalition says that on-site Small Generating Facilities actually enhance electric system reliability, and that complex technical provisions should therefore not be required.

507. Plug Power asserts that unless the Commission adopts a simpler SGIA, the Commission's rulemaking will not help to reach national interconnection standards.[167] Of particular concern to Plug Power are the Proposed SGIA's insurance requirements and what Plug Power terms its open-ended cost provisions.

508. CT DPUC urges the Commission to adopt rules that are not unnecessarily complicated to administer.

Commission Conclusion

509. We agree with commenters that the Small Generator Interconnection NOPR contained some provisions that were overly complicated for many Small Generating Facility interconnections. Wherever possible, we have simplified the SGIP and SGIA. And, for very small certified Small Generating Facilities, this Final Rule includes the highly simplified 10 kW Inverter Process.

Arguments in Favor of a Non-Binding Model Rule

Comments

510. CPUC states that it would support Commission efforts to establish non-binding guidelines, or a model rule, for use by states that have not yet adopted their own standards.

511. NARUC comments that any standard interconnection procedures document and agreement issued by the Commission that disclaims jurisdiction over ''local distribution'' facilities has limited applicability. It also claims that states are better situated to handle small generator interconnections, and having two competing interconnection regimes for small generator interconnections would be confusing. NARUC therefore also urges the Commission to adopt a policy statement instead of a binding rule.

Commission Conclusion

512. We conclude that as much standardization as possible of the rates, terms, and conditions of jurisdictional interconnection service will help eliminate undue discrimination. A non-binding policy statement would not end this undue discrimination. Further, not regulating jurisdictional interconnections would leave a regulatory gap where neither the states nor the Commission held sway. A gap of this sort would make it more difficult for Interconnection Customers wanting to interconnect and would in fact, leave them worse off than the owners of Large Generating Facilities.

513. This Final Rule both fulfills the Commission's duty to remedy undue discrimination when covered by this rule and, when not covered by this rule, provides a model that state regulators may wish to use as a starting point for developing their own procedures and agreement. We hope that the SGIP and SGIA we adopt in this Final Rule are a step towards having a seamless interconnection process where interconnections with federal-jurisdictional facilities and state-jurisdictional facilities will be handled in a similar fashion. By doing so, we intend to avoid the very federal-state clashes NARUC anticipates.

Issues Relating to Qualifying Facilities

514. The NOPR did not address the issue of how QFs would be impacted by the small generator rulemaking.

Comments

515. EEI and PacifiCorp ask the Commission to clarify that a QF that is not selling at wholesale, other than to a host utility under PURPA, should seek interconnection service through state procedures, not through Commission procedures. PacifiCorp states that the PURPA regulatory scheme for QFs involves considerable deference to state regulation with regard to the interconnection of QFs to state-regulated utilities. The Iowa Utilities Board agrees and asserts that this Final Rule should say that states have authority to establish standards for the interconnection of QFs. To avoid confusion, PacifiCorp proposes that the SGIP state clearly that a Small Generating Facility with QF status or one seeking such status is not eligible for interconnection under the Commission's rule. PacifiCorp recommends amending the Interconnection Request so that the Interconnection Customer must certify that it does not intend to seek QF status. If it then seeks QF status, PacifiCorp proposes to require a review of the interconnection to determine whether it meets state interconnection standards for QFs. The Interconnection Customer

[165] A particular state's interconnection rules may also differ from the NARUC Model.

[166] Small Generator Coalition at 7–8.

[167] Plug Power at 3.

would also pay any costs incurred by the Transmission Provider that a QF would have paid, if such costs would not be recovered by the Transmission Provider under the SGIP.

Commission Conclusion

516. The Commission has regulations that govern a QF's interconnection with most electric utilities in the United States,[168] including normally non-jurisdictional utilities.[169] When an electric utility is required to interconnect under section 292.303 of the Commission's regulations, that is, when it purchases the QF's total output, the state has authority over the interconnection and the allocation of interconnection costs.[170] But when an electric utility interconnecting with a QF does not purchase all of the QF's output and instead transmits the QF's power in interstate commerce, the Commission exercises jurisdiction over the rates, terms, and conditions affecting or related to such service, such as interconnections.[171]

517. The Commission thus exercises jurisdiction over a QF's interconnection if the QF's owner sells any of the QF's output to an entity other than the electric utility directly interconnected with the QF. This Final Rule applies when the owner of the QF seeks interconnection with a facility subject to the OATT to sell any of the output of the QF to a third party. This applies to a new QF that plans to sell any of its output to a third party and to an existing QF interconnected with an electric utility or on-site customer that decides in the future to sell any of its output to a third party. States continue to exercise authority over QF interconnections when the owner of the QF sells the output of the QF only to the interconnected utility or to on-site customers.

518. PacifiCorp's proposal that the Commission require the Interconnection Customer to certify that it does not intend to seek QF status is unnecessary. This Final Rule only applies when the interconnection is subject to the Commission's jurisdiction. Other rules apply if the generator seeks to interconnect as a QF. PacifiCorp has provided no convincing rationale why this proposed amendment is necessary for this rulemaking.

Taxes

519. The NOPR did not explicitly address the potential taxation of payments made by the Interconnection Customer to the Transmission Provider for Interconnection Facilities and Upgrades.

Comments

520. A few commenters urge the Commission to address taxes. They argue that the Commission should adopt an approach similar to that taken in the LGIA so that any taxes incurred by the Transmission Provider are not shifted to its customers.

521. Because payments received for Upgrades by the Transmission Provider may be taxed, EEI and Ameren ask the Commission to clarify how the Transmission Provider will recover those tax payments. Further, EEI argues that additional financial security may be required because such facilities could be jurisdictional to either the Commission or state utility commissions. Additional financial security would ensure that the utility is not forced to recover such costs from its entire customer base. EEI proposes that the following sentence be added to Proposed SGIA article 5.2: ''[The] Transmission Provider may request additional financial security to cover tax liabilities that it may incur as a result of a transaction being deemed by the Internal Revenue Service to have been a taxable event, for example, when an Interconnection Customer terminates a signed Interconnection Agreement.''

522. Southern Company proposes a tax provision modeled after the ANOPR consensus documents. Under Proposed SGIA article 5.1.2.1, the refunds paid to the Interconnection Customer through transmission credits include ''any tax gross-up or other tax-related payments'' in connection with Network Upgrades required for interconnection. It argues that if the Interconnection Customer receives transmission credits for such payments, all other transmission customers will have to bear the tax liability created by the Interconnection Customer. Transmission credits should be provided to the Interconnection Customer for the cost of installing facilities only if those costs may facilitate transmission delivery service. Any tax gross-up paid by the Interconnection Customer would not facilitate transmission delivery service, but instead would be a tax liability created solely by the interconnection. Moreover, requiring the refund through credits of taxes paid, plus interest, would force the Transmission Provider to pay the full carrying cost of income taxes on the Interconnection Customer's assets with no means of recouping the expenditure.

Commission Conclusion

523. The commenters are correct that payments received for Upgrades by the Transmission Provider may be taxed under certain circumstances. If construction of Upgrades is necessary, any associated taxes are to be handled consistent with Commission precedent and applicable tax rules and regulations. In particular, the Parties should then look to the LGIA's tax framework.[172] We also reiterate that it is Commission policy that each Party must cooperate with the other Party to maintain the Transmission Provider's tax exempt status, where applicable.

OATT Reciprocity Requirements

524. The Small Generator Interconnection NOPR did not propose any changes to the existing reciprocity policy; accordingly, the Small Generator Interconnection NOPR did not discuss it.

Comments

525. NRECA states that it ''applauds the Commission's decision to apply the reciprocity provision in the OATT and the reciprocity policy articulated in Order No. 888 [and] appreciates the sensitivity the Commission has demonstrated to the needs of non-jurisdictional service providers.'' [173] However, it remains concerned that non-public utilities may be discouraged from interconnecting new generation out of fear that such an interconnection will make them subject to the jurisdiction of the Commission. To avoid this, NRECA advocates the creation of a safe harbor for non-jurisdictional entities that want to interconnect new generation, yet maintain their non-jurisdictional status. NRECA points to several Commission natural gas decisions that it asserts provide precedent for creating a safe harbor of the type it proposes. NRECA also states that the Commission could achieve the same result by ordering an interconnection under section 211 of the FPA.

526. AMP-Ohio and LADWP ask the Commission to clarify that the

[168] 18 CFR 292.303, 292.306 (2004).

[169] The absence of interstate commerce in Alaska, Hawaii, and portions of Texas and Maine, and Puerto Rico is not germane to the Commission's jurisdiction over QF matters under PURPA. *See* 16 U.S.C. 2602 (2000).

[170] *See* Western Massachusetts Electric Co., 61 FERC ¶ 61,182 at 61,661–62 (1992), *aff'd sub nom. Western Massachusetts Electric Co.* v. *FERC,* 165 F.3d. 922, 926 (D.C. Cir. 1999).

[171] *Id.* at 61,661–62. The Commission further clarified that ''[t]he fact that the facilities used to support the jurisdictional service might also be used to provide various nonjurisdictional services, such as back-up and maintenance power for a QF, does not vest state regulatory authorities with authority to regulate matters subject to the Commission's exclusive jurisdiction.'' *Id.* at 61,662.

[172] *See, e.g.*, LGIA articles 5.17 and 5.18 and Order No. 2003–A at P 324 *et seq.*

[173] NRECA at 57.

reciprocity condition applies only to the public utility over whose system the non-public utility takes transmission service. They also ask the Commission to clarify that there is no reciprocity obligation on the part of a non-public utility that owns only distribution facilities, not transmission facilities. The effect of most small generators is felt at the distribution level, LADWP argues, and these interconnections are more likely to affect retail customers. SMUD makes a similar argument.

527. PacifiCorp requests that the Commission clarify that if a public utility is forced to offer interconnection service on its distribution lines to a non-public utility under the reciprocity condition, then the public utility must be offered similar rights to interconnect with the non-public utility. PacifiCorp argues that

> [b]ecause many non-jurisdictional utilities own distribution systems that they do not consider 'transmission,' even when the corresponding system of a public utility is considered transmission by the Commission, the potential for discriminatory impact is real. At a minimum, the definition of a non-jurisdictional utility's 'transmission facilities' should be modified to include any distribution facility that would be considered 'transmission' if it were owned by a jurisdictional utility.[174]

528. SMUD asks if reciprocity applies when the Interconnection Customer seeks to connect at distribution voltage to the non-jurisdictional utility and proposes to engage in sales for resale. It also asks if reciprocity applies differently for non-jurisdictional utilities seeking bilateral agreements with public utilities than to non-jurisdictional utilities seeking approval of safe harbor tariffs.

529. NRECA asks the Commission to clarify that a non-jurisdictional utility is not required to offer interconnection service if doing so would jeopardize its tax-exempt status.

530. Finally, Bureau of Reclamation, BPA, and others assert that as federal agencies, they are not able to comply with all of the provisions of the Proposed SGIP and SGIA. For instance, BPA says its contracts must accommodate the Freedom of Information Act and that it could not comply with all aspects of the Commission's proposed confidentiality provisions. BPA and Bureau of Reclamation request clarification that they are not required to comply with these provisions.

[174] PacifiCorp at 2–3.

Commission Conclusion

531. Most of the comments focus on whether interconnections with ''distribution'' systems are subject to the reciprocity condition. The answer is, to satisfy the reciprocity condition of Order No. 888, a non-public utility must offer to a public utility with an OATT service comparable to that offered to its own or affiliated Interconnection Customers.[175]

532. PacifiCorp is correct that what the facility is termed by its owner does not affect its jurisdictional status. The reciprocity condition would apply to any facility used to offer services that would be Commission-jurisdictional if the non-public utility were a public utility.

533. The reciprocity requirement in Order No. 888 permits a public utility to require, as a condition of providing open access service to a non-public utility that owns, controls, or operates transmission facilities, that the non-public utility provide reciprocal transmission service. In Order No. 2003–A, the Commission explained that the reciprocity provision applies to Interconnection Service in the same way.[176]

534. There are three ways a non-public utility may satisfy the reciprocity provision.[177] First, it may provide service under a Commission-approved ''safe harbor'' tariff—a tariff that the Commission has determined offers truly open access service. Second, it may provide service to a public utility under a bilateral agreement that satisfies its reciprocity obligation. Third, the non-public utility may ask the public utility to waive the reciprocity condition.

535. A non-public utility that has a ''safe harbor'' tariff that is modeled on the OATT must add to that tariff an interconnection procedures document and interconnection agreement that either are modeled on the OATT interconnection procedures document and agreement or are otherwise found to offer truly open access service if it wishes to continue to qualify for ''safe harbor'' treatment.[178] A non-public utility that owns, controls, or operates transmission, has not filed with the Commission a ''safe harbor'' tariff, and seeks transmission service from a public utility that invokes the reciprocity provision must either satisfy its reciprocity obligation under a bilateral agreement or ask the public utility to waive the OATT reciprocity condition.

[175] Order No. 2003–A at P 775.

[176] *See* Order No. 2003–A at P 760 *et seq.*

[177] *Id.* at P 761.

[178] *Id.*

536. This Final Rule does not modify the Commission's reciprocity policy as laid out in Order Nos. 888 and 2003.

537. LADWP also states that there are relatively few Commission-jurisdictional Small Generating Facility interconnections and urges the Commission not to apply its reciprocity policy in the small generator context. The fact that there may be relatively few interconnections subject to this Final Rule does not justify abandoning long-standing reciprocity policy.

538. As the Commission determined in Order Nos. 888[179] and 2003–A,[180] reciprocal service is not required if providing such service would jeopardize the tax-exempt status or bond status of the non-public utility.

539. As to BPA and Bureau of Reclamation's comments, we reiterate that reciprocity does not require federal entities to provide services or sign contracts that they cannot legally enter into. If such entities choose to amend their safe harbor tariffs on compliance, they may propose modifications to the SGIP and SGIA that address their concerns.

540. Finally, we deny NRECA's proposed safe harbor provision. As it notes, section 211 of the FPA already allows a non-public utility to safeguard its non-jurisdictional status. We see no need to fix a system that does not appear to be broken.

Coordination With Affected Systems

541. An Affected System is an electric system other than the Transmission Provider that may be affected by the proposed interconnection. In the Small Generator Interconnection NOPR, the Commission proposed to treat coordination between the Transmission Provider, Interconnection Customer, and any Affected Systems the same way as in the LGIA. Order Nos. 2003 and 2003–A required the Transmission Provider to coordinate with an Affected System. The Commission requested comments on whether there are any issues specific to Small Generating Facilities that necessitate a different policy.

Comments

542. While no commenters present any arguments on this issue specific to the small generator context, some discuss the Affected System provision in terms of Distribution Systems.

Commission Conclusion

543. We are adopting an Affected System provision comparable to the one

[179] Order No. 888 at 31,762, n.499.

[180] Order No. 2003–A at P 782.

in the LGIP and LGIA. Regarding the comments addressing the Affected System provision in terms of Distribution Systems subject to an OATT, we note that the definition of Affected System includes not only transmission facilities. The definition is more inclusive; it is ''an electric system * * * that may be affected by the proposed interconnection.'' Thus, an Affected System may be any type of electric system.[181]

I. Compliance Issues

Amendments to the Transmission Provider's OATT

544. In this Final Rule, we are requiring all public utilities that own, control, or operate interstate transmission facilities to adopt the SGIP and SGIA, but are using a process different from the one used in Order No. 2003. On the effective date of Order No. 2003, the OATT of each Transmission Provider was deemed to have included the LGIP and LGIA.[182] On the effective date of this Final Rule, as in Order No. 2003,[183] the OATTs of all non-independent Transmission Providers are deemed revised to include the Final Rule SGIP and SGIA. But unlike the Order No. 2003 process, where the Commission directed Transmission Providers to make ministerial filings to include the LGIP and LGIA in their next filings with the Commission, here the Commission will require no formal amendment until compliance is due in the Commission's rulemaking on Electronic Tariff Filings.[184] This means that a non-independent Transmission Provider that wishes to adopt the SGIP and SGIA (without variations) into its OATT need not formally add the documents to its OATT until it submits a compliance filing in response to the Commission's pending Electronic Tariff Filings rulemaking. A non-independent Transmission Provider that decides to take this option nevertheless must apply the SGIP and SGIA to any request for small generator interconnection that it receives after the effective date of this Final Rule, but before it complies with the rulemaking on Electronic Tariff Filings. The compliance obligation is different for non-independent Transmission Providers that seek variations from the Final Rule documents, as discussed further below.

545. If an RTO or ISO wishes to adopt the SGIP and SGIA into its OATT, it may also await compliance with the Electronic Tariff Filings rulemaking before formally adding the documents to its OATT. But the RTO or ISO should notify the Commission by the effective date of this Final Rule that it will adopt the Final Rule documents and that requests for interconnection of Small Generating Facilities will be subject to the SGIP and SGIA in the interim period. An RTO or ISO that does not adopt the SGIP and SGIA will have additional time to submit its compliance filings to allow for the stakeholder process and other measures that must be taken before an RTO or ISO adopts tariff changes. Therefore, an RTO or ISO that seeks variations will have an additional 90 days to submit its compliance filing. As in the Order No. 2003 proceeding, until the Commission acts on the compliance filing of an RTO or ISO that seeks variations, the RTO's or ISO's existing Commission-approved interconnection procedures and agreement remain in effect.

Variations From the Final Rule

546. As in Order No. 2003, the Commission will consider two categories of variations from the Final Rule submitted by a non-independent Transmission Provider.[185] First, the Commission will consider ''regional reliability variations'' that track established reliability requirements (*i.e.*, requirements approved by the applicable regional reliability council). Any request for a ''regional reliability variation'' must be supported by references to established reliability requirements,[186] and the text of the reliability requirements must be provided in support of the variation. If the variation is for any other reason, the non-independent Transmission Provider must demonstrate that the variation is ''consistent with or superior to'' the Final Rule provision. Blanket statements that a variation meets the standard or clarifies the Final Rule provision are not sufficient. Any request for application of this standard will be considered under FPA section 205 and must be supported by arguments explaining how each variation meets the standard.

547. Requests for regional reliability variations are due on the effective date of this Final Rule. Requests for ''consistent with or superior to'' variations may be submitted on or after the effective date of the Final Rule. We note that the ''consistent with or superior to'' standard is difficult to meet because the burden of showing that a variation is ''consistent with or superior to'' the relevant provision or provisions in the Final Rule document is significant.

548. Any request for a variation should be accompanied by a request to include the complete SGIP and SGIA into the Transmission Provider's OATT. The Commission will consider incomplete any request for a variation that does not also propose to append to the Transmission Provider's OATT the complete SGIP and SGIA. As explained above, an RTO or ISO will have 90 additional days (for a total of 150 days) to submit a compliance filing. That compliance filing must contain all proposed independent entity variations.

549. With respect to an RTO or ISO, at the time its compliance filing is made, as explained in Order No. 2003, the Commission will allow it to seek ''independent entity variations'' from the Final Rule pricing and non-pricing provisions.[187] The RTO or ISO should explain the basis for each variation.

550. Finally, for a non-independent Transmission Provider that belongs to an RTO or ISO, the RTO's or ISO's Commission-approved standards and procedures are to govern interconnection with its members' facilities that are under the operational control of the RTO or ISO. An interconnection with a Commission jurisdictional facility that is owned by a non-independent Transmission Provider but is not under the operational control of the RTO or ISO is to be conducted according to the non-independent Transmission Provider's procedures and agreement. A non-independent Transmission Provider, even if it belongs to an RTO or ISO, is not eligible for ''independent entity variations'' for procedures and agreements applicable to interconnection with facilities that remain within its operational control (and therefore, are subject to a tariff different from the RTO or ISO's OATT). To clarify, if a non-independent Transmission Provider belongs to an RTO or ISO, but keeps operational control of some jurisdictional facilities, and those facilities are not subject to the interconnection procedures under the OATT of the RTO or ISO, then the non-independent Transmission Provider must have a separate set of interconnection procedures and

[181] We note that, similar to when the Affected System is a non-jurisdictional entity, the Commission does not have to have jurisdiction over the Affected System in order for the interconnection to proceed. *See* Order No. 2003–A at P 114–115.

[182] Order No. 2003 at P 910.

[183] *See* Standardization of Generator Interconnection Agreements and Procedures, Notice Clarifying Compliance Procedures, 106 FERC ¶ 61,009 at P 2 (2004).

[184] Electronic Tariff Filings, Notice of Proposed Rulemaking, 69 FR 43929 (July 23, 2004), FERC Stats. & Regs., Proposed Regulations, ¶ 32,575 (July 8, 2004).

[185] Order No. 2003 at P 824–25.

[186] *See also* New York Independent System Operator, Inc., 108 FERC ¶ 61,159 at P 95 (2004), *reh'g pending.*

[187] Order No. 2003 at P 827.

agreement applicable to these facilities. To address the confusion that may arise from having inconsistent interconnection procedures and agreements applicable within an RTO or ISO region, we allow a non-independent Transmission Provider that keeps control over some jurisdictional facilities to subject these facilities to an RTO- or ISO-controlled interconnection process. In such instance, the non-independent Transmission Provider must agree to transfer to the RTO or ISO control over the significant aspects of the interconnection process, including the performance of all interconnection studies and cost determinations applicable to Network Upgrades.[188]

Interconnection Requests Submitted Prior to the Effective Date of This Final Rule and Grandfathering of Existing Interconnection Agreements

551. The grandfathering of existing agreements was not specifically addressed in the Small Generator Interconnection NOPR; however, the Commission did request comments on whether generic Commission policies applicable to Large Generating Facilities (such as grandfathering) should be applied to Small Generating Facilities.

Comments

552. American Forest and National Grid seek clarification that small generators that are already interconnected are not subject to this rulemaking. To avoid unintended barriers to Small Generating Facilities, they urge the Commission to follow the Order No. 2003 approach for grandfathering. American Forest states that generators should not have to undergo this new interconnection process, particularly where the generating facilities that are already interconnected have not changed their physical operations.

553. California Wind Energy requests that, as in Order No. 2003, contract conversion of pre-existing interconnection contracts with former QFs should not trigger an obligation under this Final Rule to file an Interconnection Request because a change in contract status alone does not affect a generator's demand on the electric system. It also seeks clarification that, when the QF's interconnection agreement provides for greater capacity than what is to be sold to the interconnecting utility under the PURPA power purchase contract, upon contract conversion, the former QF should not have to submit an Interconnection Request if the transmission requirements are consistent with those provided for in the prior agreement.

554. Finally, if the Commission adopts the approach used in Order No. 2003, California Wind Energy requests that the Commission clarify when a change in a QF's contract status triggers an obligation to file a new Interconnection Request. It notes that Order No. 2003 states that the owner of a QF formerly interconnected with a Transmission System has no obligation to file an Interconnection Request when its contract status changes if the output of its generator ''will be substantially the same as before.'' [189] California Wind Energy asserts that the term ''output'' leaves ambiguous the effect of the Commission's criteria on projects that are to be repowered after contract conversion. It explains that when a QF repowers, it increases energy production while maintaining its maximum megawatt output. California Wind Energy seeks clarification that when a small generator increases energy production as a result of a post-PURPA contract repower, and there is no meaningful change in the generator's maximum output, there is no obligation to file a new Interconnection Request.

Commission Conclusion

555. As in Order No. 2003, the Commission is not requiring changes to interconnection agreements filed with the Commission before the effective date of this Final Rule. Interconnection agreements submitted for approval by the Commission before the effective date of this Final Rule are grandfathered and will not be rejected outright for failing to conform to the SGIA. Small Generating Facilities already interconnected that have not changed their physical operations in such a way as to require a new Interconnection Request are not subject to this rulemaking.

556. We also note that the Small Generator NOPR did not address what happens to Interconnection Customers whose Interconnection Requests are pending at the time this Final Rule goes into effect. LGIP section 5 addresses how such interconnections are to be processed, and we adopt a shortened version of that provision in the SGIP as well. The new section 1.7 clarifies that nothing in this Final Rule is intended to affect an Interconnection Customer's Queue Position assigned prior to the effective date of this rule. It also states that the Parties shall continue to process any executed interconnection study agreements (or study agreements that have been filed unexecuted with the Commission) once this Final Rule becomes effective. However, we will require that any new interconnection study agreement entered into after this Final Rule becomes effective follow the *pro forma* study agreements contained in the SGIP. Any accommodation needed to process such Interconnection Requests (*i.e.*, should the pre- and post-Final Rule study processes be significantly different) should be filed with the Commission and will be evaluated on a case-by-case basis.

557. If an interconnection agreement has been executed prior to the effective date of this Final Rule, then no additional steps need to be taken. We agree with the commenters that an existing Interconnection Customer whose Small Generating Facility is already interconnected should not have to undergo a new interconnection process.

558. We also reiterate that a change in an Interconnection Customer's contract status does not, by itself, trigger an obligation to file an Interconnection Request. As the Commission noted in Order Nos. 2003 and 2003–A, a former QF interconnected with a Transmission System that sells electric energy at wholesale in interstate commerce need not submit an Interconnection Request if it represents that the output of the generating facility is substantially the same as before.[190] Under the Commission's regulations,[191] a QF must provide electric energy to its interconnecting utility much like the interconnecting utility's other network resources because the utility must purchase the QF's power to displace its own generation. When the owner of a QF that was formerly interconnected with a Transmission System seeks to sell energy at wholesale and represents that the output of its generator will be substantially the same after conversion, it would be unreasonable for a Transmission Provider to require the former QF to join the interconnection queue.

559. California Wind Energy also asks the Commission to clarify that a plant repowering at the time of contract conversion that does not increase plant capacity will not trigger an obligation to file an Interconnection Request. We clarify that a contract conversion that does not affect a generator's demands on the Transmission System does not trigger an obligation to file. When a QF's existing interconnection agreement provides for capacity greater than the capacity sold by the QF to the

[188] *See* Order No. 2003–B at P 80.

[189] Order No. 2003 at P 815.

[190] Order No. 2003 at P 815.

[191] 18 CFR 292.303 (2004).

interconnecting utility under the PURPA power purchase contract, the QF's contract conversion will not trigger an obligation to file an Interconnection Request if its transmission requirements are consistent with the capacity provided for in the existing interconnection agreement.

Order No. 2001 and the Filing of Interconnection Agreements

560. Order No. 2001 [192] revised how traditional public utilities and power marketers must satisfy their obligation, under section 205 of the FPA and Part 35 of the Commission's regulations, to file agreements with the Commission.[193] Public utilities that have standard forms of agreement in their OATTs, cost-based power sales tariffs, or tariffs for other generally applicable services no longer need to file conforming service agreements with the Commission. The filing requirement for conforming agreements (those that follow the standard form) is now satisfied by filing the standard form of agreement and an Electronic Quarterly Report. Order No. 2001 also lifted the requirement that Parties to an expiring conforming agreement file a notice of cancellation or a cancellation tariff sheet with the Commission. The public utility may simply remove the agreement from its Electric Quarterly Report in the quarter after it terminates.

561. Non-conforming agreements, which are agreements for transmission, cost-based power sales or other generally applicable services that do not conform to a standard form of agreement in a public utility's tariff, must continue to be filed with the Commission for approval before going into effect. This category includes unexecuted agreements and agreements that do not precisely match the standard form of agreement.

562. Order No. 2003 explained that, under Order No. 2001, if an interconnection agreement conforms to a Commission-approved standard form of interconnection agreement, the Transmission Provider does not have to file it with the Commission, but must report it in its Electric Quarterly Reports. The same filing rules will apply to non-conforming SGIAs as for non-conforming LGIAs. However, an interconnection agreement that does not precisely match the Transmission Provider's Commission-approved standard interconnection agreements or that is unexecuted must be filed in its entirety. The Transmission Provider shall clearly show where the filed agreement does not conform to its standard interconnection agreement through red-lining and strike-out and justify the basis for the nonconformance.

III. Information Collection Statement

563. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and record keeping (collections of information) imposed by an agency.[194] The information collection requirements in this Final Rule are identified under the Commission data collection, FERC–516A ''Standardization of Small Generator Interconnection Agreements and Procedures.'' Under section 3507(d) of the Paperwork Reduction Act of 1995,[195] the proposed reporting requirements in the subject rulemaking will be submitted to OMB for review. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (Attention: Michael Miller, Office of the Executive Director, 202–502–8415) or from the Office of Management and Budget (Attention: Desk Officer for the Federal Energy Regulatory Commission, fax: 202–395–7285, e-mail: *n.;[9 oira_submission@omb.eop.gov).*

564. The ''public protection'' provision of the Paperwork Reduction Act [196] requires each agency to display a currently valid OMB control number and inform respondents that a response is not required unless the information collection displays a valid OMB control number on each information collection. This provision has two legal effects: (1) It creates a legal responsibility for the agency; and (2) it provides an affirmative legal defense for respondents if the information collection is imposed on respondents by the Commission through regulation or administrative means in order to satisfy a legal authority or responsibility of the Commission. If the Commission should fail to display an OMB control number, then it is the Commission not the respondent who is in violation of the law. ''Display'' is defined as publishing the OMB control number in regulations, guidelines or other issuances in the **Federal Register** (for example, in the preamble or regulatory text for the final rule containing the information collection).[197] Therefore, the Commission may not conduct or sponsor, and a person is not required to respond to a collection of information unless the information collection displays a valid OMB control number.

565. *Public Reporting Burden:* The Commission did not receive specific comments concerning its burden estimates and uses the same estimates here in the Final Rule. Comments on the substantive issues raised in the NOPR are addressed elsewhere in the Final Rule.

Data collection	No. of respondents	No. of responses	Hours per response	Total annual hours
FERC–516A				
SGIPs & SGIAs	238	1	25	5,950
Recordkeeping	238	1	2	476
Totals				6,426

[192] Revised Public Utility Filing Requirements, Order No. 2001, 67 FR 31043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002); *reh'g denied,* Order 2001–A, 100 FERC ¶ 61,074 (2002); *reconsideration and clarification denied,* Order No. 2001–B, 100 FERC ¶ 61,342 (2002); *further order,* Order No. 2001–C, 101 FERC ¶ 61,314 (2002).

[193] Order No. 2001 pointed out that Part 35 of the Commission's regulations does not make a distinction between an interconnection agreement and other agreements for service that must be filed under the Commission's regulations. Order No. 2001, therefore, said that if an interconnection agreement conforms to a Commission-approved *standard* form of interconnection agreement, the utility does not have to file it, but must report it in the Electric Quarterly Reports. It also stated that the requirement to file contract data and transaction data begins with the first Electric Quarterly Report filed after service begins under an agreement, and continues until the Electric Quarterly Report filed after it expires or by order of the Commission. However, an interconnection agreement that does not precisely match the Transmission Provider's approved interconnection agreement or that is unexecuted must be filed with the Commission. The Transmission Provider must clearly show where the agreement does not conform to its standard interconnection agreement, preferably through red-lining and strike-out.

[194] 5 CFR 1320.11 (2004).

[195] 44 U.S.C. 3507(d) (2000).

[196] 44 U.S.C. 3512; 5 CFR 1320.5(b); 5 CFR 1320.6(a).

[197] See 1 CFR 21.35 and 5 CFR 1320.3(f)(3).

Total Annual Hours for Collection: 5,950 (reporting) [238 respondents × 1 × 25 hours] + 476 hours (recordkeeping) [238 hours × 1 filing × 2 hours to retain interconnection documents] = 6,426.[198]

566. Information Collection Costs: The Commission sought comments about the time needed to comply with these requirements. No comments were received. Staffing requirements to review and modify existing SGIPs and SGIAs = $309,400 [238 respondents × $1,300 (25 hours @ $52 hourly rate)]. To be added to this cost are the annualized costs for operations and management (238 respondents × $34 [2 hours @ $17 hourly rate for recordkeeping] or $8,092)). Total costs of $317,492 for preparing filings for modification of the OATT and for recordkeeping of interconnection documents. There will be a one-time start up cost to comply with these requirements for the procedures and agreements and then an additional cost to maintain them.[199]

Titles: FERC–516A ''Standardization of Small Generator Interconnection Agreements and Procedures

Action: Revision of Currently Approved Collection of Information

OMB Control Nos: 1902–0203.

Respondents: Business or other for profit.

Frequency of Responses: One occasion.

Necessity of Information: The Final Rule revises the reporting requirements contained in 18 CFR part 35. The Commission promulgates a standardized SGIP and SGIA that public utilities must adopt. As noted in the Final Rule, adopting these procedures and agreement will (1) reduce interconnection costs and time for the owners of Small Generating Facilities and Transmission Providers alike; (2) limit opportunities for Transmission Providers to favor their own generation; (3) facilitate market entry for generation competitors; and (4) encourage needed investment in generator and transmission infrastructure.

567. Interconnection plays a growing, crucial role in bringing generation into the market to meet the needs of electricity customers. However, requests for interconnection frequently result in complex technical disputes about interconnection feasibility, cost and cost responsibility. The Commission expects that a standardized SGIP and SGIA will reduce interconnection costs and time for Interconnection Customers and Transmission Providers, resolve most interconnection disputes, minimize opportunities for undue discrimination, foster increased development of economic generation, and improve system reliability.

568. For information on the requirements, submitting comments on the collection of information and the associated burden estimates including suggestions for reducing this burden, please send your comments to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (Attention: Michael Miller, Office of the Executive Director, (202) 502–8415) or send comments to the Office of Management and Budget (Attention: Desk Officer for the Federal Energy Regulatory Commission, fax: (202) 395–7285, e-mail *oira_submission@omb.eop.gov*).

IV. Environmental Impact Statement

569. Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[200] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural or does not substantially change the effect of legislation or regulations being amended,[201] and also for information gathering, analysis, and dissemination.[202] The Final Rule updates part 35 of the Commission's regulations and does not substantially change the effect of the underlying legislation or the regulations being revised or eliminated. In addition, the Final Rule involves information gathering, analysis, and dissemination. Therefore, this Final Rule falls within categorical exemptions provided in the Commission's regulations. Consequently, neither an environmental impact statement nor an environmental assessment is required.

570. While some Small Generating Facilities, such as reciprocating engines, may produce more pollution, others, such as photovoltaics and fuel cells, produce significantly less air, water and noise pollution than do new central station technologies. Others, such as micro-turbines, provide opportunities to reduce emissions by improving the efficiency with which energy is consumed, through improved heat rates and combined heat and power applications. Small Generating Facilities may eliminate the need to run older, more polluting generating units and reduce power line losses. As one of the goals of this rule is to allow interconnection of Small Generating Facilities that can provide environmental and economic benefits, this rule will benefit customers by providing alternative generation sources.

V. Regulatory Flexibility Act

571. The Regulatory Flexibility Act (RFA)[203] requires that a rulemaking contain either a description and analysis of the effect that the proposed rule will have on small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities. However, the RFA does not define ''significant'' or ''substantial'' instead leaving it up to any agency to determine the impacts of its regulations on small entities. In the NOPR, the Commission stated that the proposed regulations would impose requirements only on interstate Transmission Providers, which are not small businesses. The Commission certified that the proposed regulations would not have a significant adverse impact on a substantial number of small entities. In making its certification, the Commission determined that the rule applies only to public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce and not to electric utilities per se. Small entities that believe this rule will have a significant impact on them may apply to the Commission for waivers.

Comments

572. NRECA questions this certification. NRECA argues that to lessen the impact of this rule on small entities, the Commission should: ''(1) Provide a durable blanket waiver of the NOPR requirements to all currently FPA-jurisdictional utilities, that qualify as 'small' public utilities under the Small Business Administration (SBA) utility size standards, and (2) provide a safe harbor for all 'small' non-jurisdictional providers that want to work with consumers to interconnect generation, but want to maintain their non-jurisdictional status.''

Commission Conclusion

573. We are applying the same standards to any entity seeking a waiver of the requirements of this Final Rule. Because the possible scenarios under which small entities may seek waivers

[198] Adjustments made to reflect an increase in the number of respondents from the estimate in the Small Generator Interconnection NOPR.

[199] Adjusted figures to reflect an increase in the number of respondents.

[200] Regulations Implementing National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

[201] 18 CFR 380.4(a)(2)(ii) (2004).

[202] 18 CFR 380.4(a)(5) (2004).

[203] 5 U.S.C. 601–612 (2000).

are diverse, they are not susceptible to resolution on a generic basis, and we are requiring applications and fact-specific determinations in each instance. The Commission does not have jurisdiction over non-public utilities' rate, terms and conditions of transmission service under sections 205 and 206 of the FPA, and Order No. 888 does not require that non-public utilities file open access transmission tariffs. In addition, under the waiver provisions of Order No. 888, small non-public utilities may seek waiver from the reciprocity provision. This waiver policy follows the SBA definition of a small utility.[204] The SBA defines a small electric utility as one that disposes of 4 MWh or less of electric energy in a given year.[205]

574. We disagree with NRECA that this Final Rule will have a significant economic effect on a substantial number of small entities. Of the 931 electric cooperatives in the 47 states across the country, 686 receive financial assistance from the U.S. Department of Agriculture and therefore are not subject to the Commission's jurisdiction.[206] Of the 67 members of NRECA who have generation and transmission facilities, only 34 electric cooperatives are subject to the Commission's jurisdiction. They are only a small subset of the entities considered when determining a significant impact on a substantial number of small entities. Within the subset of 34 entities, only a few own, control, or operate interstate transmission facilities.

575. As NRECA noted in its comments, the Commission has an important role in determining whether facilities are distribution or transmission, and as the Commission noted elsewhere in this Final Rule, the only facilities that are already subject to a Transmission's Provider's OATT are covered by this rule and apply only to a small percentage of small generator interconnections. The Commission recognizes that most small generators will interconnect with facilities that are not subject to the OATT.

576. However, in drafting this rule the Commission has followed the provisions of both the RFA and the Paperwork Reduction Act to consider the potential impact of regulations on small business and other small entities. Specifically, the RFA directs agencies to consider four regulatory alternatives to be considered in a rulemaking to lessen the impact on small entities: Tiering or establishment of different compliance or reporting requirements for small entities, classification, consolidation, clarification or simplification of compliance and reporting requirements, performance rather than design standards, and exemptions. The Commission has adopted both tiering, and classification and simplification when developing technical accelerated procedures to apply to interconnections that will have no adverse effect on the Transmission Provider's electric system. By the use of tiering, the Commission is creating three ways to evaluate Interconnection Requests that can be applied to size and operating conditions of a small generating facility. As noted earlier, all Small Generating Facilities are subject to the Study Process, but in order to expedite the process and reduce the requirements on facilities smaller than 2 MW, technical screens were developed for certified Small Generating Facilities no larger than 2 MW (Fast Track) and certified inverter-based Small Generating Facilities no larger than 10 kW (10 kW Inverter Process). The latter process was further simplified as it does not use an SGIA, instead using an all-in-one document that includes the application form, interconnection procedures, and terms and conditions. In addition, many provisions of the SGIA are based on the NARUC Model which in turn is based on the experience of several states for implementing interconnections.

577. A core issue has been whether standards could be developed that will allow for a cost effective interconnection solution without jeopardizing the safety and reliability of the Transmission System. One study showed that the typical cost of interconnection ranges from $50/kW–$200/kW depending on the size of the generating facility, application and utility requirements.[207] By simplifying both the interconnection procedures document and interconnection agreement, the costs of small generating facilities should be reduced, equipment manufacturers will be able to operate from a single set of technical specifications, and seamless procedures will be in place that do not jeopardize the safety and reliability of the Transmission System.

VI. Document Availability

578. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to obtain this document from the Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern Time) at 888 First Street, NE., Room 2A, Washington, DC. The full text of this document is also available electronically from the Commission's eLibrary system (formerly called FERRIS) in PDF and Microsoft Word format for viewing, printing, and downloading. eLibrary may be accessed through the Commission's Home Page *(http://www.ferc.gov).* To access this document in eLibrary, type ''RM02–1-'' in the docket number field and specify a date range that includes this document's issuance date.

579. User assistance is available for eLibrary and the Commission's Web site during normal business hours from our Help Line at (202) 502–8222 or the Public Reference Room at (202) 502–8371 Press 0, TTY (202) 502–8659. E-Mail the Public Reference Room at *public.referenceroom@ferc.gov.*

VII. Effective Date And Congressional Notification

580. This Final Rule will take effect on August 12, 2005. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this rule is not a ''major rule'' within the meaning of section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.[208] The Commission will submit the Final Rule to both houses of Congress and the General Accounting Office.[209]

List of Subjects in 18 CFR Part 35

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

By the Commission.

Linda Mitry,

Deputy Secretary.

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

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

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

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

■ 2. In § 35.28, paragraph (f) is revised to read as follows:

[204] *See* 5 U.S.C. 601(3) and 601(6) and 15 U.S.C. 632(a).

[205] *See* 13 CFR 121.601.

[206] Source: Rural Utilities Service, U.S. Department of Agriculture, *http://www.usdagov.rus/electric/borrowers/index.htm.* April, 2005.

[207] Souce: Arthur D. Little, *Distribution Generation: System Interfaces,* Arthur D. Little, Inc., Cambridge, Massachusetts, 1999.

[208] 5 U.S.C. 804(2) (2000).

[209] 5 U.S.C. 801(a)(1)(A) (2000).

§ 35.28 Non-discriminatory open access transmission tariff.

* * * * *

(f) *Standard generator interconnection procedures and agreements.* (1) Every public utility that is required to have on file a non-discriminatory open access transmission tariff under this section must amend such tariff by adding the standard interconnection procedures and agreement contained in Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (Final Rule on Generator Interconnection) and the standard small generator interconnection procedures and agreement contained in Order No. 2006, FERC Stats. & Regs. ¶_____ (Final Rule on Small Generator Interconnection), or such other interconnection procedures and agreements as may be approved by the Commission consistent with Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (Final Rule on Generator Interconnection) and Order No. 2006, FERC Stats. & Regs. ¶_____ (Final Rule on Small Generator Interconnection).

(i) The amendment to implement the Final Rule on Generator Interconnection required by paragraph (f)(1) of this section must be filed no later than January 20, 2004.

Before Commissioners: Pat Wood, III, Chairman;

(ii) The amendment to implement the Final Rule on Small Generator Interconnection required by paragraph (f)(1) of this section must be filed no later than August 12, 2005.

(iii) Any public utility that seeks a deviation from the standard interconnection procedures and agreement contained in Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (Final Rule on Generator Interconnection) or the standard small generator interconnection procedures and agreement contained in Order No. 2006, FERC Stats. & Regs. ¶____ (Final Rule on Small Generator Interconnection), must demonstrate that the deviation is consistent with the principles of either Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (Final Rule on Generator Interconnection) or Order No. 2006, FERC Stats. & Regs. ¶____ (Final Rule on Small Generator Interconnection).

(2) The non-public utility procedures for tariff reciprocity compliance described in paragraph (e) of this section are applicable to the standard interconnection procedures and agreements.

(3) A public utility subject to the requirements of this paragraph pertaining to the Final Rule on Generator Interconnection may file a request for waiver of all or part of the requirements of this paragraph, for good cause shown. An application for waiver must be filed either:

(i) No later than January 20, 2004, or

(ii) No later than 60 days prior to the time the public utility would otherwise have to comply with the requirements of this paragraph.

(4) A public utility subject to the requirements of this paragraph pertaining to the Final Rule on Small Generator Interconnection may file a request for waiver of all or part of the requirements of this paragraph, for good cause shown. An application for waiver must be filed either:

(i) No later than August 12, 2005, or

(ii) No later than 60 days prior to the time the public utility would otherwise have to comply with the requirements of this paragraph. [The following Appendices will not be published in the *Code of Federal Regulations.*]

Appendix A—Commenter Acronyms [1]

AEP—American Electric Power System

Alabama PSC—Alabama Public Service Commission

Allegheny Energy—Allegheny Energy Supply Company, LLC and Allegheny Power

Ameren—Ameren Services Company

American Forest—American Forest & Paper Association and the Process Gas Consumers Group

AMP–Ohio—American Municipal Power—Ohio, Inc.

Avista—Avista Corp. and Puget Sound Energy, Inc.

Baltimore G&E—Baltimore Gas and Electric Company

BPA—Bonneville Power Administration, U.S. Department of Energy

Bureau of Reclamation—Bureau of Reclamation, U.S. Department of Interior

CA ISO—California ISO

California Wind Energy—California Wind Energy Association

Capstone—Capstone Turbine Corp.

Central Iowa Coop—Central Iowa Power Cooperative and Corn Belt Power Cooperative

Central Maine—Central Maine Power Company, New York State Electric & Gas Corporation, and Rochester Gas & Electric Corporation

Cinergy—Cinergy Services, Inc.

Consumers—Consumers Energy Company

CPUC—California Public Utilities Commission

CT DPUC—Connecticut Department of Public Utility Control

Cummins—Cummins, Inc.

EEI—Edison Electric Institute

Empire District—Empire District Electric Co.

Encorp—Encorp, Inc.

Exelon—Exelon Generation Company, LLC, Commonwealth Edison Company, PECO Energy Company, and Sithe Energies, Inc.

FERC DRS—Dispute Resolution Service, Federal Energy Regulatory Commission

Florida PSC—Florida Public Service Commission

Garwin McNeilus—Mr. Garwin McNeilus

Georgia PSC—Georgia Public Service Commission

Georgia Transmission—Georgia Transmission Corporation

Idaho Power—Idaho Power Company

Iowa Utilities Board—Iowa Utilities Board

ISO New England—ISO New England

Joint Commenters—National Association of Regulatory Utility Commissioners, Small Generator Coalition (members listed below), American Public Power Association (who did not participate in the filing of supplemental comments), National Rural Electric Cooperative Association, and Edison Electric Institute

LADWP—Los Angeles Department of Water and Power

Massachusetts DTE—Massachusetts Department of Telecommunications and Energy

MidAmerican—MidAmerican Energy Company

Midwest ISO—Midwest Independent Transmission System Operator, Inc.

Minnesota PUC—Minnesota Public Utilities Commission and the Minnesota Department of Commerce

Mississippi PSC—Mississippi Public Service Commission

NARUC—National Association of Regulatory Utility Commissioners

National Grid—National Grid USA

NEMA—National Electrical Manufacturers Association

NEPOOL Participants—New England Power Pool Participants Committee

Nevada Power—Nevada Power Company and Sierra Pacific Power Company

NJ BPU—New Jersey Board of Public Utilities

North Carolina Commission—North Carolina Utilities Commission and the Public Staff of the North Carolina Utilities Commission

NorthWestern Energy—NorthWestern Energy

NRECA—National Rural Electric Cooperative Association

NYISO—New York Independent System Operator, Inc.

NYPSC—New York State Public Service Commission

NYTO—Central Hudson Gas and Electric Corp., Consolidated Edison Company of New York, Inc., Long Island Power Authority, New York Power Authority, New York State Electric and Gas Corp., Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corp.

Ohio PUC—Public Utilities Commission of Ohio

PacifiCorp—PacifiCorp

PG&E—Pacific Gas and Electric Company

PJM—PJM Interconnection, L.L.C.

Plug Power—Plug Power, Inc.

Progress Energy—Progress Energy, Inc., Carolina Power and Light Co., and Florida Power Corp.

PSE&G—Public Service Electric and Gas Company

[1] This list includes commenters who filed in response to the request for comments in the Notice of Proposed Rulemaking, the August 12, 2004 Request for Supplemental Comments, or both. Commenters who responded to the Request for Supplemental Comments are also listed separately at the end of this appendix.

Robert L. Carey—Mr. Robert L. Carey

RW Beck—R.W. Beck, Inc.

Small Generator Coalition—American Council for an Energy Efficient Economy; American Solar Energy Society; American Wind Energy Association; BP Solar; Citizens Action Coalition of Indiana; Coffman Electrical Equipment; Cummins Power Generation; Elliott Energy Systems; Encorp; Environmental Law & Policy Center; Kyocera Solar, Inc.; MAN Turbomachinery, Inc.; Natural Resources Defense Council; Northeast-Midwest Institute; Northwest Energy Coalition; Pace Energy Program; Pennsylvania Energy Project; Plug Power, Inc.; Power Equipment Associates; PowerLight Corporation; RWE SCHOTT Solar, Inc.; Shepherd Advisors; Solar Energy Industries Association; Spire Solar, Inc.; U.S. Combined Heat and Power Association; and University of Oregon Solar Radiation Monitoring Laboratory.

SMUD—Sacramento Municipal Utility District

SoCal Edison—Southern California Edison Company

Solar Turbines—Solar Turbines, Inc.

Southern Company—Southern Company Services, Inc.

SW TDU Group—Southwest Transmission Dependent Utility Group (Aguila Irrigation District, Ak-Chin Electric Utility Authority, Buckeye Water Conservation and Drainage District, Central Arizona Water Conservation District, Electrical District No. 3, Electrical District No. 4, Electrical District No. 5, Electrical District No. 6, Electrical District No. 7, Electrical District No. 8, Harquahala Valley Power District, Maricopa County Municipal Water District No. 1, McMullen Valley Water Conservation and Drainage District, City of Needles, Roosevelt Irrigation District, City of Safford, Tonopah Irrigation District, Wellton-Mohawk Irrigation and Drainage District)

Tangibl—Tangibl, LLC

TAPS—Transmission Access Policy Study Group

TDU Systems—Transmission Dependent Utility Systems (Alabama Electric Cooperative, Inc.; Arkansas Electric Cooperative Corporation; Golden Spread Electric Cooperative; Kansas Electric Power Cooperative, Inc.; Old Dominion Electric Cooperative; and Seminole Electric Cooperative, Inc.)

USCHPA—U.S. Combined Heat and Power Association

Western—Western Area Power Administration

Commenters Who Filed in Response to the Commission's Request for Supplemental Comments

CT DPUC—Connecticut Department of Public Utility Control

FERC DRS—Dispute Resolution Service, Federal Energy Regulatory Commission

Joint Commenters—National Association of Regulatory Utility Commissioners, Small Generator Coalition (members listed above), National Rural Electric Cooperative Association, and Edison Electric Institute (American Public Power Association did not participate in the filing of supplemental comments)

Massachusetts DTE—Massachusetts Department of Telecommunications and Energy

Minnesota PUC—Minnesota Public Utilities Commission and the Minnesota Department of Commerce

National Grid—National Grid USA

NJ BPU—New Jersey Board of Public Utilities

North Carolina Commission—North Carolina Utilities Commission and the Public Staff of the North Carolina Utilities Commission

NRECA—National Rural Electric Cooperative Association

Ohio PUC—Public Utilities Commission of Ohio

PJM—PJM Interconnection, L.L.C.

Small Generator Coalition (members listed above)

USCHPA—U.S. Combined Heat and Power Association

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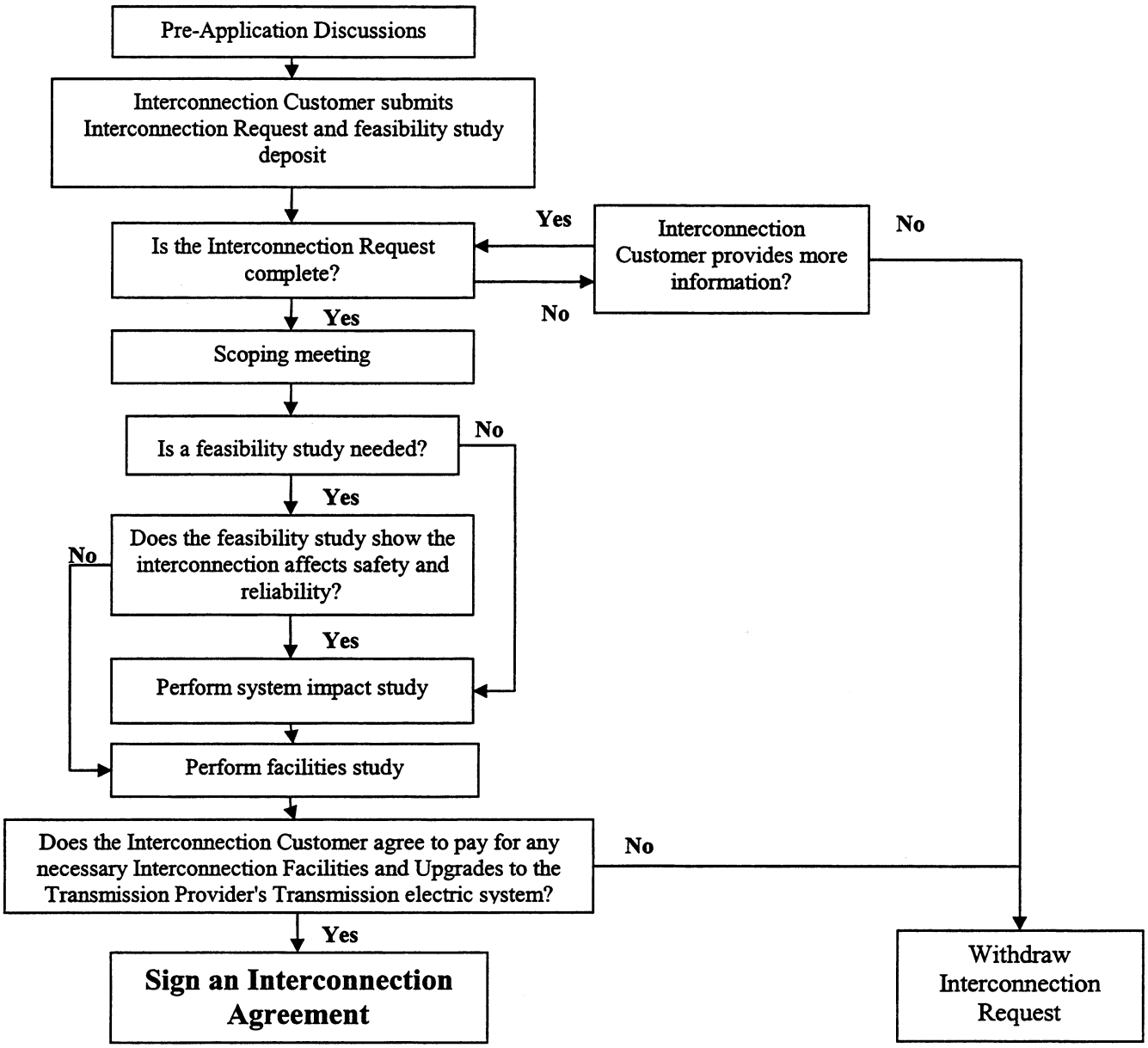
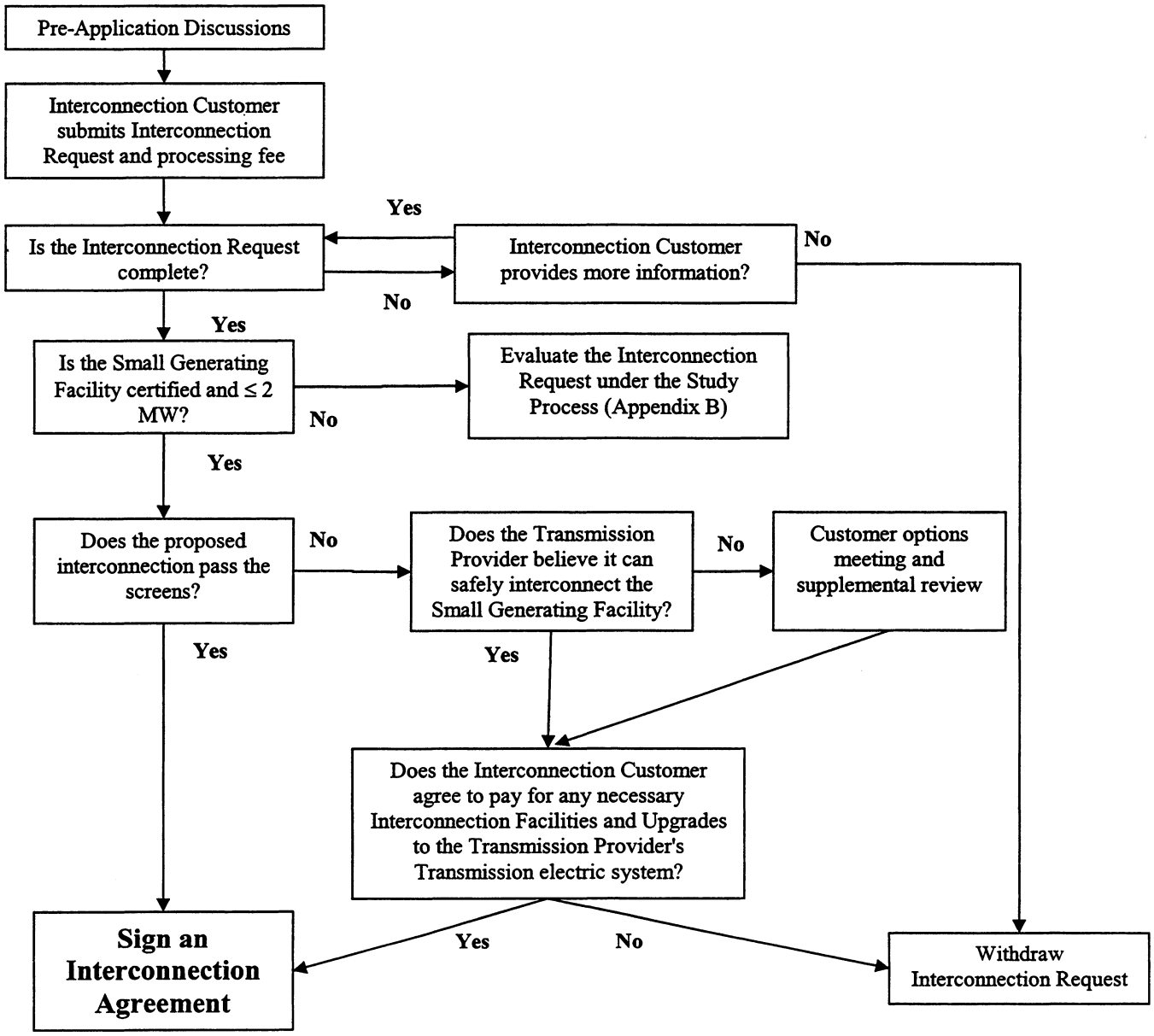
Appendix B



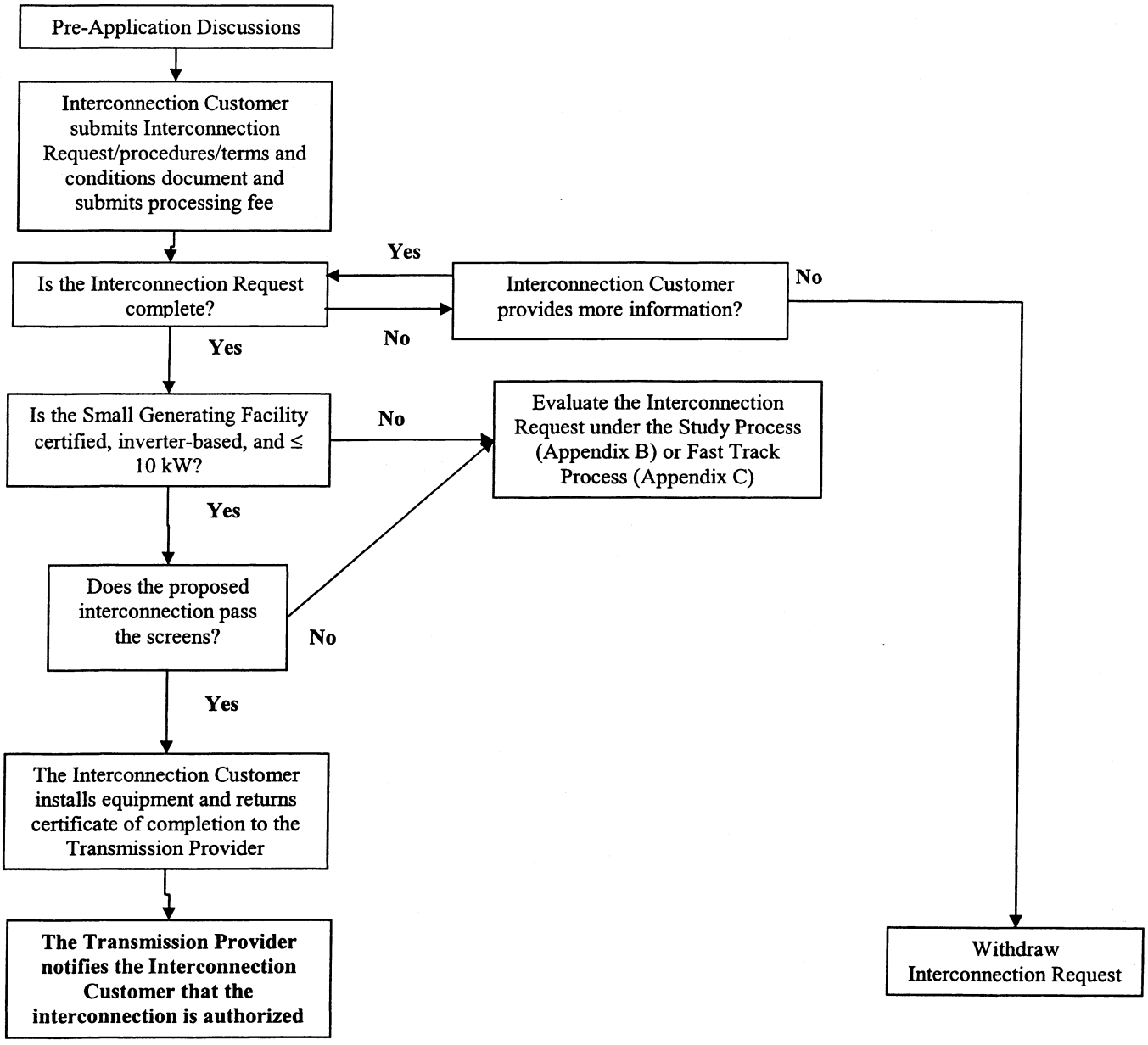
Flow Chart for Interconnecting a Small Generating Facility Using the "Study Process"

Appendix C

Flow Chart for Interconnecting a Certified Small Generating Facility No Larger than 2 MW Using the "Fast Track Process"



Appendix D—Flow Chart for Interconnecting a Certified Inverter-Based Small Generating Facility No Larger Than 10 kW Using the "10 kW Inverter Process"



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Appendix E to the Small Generator Interconnection Final Rule

SMALL GENERATOR INTERCONNECTION PROCEDURES (SGIP) (For Generating Facilities No Larger Than 20 MW)

Table of Contents

Section 1. Application

1.1 Applicability

1.1.1 A request to interconnect a certified Small Generating Facility (See Attachments 3 and 4 for description of certification criteria) no larger than 2 MW shall be evaluated under the section 2 Fast Track Process. A request to interconnect a certified inverter-based Small Generating Facility no larger than 10 kW shall be evaluated under the Attachment 5 10 kW Inverter Process. A request to interconnect a Small Generating Facility larger than 2 MW but no larger than 20 MW or a Small Generating Facility that does not pass the Fast Track Process or the 10 kW Inverter Process, shall be evaluated under the section 3 Study Process.

1.1.2 Capitalized terms used herein shall have the meanings specified in the Glossary of Terms in Attachment 1 or the body of these procedures.

1.1.3 Neither these procedures nor the requirements included hereunder apply to Small Generating Facilities interconnected or approved for interconnection prior to 60 Business Days after the effective date of these procedures.

1.1.4 Prior to submitting its Interconnection Request (Attachment 2), the Interconnection Customer may ask the Transmission Provider's interconnection contact employee or office whether the proposed interconnection is subject to these procedures. The Transmission Provider shall respond within 15 Business Days.

1.1.5 Infrastructure security of electric system equipment and operations and control hardware and software is essential to ensure day-to-day reliability and operational security. The Federal Energy Regulatory Commission expects all Transmission Providers, market participants, and Interconnection Customers interconnected with electric systems to comply with the recommendations offered by the President's Critical Infrastructure Protection Board and best practice recommendations from the electric reliability authority. All public utilities are expected to meet basic standards for electric system infrastructure and operational security, including physical, operational, and cyber-security practices.

1.1.6 References in these procedures to interconnection agreement are to the Small Generator Interconnection Agreement (SGIA).

1.2 Pre-Application

The Transmission Provider shall designate an employee or office from which information on the application process and on an Affected System can be obtained through informal requests from the Interconnection Customer presenting a proposed project for a specific site. The name, telephone number, and e-mail address of such contact employee or office shall be made available on the Transmission Provider's Internet web site. Electric system information provided to the Interconnection Customer should include relevant system studies, interconnection studies, and other materials useful to an understanding of an interconnection at a particular point on the Transmission Provider's Transmission System, to the extent such provision does not violate confidentiality provisions of prior agreements or critical infrastructure requirements. The Transmission Provider shall comply with reasonable requests for such information.

1.3 Interconnection Request

The Interconnection Customer shall submit its Interconnection Request to the Transmission Provider, together with the processing fee or deposit specified in the Interconnection Request. The Interconnection Request shall be date- and time-stamped upon receipt. The original date- and time-stamp applied to the Interconnection Request at the time of its original submission shall be accepted as the qualifying date- and time-stamp for the purposes of any timetable in these procedures. The Interconnection Customer shall be notified of receipt by the Transmission Provider within three Business Days of receiving the Interconnection Request. The Transmission Provider shall notify the Interconnection Customer within ten Business Days of the receipt of the Interconnection Request as to whether the Interconnection Request is complete or incomplete. If the Interconnection Request is incomplete, the Transmission Provider shall provide along with the notice that the Interconnection Request is incomplete, a written list detailing all information that must be provided to complete the Interconnection Request. The Interconnection Customer will have ten Business Days after receipt of the notice to submit the listed information or to request an extension of time to provide such information. If the Interconnection Customer does not provide the listed information or a request for an extension of time within the deadline, the Interconnection Request will be deemed withdrawn. An Interconnection Request will be deemed complete upon submission of the listed information to the Transmission Provider.

1.4 Modification of the Interconnection Request

Any modification to machine data or equipment configuration or to the interconnection site of the Small Generating Facility not agreed to in writing by the Transmission Provider and the Interconnection Customer may be deemed a withdrawal of the Interconnection Request and may require submission of a new Interconnection Request, unless proper notification of each Party by the other and a reasonable time to cure the problems created by the changes are undertaken.

1.5 Site Control

Documentation of site control must be submitted with the Interconnection Request. Site control may be demonstrated through:

1.8.1 Ownership of, a leasehold interest in, or a right to develop a site for the purpose of constructing the Small Generating Facility;

1.8.2 An option to purchase or acquire a leasehold site for such purpose; or

1.8.3 An exclusivity or other business relationship between the Interconnection Customer and the entity having the right to sell, lease, or grant the Interconnection Customer the right to possess or occupy a site for such purpose.

1.6 Queue Position

The Transmission Provider shall assign a Queue Position based upon the date- and time-stamp of the Interconnection Request. The Queue Position of each Interconnection Request will be used to determine the cost responsibility for the Upgrades necessary to accommodate the interconnection. The Transmission Provider shall maintain a single queue per geographic region. At the Transmission Provider's option, Interconnection Requests may be studied serially or in clusters for the purpose of the system impact study.

1.7 Interconnection Requests Submitted Prior to the Effective Date of the SGIP

Nothing in this SGIP affects an Interconnection Customer's Queue Position assigned before the effective date of this SGIP. The Parties agree to complete work on any interconnection study agreement executed prior the effective date of this SGIP in accordance with the terms and conditions of that interconnection study agreement. Any new studies or other additional work will be completed pursuant to this SGIP.

Section 2. Fast Track Process

2.1 Applicability

The Fast Track Process is available to an Interconnection Customer proposing to interconnect its Small Generating Facility with the Transmission Provider's Transmission System if the Small Generating Facility is no larger than 2 MW and if the Interconnection Customer's proposed Small Generating Facility meets the codes, standards, and certification requirements of Attachments 3 and 4 of these procedures, or the Transmission Provider has reviewed the design or tested the proposed Small Generating Facility and is satisfied that it is safe to operate.

2.2 Initial Review

Within 15 Business Days after the Transmission Provider notifies the Interconnection Customer it has received a complete Interconnection Request, the Transmission Provider shall perform an initial review using the screens set forth below, shall notify the Interconnection Customer of the results, and include with the notification copies of the analysis and data underlying the Transmission Provider's determinations under the screens.

2.2.1 *Screens.*

2.2.1.1 The proposed Small Generating Facility's Point of Interconnection must be on a portion of the Transmission Provider's Distribution System that is subject to the Tariff.

2.2.1.2 For interconnection of a proposed Small Generating Facility to a radial distribution circuit, the aggregated generation, including the proposed Small Generating Facility, on the circuit shall not exceed 15% of the line section annual peak load as most recently measured at the substation. A line section is that portion of a Transmission Provider's electric system connected to a customer bounded by automatic sectionalizing devices or the end of the distribution line.

2.2.1.3 For interconnection of a proposed Small Generating Facility to the load side of spot network protectors, the proposed Small Generating Facility must utilize an inverter-based equipment package and, together with the aggregated other inverter-based generation, shall not exceed the smaller of 5% of a spot network's maximum load or 50 kW.[1]

[1] A spot Network is a type of distribution system found within modern commercial buildings to provide high reliability of service to a single customer. (*Standard Handbook for Electrical Engineers,* 11th edition, Donald Fink, McGraw Hill Book Company).

2.2.1.4 The proposed Small Generating Facility, in aggregation with other generation on the distribution circuit, shall not contribute more than 10% to the distribution circuit's maximum fault current at the point on the high voltage (primary) level nearest the proposed point of change of ownership.

2.2.1.5 The proposed Small Generating Facility, in aggregate with other generation on the distribution circuit, shall not cause any distribution protective devices and equipment (including, but not limited to, substation breakers, fuse cutouts, and line reclosers), or Interconnection Customer equipment on the system to exceed 87.5% of the short circuit interrupting capability; nor shall the interconnection proposed for a circuit that already exceeds 87.5% of the short circuit interrupting capability.

2.2.1.6 Using the table below, determine the type of interconnection to a primary distribution line. This screen includes a review of the type of electrical service provided to the Interconnecting Customer, including line configuration and the transformer connection to limit the potential for creating over-voltages on the Transmission Provider's electric power system due to a loss of ground during the operating time of any anti-islanding function.

Primary distribution line type	Type of interconnection to primary distribution line	Result/ criteria
Three-phase, three wire.	3-phase or single phase, phase-to-phase.	Pass screen.
Three-phase, four wire.	Effectively-grounded 3 phase or Single-phase, line-to-neutral.	Pass screen.

2.2.1.7 If the proposed Small Generating Facility is to be interconnected on single-phase shared secondary, the aggregate generation capacity on the shared secondary, including the proposed Small Generating Facility, shall not exceed 20 kW.

2.2.1.8 If the proposed Small Generating Facility is single-phase and is to be interconnected on a center tap neutral of a 240 volt service, its addition shall not create an imbalance between the two sides of the 240 volt service of more than 20% of the nameplate rating of the service transformer.

2.2.1.9 The Small Generating Facility, in aggregate with other generation interconnected to the transmission side of a substation transformer feeding the circuit where the Small Generating Facility proposes to interconnect shall not exceed 10 MW in an area where there are known, or posted, transient stability limitations to generating units located in the general electrical vicinity (*e.g.,* three or four transmission busses from the point of interconnection).

2.2.1.10 No construction of facilities by the Transmission Provider on its own system shall be required to accommodate the Small Generating Facility.

2.2.2 If the proposed interconnection passes the screens, the Interconnection Request shall be approved and the Transmission Provider will provide the Interconnection Customer an executable interconnection agreement within five Business Days after the determination.

2.2.3 If the proposed interconnection fails the screens, but the Transmission Provider determines that the Small Generating Facility may nevertheless be interconnected consistent with safety, reliability, and power quality standards, the Transmission Provider shall provide the Interconnection Customer an executable interconnection agreement within five Business Days after the determination.

2.2.4 If the proposed interconnection fails the screens, but the Transmission Provider does not or cannot determine from the initial review that the Small Generating Facility may nevertheless be interconnected consistent with safety, reliability, and power quality standards unless the Interconnection Customer is willing to consider minor modifications or further study, the Transmission Provider shall provide the Interconnection Customer with the opportunity to attend a customer options meeting.

2.3 Customer Options Meeting

If the Transmission Provider determines the Interconnection Request cannot be approved without minor modifications at minimal cost; or a supplemental study or other additional studies or actions; or at significant cost to address safety, reliability, or power quality problems, within the five Business Day period after the determination, the Transmission Provider shall notify the Interconnection Customer and provide copies of all data and analyses underlying its conclusion. Within ten Business Days of the Transmission Provider's determination, the Transmission Provider shall offer to convene a customer options meeting with the Transmission Provider to review possible Interconnection Customer facility modifications or the screen analysis and related results, to determine what further steps are needed to permit the Small Generating Facility to be connected safely and reliably. At the time of notification of the Transmission Provider's determination, or at the customer options meeting, the Transmission Provider shall:

2.3.1 Offer to perform facility modifications or minor modifications to the Transmission Provider's electric system (*e.g.,* changing meters, fuses, relay settings) and provide a non-binding good faith estimate of the limited cost to make such modifications to the Transmission Provider's electric system; or

2.3.2 Offer to perform a supplemental review if the Transmission Provider concludes that the supplemental review might determine that the Small Generating Facility could continue to qualify for interconnection pursuant to the Fast Track Process, and provide a non-binding good faith estimate of the costs of such review; or

2.3.3 Obtain the Interconnection Customer's agreement to continue evaluating the Interconnection Request under the section 3 Study Process.

2.4 Supplemental Review

If the Interconnection Customer agrees to a supplemental review, the Interconnection Customer shall agree in writing within 15 Business Days of the offer, and submit a deposit for the estimated costs. The Interconnection Customer shall be responsible for the Transmission Provider's actual costs for conducting the supplemental review. The Interconnection Customer must pay any review costs that exceed the deposit within 20 Business Days of receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced costs, the Transmission Provider will return such excess within 20 Business Days of the invoice without interest.

2.4.1 Within ten Business Days following receipt of the deposit for a supplemental review, the Transmission Provider will determine if the Small Generating Facility can be interconnected safely and reliably.

2.4.1.1 If so, the Transmission Provider shall forward an executable an interconnection agreement to the Interconnection Customer within five Business Days.

2.4.1.2 If so, and Interconnection Customer facility modifications are required to allow the Small Generating Facility to be interconnected consistent with safety, reliability, and power quality standards under these procedures, the Transmission Provider shall forward an executable interconnection agreement to the Interconnection Customer within five Business Days after confirmation that the Interconnection Customer has agreed to make the necessary changes at the Interconnection Customer's cost.

2.4.1.3 If so, and minor modifications to the Transmission provider's electric system are required to allow the Small Generating Facility to be interconnected consistent with safety, reliability, and power quality standards under the Fast Track Process, the Transmission Provider shall forward an executable interconnection agreement to the Interconnection Customer within ten Business Days that requires the Interconnection Customer to pay the costs of such system modifications prior to interconnection.

2.4.1.4 If not, the Interconnection Request will continue to be evaluated under the section 3 Study Process.

Section 3. Study Process

3.1 Applicability

The Study Process shall be used by an Interconnection Customer proposing to interconnect its Small Generating Facility with the Transmission Provider's Transmission System if the Small Generating Facility (1) is larger than 2 MW but no larger than 20 MW, (2) is not certified, or (3) is certified but did not pass the Fast Track Process or the 10 kW Inverter Process.

3.2 Scoping Meeting

3.2.1 A scoping meeting will be held within ten Business Days after the Interconnection Request is deemed complete, or as otherwise mutually agreed to by the Parties. The Transmission Provider and the Interconnection Customer will bring to the meeting personnel, including system engineers and other resources as may be reasonably required to accomplish the purpose of the meeting.

3.2.2 The purpose of the scoping meeting is to discuss the Interconnection Request and review existing studies relevant to the Interconnection Request. The Parties shall further discuss whether the Transmission Provider should perform a feasibility study or proceed directly to a system impact study, or a facilities study, or an interconnection agreement. If the Parties agree that a feasibility study should be performed, the Transmission Provider shall provide the Interconnection Customer, as soon as possible, but not later than five Business Days after the scoping meeting, a feasibility study agreement (Attachment 6) including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study.

3.2.3 The scoping meeting may be omitted by mutual agreement. In order to remain in consideration for interconnection, an Interconnection Customer who has requested a feasibility study must return the executed feasibility study agreement within 15 Business Days. If the Parties agree not to perform a feasibility study, the Transmission Provider shall provide the Interconnection Customer, no later than five Business Days after the scoping meeting, a system impact study agreement (Attachment 7) including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study.

3.3 Feasibility Study

3.3.1 The feasibility study shall identify any potential adverse system impacts that would result from the interconnection of the Small Generating Facility.

3.3.2 A deposit of the lesser of 50 percent of the good faith estimated feasibility study costs or earnest money of $1,000 may be required from the Interconnection Customer.

3.3.3 The scope of and cost responsibilities for the feasibility study are described in the attached feasibility study agreement.

3.3.4 If the feasibility study shows no potential for adverse system impacts, the Transmission Provider shall send the Interconnection Customer a facilities study agreement, including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study. If no additional facilities are required, the Transmission Provider shall send the Interconnection Customer an executable interconnection agreement within five Business Days.

3.3.5 If the feasibility study shows the potential for adverse system impacts, the review process shall proceed to the appropriate system impact study(s).

3.4 System Impact Study

3.4.1 A system impact study shall identify and detail the electric system impacts that would result if the proposed Small Generating Facility were interconnected without project modifications or electric system modifications, focusing on the adverse system impacts identified in the feasibility study, or to study potential impacts, including but not limited to those identified in the scoping meeting. A system impact study shall evaluate the impact of the proposed interconnection on the reliability of the electric system.

3.4.2 If no transmission system impact study is required, but potential electric power Distribution System adverse system impacts are identified in the scoping meeting or shown in the feasibility study, a distribution system impact study must be performed. The Transmission Provider shall send the Interconnection Customer a distribution system impact study agreement within 15 Business Days of transmittal of the feasibility study report, including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study, or following the scoping meeting if no feasibility study is to be performed.

3.4.3 In instances where the feasibility study or the distribution system impact study shows potential for transmission system adverse system impacts, within five Business Days following transmittal of the feasibility study report, the Transmission Provider shall send the Interconnection Customer a transmission system impact study agreement, including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study, if such a study is required.

3.4.4 If a transmission system impact study is not required, but electric power Distribution System adverse system impacts are shown by the feasibility study to be possible and no distribution system impact study has been conducted, the Transmission Provider shall send the Interconnection Customer a distribution system impact study agreement.

3.4.5 If the feasibility study shows no potential for transmission system or Distribution System adverse system impacts, the Transmission Provider shall send the Interconnection Customer either a facilities study agreement (Attachment 8), including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study, or an executable interconnection agreement, as applicable.

3.4.6 In order to remain under consideration for interconnection, the Interconnection Customer must return executed system impact study agreements, if applicable, within 30 Business Days.

3.4.7A deposit of the good faith estimated costs for each system impact study may be required from the Interconnection Customer.

3.4.8 The scope of and cost responsibilities for a system impact study are described in the attached system impact study agreement.

3.4.9 Where transmission systems and Distribution Systems have separate owners, such as is the case with transmission-dependent utilities (''TDUs'')—whether investor-owned or not—the Interconnection Customer may apply to the nearest Transmission Provider (Transmission Owner, Regional Transmission Operator, or Independent Transmission Provider) providing transmission service to the TDU to request project coordination. Affected Systems shall participate in the study and

provide all information necessary to prepare the study.

3.5 Facilities Study

3.5.1 Once the required system impact study(s) is completed, a system impact study report shall be prepared and transmitted to the Interconnection Customer along with a facilities study agreement within five Business Days, including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the facilities study. In the case where one or both impact studies are determined to be unnecessary, a notice of the fact shall be transmitted to the Interconnection Customer within the same timeframe.

3.5.2 In order to remain under consideration for interconnection, or, as appropriate, in the Transmission Provider's interconnection queue, the Interconnection Customer must return the executed facilities study agreement or a request for an extension of time within 30 Business Days.

3.5.3 The facilities study shall specify and estimate the cost of the equipment, engineering, procurement and construction work (including overheads) needed to implement the conclusions of the system impact study(s).

3.5.4 Design for any required Interconnection Facilities and/or Upgrades shall be performed under the facilities study agreement. The Transmission Provider may contract with consultants to perform activities required under the facilities study agreement. The Interconnection Customer and the Transmission Provider may agree to allow the Interconnection Customer to separately arrange for the design of some of the Interconnection Facilities. In such cases, facilities design will be reviewed and/or modified prior to acceptance by the Transmission Provider, under the provisions of the facilities study agreement. If the Parties agree to separately arrange for design and construction, and provided security and confidentiality requirements can be met, the Transmission Provider shall make sufficient information available to the Interconnection Customer in accordance with confidentiality and critical infrastructure requirements to permit the Interconnection Customer to obtain an independent design and cost estimate for any necessary facilities.

3.5.5 A deposit of the good faith estimated costs for the facilities study may be required from the Interconnection Customer.

3.5.6 The scope of and cost responsibilities for the facilities study are described in the attached facilities study agreement.

3.5.7 Upon completion of the facilities study, and with the agreement of the Interconnection Customer to pay for Interconnection Facilities and Upgrades identified in the facilities study, the Transmission Provider shall provide the Interconnection Customer an executable interconnection agreement within five Business Days.

Section 4. Provisions That Apply to All Interconnection Requests

4.1 Reasonable Efforts

The Transmission Provider shall make reasonable efforts to meet all time frames provided in these procedures unless the Transmission Provider and the Interconnection Customer agree to a different schedule. If the Transmission Provider cannot meet a deadline provided herein, it shall notify the Interconnection Customer, explain the reason for the failure to meet the deadline, and provide an estimated time by which it will complete the applicable interconnection procedure in the process.

4.2 Disputes

4.2.1 The Parties agree to attempt to resolve all disputes arising out of the interconnection process according to the provisions of this article.

4.2.2 In the event of a dispute, either Party shall provide the other Party with a written Notice of Dispute. Such Notice shall describe in detail the nature of the dispute.

4.2.3 If the dispute has not been resolved within two Business Days after receipt of the Notice, either Party may contact FERC's Dispute Resolution Service (DRS) for assistance in resolving the dispute.

4.2.4 The DRS will assist the Parties in either resolving their dispute or in selecting an appropriate dispute resolution venue (*e.g.*, mediation, settlement judge, early neutral evaluation, or technical expert) to assist the Parties in resolving their dispute. DRS can be reached at 1–877–337–2237 or via the internet at *http://www.ferc.gov/legal/adr.asp.*

4.2.5 Each Party agrees to conduct all negotiations in good faith and will be responsible for one-half of any costs paid to neutral third-parties.

4.2.6 If neither Party elects to seek assistance from the DRS, or if the attempted dispute resolution fails, then either Party may exercise whatever rights and remedies it may have in equity or law consistent with the terms of this Agreement.

4.3 Interconnection Metering

Any metering necessitated by the use of the Small Generating Facility shall be installed at the Interconnection Customer's expense in accordance with Federal Energy Regulatory Commission, state, or local regulatory requirements or the Transmission Provider's specifications.

4.4 Commissioning

Commissioning tests of the Interconnection Customer's installed equipment shall be performed pursuant to applicable codes and standards. The Transmission Provider must be given at least five Business Days written notice, or as otherwise mutually agreed to by the Parties, of the tests and may be present to witness the commissioning tests.

4.5. Confidentiality

4.5 Confidentiality information shall mean any confidential and/or proprietary information provided by one Party to the other Party that is clearly marked or otherwise designated ''Confidential.'' For purposes of this Agreement all design, operating specifications, and metering data provided by the Interconnection Customer shall be deemed confidential information regardless of whether it is clearly marked or otherwise designated as such.

4.5.2 Confidential Information does not include information previously in the public domain, required to be publicly submitted or divulged by Governmental Authorities (after notice to the other Party and after exhausting any opportunity to oppose such publication or release), or necessary to be divulged in an action to enforce this Agreement. Each Party receiving Confidential Information shall hold such information in confidence and shall not disclose it to any third party nor to the public without the prior written authorization from the Party providing that information, except to fulfill obligations under this Agreement, or to fulfill legal or regulatory requirements.

4.5.2.1 Each Party shall employ at least the same standard of care to protect Confidential Information obtained from the other Party as it employs to protect its own Confidential Information.

4.5.2.2 Each Party is entitled to equitable relief, by injunction or otherwise, to enforce its rights under this provision to prevent the release of Confidential Information without bond or proof of damages, and may seek other remedies available at law or in equity for breach of this provision.

4.5.3 Notwithstanding anything in this article to the contrary, and pursuant to 18 CFR 1b.20, if FERC, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to this Agreement, the Party shall provide the requested information to FERC, within the time provided for in the request for information. In providing the information to FERC, the Party may, consistent with 18 CFR 388.112, request that the information be treated as confidential and non-public by FERC and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Party to this Agreement prior to the release of the Confidential Information to FERC. The Party shall notify the other Party to this Agreement when it is notified by FERC that a request to release Confidential Information has been received by FERC, at which time either of the Parties may respond before such information would be made public, pursuant to 18 CFR 388.112. Requests from a state regulatory body conducting a confidential investigation shall be treated in a similar manner if consistent with the applicable state rules and regulations.

4.6 Comparability

The Transmission Provider shall receive, process and analyze all Interconnection Requests in a timely manner as set forth in this document. The Transmission Provider shall use the same reasonable efforts in processing and analyzing Interconnection Requests from all Interconnection Customers, whether the Small Generating Facility is owned or operated by the Transmission Provider, its subsidiaries or affiliates, or others.

4.7 Record Retention

The Transmission Provider shall maintain for three years records, subject to audit, of all Interconnection Requests received under these procedures, the times required to complete Interconnection Request approvals and disapprovals, and justification for the actions taken on the Interconnection Requests.

4.8 Interconnection Agreement

After receiving an interconnection agreement from the Transmission Provider, the Interconnection Customer shall have 30 Business Days or another mutually agreeable timeframe to sign and return the interconnection agreement, or request that the Transmission Provider file an unexecuted interconnection agreement with the Federal Energy Regulatory Commission. If the Interconnection Customer does not sign the interconnection agreement, or ask that it be filed unexecuted by the Transmission Provider within 30 Business Days, the Interconnection Request shall be deemed withdrawn. After the interconnection agreement is signed by the Parties, the interconnection of the Small Generating Facility shall proceed under the provisions of the interconnection agreement.

4.9 Coordination With Affected Systems

The Transmission Provider shall coordinate the conduct of any studies required to determine the impact of the Interconnection Request on Affected Systems with Affected System operators and, if possible, include those results (if available) in its applicable interconnection study within the time frame specified in these procedures. The Transmission Provider will include such Affected System operators in all meetings held with the Interconnection Customer as required by these procedures. The Interconnection Customer will cooperate with the Transmission Provider in all matters related to the conduct of studies and the determination of modifications to Affected Systems. A Transmission Provider which may be an Affected System shall cooperate with the Transmission Provider with whom interconnection has been requested in all matters related to the conduct of studies and the determination of modifications to Affected Systems.

4.10 Capacity of the Small Generating Facility

4.10.1 If the Interconnection Request is for an increase in capacity for an existing Small Generating Facility, the Interconnection Request shall be evaluated on the basis of the new total capacity of the Small Generating Facility.

4.10.2 If the Interconnection Request is for a Small Generating Facility that includes multiple energy production devices at a site for which the Interconnection Customer seeks a single Point of Interconnection, the Interconnection Request shall be evaluated on the basis of the aggregate capacity of the multiple devices.

4.10.3 The Interconnection Request shall be evaluated using the maximum rated capacity of the Small Generating Facility.

Attachment 1—Glossary of Terms

10 kW Inverter Process—The procedure for evaluating an Interconnection Request for a certified inverter-based Small Generating Facility no larger than 10 kW that uses the section 2 screens. The application process uses an all-in-one document that includes a simplified Interconnection Request, simplified procedures, and a brief set of terms and conditions. See SGIP Attachment 5.

Affected System—An electric system other than the Transmission Provider's Transmission System that may be affected by the proposed interconnection.

Business Day—Monday through Friday, excluding Federal Holidays.

Distribution System—The Transmission Provider's facilities and equipment used to transmit electricity to ultimate usage points such as homes and industries directly from nearby generators or from interchanges with higher voltage transmission networks which transport bulk power over longer distances. The voltage levels at which Distribution Systems operate differ among areas.

Distribution Upgrades—The additions, modifications, and upgrades to the Transmission Provider's Distribution System at or beyond the Point of Interconnection to facilitate interconnection of the Small Generating Facility and render the transmission service necessary to effect the Interconnection Customer's wholesale sale of electricity in interstate commerce. Distribution Upgrades do not include Interconnection Facilities.

Fast Track Process—The procedure for evaluating an Interconnection Request for a certified Small Generating Facility no larger than 2 MW that includes the section 2 screens, customer options meeting, and optional supplemental review.

Interconnection Customer—Any entity, including the Transmission Provider, the Transmission Owner or any of the affiliates or subsidiaries of either, that proposes to interconnect its Small Generating Facility with the Transmission Provider's Transmission System.

Interconnection Facilities—The Transmission Provider's Interconnection Facilities and the Interconnection Customer's Interconnection Facilities. Collectively, Interconnection Facilities include all facilities and equipment between the Small Generating Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Small Generating Facility to the Transmission Provider's Transmission System. Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades or Network Upgrades.

Interconnection Request—The Interconnection Customer's request, in accordance with the Tariff, to interconnect a new Small Generating Facility, or to increase the capacity of, or make a Material Modification to the operating characteristics of, an existing Small Generating Facility that is interconnected with the Transmission Provider's Transmission System.

Material Modification—A modification that has a material impact on the cost or timing of any Interconnection Request with a later queue priority date.

Network Upgrades—Additions, modifications, and upgrades to the Transmission Provider's Transmission System required at or beyond the point at which the Small Generating Facility interconnects with the Transmission Provider's Transmission System to accommodate the interconnection with the Small Generating Facility to the Transmission Provider's Transmission System. Network Upgrades do not include Distribution Upgrades.

Party or Parties—The Transmission Provider, Transmission Owner, Interconnection Customer or any combination of the above.

Point of Interconnection—The point where the Interconnection Facilities connect with the Transmission Provider's Transmission System.

Queue Position—The order of a valid Interconnection Request, relative to all other pending valid Interconnection Requests, that is established based upon the date and time of receipt of the valid Interconnection Request by the Transmission Provider.

Small Generating Facility—The Interconnection Customer's device for the production of electricity identified in the Interconnection Request, but shall not include the Interconnection Customer's Interconnection Facilities.

Study Process—The procedure for evaluating an Interconnection Request that includes the section 3 scoping meeting, feasibility study, system impact study, and facilities study.

Transmission Owner—The entity that owns, leases or otherwise possesses an interest in the portion of the Transmission System at the Point of Interconnection and may be a Party to the Small Generator Interconnection Agreement to the extent necessary.

Transmission Provider—The public utility (or its designated agent) that owns, controls, or operates transmission or distribution facilities used for the transmission of electricity in interstate commerce and provides transmission service under the Tariff. The term Transmission Provider should be read to include the Transmission Owner when the Transmission Owner is separate from the Transmission Provider.

Transmission System—The facilities owned, controlled or operated by the Transmission Provider or the Transmission Owner that are used to provide transmission service under the Tariff.

Upgrades—The required additions and modifications to the Transmission Provider's Transmission System at or beyond the Point of Interconnection. Upgrades may be Network Upgrades or Distribution Upgrades. Upgrades do not include Interconnection Facilities.

BILLING CODE 6717–01–U

Attachment 2

SMALL GENERATOR INTERCONNECTION REQUEST

(Application Form)

Transmission Provider: _____

Designated Contact Person: _____

Address: _____

Telephone Number: _____

Fax: _____

E-Mail Address: _____

An Interconnection Request is considered complete when it provides all applicable and correct information required below.

Preamble and Instructions

An Interconnection Customer who requests a Federal Energy Regulatory Commission jurisdictional interconnection must submit this Interconnection Request by hand delivery, mail, e-mail, or fax to the Transmission Provider.

Processing Fee or Deposit:

If the Interconnection Request is submitted under the Fast Track Process, the non-refundable processing fee is $500.

If the Interconnection Request is submitted under the Study Process, whether a new submission or an Interconnection Request that did not pass the Fast Track Process, the Interconnection Customer shall submit to the Transmission Provider a deposit not to exceed $1,000 towards the cost of the feasibility study.

Interconnection Customer Information

Legal Name of the Interconnection Customer (or, if an individual, individual's name)

Name: _____

Contact Person: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____

Facility Location (if different from above): _____

Telephone (Day): _____ Telephone (Evening): _____

Fax: _____ E-Mail Address: _____

Alternative Contact Information (if different from the Interconnection Customer)

Contact Name: _____

Title: _____

Address: _____

_____

Telephone (Day): _____ Telephone (Evening): _____

Fax: _____ E-Mail Address: _____

Application is for: _____New Small Generating Facility

_____Capacity addition to Existing Small Generating Facility

If capacity addition to existing facility, please describe: _____

_____

Will the Small Generating Facility be used for any of the following?

Net Metering? Yes ___ No ___

To Supply Power to the Interconnection Customer? Yes ___No ___

To Supply Power to Others? Yes ____ No ____

For installations at locations with existing electric service to which the proposed Small Generating Facility will interconnect, provide:

_____ _____

(Local Electric Service Provider*) (Existing Account Number*)

[*To be provided by the Interconnection Customer if the local electric service provider is different from the Transmission Provider]

Contact Name: _____

Title: _____

Address: _____

Telephone (Day): _____ Telephone (Evening): _____

Fax: _____ E-Mail Address: _____

Requested Point of Interconnection: _____

Interconnection Customer's Requested In-Service Date: _____

Small Generating Facility Information

Data apply only to the Small Generating Facility, not the Interconnection Facilities.

Energy Source: ___ Solar ___ Wind ___ Hydro ___ Hydro Type (e.g. Run-of-River):_____

Diesel ___ Natural Gas ___ Fuel Oil ___ Other (state type) _____

Prime Mover: ___Fuel Cell ___Recip Engine ___Gas Turb ___Steam Turb

___Microturbine ___PV ___Other

Type of Generator: ____Synchronous ____Induction ____ Inverter

Generator Nameplate Rating: _____kW (Typical) Generator Nameplate kVAR: _____

Interconnection Customer or Customer-Site Load: _____kW (if none, so state)

Typical Reactive Load (if known): _____

Maximum Physical Export Capability Requested: _____ kW

List components of the Small Generating Facility equipment package that are currently certified:

Equipment Type	Certifying Entity
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____

Is the prime mover compatible with the certified protective relay package? ____Yes ____No

Generator (or solar collector)

Manufacturer, Model Name & Number: _____

Version Number: _____

Nameplate Output Power Rating in kW: (Summer) _____ (Winter) _____

Nameplate Output Power Rating in kVA: (Summer) _____ (Winter) _____

Individual Generator Power Factor

Rated Power Factor: Leading: _____ Lagging: _____

Total Number of Generators in wind farm to be interconnected pursuant to this

Interconnection Request: _____ Elevation: _____ ___Single phase ___Three phase

Inverter Manufacturer, Model Name & Number (if used): _____

List of adjustable set points for the protective equipment or software: _____

Note: A completed Power Systems Load Flow data sheet must be supplied with the Interconnection Request.

Small Generating Facility Characteristic Data (for inverter-based machines)

Max design fault contribution current: _____ Instantaneous ___ or RMS? ___

Harmonics Characteristics: _____

Start-up requirements: _____

Small Generating Facility Characteristic Data (for rotating machines)

RPM Frequency: _____

(*) Neutral Grounding Resistor (If Applicable): _____

Synchronous Generators:

Direct Axis Synchronous Reactance, Xd: _____ P.U.

Direct Axis Transient Reactance, X'_d: _____P.U.

Direct Axis Subtransient Reactance, X''_d: _____P.U.

Negative Sequence Reactance, X_2: _____ P.U.

Zero Sequence Reactance, X_0: _____ P.U.

KVA Base: _____

Field Volts: _____

Field Amperes: _____

Induction Generators:

Motoring Power (kW): _____

I_2^2t or K (Heating Time Constant): _____

Rotor Resistance, Rr: _____

Stator Resistance, Rs: _____

Stator Reactance, Xs: _____

Rotor Reactance, Xr: _____

Magnetizing Reactance, Xm: _____

Short Circuit Reactance, Xd": _____

Exciting Current: _____

Temperature Rise: _____

Frame Size: _____

Design Letter: _____

Reactive Power Required In Vars (No Load): _____

Reactive Power Required In Vars (Full Load): _____

Total Rotating Inertia, H: _____ Per Unit on kVA Base

Note: Please contact the Transmission Provider prior to submitting the Interconnection Request to determine if the specified information above is required.

Excitation and Governor System Data for Synchronous Generators Only

Provide appropriate IEEE model block diagram of excitation system, governor system and power system stabilizer (PSS) in accordance with the regional reliability council criteria. A PSS may be determined to be required by applicable studies. A copy of the manufacturer's block diagram may not be substituted.

Interconnection Facilities Information

Will a transformer be used between the generator and the point of common coupling? ___Yes ___No

Will the transformer be provided by the Interconnection Customer? ____Yes ____No

Transformer Data (If Applicable, for Interconnection Customer-Owned Transformer):

Is the transformer: ____single phase _____three phase? Size: _____kVA

Transformer Impedance: _____% on _____kVA Base

If Three Phase:

Transformer Primary: _____ Volts _____ Delta _____Wye _____ Wye Grounded

Transformer Secondary: _____ Volts _____ Delta _____Wye _____ Wye Grounded

Transformer Tertiary: _____ Volts _____ Delta _____Wye _____ Wye Grounded

Transformer Fuse Data (If Applicable, for Interconnection Customer-Owned Fuse):

(Attach copy of fuse manufacturer's Minimum Melt and Total Clearing Time-Current Curves)

Manufacturer: _____ Type: _____ Size: _____Speed: _____

Interconnecting Circuit Breaker (if applicable):

Manufacturer: _____ Type: _____

Load Rating (Amps): _____ Interrupting Rating (Amps): _____ Trip Speed (Cycles): _____

Interconnection Protective Relays (If Applicable):

If Microprocessor-Controlled:

List of Functions and Adjustable Setpoints for the protective equipment or software:

Setpoint Function	Minimum	Maximum
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____
6. _____	_____	_____

If Discrete Components:

(Enclose Copy of any Proposed Time-Overcurrent Coordination Curves)

Manufacturer: _____ Type: _____ Style/Catalog No.: _____ Proposed Setting: _____

Manufacturer: _____ Type: _____ Style/Catalog No.: _____ Proposed Setting: _____

Manufacturer: _____ Type: _____ Style/Catalog No.: _____ Proposed Setting: _____

Manufacturer: _____ Type: _____ Style/Catalog No.: _____ Proposed Setting: _____

Manufacturer: _____ Type: _____ Style/Catalog No.: _____ Proposed Setting: _____

Current Transformer Data (If Applicable):

(Enclose Copy of Manufacturer's Excitation and Ratio Correction Curves)

Manufacturer: _____

Type: _____ Accuracy Class: ___ Proposed Ratio Connection: ____

Manufacturer: _____

Type: _____ Accuracy Class: ___ Proposed Ratio Connection: ____

Potential Transformer Data (If Applicable):

Manufacturer: _____

Type: _____ Accuracy Class: ___ Proposed Ratio Connection: ____

Manufacturer: _____

Type: _____ Accuracy Class: ___ Proposed Ratio Connection: ____

General Information

Enclose copy of site electrical one-line diagram showing the configuration of all Small Generating Facility equipment, current and potential circuits, and protection and control schemes. This one-line diagram must be signed and stamped by a licensed Professional Engineer if the Small Generating Facility is larger than 50 kW. Is One-Line Diagram Enclosed? ____Yes ____No

Enclose copy of any site documentation that indicates the precise physical location of the proposed Small Generating Facility (e.g., USGS topographic map or other diagram or documentation).

Proposed location of protective interface equipment on property (include address if different from the Interconnection Customer's address) _____

Enclose copy of any site documentation that describes and details the operation of the protection and control schemes. Is Available Documentation Enclosed? ___Yes ____No

Enclose copies of schematic drawings for all protection and control circuits, relay current circuits, relay potential circuits, and alarm/monitoring circuits (if applicable).

Are Schematic Drawings Enclosed? ___Yes ____No

Applicant Signature

I hereby certify that, to the best of my knowledge, all the information provided in this Interconnection Request is true and correct.

For Interconnection Customer: _____Date: _____

BILLING CODE 6717-01-C

Attachment 3—Certification Codes and Standards

IEEE1547 Standard for Interconnecting Distributed Resources with Electric Power Systems (including use of IEEE 1547.1 testing protocols to establish conformity)
UL 1741 Inverters, Converters, and Controllers for Use in Independent Power Systems
IEEE Std 929–2000 IEEE Recommended Practice for Utility Interface of Photovoltaic (PV) Systems
NFPA 70 (2002), National Electrical Code
IEEE Std C37.90.1–1989 (R1994), IEEE Standard Surge Withstand Capability (SWC) Tests for Protective Relays and Relay Systems
IEEE Std C37.90.2 (1995), IEEE Standard Withstand Capability of Relay Systems to Radiated Electromagnetic Interference from Transceivers
IEEE Std C37.108–1989 (R2002), IEEE Guide for the Protection of Network Transformers
IEEE Std C57.12.44–2000, IEEE Standard Requirements for Secondary Network Protectors
IEEE Std C62.41.2–2002, IEEE Recommended Practice on Characterization of Surges in Low Voltage (1000V and Less) AC Power Circuits
IEEE Std C62.45–1992 (R2002), IEEE Recommended Practice on Surge Testing for Equipment Connected to Low-Voltage (1000V and Less) AC Power Circuits
ANSI C84.1–1995 Electric Power Systems and Equipment—Voltage Ratings (60 Hertz)
IEEE Std 100–2000, IEEE Standard Dictionary of Electrical and Electronic Terms
NEMA MG 1–1998, Motors and Small Resources, Revision 3
IEEE Std 519–1992, IEEE Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems
NEMA MG 1–2003 (Rev 2004), Motors and Generators, Revision 1

Attachment 4—Certification of Small Generator Equipment Packages

1.0 Small Generating Facility equipment proposed for use separately or packaged with other equipment in an interconnection system shall be considered certified for interconnected operation if (1) it has been tested in accordance with industry standards for continuous utility interactive operation in compliance with the appropriate codes and standards referenced below by any Nationally Recognized Testing Laboratory (NRTL) recognized by the United States Occupational Safety and Health Administration to test and certify interconnection equipment pursuant to the relevant codes and standards listed in SGIP Attachment 3, (2) it has been labeled and is publicly listed by such NRTL at the time of the interconnection application, and (3) such NRTL makes readily available for verification all test standards and procedures it utilized in performing such equipment certification, and, with consumer approval, the test data itself. The NRTL may make such information available on its website and by encouraging such information to be included in the manufacturer's literature accompanying the equipment.

2.0 The Interconnection Customer must verify that the intended use of the equipment falls within the use or uses for which the equipment was tested, labeled, and listed by the NRTL.

3.0 Certified equipment shall not require further type-test review, testing, or additional equipment to meet the requirements of this interconnection procedure; however, nothing herein shall preclude the need for an on-site commissioning test by the parties to the interconnection nor follow-up production testing by the NRTL.

4.0 If the certified equipment package includes only interface components (switchgear, inverters, or other interface devices), then an Interconnection Customer must show that the generator or other electric source being utilized with the equipment package is compatible with the equipment package and is consistent with the testing and listing specified for this type of interconnection equipment.

5.0 Provided the generator or electric source, when combined with the equipment package, is within the range of capabilities for which it was tested by the NRTL, and does not violate the interface components' labeling and listing performed by the NRTL, no further design review, testing or additional equipment on the customer side of the point of common coupling shall be required to meet the requirements of this interconnection procedure.

6.0 An equipment package does not include equipment provided by the utility.

7.0 Any equipment package approved and listed in a state by that state's regulatory body for interconnected operation in that state prior to the effective date of these small generator interconnection procedures shall be considered certified under these procedures for use in that state.

Attachment 5—Application, Procedures, and Terms and Conditions for Interconnecting a Certified Inverter-Based Small Generating Facility No Larger Than 10 kW (''10 kW Inverter Process'')

1.0 The Interconnection Customer (''Customer'') completes the Interconnection Request (''Application'') and submits it to the Transmission Provider (''Company'').

2.0 The Company acknowledges to the Customer receipt of the Application within three Business Days of receipt.

3.0 The Company evaluates the Application for completeness and notifies the Customer within ten Business Days of receipt that the Application is or is not complete and, if not, advises what material is missing.

4.0 The Company verifies that the Small Generating Facility can be interconnected safely and reliably using the screens contained in the Fast Track Process in the Small Generator Interconnection Procedures (SGIP). The Company has 15 Business Days to complete this process. Unless the Company determines and demonstrates that the Small Generating Facility cannot be interconnected safely and reliably, the Company approves the Application and returns it to the Customer. Note to Customer: Please check with the Company before submitting the Application if disconnection equipment is required.

5.0 After installation, the Customer returns the Certificate of Completion to the Company. Prior to parallel operation, the Company may inspect the Small Generating Facility for compliance with standards which may include a witness test, and may schedule appropriate metering replacement, if necessary.

6.0 The Company notifies the Customer in writing that interconnection of the Small Generating Facility is authorized. If the witness test is not satisfactory, the Company has the right to disconnect the Small Generating Facility. The Customer has no right to operate in parallel until a witness test has been performed, or previously waived on the Application. The Company is obligated to complete this witness test within ten Business Days of the receipt of the Certificate of Completion. If the Company does not inspect within ten Business Days or by mutual agreement of the Parties, the witness test is deemed waived.

7.0 Contact Information—The Customer must provide the contact information for the legal applicant (*i.e.*, the Interconnection Customer). If another entity is responsible for interfacing with the Company, that contact information must be provided on the Application.

8.0 Ownership Information—Enter the legal names of the owner(s) of the Small Generating Facility. Include the percentage ownership (if any) by any utility or public utility holding company, or by any entity owned by either.

9.0 UL1741 Listed—This standard (''Inverters, Converters, and Controllers for Use in Independent Power Systems'') addresses the electrical interconnection design of various forms of generating equipment. Many manufacturers submit their equipment to a Nationally Recognized Testing Laboratory (NRTL) that verifies compliance with UL1741. This ''listing'' is then marked on the equipment and supporting documentation.

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Application for Interconnecting a Certified Inverter-Based Small Generating Facility No Larger than 10kW

This Application is considered complete when it provides all applicable and correct information required below. Additional information to evaluate the Application may be required.

Processing Fee

A non-refundable processing fee of $100 must accompany this Application.

Interconnection Customer

Name: _____

Contact Person: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone (Day): _____ (Evening): _____

Fax: _____ E-Mail Address: _____

Contact (if different from Interconnection Customer)

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone (Day): _____ (Evening): _____

Fax: _____ E-Mail Address: _____

Owner of the facility (include % ownership by any electric utility): _____

Small Generating Facility Information

Location (if different from above): _____

Electric Service Company: _____

Account Number: _____

Inverter Manufacturer:_____Model_____

Nameplate Rating: _____ (kW) _____ (kVA) _____ (AC Volts)

Single Phase _____ Three Phase_____

System Design Capacity: _____ (kW) _____ (kVA)

Prime Mover: Photovoltaic ☐ Reciprocating Engine ☐ Fuel Cell ☐

Turbine ☐ Other _____

Energy Source: Solar ☐ Wind ☐ Hydro ☐ Diesel ☐ Natural Gas ☐

Fuel Oil ☐ Other (describe) _____

Is the equipment UL1741 Listed? Yes_____ No ___

If Yes, attach manufacturer's cut-sheet showing UL1741 listing

Estimated Installation Date: _____ Estimated In-Service Date: _____

The 10 kW Inverter Process is available only for inverter-based Small Generating Facilities no larger than 10 kW that meet the codes, standards, and certification requirements of Attachments 3 and 4 of the Small Generator Interconnection Procedures (SGIP), or the Transmission Provider has reviewed the design or tested the proposed Small Generating Facility and is satisfied that it is safe to operate.

List components of the Small Generating Facility equipment package that are currently certified:

Equipment Type	Certifying Entity
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____

Interconnection Customer Signature

I hereby certify that, to the best of my knowledge, the information provided in this Application is true. I agree to abide by the Terms and Conditions for Interconnecting an Inverter-Based Small Generating Facility No Larger than 10kW and return the Certificate of Completion when the Small Generating Facility has been installed.

Signed: _____

Title: _____ Date: _____

Contingent Approval to Interconnect the Small Generating Facility

(For Company use only)

Interconnection of the Small Generating Facility is approved contingent upon the Terms and Conditions for Interconnecting an Inverter-Based Small Generating Facility No Larger than 10kW and return of the Certificate of Completion.

Company Signature: _____

Title: _____ Date: _____

Application ID number: _____

Company waives inspection/witness test? Yes___No___

Small Generating Facility Certificate of Completion

Is the Small Generating Facility owner-installed? Yes_____ No _____

Interconnection Customer: _____

Contact Person:_____

Address: _____

Location of the Small Generating Facility (if different from above):

_____

City: _____ State: _____ Zip Code: _____

Telephone (Day): _____ (Evening): _____

Fax: _____ E-Mail Address: _____

Electrician:

Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Telephone (Day): _____ (Evening): _____

Fax: _____ E-Mail Address: _____

License number: _____

Date Approval to Install Facility granted by the Company: _____

Application ID number: _____

Inspection:

The Small Generating Facility has been installed and inspected in compliance with the local

building/electrical code of _____

Signed (Local electrical wiring inspector, or attach signed electrical inspection):

_____

Print Name: _____

Date: _____

As a condition of interconnection, you are required to send/fax a copy of this form along with a copy of the signed electrical permit to (insert Company information below):

Name: _____

Company: _____

Address: _____

_____

City, State ZIP: _____

Fax: _____

Approval to Energize the Small Generating Facility (For Company use only)

Energizing the Small Generating Facility is approved contingent upon the Terms and Conditions for Interconnecting an Inverter-Based Small Generating Facility No Larger than 10kW

Company Signature: _____

Title: _____ Date: _____

BILLING CODE 6717–01–C

Terms and Conditions for Interconnecting an Inverter-Based Small Generating Facility No Larger Than 10kW

1.0 Construction of the Facility

The Interconnection Customer (the ''Customer'') may proceed to construct (including operational testing not to exceed two hours) the Small Generating Facility when the Transmission Provider (the ''Company'') approves the Interconnection Request (the ''Application'') and returns it to the Customer.

2.0 Interconnection and Operation

The Customer may operate Small Generating Facility and interconnect with the Company's electric system once all of the following have occurred:

2.1 Upon completing construction, the Customer will cause the Small Generating Facility to be inspected or otherwise certified by the appropriate local electrical wiring inspector with jurisdiction, and

2.2 The Customer returns the Certificate of Completion to the Company, and

2.3 The Company has either:

2.3.1 Completed its inspection of the Small Generating Facility to ensure that all equipment has been appropriately installed and that all electrical connections have been made in accordance with applicable codes. All inspections must be conducted by the Company, at its own expense, within ten Business Days after receipt of the Certificate of Completion and shall take place at a time agreeable to the Parties. The Company shall provide a written statement that the Small Generating Facility has passed inspection or shall notify the Customer of what steps it must take to pass inspection as soon as practicable after the inspection takes place; or

2.3.2 If the Company does not schedule an inspection of the Small Generating Facility within ten business days after receiving the Certificate of Completion, the witness test is deemed waived (unless the Parties agree otherwise); or

2.3.3 The Company waives the right to inspect the Small Generating Facility.

2.4 The Company has the right to disconnect the Small Generating Facility in the event of improper installation or failure to return the Certificate of Completion.

2.5 Revenue quality metering equipment must be installed and tested in accordance with applicable ANSI standards.

3.0 Safe Operations and Maintenance

The Customer shall be fully responsible to operate, maintain, and repair the Small Generating Facility as required to ensure that it complies at all times with the interconnection standards to which it has been certified.

4.0 Access

The Company shall have access to the disconnect switch (if the disconnect switch is required) and metering equipment of the Small Generating Facility at all times. The Company shall provide reasonable notice to the Customer when possible prior to using its right of access.

5.0 Disconnection

The Company may temporarily disconnect the Small Generating Facility upon the following conditions:

5.1 For scheduled outages upon reasonable notice.

5.2 For unscheduled outages or emergency conditions.

5.3 If the Small Generating Facility does not operate in the manner consistent with these Terms and Conditions.

5.4 The Company shall inform the Customer in advance of any scheduled disconnection, or as is reasonable after an unscheduled disconnection.

6.0 Indemnification

The Parties shall at all times indemnify, defend, and save the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or inactions of its obligations under this agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.

7.0 Insurance

The Parties each agree to maintain commercially reasonable amounts of insurance.

8.0 Limitation of Liability

Each party's liability to the other party for any loss, cost, claim, injury, liability, or expense, including reasonable attorney's fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred. In no event shall either party be liable to the other party for any indirect, incidental, special, consequential, or punitive damages of any kind whatsoever, except as allowed under paragraph 6.0.

9.0 Termination

The agreement to operate in parallel may be terminated under the following conditions:

9.1 By the Customer

By providing written notice to the Company.

9.2 By the Company

If the Small Generating Facility fails to operate for any consecutive 12 month period or the Customer fails to remedy a violation of these Terms and Conditions.

9.3 Permanent Disconnection

In the event this Agreement is terminated, the Company shall have the right to disconnect its facilities or direct the Customer to disconnect its Small Generating Facility.

9.4 Survival Rights

This Agreement shall continue in effect after termination to the extent necessary to allow or require either Party to fulfill rights or obligations that arose under the Agreement.

10.0 Assignment/Transfer of Ownership of the Facility

This Agreement shall survive the transfer of ownership of the Small Generating Facility to a new owner when the new owner agrees in writing to comply with the terms of this Agreement and so notifies the Company.

Attachment 6

Feasibility Study Agreement

THIS AGREEMENT is made and entered into this_____day of_____

20___ by and between_____,

a_____organized and existing under the laws of the State of

_____, ("Interconnection Customer,") and

_____, a_____

existing under the laws of the State of_____,

("Transmission Provider"). Interconnection Customer and Transmission Provider each may be referred to as a "Party," or collectively as the "Parties."

WHEREAS, Interconnection Customer has requested the Transmission Provider to perform a feasibility study to assess the feasibility of interconnecting the proposed Small Generating Facility with the Transmission Provider's Transmission System, and of any Affected Systems;

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein the Parties agreed as follows:

1.0 When used in this Agreement, with initial capitalization, the terms specified shall have the meanings indicated or the meanings specified in the standard Small Generator Interconnection Procedures.

2.0 The Interconnection Customer elects and the Transmission Provider shall cause to be performed an interconnection feasibility study consistent with the standard Small Generator Interconnection Procedures in accordance with the Open Access Transmission Tariff.

3.0 The scope of the feasibility study shall be subject to the assumptions set forth in Attachment A to this Agreement.

4.0 The feasibility study shall be based on the technical information provided by the Interconnection Customer in the Interconnection Request, as may be modified as the result of the scoping meeting. The Transmission Provider reserves the right to request additional technical information from the Interconnection Customer as may reasonably become necessary consistent with Good Utility Practice during the course of the feasibility study and as designated in accordance with the standard Small Generator Interconnection Procedures. If the Interconnection Customer modifies its Interconnection Request, the time to complete the feasibility study may be extended by agreement of the Parties.

5.0 In performing the study, the Transmission Provider shall rely, to the extent reasonably practicable, on existing studies of recent vintage. The Interconnection Customer shall not be charged for such existing studies; however, the Interconnection Customer shall be responsible for charges associated with any new study or modifications to existing studies that are reasonably necessary to perform the feasibility study.

6.0 The feasibility study report shall provide the following analyses for the purpose of identifying any potential adverse system impacts that would result from the interconnection of the Small Generating Facility as proposed:

6.1 Initial identification of any circuit breaker short circuit capability limits exceeded as a result of the interconnection;

6.2 Initial identification of any thermal overload or voltage limit violations resulting from the interconnection;

6.3 Initial review of grounding requirements and electric system protection; and

6.4 Description and non-bonding estimated cost of facilities required to interconnect the proposed Small Generating Facility and to address the identified short circuit and power flow issues.

7.0 The feasibility study shall model the impact of the Small Generating Facility regardless of purpose in order to avoid the further expense and interruption of operation for reexamination of feasibility and impacts if the Interconnection Customer later changes the purpose for which the Small Generating Facility is being installed.

8.0 The study shall include the feasibility of any interconnection at a proposed project site where there could be multiple potential Points of Interconnection, as requested by the Interconnection Customer and at the Interconnection Customer's cost.

9.0 A deposit of the lesser of 50 percent of good faith estimated feasibility study costs or earnest money of $1,000 may be required from the Interconnection Customer.

10.0 Once the feasibility study is completed, a feasibility study report shall be prepared and transmitted to the Interconnection Customer. Barring unusual circumstances, the feasibility study must be completed and the feasibility study report transmitted within 30 Business Days of the Interconnection Customer's agreement to conduct a feasibility study.

11.0 Any study fees shall be based on the Transmission Provider's actual costs and will be invoiced to the Interconnection Customer after the study is completed and delivered and will include a summary of professional time.

12.0 The Interconnection Customer must pay any study costs that exceed the deposit without interest within 30 calendar days on receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced fees, the Transmission Provider shall refund such excess within 30 calendar days of the invoice without interest.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed

by their duly authorized officers or agents on the day and year first above written.

BILLING CODE 6717–01–U

[Insert name of Transmission Provider]	**[Insert name of Interconnection Customer]**
_____	_____
Signed_____	Signed_____
Name (Printed):	Name (Printed):
_____	_____
Title_____	Title_____

Attachment A to

Feasibility Study Agreement

Assumptions Used in Conducting the Feasibility Study

The feasibility study will be based upon the information set forth in the Interconnection Request and agreed upon in the scoping meeting held on _____:

(1) Designation of Point of Interconnection and configuration to be studied.

(2) Designation of alternative Points of Interconnection and configuration.

(1) and (2) are to be completed by the Interconnection Customer. Other assumptions (listed below) are to be provided by the Interconnection Customer and the Transmission Provider.

Attachment 7

System Impact Study Agreement

THIS AGREEMENT is made and entered into this_____day of_____

20___ by and between_____,

a_____organized and existing under the laws of the State of

_____, ("Interconnection Customer,") and

_____, a_____

existing under the laws of the State of_____,

("Transmission Provider"). Interconnection Customer and Transmission Provider each may be referred to as a "Party," or collectively as the "Parties."

Recitals

WHEREAS, the Interconnection Customer is proposing to develop a Small Generating Facility or generating capacity addition to an existing Small Generating Facility consistent with the Interconnection Request completed by the Interconnection Customer on_____; and

WHEREAS, the Interconnection Customer desires to interconnect the Small Generating Facility with the Transmission Provider's Transmission System;

WHEREAS, the Transmission Provider has completed a feasibility study and provided the results of said study to the Interconnection Customer (This recital to be omitted if the Parties have agreed to forego the feasibility study.); and

WHEREAS, the Interconnection Customer has requested the Transmission Provider to perform a system impact study(s) to assess the impact of interconnecting the Small Generating Facility with the Transmission Provider's Transmission System, and of any Affected Systems;

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein the Parties agreed as follows:

1.0 When used in this Agreement, with initial capitalization, the terms specified shall have the meanings indicated or the meanings specified in the standard Small Generator Interconnection Procedures.

2.0 The Interconnection Customer elects and the Transmission Provider shall cause to be performed a system impact study(s) consistent with the standard Small Generator Interconnection Procedures in accordance with the Open Access Transmission Tariff.

3.0 The scope of a system impact study shall be subject to the assumptions set forth in Attachment A to this Agreement.

4.0 A system impact study will be based upon the results of the feasibility study and the technical information provided by Interconnection Customer in the Interconnection Request. The Transmission Provider reserves the right to request additional technical information from the Interconnection Customer as may reasonably become necessary consistent with Good Utility Practice during the course of the system impact study. If the Interconnection Customer modifies its designated Point of Interconnection, Interconnection Request, or the technical information provided therein is modified, the time to complete the system impact study may be extended.

5.0 A system impact study shall consist of a short circuit analysis, a stability analysis, a power flow analysis, voltage drop and flicker studies, protection and set point coordination studies, and grounding reviews, as necessary. A system impact study shall state the assumptions upon which it is based, state the results of the analyses, and provide the requirement or potential impediments to providing the requested interconnection service, including a preliminary indication of the cost and length of time that would be necessary to correct any problems identified in those analyses and implement the interconnection. A system impact study shall provide a list of facilities that are required as a result of the Interconnection Request and non-binding good faith estimates of cost responsibility and time to construct.

6.0 A distribution system impact study shall incorporate a distribution load flow study, an analysis of equipment interrupting ratings, protection coordination study, voltage drop and flicker studies, protection and set point coordination studies, grounding reviews, and the impact on electric system operation, as necessary.

7.0 Affected Systems may participate in the preparation of a system impact study, with a division of costs among such entities as they may agree. All Affected Systems shall be afforded an opportunity to review and comment upon a system impact study that covers potential adverse system impacts on their electric systems, and the Transmission Provider has 20 additional Business Days to complete a system impact study requiring review by Affected Systems.

8.0 If the Transmission Provider uses a queuing procedure for sorting or prioritizing projects and their associated cost responsibilities for any required Network Upgrades, the system impact study shall consider all generating facilities (and with respect to paragraph 8.3 below, any identified Upgrades associated with such higher queued interconnection) that, on the date the system impact study is commenced—

8.1 Are directly interconnected with the Transmission Provider's electric system; or

8.2 Are interconnected with Affected Systems and may have an impact on the proposed interconnection; and

8.3 Have a pending higher queued Interconnection Request to interconnect with the Transmission Provider's electric system.

9.0 A distribution system impact study, if required, shall be completed and the results transmitted to the Interconnection Customer within 30 Business Days after this Agreement is signed by the Parties. A transmission system impact study, if required, shall be completed and the results transmitted to the Interconnection Customer within 45 Business Days after this Agreement is signed by the Parties, or in accordance with the Transmission Provider's queuing procedures.

10.0 A deposit of the equivalent of the good faith estimated cost of a distribution system impact study and the one half the good faith estimated cost of a transmission system impact study may be required from the Interconnection Customer.

11.0 Any study fees shall be based on the Transmission Provider's actual costs and will be invoiced to the Interconnection Customer after the study is completed and delivered and will include a summary of professional time.

12.0 The Interconnection Customer must pay any study costs that exceed the deposit without interest within 30 calendar days on receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced fees, the Transmission Provider shall refund such excess within 30 calendar days of the invoice without interest.

IN WITNESS THEREOF, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

BILLING CODE 6717–01–U

[Insert name of Transmission Provider]	[Insert name of Interconnection Customer]
_____	_____
Signed_____	Signed_____
Name (Printed):	Name (Printed):
_____	_____
Title_____	Title_____

Attachment A to System

Impact Study Agreement

Assumptions Used in Conducting the System Impact Study

The system impact study shall be based upon the results of the feasibility study, subject to any modifications in accordance with the standard Small Generator Interconnection Procedures, and the following assumptions:

(1) Designation of Point of Interconnection and configuration to be studied.

(2) Designation of alternative Points of Interconnection and configuration.

(1) and (2) are to be completed by the Interconnection Customer. Other assumptions (listed below) are to be provided by the Interconnection Customer and the Transmission Provider.

Attachment 8

Facilities Study Agreement

THIS AGREEMENT is made and entered into this_____day of_____ 20___ by and between_____, a_____organized and existing under the laws of the State of _____, ("Interconnection Customer,") and _____, a_____ existing under the laws of the State of_____, ("Transmission Provider"). Interconnection Customer and Transmission Provider each may be referred to as a "Party," or collectively as the "Parties."

BILLING CODE 6717–01–C

Recitals

WHEREAS, the Interconnection Customer is proposing to develop a Small Generating Facility or generating capacity addition to an existing Small Generating Facility consistent with the Interconnection Request completed by the Interconnection Customer on_____; and

WHEREAS, the Interconnection Customer desires to interconnect the Small Generating Facility with the Transmission Provider's Transmission System;

WHEREAS, the Transmission Provider has completed a system impact study and provided the results of said study to the Interconnection Customer; and

WHEREAS, the Interconnection Customer has requested the Transmission Provider to perform a facilities study to specify and estimate the cost of the equipment, engineering, procurement and construction work needed to implement the conclusions of the system impact study in accordance with Good Utility Practice to physically and electrically connect the Small Generating Facility with the Transmission Provider's Transmission System.

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein the Parties agreed as follows:

1.0 When used in this Agreement, with initial capitalization, the terms specified shall have the meanings indicated or the meanings specified in the standard Small Generator Interconnection Procedures.

2.0 The Interconnection Customer elects and the Transmission Provider shall cause a facilities study consistent with the standard Small Generator Interconnection Procedures to be performed in accordance with the Open Access Transmission Tariff.

3.0 The scope of the facilities study shall be subject to data provided in Attachment A to this Agreement.

4.0 The facilities study shall specify and estimate the cost of the equipment, engineering, procurement and construction work (including overheads) needed to implement the conclusions of the system impact study(s). The facilities study shall also identify (1) the electrical switching configuration of the equipment, including, without limitation, transformer, switchgear, meters, and other station equipment, (2) the nature and estimated cost of the Transmission Provider's Interconnection Facilities and Upgrades necessary to accomplish the interconnection, and (3) an estimate of the time required to complete the construction and installation of such facilities.

5.0 The Transmission Provider may propose to group facilities required for more than one Interconnection Customer in order to minimize facilities costs through economies of scale, but any Interconnection Customer may require the installation of facilities required for its own Small Generating Facility if it is willing to pay the costs of those facilities.

6.0 A deposit of the good faith estimated facilities study costs may be required from the Interconnection Customer.

7.0 In cases where Upgrades are required, the facilities study must be completed within 45 Business Days of the receipt of this Agreement. In cases where no Upgrades are necessary, and the required facilities are limited to Interconnection Facilities, the facilities study must be completed within 30 Business Days.

8.0 Once the facilities study is completed, a facilities study report shall be prepared and transmitted to the Interconnection Customer. Barring unusual circumstances, the facilities study must be completed and the facilities study report transmitted within 30 Business Days of the Interconnection Customer's agreement to conduct a facilities study.

9.0 Any study fees shall be based on the Transmission Provider's actual costs and will be invoiced to the Interconnection Customer after the study is completed and delivered and will include a summary of professional time.

10.0 The Interconnection Customer must pay any study costs that exceed the deposit without interest within 30 calendar days on receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced fees, the Transmission Provider shall refund such excess within 30 calendar days of the invoice without interest.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

BILLING CODE 6717–01–U

[Insert name of Transmission Provider]	[Insert name of Interconnection Customer]
_____	_____
Signed_____	Signed_____
Name (Printed):	Name (Printed):
_____	_____
Title_____	Title_____

Attachment A to

Facilities Study Agreement

Data to Be Provided by the Interconnection Customer with the Facilities Study Agreement

Provide location plan and simplified one-line diagram of the plant and station facilities. For staged projects, please indicate future generation, transmission circuits, etc.

On the one-line diagram, indicate the generation capacity attached at each metering location. (Maximum load on CT/PT)

On the one-line diagram, indicate the location of auxiliary power. (Minimum load on CT/PT) Amps

One set of metering is required for each generation connection to the new ring bus or existing Transmission Provider station. Number of generation connections: _____

Will an alternate source of auxiliary power be available during CT/PT maintenance?

Yes _____ No _____

Will a transfer bus on the generation side of the metering require that each meter set be designed for the total plant generation? Yes _____ No _____

(Please indicate on the one-line diagram).

What type of control system or PLC will be located at the Small Generating Facility?

_____

_____

What protocol does the control system or PLC use?

_____

_____

Please provide a 7.5-minute quadrangle map of the site. Indicate the plant, station, transmission line, and property lines.

Physical dimensions of the proposed interconnection station:

Bus length from generation to interconnection station:

Line length from interconnection station to Transmission Provider's Transmission System.

Tower number observed in the field. (Painted on tower leg)*:

Number of third party easements required for transmission lines*:

* To be completed in coordination with Transmission Provider.

Is the Small Generating Facility located in Transmission Provider's service area?

Yes _____ No _____ If No, please provide name of local provider:

_____

Please provide the following proposed schedule dates:

Begin Construction Date:_____

Generator step-up transformers receive back feed power Date:_____

Generation Testing Date:_____

Commercial Operation Date:_____

BILLING CODE 6717–01–C

Appendix F to the Small Generator Interconnection Final Rule

Small Generator Interconnection Agreement (SGIA) (For Generating Facilities No Larger Than 20 MW)

Table of Contents

BILLING CODE 6717–01–U

This Interconnection Agreement ("Agreement") is made and entered into this _____ day of _____, 20__, by _____ ("Transmission Provider"), and _____ ("Interconnection Customer") each hereinafter sometimes referred to individually as "Party" or both referred to collectively as the "Parties."

Transmission Provider Information

Transmission Provider: _____

Attention: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Interconnection Customer Information

Interconnection Customer: _____

Attention: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Interconnection Customer Application No: _____

BILLING CODE 6717–01–C

In consideration of the mutual covenants set forth herein, the Parties agree as follows:

Article 1. Scope and Limitations of Agreement

1.1 This Agreement shall be used for all Interconnection Requests submitted under the Small Generator Interconnection Procedures (SGIP) except for those submitted under the 10 kW Inverter Process contained in SGIP Attachment 5.

1.2 This Agreement governs the terms and conditions under which the Interconnection Customer's Small Generating Facility will interconnect with, and operate in parallel with, the Transmission Provider's Transmission System.

1.3 This Agreement does not constitute an agreement to purchase or deliver the Interconnection Customer's power. The purchase or delivery of power and other services that the Interconnection Customer may require will be covered under separate agreements. The Interconnection Customer will be responsible for separately making all necessary arrangements (including scheduling) for delivery of electricity with the applicable Transmission Provider.

1.4 Nothing in this Agreement is intended to affect any other agreement between the Transmission Provider and the Interconnection Customer.

1.5 Responsibilities of the Parties

1.5.1 The Parties shall perform all obligations of this Agreement in accordance with all Applicable Laws and Regulations, Operating Requirements, and Good Utility Practice.

1.5.2 The Interconnection Customer shall construct, interconnect, operate and maintain its Small Generating Facility and construct, operate, and maintain its Interconnection Facilities in accordance with the applicable manufacturer's recommended maintenance schedule, in accordance with this Agreement, and with Good Utility Practice.

1.5.3 The Transmission Provider shall construct, operate, and maintain its Transmission System and Interconnection Facilities in accordance with this Agreement, and with Good Utility Practice.

1.5.4 The Interconnection Customer agrees to construct its facilities or systems in accordance with applicable specifications that meet or exceed those provided by the National Electrical Safety Code, the American National Standards Institute, IEEE, Underwriter's Laboratory, and Operating Requirements in effect at the time of construction and other applicable national and state codes and standards. The Interconnection Customer agrees to design, install, maintain, and operate its Small Generating Facility so as to reasonably minimize the likelihood of a disturbance adversely affecting or impairing the system or equipment of the Transmission Provider or Affected Systems.

1.5.5 Each Party shall operate, maintain, repair, and inspect, and shall be fully responsible for the facilities that it now or subsequently may own unless otherwise specified in the Attachments to this Agreement. Each Party shall be responsible for the safe installation, maintenance, repair and condition of their respective lines and appurtenances on their respective sides of the point of change of ownership. The Transmission Provider and the Interconnection Customer, as appropriate, shall provide Interconnection Facilities that adequately protect the Transmission Provider's Transmission System, personnel, and other persons from damage and injury. The allocation of responsibility for the design, installation, operation, maintenance and ownership of Interconnection Facilities shall be delineated in the Attachments to this Agreement.

1.5.6 The Transmission Provider shall coordinate with all Affected Systems to support the interconnection.

1.6 Parallel Operation Obligations

Once the Small Generating Facility has been authorized to commence parallel operation, the Interconnection Customer shall abide by all rules and procedures pertaining to the parallel operation of the Small Generating Facility in the applicable control area, including, but not limited to; 1) the rules and procedures concerning the operation of generation set forth in the Tariff or by the system operator for the Transmission Provider's Transmission System and; 2) the Operating Requirements set forth in Attachment 5 of this Agreement.

1.7 Metering

The Interconnection Customer shall be responsible for the Transmission Provider's reasonable and necessary cost for the purchase, installation, operation, maintenance, testing, repair, and replacement of metering and data acquisition equipment specified in Attachments 2 and 3 of this Agreement. The Interconnection Customer's metering (and data acquisition, as required) equipment shall conform to applicable industry rules and Operating Requirements.

1.8 Reactive Power

1.8.1 The Interconnection Customer shall design its Small Generating Facility to maintain a composite power delivery at continuous rated power output at the Point of Interconnection at a power factor within the range of 0.95 leading to 0.95 lagging, unless the Transmission Provider has established different requirements that apply to all similarly situated generators in the control area on a comparable basis. The requirements of this paragraph shall not apply to wind generators.

1.8.2 The Transmission Provider is required to pay the Interconnection Customer for reactive power that the Interconnection Customer provides or absorbs from the Small Generating Facility when the Transmission Provider requests the Interconnection Customer to operate its Small Generating Facility outside the range specified in article 1.8.1. In addition, if the Transmission Provider pays its own or affiliated generators for reactive power service within the specified range, it must also pay the Interconnection Customer.

1.8.3 Payments shall be in accordance with the Interconnection Customer's applicable rate schedule then in effect unless the provision of such service(s) is subject to a regional transmission organization or independent system operator FERC-approved rate schedule. To the extent that no rate schedule is in effect at the time the Interconnection Customer is required to provide or absorb reactive power under this Agreement, the Parties agree to expeditiously file such rate schedule and agree to support any request for waiver of the Commission's prior notice requirement in order to compensate the Interconnection Customer from the time service commenced.

1.9 Capitalized terms used herein shall have the meanings specified in the Glossary of Terms in Attachment 1 or the body of this Agreement.

Article 2. Inspection, Testing, Authorization, and Right of Access

2.1 Equipment Testing and Inspection

2.1.1 The Interconnection Customer shall test and inspect its Small Generating Facility and Interconnection Facilities prior to interconnection. The Interconnection Customer shall notify the Transmission Provider of such activities no fewer than five Business Days (or as may be agreed to by the Parties) prior to such testing and inspection. Testing and inspection shall occur on a Business Day. The Transmission Provider may, at its own expense, send qualified personnel to the Small Generating Facility site to inspect the interconnection and observe the testing. The Interconnection Customer shall provide the Transmission Provider a written test report when such testing and inspection is completed.

2.1.2 The Transmission Provider shall provide the Interconnection Customer written acknowledgment that it has received the Interconnection Customer's written test report. Such written acknowledgment shall not be deemed to be or construed as any representation, assurance, guarantee, or warranty by the Transmission Provider of the safety, durability, suitability, or reliability of the Small Generating Facility or any associated control, protective, and safety devices owned or controlled by the Interconnection Customer or the quality of power produced by the Small Generating Facility.

2.2 Authorization Required Prior to Parallel Operation

2.2.1 The Transmission Provider shall use Reasonable Efforts to list applicable parallel operation requirements in Attachment 5 of this Agreement. Additionally, the Transmission Provider shall notify the Interconnection Customer of any changes to these requirements as soon as they are known. The Transmission Provider shall make Reasonable Efforts to cooperate with the Interconnection Customer in meeting requirements necessary for the Interconnection Customer to commence parallel operations by the in-service date.

2.2.2 The Interconnection Customer shall not operate its Small Generating Facility in parallel with the Transmission Provider's Transmission System without prior written authorization of the Transmission Provider. The Transmission Provider will provide such authorization once the Transmission Provider receives notification that the Interconnection Customer has complied with

all applicable parallel operation requirements. Such authorization shall not be unreasonably withheld, conditioned, or delayed.

2.3 Right of Access

2.3.1 Upon reasonable notice, the Transmission Provider may send a qualified person to the premises of the Interconnection Customer at or immediately before the time the Small Generating Facility first produces energy to inspect the interconnection, and observe the commissioning of the Small Generating Facility (including any required testing), startup, and operation for a period of up to three Business Days after initial start-up of the unit. In addition, the Interconnection Customer shall notify the Transmission Provider at least five Business Days prior to conducting any on-site verification testing of the Small Generating Facility.

2.3.2 Following the initial inspection process described above, at reasonable hours, and upon reasonable notice, or at any time without notice in the event of an emergency or hazardous condition, the Transmission Provider shall have access to the Interconnection Customer's premises for any reasonable purpose in connection with the performance of the obligations imposed on it by this Agreement or if necessary to meet its legal obligation to provide service to its customers.

2.3.3 Each Party shall be responsible for its own costs associated with following this article.

Article 3. Effective Date, Term, Termination, and Disconnection

3.1 Effective Date

This Agreement shall become effective upon execution by the Parties subject to acceptance by FERC (if applicable), or if filed unexecuted, upon the date specified by the FERC. The Transmission Provider shall promptly file this Agreement with the FERC upon execution, if required.

3.2 Term of Agreement

This Agreement shall become effective on the Effective Date and shall remain in effect for a period of ten years from the Effective Date or such other longer period as the Interconnection Customer may request and shall be automatically renewed for each successive one-year period thereafter, unless terminated earlier in accordance with article 3.3 of this Agreement.

3.3 Termination

No termination shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination, including the filing with FERC of a notice of termination of this Agreement (if required), which notice has been accepted for filing by FERC.

3.3.1 The Interconnection Customer may terminate this Agreement at any time by giving the Transmission Provider 20 Business Days written notice.

3.3.2 Either Party may terminate this Agreement after Default pursuant to article 7.6.

3.3.3 Upon termination of this Agreement, the Small Generating Facility will be disconnected from the Transmission Provider's Transmission System. The termination of this Agreement shall not relieve either Party of its liabilities and obligations, owed or continuing at the time of the termination.

3.3.4 This provisions of this article shall survive termination or expiration of this Agreement.

3.4 Temporary Disconnection

Temporary disconnection shall continue only for so long as reasonably necessary under Good Utility Practice.

3.4.1 *Emergency Conditions*—''Emergency Condition'' shall mean a condition or situation: (1) That in the judgment of the Party making the claim is imminently likely to endanger life or property; or (2) that, in the case of the Transmission Provider, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to the Transmission System, the Transmission Provider's Interconnection Facilities or the Transmission Systems of others to which the Transmission System is directly connected; or (3) that, in the case of the Interconnection Customer, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Small Generating Facility or the Interconnection Customer's Interconnection Facilities. Under Emergency Conditions, the Transmission Provider may immediately suspend interconnection service and temporarily disconnect the Small Generating Facility. The Transmission Provider shall notify the Interconnection Customer promptly when it becomes aware of an Emergency Condition that may reasonably be expected to affect the Interconnection Customer's operation of the Small Generating Facility. The Interconnection Customer shall notify the Transmission Provider promptly when it becomes aware of an Emergency Condition that may reasonably be expected to affect the Transmission Provider's Transmission System or other Affected Systems. To the extent information is known, the notification shall describe the Emergency Condition, the extent of the damage or deficiency, the expected effect on the operation of both Parties' facilities and operations, its anticipated duration, and the necessary corrective action.

3.4.2 *Routine Maintenance, Construction, and Repair*—The Transmission Provider may interrupt interconnection service or curtail the output of the Small Generating Facility and temporarily disconnect the Small Generating Facility from the Transmission Provider's Transmission System when necessary for routine maintenance, construction, and repairs on the Transmission Provider's Transmission System. The Transmission Provider shall provide the Interconnection Customer with five Business Days notice prior to such interruption. The Transmission Provider shall use Reasonable Efforts to coordinate such reduction or temporary disconnection with the Interconnection Customer.

3.4.3 *Forced Outages*—During any forced outage, the Transmission Provider may suspend interconnection service to effect immediate repairs on the Transmission Provider's Transmission System. The Transmission Provider shall use Reasonable Efforts to provide the Interconnection Customer with prior notice. If prior notice is not given, the Transmission Provider shall, upon request, provide the Interconnection Customer written documentation after the fact explaining the circumstances of the disconnection.

3.4.4 *Adverse Operating Effects*—The Transmission Provider shall notify the Interconnection Customer as soon as practicable if, based on Good Utility Practice, operation of the Small Generating Facility may cause disruption or deterioration of service to other customers served from the same electric system, or if operating the Small Generating Facility could cause damage to the Transmission Provider's Transmission System or Affected Systems. Supporting documentation used to reach the decision to disconnect shall be provided to the Interconnection Customer upon request. If, after notice, the Interconnection Customer fails to remedy the adverse operating effect within a reasonable time, the Transmission Provider may disconnect the Small Generating Facility. The Transmission Provider shall provide the Interconnection Customer with five Business Day notice of such disconnection, unless the provisions of article 3.4.1 apply.

3.4.5 *Modification of the Small Generating Facility*—The Interconnection Customer must receive written authorization from the Transmission Provider before making any change to the Small Generating Facility that may have a material impact on the safety or reliability of the Transmission System. Such authorization shall not be unreasonably withheld. Modifications shall be done in accordance with Good Utility Practice. If the Interconnection Customer makes such modification without the Transmission Provider's prior written authorization, the latter shall have the right to temporarily disconnect the Small Generating Facility.

3.4.6 *Reconnection*—The Parties shall cooperate with each other to restore the Small Generating Facility, Interconnection Facilities, and the Transmission Provider's Transmission System to their normal operating state as soon as reasonably practicable following a temporary disconnection.

Article 4. Cost Responsibility for Interconnection Facilities and Distribution Upgrades

4.1 Interconnection Facilities

4.1.1 The Interconnection Customer shall pay for the cost of the Interconnection Facilities itemized in Attachment 2 of this Agreement. The Transmission Provider shall provide a best estimate cost, including overheads, for the purchase and construction of its Interconnection Facilities and provide a detailed itemization of such costs. Costs associated with Interconnection Facilities may be shared with other entities that may benefit from such facilities by agreement of the Interconnection Customer, such other entities, and the Transmission Provider.

4.1.2 The Interconnection Customer shall be responsible for its share of all reasonable expenses, including overheads, associated with (1) owning, operating, maintaining, repairing, and replacing its own Interconnection Facilities, and (2) operating, maintaining, repairing, and replacing the Transmission Provider's Interconnection Facilities.

4.2 Distribution Upgrades

The Transmission Provider shall design, procure, construct, install, and own the Distribution Upgrades described in Attachment 6 of this Agreement. If the Transmission Provider and the Interconnection Customer agree, the Interconnection Customer may construct Distribution Upgrades that are located on land owned by the Interconnection Customer. The actual cost of the Distribution Upgrades, including overheads, shall be directly assigned to the Interconnection Customer.

Article 5. Cost Responsibility for Network Upgrades

5.1 Applicability

No portion of this article 5 shall apply unless the interconnection of the Small Generating Facility requires Network Upgrades.

5.2 Network Upgrades

The Transmission Provider or the Transmission Owner shall design, procure, construct, install, and own the Network Upgrades described in Attachment 6 of this Agreement. If the Transmission Provider and the Interconnection Customer agree, the Interconnection Customer may construct Network Upgrades that are located on land owned by the Interconnection Customer. Unless the Transmission Provider elects to pay for Network Upgrades, the actual cost of the Network Upgrades, including overheads, shall be borne initially by the Interconnection Customer.

5.2.1 *Repayment of Amounts Advanced for Network Upgrades*

The Interconnection Customer shall be entitled to a cash repayment, equal to the total amount paid to the Transmission Provider and Affected System operator, if any, for Network Upgrades, including any tax gross-up or other tax-related payments associated with the Network Upgrades, and not otherwise refunded to the Interconnection Customer, to be paid to the Interconnection Customer on a dollar-for-dollar basis for the non-usage sensitive portion of transmission charges, as payments are made under the Transmission Provider's Tariff and Affected System's Tariff for transmission services with respect to the Small Generating Facility. Any repayment shall include interest calculated in accordance with the methodology set forth in FERC's regulations at 18 CFR 35.19a(a)(2)(iii) from the date of any payment for Network Upgrades through the date on which the Interconnection Customer receives a repayment of such payment pursuant to this subparagraph. The Interconnection Customer may assign such repayment rights to any person.

5.2.1.1 Notwithstanding the foregoing, the Interconnection Customer, the Transmission Provider, and Affected System operator may adopt any alternative payment schedule that is mutually agreeable so long as the Transmission Provider and Affected System operator take one of the following actions no later than five years from the Commercial Operation Date: (1) Return to the Interconnection Customer any amounts advanced for Network Upgrades not previously repaid, or (2) declare in writing that the Transmission Provider or Affected System operator will continue to provide payments to the Interconnection Customer on a dollar-for-dollar basis for the non-usage sensitive portion of transmission charges, or develop an alternative schedule that is mutually agreeable and provides for the return of all amounts advanced for Network Upgrades not previously repaid; however, full reimbursement shall not extend beyond twenty (20) years from the commercial operation date.

5.2.1.2 If the Small Generating Facility fails to achieve commercial operation, but it or another generating facility is later constructed and requires use of the Network Upgrades, the Transmission Provider and Affected System operator shall at that time reimburse the Interconnection Customer for the amounts advanced for the Network Upgrades. Before any such reimbursement can occur, the Interconnection Customer, or the entity that ultimately constructs the generating facility, if different, is responsible for identifying the entity to which reimbursement must be made.

5.3 Special Provisions for Affected Systems

Unless the Transmission Provider provides, under this Agreement, for the repayment of amounts advanced to Affected System operator for Network Upgrades, the Interconnection Customer and Affected System operator shall enter into an agreement that provides for such repayment. The agreement shall specify the terms governing payments to be made by the Interconnection Customer to Affected System operator as well as the repayment by Affected System operator.

5.4 Rights Under Other Agreements

Notwithstanding any other provision of this Agreement, nothing herein shall be construed as relinquishing or foreclosing any rights, including but not limited to firm transmission rights, capacity rights, transmission congestion rights, or transmission credits, that the Interconnection Customer shall be entitled to, now or in the future, under any other agreement or tariff as a result of, or otherwise associated with, the transmission capacity, if any, created by the Network Upgrades, including the right to obtain cash reimbursements or transmission credits for transmission service that is not associated with the Small Generating Facility.

Article 6. Billing, Payment, Milestones, and Financial Security

6.1 Billing and Payment Procedures and Final Accounting

6.1.1 The Transmission Provider shall bill the Interconnection Customer for the design, engineering, construction, and procurement costs of Interconnection Facilities and Upgrades contemplated by this Agreement on a monthly basis, or as otherwise agreed by the Parties. The Interconnection Customer shall pay each bill within 30 calendar days of receipt, or as otherwise agreed to by the Parties.

6.1.2 Within three months of completing the construction and installation of the Transmission Provider's Interconnection Facilities and/or Upgrades described in the Attachments to this Agreement, the Transmission Provider shall provide the Interconnection Customer with a final accounting report of any difference between (1) the Interconnection Customer's cost responsibility for the actual cost of such facilities or Upgrades, and (2) the Interconnection Customer's previous aggregate payments to the Transmission Provider for such facilities or Upgrades. If the Interconnection Customer's cost responsibility exceeds its previous aggregate payments, the Transmission Provider shall invoice the Interconnection Customer for the amount due and the Interconnection Customer shall make payment to the Transmission Provider within 30 calendar days. If the Interconnection Customer's previous aggregate payments exceed its cost responsibility under this Agreement, the Transmission Provider shall refund to the Interconnection Customer an amount equal to the difference within 30 calendar days of the final accounting report.

6.2 Milestones

The Parties shall agree on milestones for which each Party is responsible and list them in Attachment 4 of this Agreement. A Party's obligations under this provision may be extended by agreement. If a Party anticipates that it will be unable to meet a milestone for any reason other than a Force Majeure Event, it shall immediately notify the other Party of the reason(s) for not meeting the milestone and (1) propose the earliest reasonable alternate date by which it can attain this and future milestones, and (2) requesting appropriate amendments to Attachment 4. The Party affected by the failure to meet a milestone shall not unreasonably withhold agreement to such an amendment unless it will suffer significant uncompensated economic or operational harm from the delay, (2) attainment of the same milestone has previously been delayed, or (3) it has reason to believe that the delay in meeting the milestone is intentional or unwarranted notwithstanding the circumstances explained by the Party proposing the amendment.

6.3 Financial Security Arrangements

At least 20 Business Days prior to the commencement of the design, procurement, installation, or construction of a discrete portion of the Transmission Provider's Interconnection Facilities and Upgrades, the Interconnection Customer shall provide the Transmission Provider, at the Interconnection Customer's option, a guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable to the Transmission Provider and is consistent with the Uniform Commercial

Code of the jurisdiction where the Point of Interconnection is located. Such security for payment shall be in an amount sufficient to cover the costs for constructing, designing, procuring, and installing the applicable portion of the Transmission Provider's Interconnection Facilities and Upgrades and shall be reduced on a dollar-for-dollar basis for payments made to the Transmission Provider under this Agreement during its term. In addition:

6.3.1 The guarantee must be made by an entity that meets the creditworthiness requirements of the Transmission Provider, and contain terms and conditions that guarantee payment of any amount that may be due from the Interconnection Customer, up to an agreed-to maximum amount.

6.3.2 The letter of credit or surety bond must be issued by a financial institution or insured reasonably acceptable to the Transmission Provider and must specify a reasonable expiration date.

Article 7. Assignment, Liability, Indemnity, Force Majeure, Consequential Damages, and Default

7.1 Assignment

This Agreement may be assigned by either Party upon 15 Business Days prior written notice and opportunity to object by the other Party; provided that:

7.1.1 Either Party may assign this Agreement without the consent of the other Party to any affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement;

7.1.2 The Interconnection Customer shall have the right to assign this Agreement, without the consent of the Transmission Provider, for collateral security purposes to aid in providing financing for the Small Generating Facility, provided that the Interconnection Customer will promptly notify the Transmission Provider of any such assignment.

7.1.3 Any attempted assignment that violates this article is void and ineffective. Assignment shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. An assignee is responsible for meeting the same financial, credit, and insurance obligations as the Interconnection Customer. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

7.2 Limitation of Liability

Each Party's liability to the other Party for any loss, cost, claim, injury, liability, or expense, including reasonable attorney's fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred. In no event shall either Party be liable to the other Party for any indirect, special, consequential, or punitive damages, except as authorized by this Agreement.

7.3 Indemnity

7.3.1 This provision protects each Party from liability incurred to third parties as a result of carrying out the provisions of this Agreement. Liability under this provision is exempt from the general limitations on liability found in article 7.2.

7.3.2 The Parties shall at all times indemnify, defend, and hold the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or failure to meet its obligations under this Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.

7.3.3 If an indemnified person is entitled to indemnification under this article as a result of a claim by a third party, and the indemnifying Party fails, after notice and reasonable opportunity to proceed under this article, to assume the defense of such claim, such indemnified person may at the expense of the indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

7.3.4 If an indemnifying party is obligated to indemnify and hold any indemnified person harmless under this article, the amount owing to the indemnified person shall be the amount of such indemnified person's actual loss, net of any insurance or other recovery.

7.3.5 Promptly after receipt by an indemnified person of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in this article may apply, the indemnified person shall notify the indemnifying party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the indemnifying party.

7.4 Consequential Damages

Other than as expressly provided for in this Agreement, neither Party shall be liable under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

7.5 Force Majeure

7.5.1 As used in this article, a Force Majeure Event shall mean ''any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure Event does not include an act of negligence or intentional wrongdoing.''

7.5.2 If a Force Majeure Event prevents a Party from fulfilling any obligations under this Agreement, the Party affected by the Force Majeure Event (Affected Party) shall promptly notify the other Party, either in writing or via the telephone, of the existence of the Force Majeure Event. The notification must specify in reasonable detail the circumstances of the Force Majeure Event, its expected duration, and the steps that the Affected Party is taking to mitigate the effects of the event on its performance. The Affected Party shall keep the other Party informed on a continuing basis of developments relating to the Force Majeure Event until the event ends. The Affected Party will be entitled to suspend or modify its performance of obligations under this Agreement (other than the obligation to make payments) only to the extent that the effect of the Force Majeure Event cannot be mitigated by the use of Reasonable Efforts. The Affected Party will use Reasonable Efforts to resume its performance as soon as possible.

7.6 Default

7.6.1 No Default shall exist where such failure to discharge an obligation (other than the payment of money) is the result of a Force Majeure Event as defined in this Agreement or the result of an act or omission of the other Party. Upon a Default, the non-defaulting Party shall give written notice of such Default to the defaulting Party. Except as provided in article 7.6.2, the defaulting Party shall have 60 calendar days from receipt of the Default notice within which to cure such Default; provided however, if such Default is not capable of cure within 60 calendar days, the defaulting Party shall commence such cure within 20 calendar days after notice and continuously and diligently complete such cure within six months from receipt of the Default notice; and, if cured within such time, the Default specified in such notice shall cease to exist.

7.6.2 If a Default is not cured as provided in this article, or if a Default is not capable of being cured within the period provided for herein, the non-defaulting Party shall have the right to terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not that Party terminates this Agreement, to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity. The provisions of this article will survive termination of this Agreement.

Article 8. Insurance

8.1 The Interconnection Customer shall, at its own expense, maintain in force general liability insurance without any exclusion for liabilities related to the interconnection undertaken pursuant to this Agreement. The amount of such insurance shall be sufficient to insure against all reasonably foreseeable direct liabilities given the size and nature of the generating equipment being interconnected, the interconnection itself,

and the characteristics of the system to which the interconnection is made. The Interconnection Customer shall obtain additional insurance only if necessary as a function of owning and operating a generating facility. Such insurance shall be obtained from an insurance provider authorized to do business in the State where the interconnection is located. Certification that such insurance is in effect shall be provided upon request of the Transmission Provider, except that the Interconnection Customer shall show proof of insurance to the Transmission Provider no later than ten Business Days prior to the anticipated commercial operation date. An Interconnection Customer of sufficient credit-worthiness may propose to self-insure for such liabilities, and such a proposal shall not be unreasonably rejected.

8.2 The Transmission Provider agrees to maintain general liability insurance or self-insurance consistent with the Transmission Provider's commercial practice. Such insurance or self-insurance shall not exclude coverage for the Transmission Provider's liabilities undertaken pursuant to this Agreement.

8.3 The Parties further agree to notify each other whenever an accident or incident occurs resulting in any injuries or damages that are included within the scope of coverage of such insurance, whether or not such coverage is sought.

Article 9. Confidentiality

9.1 Confidential Information shall mean any confidential and/or proprietary information provided by one Party to the other Party that is clearly marked or otherwise designated ''Confidential.'' For purposes of this Agreement all design, operating specifications, and metering data provided by the Interconnection Customer shall be deemed Confidential Information regardless of whether it is clearly marked or otherwise designated as such.

9.2 Confidential Information does not include information previously in the public domain, required to be publicly submitted or divulged by Governmental Authorities (after notice to the other Party and after exhausting any opportunity to oppose such publication or release), or necessary to be divulged in an action to enforce this Agreement. Each Party receiving Confidential Information shall hold such information in confidence and shall not disclose it to any third party nor to the public without the prior written authorization from the Party providing that information, except to fulfill obligations under this Agreement, or to fulfill legal or regulatory requirements.

9.2.1 Each Party shall employ at least the same standard of care to protect Confidential Information obtained from the other Party as it employs to protect its own Confidential Information.

9.2.2 Each Party is entitled to equitable relief, by injunction or otherwise, to enforce its rights under this provision to prevent the release of Confidential Information without bond or proof of damages, and may seek other remedies available at law or in equity for breach of this provision.

9.3 Notwithstanding anything in this article to the contrary, and pursuant to 18 CFR 1b.20, if FERC, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to this Agreement, the Party shall provide the requested information to FERC, within the time provided for in the request for information. In providing the information to FERC, the Party may, consistent with 18 CFR 388.112, request that the information be treated as confidential and non-public by FERC and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Party to this Agreement prior to the release of the Confidential Information to FERC. The Party shall notify the other Party to this Agreement when it is notified by FERC that a request to release Confidential Information has been received by FERC, at which time either of the Parties may respond before such information would be made public, pursuant to 18 CFR 388.112. Requests from a state regulatory body conducting a confidential investigation shall be treated in a similar manner if consistent with the applicable state rules and regulations.

Article 10. Disputes

10.1 The Parties agree to attempt to resolve all disputes arising out of the interconnection process according to the provisions of this article.

10.2 In the event of a dispute, either Party shall provide the other Party with a written Notice of Dispute. Such Notice shall describe in detail the nature of the dispute.

10.3 If the dispute has not been resolved within two Business Days after receipt of the Notice, either Party may contact FERC's Dispute Resolution Service (DRS) for assistance in resolving the dispute.

10.4 The DRS will assist the Parties in either resolving their dispute or in selecting an appropriate dispute resolution venue (*e.g.*, mediation, settlement judge, early neutral evaluation, or technical expert) to assist the Parties in resolving their dispute. DRS can be reached at 1–877–337–2237 or via the internet at *http://www.ferc.gov/legal/adr.asp.*

10.5 Each Party agrees to conduct all negotiations in good faith and will be responsible for one-half of any costs paid to neutral third-parties.

10.6 If neither Party elects to seek assistance from the DRS, or if the attempted dispute resolution fails, then either Party may exercise whatever rights and remedies it may have in equity or law consistent with the terms of this Agreement.

Article 11. Taxes

11.1 The Parties agree to follow all applicable tax laws and regulations, consistent with FERC policy and Internal Revenue Service requirements.

11.2 Each Party shall cooperate with the other to maintain the other Party's tax status. Nothing in this Agreement is intended to adversely affect the Transmission Provider's tax exempt status with respect to the issuance of bonds including, but not limited to, local furnishing bonds.

Article 12. Miscellaneous

12.1 Governing Law, Regulatory Authority, and Rules

The validity, interpretation and enforcement of this Agreement and each of its provisions shall be governed by the laws of the state of _____(where the Point of Interconnection is located), without regard to its conflicts of law principles. This Agreement is subject to all Applicable Laws and Regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a Governmental Authority.

12.2 Amendment

The Parties may amend this Agreement by a written instrument duly executed by both Parties.

12.3 No Third-Party Beneficiaries

This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns.

12.4 Waiver

12.4.1 The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

12.4.2 Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, or duty of this Agreement. Termination or default of this Agreement for any reason by Interconnection Customer shall not constitute a waiver of the Interconnection Customer's legal rights to obtain an interconnection from the Transmission Provider. Any waiver of this Agreement shall, if requested, be provided in writing.

12.5 Entire Agreement

This Agreement, including all Attachments, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement. There are no other agreements, representations, warranties, or covenants which constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this Agreement.

12.6 Multiple Counterparts

This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

12.7 No Partnership

This Agreement shall not be interpreted or construed to create an association, joint

venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

12.8 Severability

If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other Governmental Authority, (1) such portion or provision shall be deemed separate and independent, (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (3) the remainder of this Agreement shall remain in full force and effect.

12.9 Security Arrangements

Infrastructure security of electric system equipment and operations and control hardware and software is essential to ensure day-to-day reliability and operational security. FERC expects all Transmission Providers, market participants, and Interconnection Customers interconnected to electric systems to comply with the recommendations offered by the President's Critical Infrastructure Protection Board and, eventually, best practice recommendations from the electric reliability authority. All public utilities are expected to meet basic standards for system infrastructure and operational security, including physical, operational, and cyber-security practices.

12.10 Environmental Releases

Each Party shall notify the other Party, first orally and then in writing, of the release of any hazardous substances, any asbestos or lead abatement activities, or any type of remediation activities related to the Small Generating Facility or the Interconnection Facilities, each of which may reasonably be expected to affect the other Party. The notifying Party shall (1) provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than 24 hours after such Party becomes aware of the occurrence, and (2) promptly furnish to the other Party copies of any publicly available reports filed with any governmental authorities addressing such events.

12.11 Subcontractors

Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

12.11.1 The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall the Transmission Provider be liable for the actions or inactions of the Interconnection Customer or its subcontractors with respect to obligations of the Interconnection Customer under this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

12.11.2 The obligations under this article will not be limited in any way by any limitation of subcontractor's insurance.

12.12 Reservation of Rights

The Transmission Provider shall have the right to make a unilateral filing with FERC to modify this Agreement with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and the Interconnection Customer shall have the right to make a unilateral filing with FERC to modify this Agreement under any applicable provision of the Federal Power Act and FERC's rules and regulations; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties or of FERC under sections 205 or 206 of the Federal Power Act and FERC's rules and regulations, except to the extent that the Parties otherwise agree as provided herein.

Article 13. Notices

13.1 General

Unless otherwise provided in this Agreement, any written notice, demand, or request required or authorized in connection with this Agreement (''Notice'') shall be deemed properly given if delivered in person, delivered by recognized national currier service, or sent by first class mail, postage prepaid, to the person specified below:

BILLING CODE 6717–01–U

If to the Interconnection Customer:

Interconnection Customer: _____

Attention: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

If to the Transmission Provider:

Transmission Provider: _____

Attention: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

BILLING CODE 6717–01–C

13.2 Billing and Payment

Billings and payments shall be sent to the addresses set out below:

Interconnection Customer: _____

Attention: _____

Address: _____

City: _____ State:_____ Zip:_____

Transmission Provider: _____

Attention: _____

Address: _____

City: _____ State:_____ Zip:_____

13.3 Alternative Forms of Notice

Any notice or request required or permitted to be given by either Party to the other and not required by this Agreement to be given in writing may be so given by telephone, facsimile or e-mail to the telephone numbers and e-mail addresses set out below:

Interconnection Customer: _____

Attention: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

If to the Transmission Provider:

Transmission Provider: _____

Attention: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

13.4 Designated Operating Representative

The Parties may also designate operating representatives to conduct the communications which may be necessary or convenient for the administration of this Agreement. This person will also serve as the point of contact with respect to operations and maintenance of the Party's facilities.

13.5 Changes to the Notice Information

Either Party may change this information by giving five Business Days written notice prior to the effective date of the change.

Article 14. Signatures

BILLING CODE 6717–01–U

Interconnection Customer's Operating Representative:

Interconnection Customer: _____

Attention: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Transmission Provider's Operating Representative:

Transmission Provider: _____

Attention: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives.

For the Transmission Provider

Name: _____

Title: _____

Date: _____

For the Interconnection Customer

Name: _____

Title: _____

Date: _____

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Attachment 1—Glossary of Terms

Affected System—An electric system other than the Transmission Provider's Transmission System that may be affected by the proposed interconnection.

Applicable Laws and Regulations—All duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority.

Business Day—Monday through Friday, excluding Federal Holidays.

Default—The failure of a breaching Party to cure its Breach under the Small Generator Interconnection Agreement.

Distribution System—The Transmission Provider's facilities and equipment used to transmit electricity to ultimate usage points such as homes and industries directly from nearby generators or from interchanges with higher voltage transmission networks which transport bulk power over longer distances. The voltage levels at which Distribution Systems operate differ among areas.

Distribution Upgrades—The additions, modifications, and upgrades to the Transmission Provider's Distribution System at or beyond the Point of Interconnection to facilitate interconnection of the Small Generating Facility and render the transmission service necessary to effect the Interconnection Customer's wholesale sale of electricity in interstate commerce. Distribution Upgrades do not include Interconnection Facilities.

Good Utility Practice—Any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

Governmental Authority—Any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include the Interconnection Customer, the Interconnection Provider, or any Affiliate thereof.

Interconnection Customer—Any entity, including the Transmission Provider, the Transmission Owner or any of the affiliates or subsidiaries of either, that proposes to interconnect its Small Generating Facility with the Transmission Provider's Transmission System.

Interconnection Facilities—The Transmission Provider's Interconnection Facilities and the Interconnection Customer's Interconnection Facilities. Collectively, Interconnection Facilities include all facilities and equipment between the Small Generating Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Small Generating Facility to the Transmission Provider's Transmission System. Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades or Network Upgrades.

Interconnection Request—The Interconnection Customer's request, in accordance with the Tariff, to interconnect a new Small Generating Facility, or to increase the capacity of, or make a Material Modification to the operating characteristics of, an existing Small Generating Facility that is interconnected with the Transmission Provider's Transmission System.

Material Modification—A modification that has a material impact on the cost or timing of any Interconnection Request with a later queue priority date.

Network Upgrades—Additions, modifications, and upgrades to the Transmission Provider's Transmission System required at or beyond the point at which the Small Generating Facility interconnects with the Transmission Provider's Transmission System to accommodate the interconnection of the Small Generating Facility with the Transmission Provider's Transmission System. Network Upgrades do not include Distribution Upgrades.

Operating Requirements—Any operating and technical requirements that may be applicable due to Regional Transmission Organization, Independent System Operator, control area, or the Transmission Provider's requirements, including those set forth in the Small Generator Interconnection Agreement.

Party or Parties—The Transmission Provider, Transmission Owner, Interconnection Customer or any combination of the above.

Point of Interconnection—The point where the Interconnection Facilities connect with the Transmission Provider's Transmission System.

Reasonable Efforts—With respect to an action required to be attempted or taken by a Party under the Small Generator Interconnection Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

Small Generating Facility—The Interconnection Customer's device for the production of electricity identified in the Interconnection Request, but shall not include the Interconnection Customer's Interconnection Facilities.

Tariff—The Transmission Provider or Affected System's Tariff through which open access transmission service and Interconnection Service are offered, as filed with the FERC, and as amended or supplemented from time to time, or any successor tariff.

Transmission Owner—The entity that owns, leases or otherwise possesses an interest in the portion of the Transmission System at the Point of Interconnection and may be a Party to the Small Generator Interconnection Agreement to the extent necessary.

Transmission Provider—The public utility (or its designated agent) that owns, controls, or operates transmission or distribution facilities used for the transmission of electricity in interstate commerce and provides transmission service under the Tariff. The term Transmission Provider should be read to include the Transmission Owner when the Transmission Owner is separate from the Transmission Provider.

Transmission System—The facilities owned, controlled or operated by the Transmission Provider or the Transmission Owner that are used to provide transmission service under the Tariff.

Upgrades—The required additions and modifications to the Transmission Provider's Transmission System at or beyond the Point of Interconnection. Upgrades may be Network Upgrades or Distribution Upgrades. Upgrades do not include Interconnection Facilities.

Attachment 2—Description and Costs of the Small Generating Facility, Interconnection Facilities, and Metering Equipment

Equipment, including the Small Generating Facility, Interconnection Facilities, and metering equipment shall be itemized and identified as being owned by the Interconnection Customer, the Transmission Provider, or the Transmission Owner. The Transmission Provider will provide a best estimate itemized cost, including overheads, of its Interconnection Facilities and metering equipment, and a best estimate itemized cost of the annual operation and maintenance expenses associated with its Interconnection Facilities and metering equipment.

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Attachment 3—One-Line Diagram Depicting the Small Generating Facility, Interconnection Facilities, Metering Equipment, and Upgrades

Attachment 4

Milestones

In-Service Date: _____

Critical milestones and responsibility as agreed to by the Parties:

	Milestone/Date	**Responsible Party**
(1)	_____	_____
(2)	_____	_____
(3)	_____	_____
(4)	_____	_____
(5)	_____	_____
(6)	_____	_____

(7) _____ _____

(8) _____ _____

(9) _____ _____

(10) _____ _____

Agreed to by:

For the Transmission Provider_____ Date_____

For the Transmission Owner (If Applicable) _____ Date_____

For the Interconnection Customer_____ Date_____

Attachment 5—Additional Operating Requirements for the Transmission Provider's Transmission System and Affected Systems Needed To Support the Interconnection Customer's Needs

The Transmission Provider shall also provide requirements that must be met by the Interconnection Customer prior to initiating parallel operation with the Transmission Provider's Transmission System.

Attachment 6—Transmission Provider's Description of Its Upgrades and Best Estimate of Upgrade Costs

The Transmission Provider shall describe Upgrades and provide an itemized best estimate of the cost, including overheads, of the Upgrades and annual operation and maintenance expenses associated with such Upgrades. The Transmission Provider shall functionalize Upgrade costs and annual expenses as either transmission or distribution related.

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TREASURY DEPARTMENT
Currency and foreign transactions; financial reporting and recordkeeping requirements:
Bank Secrecy Act; implementation—
Money Services Businesses; anti-money laundering program requirements; published 12-14-04

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cotton classing, testing and standards:
Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

AGRICULTURE DEPARTMENT
Commodity Credit Corporation
Loan and purchase programs:
Dairy Disaster Assistance Payment Program; comments due by 6-24-05; published 5-25-05 [FR 05-10444]

AGRICULTURE DEPARTMENT
Natural Resources Conservation Service
Reports and guidance documents; availability, etc.:
National Handbook of Conservation Practices; Open for comments until further notice; published 5-9-05 [FR 05-09150]

COMMERCE DEPARTMENT
Industry and Security Bureau
Export administration regulations:
Missile technology-controlled items destined to Canada; exports and reexports; license requirements; comments due by 6-23-05; published 5-24-05 [FR 05-10356]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Northeastern United States fisheries—
Atlantic deep-sea red crab; comments due by 6-20-05; published 5-20-05 [FR 05-10130]
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; comments due by 6-23-05; published 5-24-05 [FR 05-10352]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA
Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT
Acquisition regulations:
Pilot Mentor-Protege Program; Open for comments until further notice; published 12-15-04 [FR 04-27351]
Federal Acquisition Regulation (FAR):
Radio frequency identification; comments due by 6-20-05; published 4-21-05 [FR 05-07978]
Personnel, military and civilian:
Personal commercial solicitation on DoD installations; comments due by 6-20-05; published 4-19-05 [FR 05-07810]

EDUCATION DEPARTMENT
Grants and cooperative agreements; availability, etc.:
Vocational and adult education—
Smaller Learning Communities Program; Open for comments until further notice; published 2-25-05 [FR E5-00767]

ENERGY DEPARTMENT
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Voluntary Reporting of Greenhouse Gases Program—
General and technical guidelines; comments due by 6-22-05; published 5-9-05 [FR 05-09192]
Meetings:
Environmental Management Site-Specific Advisory Board—
Oak Ridge Reservation, TN; Open for comments until further notice; published 11-19-04 [FR 04-25693]

ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Commercial and industrial equipment; energy efficiency program:
Test procedures and efficiency standards—
Commercial packaged boilers; Open for comments until further notice; published 10-21-04 [FR 04-17730]

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Electric rate and corporate regulation filings:
Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Brick and structural clay products manufacturing;

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 2566/P.L. 109–14

Surface Transportation Extension Act of 2005 (May 31, 2005; 119 Stat. 324)

Last List May 17, 2005

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Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Stock Number	Price	Revision Date
1	(869–056–00001–4)	5.00	Jan. 1, 2005
2	(869–056–00002–2)	5.00	Jan. 1, 2005
3 (2003 Compilation and Parts 100 and 101)	(869–052–00002–7)	35.00	[1] Jan. 1, 2004
4	(869–056–00004–9)	10.00	[4] Jan. 1, 2005
5 Parts:			
1–699	(869–056–00005–7)	60.00	Jan. 1, 2005
700–1199	(869–056–00006–5)	50.00	Jan. 1, 2005
1200–End	(869–056–00007–3)	61.00	Jan. 1, 2005
6	(869–056–00008–1)	10.50	Jan. 1, 2005
7 Parts:			
1–26	(869–056–00009–0)	44.00	Jan. 1, 2005
27–52	(869–056–00010–3)	49.00	Jan. 1, 2005
53–209	(869–056–00011–1)	37.00	Jan. 1, 2005
210–299	(869–056–00012–0)	62.00	Jan. 1, 2005
300–399	(869–056–00013–8)	46.00	Jan. 1, 2005
400–699	(869–056–00014–6)	42.00	Jan. 1, 2005
700–899	(869–056–00015–4)	43.00	Jan. 1, 2005
900–999	(869–056–00016–2)	60.00	Jan. 1, 2005
1000–1199	(869–056–00017–1)	22.00	Jan. 1, 2005
1200–1599	(869–056–00018–9)	61.00	Jan. 1, 2005
1600–1899	(869–056–00019–7)	64.00	Jan. 1, 2005
1900–1939	(869–056–00020–1)	31.00	Jan. 1, 2005
1940–1949	(869–056–00021–9)	50.00	Jan. 1, 2005
1950–1999	(869–056–00022–7)	46.00	Jan. 1, 2005
2000–End	(869–056–00023–5)	50.00	Jan. 1, 2005
8	(869–056–00024–3)	63.00	Jan. 1, 2005
9 Parts:			
1–199	(869–056–00025–1)	61.00	Jan. 1, 2005
200–End	(869–056–00026–0)	58.00	Jan. 1, 2005
10 Parts:			
1–50	(869–056–00027–8)	61.00	Jan. 1, 2005
51–199	(869–056–00028–6)	58.00	Jan. 1, 2005
200–499	(869–056–00029–4)	46.00	Jan. 1, 2005
500–End	(869–056–00030–8)	62.00	Jan. 1, 2005
11	(869–056–00031–6)	41.00	Jan. 1, 2005
12 Parts:			
1–199	(869–056–00032–4)	34.00	Jan. 1, 2005
200–219	(869–056–00033–2)	37.00	Jan. 1, 2005
220–299	(869–056–00034–1)	61.00	Jan. 1, 2005
300–499	(869–056–00035–9)	47.00	Jan. 1, 2005
500–599	(869–056–00036–7)	39.00	Jan. 1, 2005
600–899	(869–056–00037–5)	56.00	Jan. 1, 2005
900–End	(869–056–00038–3)	50.00	Jan. 1, 2005
13	(869–056–00039–1)	55.00	Jan. 1, 2005
14 Parts:			
1–59	(869–056–00040–5)	63.00	Jan. 1, 2005
60–139	(869–056–00041–3)	61.00	Jan. 1, 2005
140–199	(869–056–00042–1)	30.00	Jan. 1, 2005
200–1199	(869–056–00043–0)	50.00	Jan. 1, 2005
1200–End	(869–056–00044–8)	45.00	Jan. 1, 2005
15 Parts:			
0–299	(869–056–00045–6)	40.00	Jan. 1, 2005
300–799	(869–056–00046–4)	60.00	Jan. 1, 2005
800–End	(869–056–00047–2)	42.00	Jan. 1, 2005
16 Parts:			
0–999	(869–056–00048–1)	50.00	Jan. 1, 2005
1000–End	(869–056–00049–9)	60.00	Jan. 1, 2005
17 Parts:			
1–199	(869–056–00051–1)	50.00	Apr. 1, 2005
200–239	(869–052–00051–5)	58.00	Apr. 1, 2004
240–End	(869–052–00052–3)	62.00	Apr. 1, 2004
18 Parts:			
1–399	(869–052–00053–1)	62.00	Apr. 1, 2004
400–End	(869–052–00054–0)	26.00	Apr. 1, 2004
19 Parts:			
1–140	(869–052–00055–8)	61.00	Apr. 1, 2004
*141–199	(869–056–00057–0)	58.00	Apr. 1, 2005
200–End	(869–052–00057–4)	31.00	Apr. 1, 2004
20 Parts:			
*1–399	(869–056–00059–6)	50.00	Apr. 1, 2005
400–499	(869–052–00059–1)	64.00	Apr. 1, 2004
500–End	(869–052–00060–9)	63.00	Apr. 1, 2004
21 Parts:			
1–99	(869–052–00061–2)	42.00	Apr. 1, 2004
100–169	(869–052–00062–1)	49.00	Apr. 1, 2004
170–199	(869–056–00064–2)	50.00	Apr. 1, 2005
*200–299	(869–056–00065–1)	17.00	Apr. 1, 2005
300–499	(869–056–00066–9)	31.00	Apr. 1, 2005
*500–599	(869–056–00067–7)	47.00	Apr. 1, 2005
600–799	(869–056–00068–5)	15.00	Apr. 1, 2005
800–1299	(869–052–00068–0)	58.00	Apr. 1, 2004
1300–End	(869–052–00069–8)	24.00	Apr. 1, 2004
22 Parts:			
1–299	(869–052–00070–1)	63.00	Apr. 1, 2004
*300–End	(869–056–00072–3)	45.00	Apr. 1, 2005
23	(869–052–00072–8)	45.00	Apr. 1, 2004
24 Parts:			
0–199	(869–056–00074–0)	60.00	Apr. 1, 2005
200–499	(869–052–00074–4)	50.00	Apr. 1, 2004
500–699	(869–052–00075–2)	30.00	Apr. 1, 2004
700–1699	(869–056–00077–4)	61.00	Apr. 1, 2005
1700–End	(869–052–00077–9)	30.00	Apr. 1, 2004
25	(869–052–00078–7)	63.00	Apr. 1, 2004
26 Parts:			
§§ 1.0–1–1.60	(869–052–00079–5)	49.00	Apr. 1, 2004
§§ 1.61–1.169	(869–052–00080–9)	63.00	Apr. 1, 2004
*§§ 1.170–1.300	(869–056–00082–1)	60.00	Apr. 1, 2005
§§ 1.301–1.400	(869–052–00082–5)	46.00	Apr. 1, 2004
§§ 1.401–1.440	(869–052–00083–3)	62.00	Apr. 1, 2004
§§ 1.441–1.500	(869–052–00084–1)	57.00	Apr. 1, 2004
§§ 1.501–1.640	(869–052–00085–0)	49.00	Apr. 1, 2004
§§ 1.641–1.850	(869–052–00086–8)	60.00	Apr. 1, 2004
*§§ 1.851–1.907	(869–056–00088–0)	61.00	Apr. 1, 2005
*§§ 1.908–1.1000	(869–056–00089–8)	60.00	Apr. 1, 2005
§§ 1.1001–1.1400	(869–052–00089–2)	61.00	Apr. 1, 2004
*§§ 1.1401–1.1550	(869–056–00091–0)	55.00	Apr. 1, 2005
§§ 1.1551–End	(869–052–00091–4)	55.00	Apr. 1, 2004
2–29	(869–052–00092–2)	60.00	Apr. 1, 2004
30–39	(869–052–00093–1)	41.00	Apr. 1, 2004
40–49	(869–052–00094–9)	28.00	Apr. 1, 2004
50–299	(869–052–00095–7)	41.00	Apr. 1, 2004

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300–499	(869–052–00096–5)	61.00	Apr. 1, 2004
500–599	(869–056–00098–7)	12.00	[5]Apr. 1, 2005
600–End	(869–052–00098–1)	17.00	Apr. 1, 2004
27 Parts:			
1–199	(869–052–00099–0)	64.00	Apr. 1, 2004
200–End	(869–056–00101–1)	21.00	Apr. 1, 2005
28 Parts:			
0–42	(869–052–00101–5)	61.00	July 1, 2004
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29 Parts:			
0–99	(869–052–00103–1)	50.00	July 1, 2004
100–499	(869–052–00104–0)	23.00	July 1, 2004
500–899	(869–052–00105–8)	61.00	July 1, 2004
900–1899	(869–052–00106–6)	36.00	July 1, 2004
1900–1910 (§§ 1900 to 1910.999)	(869–052–00107–4)	61.00	July 1, 2004
1910 (§§ 1910.1000 to end)	(869–052–00108–2)	46.00	[8]July 1, 2004
1911–1925	(869–052–00109–1)	30.00	July 1, 2004
1926	(869–052–00110–4)	50.00	July 1, 2004
1927–End	(869–052–00111–2)	62.00	July 1, 2004
30 Parts:			
1–199	(869–052–00112–1)	57.00	July 1, 2004
200–699	(869–052–00113–9)	50.00	July 1, 2004
700–End	(869–052–00114–7)	58.00	July 1, 2004
31 Parts:			
0–199	(869–052–00115–5)	41.00	July 1, 2004
200–End	(869–052–00116–3)	65.00	July 1, 2004
32 Parts:			
1–39, Vol. I		15.00	[2]July 1, 1984
1–39, Vol. II		19.00	[2]July 1, 1984
1–39, Vol. III		18.00	[2]July 1, 1984
1–190	(869–052–00117–1)	61.00	July 1, 2004
191–399	(869–052–00118–0)	63.00	July 1, 2004
400–629	(869–052–00119–8)	50.00	[8]July 1, 2004
630–699	(869–052–00120–1)	37.00	[7]July 1, 2004
700–799	(869–052–00121–0)	46.00	July 1, 2004
800–End	(869–052–00122–8)	47.00	July 1, 2004
33 Parts:			
1–124	(869–052–00123–6)	57.00	July 1, 2004
125–199	(869–052–00124–4)	61.00	July 1, 2004
200–End	(869–052–00125–2)	57.00	July 1, 2004
34 Parts:			
1–299	(869–052–00126–1)	50.00	July 1, 2004
300–399	(869–052–00127–9)	40.00	July 1, 2004
400–End	(869–052–00128–7)	61.00	July 1, 2004
35	(869–052–00129–5)	10.00	[6]July 1, 2004
36 Parts			
1–199	(869–052–00130–9)	37.00	July 1, 2004
200–299	(869–052–00131–7)	37.00	July 1, 2004
300–End	(869–052–00132–5)	61.00	July 1, 2004
37	(869–052–00133–3)	58.00	July 1, 2004
38 Parts:			
0–17	(869–052–00134–1)	60.00	July 1, 2004
18–End	(869–052–00135–0)	62.00	July 1, 2004
39	(869–052–00136–8)	42.00	July 1, 2004
40 Parts:			
1–49	(869–052–00137–6)	60.00	July 1, 2004
50–51	(869–052–00138–4)	45.00	July 1, 2004
52 (52.01–52.1018)	(869–052–00139–2)	60.00	July 1, 2004
52 (52.1019–End)	(869–052–00140–6)	61.00	July 1, 2004
53–59	(869–052–00141–4)	31.00	July 1, 2004
60 (60.1–End)	(869–052–00142–2)	58.00	July 1, 2004
60 (Apps)	(869–052–00143–1)	57.00	July 1, 2004
61–62	(869–052–00144–9)	45.00	July 1, 2004
63 (63.1–63.599)	(869–052–00145–7)	58.00	July 1, 2004
63 (63.600–63.1199)	(869–052–00146–5)	50.00	July 1, 2004
63 (63.1200–63.1439)	(869–052–00147–3)	50.00	July 1, 2004
63 (63.1440–63.8830)	(869–052–00148–1)	64.00	July 1, 2004
63 (63.8980–End)	(869–052–00149–0)	35.00	July 1, 2004
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72–80	(869–052–00151–1)	62.00	July 1, 2004
81–85	(869–052–00152–0)	60.00	July 1, 2004
86 (86.1–86.599–99)	(869–052–00153–8)	58.00	July 1, 2004
86 (86.600–1–End)	(869–052–00154–6)	50.00	July 1, 2004
87–99	(869–052–00155–4)	60.00	July 1, 2004
100–135	(869–052–00156–2)	45.00	July 1, 2004
136–149	(869–052–00157–1)	61.00	July 1, 2004
150–189	(869–052–00158–9)	50.00	July 1, 2004
190–259	(869–052–00159–7)	39.00	July 1, 2004
260–265	(869–052–00160–1)	50.00	July 1, 2004
266–299	(869–052–00161–9)	50.00	July 1, 2004
300–399	(869–052–00162–7)	42.00	July 1, 2004
400–424	(869–052–00163–5)	56.00	[8]July 1, 2004
425–699	(869–052–00164–3)	61.00	July 1, 2004
700–789	(869–052–00165–1)	61.00	July 1, 2004
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41 Chapters:			
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18, Vol. III, Parts 20–52		13.00	[3]July 1, 1984
19–100		13.00	[3]July 1, 1984
1–100	(869–052–00167–8)	24.00	July 1, 2004
101	(869–052–00168–6)	21.00	July 1, 2004
102–200	(869–052–00169–4)	56.00	July 1, 2004
201–End	(869–052–00170–8)	24.00	July 1, 2004
42 Parts:			
1–399	(869–052–00171–6)	61.00	Oct. 1, 2004
400–429	(869–052–00172–4)	63.00	Oct. 1, 2004
430–End	(869–052–00173–2)	64.00	Oct. 1, 2004
43 Parts:			
1–999	(869–052–00174–1)	56.00	Oct. 1, 2004
1000–end	(869–052–00175–9)	62.00	Oct. 1, 2004
44	(869–052–00176–7)	50.00	Oct. 1, 2004
45 Parts:			
1–199	(869–052–00177–5)	60.00	Oct. 1, 2004
200–499	(869–052–00178–3)	34.00	Oct. 1, 2004
500–1199	(869–052–00179–1)	56.00	Oct. 1, 2004
1200–End	(869–052–00180–5)	61.00	Oct. 1, 2004
46 Parts:			
1–40	(869–052–00181–3)	46.00	Oct. 1, 2004
41–69	(869–052–00182–1)	39.00	Oct. 1, 2004
70–89	(869–052–00183–0)	14.00	Oct. 1, 2004
90–139	(869–052–00184–8)	44.00	Oct. 1, 2004
140–155	(869–052–00185–6)	25.00	Oct. 1, 2004
156–165	(869–052–00186–4)	34.00	Oct. 1, 2004
166–199	(869–052–00187–2)	46.00	Oct. 1, 2004
200–499	(869–052–00188–1)	40.00	Oct. 1, 2004
500–End	(869–052–00189–9)	25.00	Oct. 1, 2004
47 Parts:			
0–19	(869–052–00190–2)	61.00	Oct. 1, 2004
20–39	(869–052–00191–1)	46.00	Oct. 1, 2004
40–69	(869–052–00192–9)	40.00	Oct. 1, 2004
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48 Chapters:			
1 (Parts 1–51)	(869–052–00195–3)	63.00	Oct. 1, 2004
1 (Parts 52–99)	(869–052–00196–1)	49.00	Oct. 1, 2004
2 (Parts 201–299)	(869–052–00197–0)	50.00	Oct. 1, 2004
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7–14	(869–052–00199–6)	56.00	Oct. 1, 2004
15–28	(869–052–00200–3)	47.00	Oct. 1, 2004
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Title	Stock Number	Price	Revision Date
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1–99	(869–052–00202–0)	60.00	Oct. 1, 2004
100–185	(869–052–00203–8)	63.00	Oct. 1, 2004
186–199	(869–052–00204–6)	23.00	Oct. 1, 2004
200–399	(869–052–00205–4)	64.00	Oct. 1, 2004
400–599	(869–052–00206–2)	64.00	Oct. 1, 2004
600–999	(869–052–00207–1)	19.00	Oct. 1, 2004
1000–1199	(869–052–00208–9)	28.00	Oct. 1, 2004
1200–End	(869–052–00209–7)	34.00	Oct. 1, 2004
50 Parts:			
1–16	(869–052–00210–1)	11.00	Oct. 1, 2004
17.1–17.95	(869–052–00211–9)	64.00	Oct. 1, 2004
17.96–17.99(h)	(869–052–00212–7)	61.00	Oct. 1, 2004
17.99(i)–end and 17.100–end	(869–052–00213–5)	47.00	Oct. 1, 2004
18–199	(869–052–00214–3)	50.00	Oct. 1, 2004
200–599	(869–052–00215–1)	45.00	Oct. 1, 2004
600–End	(869–052–00216–0)	62.00	Oct. 1, 2004
CFR Index and Findings Aids	(869–052–00049–3)	62.00	Jan. 1, 2004
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2004, through January 1, 2005. The CFR volume issued as of January 1, 2004 should be retained.

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