Federal Register

11–7–06 Tuesday
Vol. 71 No. 215 Nov. 7, 2006

Pages 65035–65364

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.archives.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.gpoaccess.gov/nara,* available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 71 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**

General online information **202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.

2. The relationship between the Federal Register and Code of Federal Regulations.

3. The important elements of typical Federal Register documents.

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, November 14, 2006
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

Printed on recycled paper.

Contents

Federal Register

Vol. 71, No. 215

Tuesday, November 7, 2006

Agricultural Marketing Service
RULES
Onions grown in Idaho and Oregon, 65037–65041

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Foreign Agricultural Service
See Forest Service
NOTICES
Privacy Act; systems of records, 65067–65068

Air Force Department
NOTICES
Meetings:
Air Force Academy Board of Visitors, 65091–65092

Animal and Plant Health Inspection Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 65068–65069

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Census Bureau
NOTICES
Surveys, determinations, etc.:
Retail trade; annual, 65072–65073
Service industries; annual, 65073

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 65115–65117

Centers for Medicare & Medicaid Services
See Inspector General Office, Health and Human Services Department

Commerce Department
See Census Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
China; correction, 65090

Defense Department
See Air Force Department
See Navy Department
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals, 65090–65091
Meetings:
National Defense University Board of Visitors; correction, 65091

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Mallinckrodt Inc., 65134–65135
Siegfried (USA), Inc., 65135

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Meetings:
International Energy Agency Industry Advisory Board, 65092–65093
National Coal Council, 65093–65094

Environmental Protection Agency
PROPOSED RULES
Air pollution; standards of performance for new stationary sources:
Volatile organic compounds (VOC)—
Synthetic organic chemicals manufacturing industry and petroleum refineries; equipment leaks, 65302–65319

Executive Office of the President
See Presidential Documents

Export-Import Bank
NOTICES
Meetings; Sunshine Act, 65097–65098

Federal Aviation Administration
RULES
Airworthiness directives:
Airbus, 65045–65047
Cessna, 65047–65049
Rolls-Royce plc, 65043–65044
Societe de Motorisations Aeronautiques, 65041–65043
PROPOSED RULES
Airworthiness directives:
Mooney Airplane Co., Inc., 65062–65064
NOTICES
Antidrug and alcohol misuse prevention programs for personnel engaged in specified aviation activities:
Random drug and alcohol testing; minimum annual percentage rates, 65167
Meetings:
Aviation Rulemaking Advisory Committee; correction, 65167

Federal Communications Commission
NOTICES
Common carrier services:
Wireless telecommunications services—
FM broadcast construction permits auction; competitive bidding procedures, 65098–65113
Meetings; Sunshine Act, 65113

Federal Deposit Insurance Corporation
NOTICES
Committees; establishment, renewal, termination, etc.:
Economic Inclusion Advisory Committee, 65113–65114

Federal Emergency Management Agency
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 65120–65121

Federal Energy Regulatory Commission
RULES
Public Utility Holding Company Act of 2005; implementation:
Centralized Service Companies Annual Report (Form No. 60); electronic filing, 65049–65052
Financial accounting, reporting, and records retention requirements, 65200–65299
NOTICES
Complaints filed:
Stowe Electric Department et al., VT, 65096
Hydroelectric applications, 65096–65097
Applications, hearings, determinations, etc.:
Chandeleur Pipe Line Co., 65094
Independent Energy Producers Association, 65094
Manitowoc Public Utilities, 65094–65095
Rendezvous Pipeline Co., L.L.C., 65095
Transwestern Pipeline Co., LLC, 65095
Truman, MN, 65095–65096

Federal Highway Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 65167–65168
Environmental statements; notice of intent:
St. Clair County, MI, 65168–65169

Federal Motor Carrier Safety Administration
NOTICES
Meetings; Sunshine Act, 65169

Federal Railroad Administration
NOTICES
Environmental statements; availability, etc.:
Section 106 Programmatic Agreement; participation as concurring party, etc.—
Powder River Basin expansion project; railroad rehabilitation and improvement financing program loan application, 65169–65170

Federal Transit Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Transit assistance programs—
Certifications and assurances; annual list, 65328–65360

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Findings on petitions, etc.—
Colorado River cutthroat trout, 65064–65066
NOTICES
Comprehensive conservation plans; availability, etc.:
Pee Dee National Wildlife Refuge, NC, 65122–65123
Endangered and threatened species:
Incidental take permits—
Charlotte County, FL; Florida scrub-jay, 65125–65126
Environmental statements; notice of intent:
Incidental take permits—
San Francisco Bay Area, CA; 89 species, 65123–65125
Meetings:
Endangered Species of Wild Fauna and Flora International Trade Convention, 65126–65129
Trinity Adaptive Management Working Group, 65122

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Bambermycins, 65053
Ivermectin, etc., 65052
Lincomycin
Correction, 65052–65053

Foreign Agricultural Service
NOTICES
Tariff rate quotas:
Sugar from Mexico, 65069–65070

Forest Service
NOTICES
Appealable decisions; legal notice:
Southern Region, 65070–65072

General Services Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals, 65090–65091
Privacy Act; systems of records, 65114–65115

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Inspector General Office, Health and Human Services Department

Homeland Security Department
See Federal Emergency Management Agency

Housing and Urban Development Department
RULES
HUD-owned properties:
HUD-acquired single family property disposition; predatory lending practices; disciplinary actions against HUD-qualified real estate brokers, 65322–65325
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 65121–65122

Inspector General Office, Health and Human Services Department
NOTICES
Program exclusions; list
Federal Register publication discontinued, 65117–65120

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
See National Park Service
See Reclamation Bureau

International Trade Administration
NOTICES
Antidumping:
Carbazole violet pigment 23 from—
China, 65073–65077
Carbon and alloy steel wire rod from—
Trinidad and Tobago, 65077–65082

Steel concrete reinforcing bars from—
Turkey, 65082–65086

Justice Department
See Drug Enforcement Administration

Land Management Bureau
NOTICES
Alaska Native claims selection:
Toghotthele Corp., 65129–65130

Legal Services Corporation
RULES
Nondiscrimination on basis of disability, 65053–65061
PROPOSED RULES
Client grievance procedures, 65064

Minerals Management Service
NOTICES
Environmental statements; availability, etc.:
Gulf of Mexico OCS—
Oil and gas operations, 65130–65132

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals, 65090–65091

National Foundation on the Arts and the Humanities
NOTICES
Reports and guidance documents; availability, etc.:
Federal antidiscrimination, whistleblower protection, and retaliation laws; No FEAR Act notice, 65135–65136

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards:
Nonconforming vehicles; importation eligibility determinations, 65170–65172
Reports and guidance documents; availability, etc.:
Highway safety program guidelines, 65172–65196

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico reef fish; correction, 65061
NOTICES
Environmental statements; notice of intent:
Atlantic highly migratory species—
Atlantic shark management measures; sandbar, dusky, and porbeagle sharks, 65086–65087
Essential fish habitat, 65087–65088
Exempted fishing permit applications, determinations, etc., 65088–65089
Reports and guidance documents; availability, etc.:
U.S. Climate Change Science Program Synthesis and Assessment Product Prospectus, 65089–65090

National Park Service
NOTICES
Environmental statements; record of decision:
Acadia National Park, ME, 65132–65133
Meetings:
National Capital Region; 2006 Christmas Pageant of Peace, 65133–65134

National Science Foundation
NOTICES
Meetings:
Commission on 21st Century Education in Science, Technology, Engineering, and Mathematics, 65136

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 65136

Navy Department
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Seahawk Biosystems Corp., 65092

Nuclear Regulatory Commission
NOTICES
Meetings; Sunshine Act, 65138–65139
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 65139–65148
Reports and guidance documents; availability, etc.:
Combustion engineering pressurized water reactors; containment spray and cooling systems; technical specification improvement; model safety evaluation, 65148–65160
Applications, hearings, determinations, etc.:
Hydro Resources, Inc., 65137
Nebraska Public Power District, 65137–65138

Presidential Documents
PROCLAMATIONS
Special observances:
World Freedom Day (Proc. 8081), 65361–65363
ADMINISTRATIVE ORDERS
Lebanon; drawdown authorization to support transport of Indonesian peacekeeping forces (Presidential Determination)
No. 2006-26 of September 29, 2006, 65035

Reclamation Bureau
NOTICES
Central Valley Project Improvement Act:
Water management plans; evaluation criteria development, 65134

Securities and Exchange Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 65160–65161

State Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 65161–65164
Committees; establishment, renewal, termination, etc.:
Overseas Security Advisory Council, 65164–65165
Culturally significant objects imported for exhibition:
Terracotta kylix, 65165
Grant and cooperative agreement awards:
American Council of Learned Societies et al., 65165–65166

Surface Transportation Board
NOTICES
Railroad services abandonment:
Boston & Maine Corp., 65197

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Motor Carrier Safety Administration
See Federal Railroad Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 65166
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 65166–65167

Treasury Department
See United States Mint

United States Mint
NOTICES
Meetings:
Citizens Coinage Advisory Committee, 65196–65197

Separate Parts In This Issue

Part II
Energy Department, Federal Energy Regulatory Commission, 65200–65299

Part III
Environmental Protection Agency, 65302–65319

Part IV
Housing and Urban Development Department, 65322–65325

Part V
Transportation Department, Federal Transit Administration, 65328–65360

Part VI
Executive Office of the President, Presidential Documents, 65361–65363

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

8081 65363

Administrative Orders:

Presidential Determinations:

No. 2006-26 of September 29, 2006 65035

7 CFR

958 65037

14 CFR

39 (4 documents) 65041, 65043, 65045, 65047

Proposed Rules:

39 65062

18 CFR

366 (2 documents) 65049, 65200

367 65200

368 65200

369 65200

375 65200

385 65049

21 CFR

520 65052

522 65052

558 65053

24 CFR

291 65322

40 CFR

Proposed Rules:

60 65302

45 CFR

1624 65053

Proposed Rules:

1621 65064

50 CFR

622 65061

Proposed Rules:

17 65064

Federal Register
Vol. 71, No. 215
Tuesday, November 7, 2006

Presidential Documents

Title 3—

The President

Presidential Determination No. 2006–26 of September 29, 2006

Presidential Determination on Drawdown of Commodities and Services from the Department of Defense to Support Transport of Indonesian Peacekeeping Forces to Lebanon

Memorandum for the Secretary of State [and the] Secretary of Defense

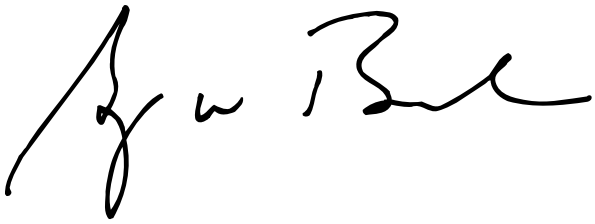
Pursuant to the authority vested in me by the Constitution and laws of the United States, including section 552(c)(2) of the Foreign Assistance Act of 1961, as amended, I hereby determine that:

(1) as a result of an unforeseen emergency, the provision of assistance under Chapter 6 of Part II of the Act in amounts in excess of funds otherwise available for such assistance is important to the national interests of the United States; and

(2) such unforeseen emergency requires the immediate provision of assistance under Chapter 6 of Part II of the Act.

I, therefore, direct the drawdown of up to $2,999,000 in commodities and services from the Department of Defense to support the transportation of Indonesian forces in support of the United Nations Interim Force in Lebanon.

The Secretary of State is authorized and directed to report this determination to the Congress and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, September 29, 2006.

[FR Doc. 06–9118
Filed 11–6–06; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register
Vol. 71, No. 215
Tuesday, November 7, 2006

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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 958

[Docket No. FV06–958–1 IFR]

Onions Grown in Certain Designated Counties in Idaho, and Malheur County, OR; Change in Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule changes the reporting requirements established under the Idaho-Eastern Oregon onion marketing order, which regulates the handling of onions grown in designated counties in Idaho and Oregon and is administered locally by the Idaho-Eastern Oregon Onion Committee. This rule: Establishes a credit application procedure for assessments paid on onions that are subsequently regraded, resorted, or repacked within the production area or diverted to exempt special purpose outlets; changes the reporting requirements for fresh onions for peeling, chopping, or slicing, and for special purpose shipments; adds ''disposal'' as a special purpose shipment; and announces the Agricultural Marketing Service's (AMS) intention to request emergency approval by the Office of Management and Budget (OMB) of a new information collection. These changes are intended to enhance the efficient operation of the program and improve compliance with the other provisions.

DATES: Effective November 8, 2006; comments received by January 8, 2007 will be considered prior to issuance of a final rule. Pursuant to the Paperwork Reduction Act, comments on the information collection burden that would result from this proposal must be received by January 8, 2007.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, E-mail: *moabdocket.clerk@usda.gov* or Internet: *http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Susan M. Hiller, Marketing Specialist or Gary D. Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or E-mail: *Susan.Hiller@usda.gov* or *GaryD.Olson@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 130 and Marketing Order No. 958, both as amended (7 CFR part 958), regulating the handling of onions grown in designated counties in Idaho, and Malheur County, Oregon, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule establishes an application procedure for handlers to receive credit for assessments paid on onions that are subsequently regraded, resorted, or repacked within the production area or diverted to exempt special purpose outlets; changes the reporting requirements for fresh onions for peeling, chopping, or slicing; changes the reporting requirements for special purpose shipments; adds ''disposal'' as a special purpose shipment; and announces the Agricultural Marketing Service's intention to request emergency approval by the Office of Management and Budget (OMB) of a new information collection. These actions were unanimously recommended by the Committee at a meeting on June 15, 2006.

Section 958.53 provides authority for the Committee, with the approval of USDA, to exempt special purpose shipments from assessment and handling regulations established under the order. Under this authority, § 958.328(e) exempts onions for planting, livestock feed, charity, dehydration, canning, freezing, extraction and pickling from the minimum grade, size, maturity, assessment and inspection requirements. Section 958.56 provides authority for the Committee, with the approval of USDA, to prescribe safeguards to prevent onions from

entering channels of trade for other than the purpose authorized. Safeguards in effect are delineated in § 958.328(f). Section 958.65 provides authority for the Committee, with the approval of USDA, to require such reports and other information as may be necessary for the Committee to perform its duties.

The Committee conducted an industry-wide meeting on January 17, 2006, to review the compliance and safeguard provisions of the order. The Committee appointed a Compliance Subcommittee, which met on May 16, 2006, to review the comments received. The three main areas of concern expressed by industry members were: (1) The need to provide a procedure for handlers to obtain credit for assessments paid on onions that are subsequently regraded, resorted, or repacked within the production area or diverted into exempt special purpose outlets; (2) improving the method of reporting fresh market onions for peeling, chopping, or slicing; and (3) improving and streamlining the safeguards for special purpose shipments. An overriding concern expressed was the need to decrease the reporting burden on receivers (buyers) of Idaho-Eastern Oregon onions.

The Committee met on June 15, 2006, to hear the report of the Compliance Subcommittee. The Committee thereafter unanimously recommended changing the reporting requirements established under the order to address these three areas of concern. The Committee recommended adding a new § 958.250 and a new form, ''Assessment Credit Report'', which establishes a procedure for those handlers who would like credit for assessments paid on onions in accordance with §§ 958.42 and 958.240 that are subsequently regraded, resorted, or repacked within the production area, or shipped into special purpose outlets. The Committee also recommended that ''disposal'' be added to § 958.328(e) as a special purpose to allow handlers to receive assessment credit on onions for which assessments have been paid when such onions are disposed of. Disposal means destroying the onions, generally by burying the onions in special pits.

The Committee unanimously recommended changing the reporting requirements for fresh onions for peeling, chopping, or slicing in § 958.328(d) by removing receiver reporting requirements. Previously, the name of Form No. FV–37, was the ''Rehandling of Onions Report'', which handlers found confusing and unrelated to the actual activity. The form has been renamed ''Fresh Cut Report'' (same form number) which will be submitted by handlers for multiple shipments rather than individual shipments.

The Committee agreed with industry concerns that reporting burdens should not be placed on the receivers of Idaho-Eastern Oregon onions. Receivers are able to acquire onions from regions that do not have a marketing order in effect and avoid reporting requirements. The Committee received reports that handlers in the production area may have lost sales due to receiver reporting requirements.

This rule will also change the safeguard reporting requirements in § 958.328(f) by clarifying that the safeguard procedures are required only for onions shipped outside the Idaho-Eastern Oregon onion production area.

Under the new safeguard procedures, with newly revised forms, handlers will notify the Committee and obtain a Certificate of Privilege permit number by completing form FV–34, ''Application to Make Special Purpose Shipments—Certificate of Privilege.'' Receivers of special purpose onions will only need to complete form FV–36, ''Special Purpose Shipment Receiver Certification'' indicating they will use the onions in an approved special purpose outlet. Receivers will no longer be required to submit form FV–35, ''Onion Diversion Report'' for every shipment. Handlers will submit additional information to the Committee on form FV–34, ''Application to Make Special Purpose Shipments—Certificate of Privilege.'' This information would include type of sale, total hundredweight for the sale, and the type of container for the sale. This form can be used for multiple shipments.

These changes are intended to enhance compliance of the special purpose shipment procedures established under the order and contribute to the efficient operation of the program.

And finally, this rule reorganizes the rules and regulations issued under this order by removing the heading ''Subpart—Assessment Rates'' and adding a new heading ''Subpart—Rules and Regulations.''

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 250 producers of onions in the production area, 38 handlers, and 24 receivers subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,500,000.

The National Agricultural Statistics Service (NASS) reported in the ''Vegetables 2005 Summary'', published in January 2006, that the total F.O.B. value of onions in the regulated production area for 2005 was $148,685,000. Therefore, based on an industry of 250 producers, 38 handlers, and 24 receivers, it can be concluded that the majority of producers, handlers, and receivers of Idaho-Eastern Oregon onions may be classified as small entities.

This rule would add a new § 958.250 which will establish an application procedure for handlers to receive credit for assessments paid on onions in accordance with §§ 958.42 and 958.240 and are subsequently regraded, resorted, repacked within the production area, or sent to exempt special purpose outlets. This rule also adds ''disposal'' as a special purpose shipment.

The rule changes the reporting requirements for fresh onions for peeling, chopping, or slicing and for special purpose shipments by reducing receiver reporting requirements and streamlining handler reporting requirements.

Regarding the impact of these actions on affected entities, this rule will impose minimal additional costs. This rule establishes a procedure to make it easier for handlers to apply for an assessment credit. The change in the reporting requirements for fresh onions for peeling, chopping, or slicing, as well as the change to the safeguards for special purpose shipments were requested by industry members and would decrease the overall reporting burden. The benefits of this rule are not expected to be disproportionately greater or less for small handlers or producers than for larger entities.

An alternative to these actions would be to have handlers report onion shipments rather than utilizing the information from each handler's inspection certificates. However, most

handlers were opposed to this alternative because it would increase their reporting burden.

This action imposes an additional reporting burden on onion handlers but eliminates reporting by receivers of onions. This action requires a new Committee form and the revision of four Committee forms, previously approved by OMB under OMB No. 0581–0178, Vegetable and Specialty Crops.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that the AMS is requesting emergency approval from the Office of Management and Budget (OMB) for a new information collection request, under OMB No. 0581–NEW, and to revise two forms previously approved under OMB No. 0581–0178, Vegetable and Specialty Crops. The emergency request was necessary because insufficient time was available to follow normal clearance procedures. Upon approval of this new collection by OMB, it will be merged with the forms currently approved for use under OMB No. 0581–0178.

As mentioned earlier, the Committee's reporting requirement recommendations involves the revision of four previously approved forms, under OMB No. 0581–0178, and the addition of one new form, under OMB No. 0581–NEW. Two of the revised forms, FV–36, ''Special Purpose Certificate for Handling Onions Which Do Not Meet Fresh Market Requirements'', which has been renamed ''Special Purpose Shipment Receiver Certification'', and FV–37, ''Rehandling of Onions Report'', which has been renamed to ''Fresh Cut Report''; have been submitted to OMB and were approved on July 12, 2006. The remaining two previously approved forms which are being revised, FV–34, ''Application to Make Special Purpose Shipments—Certificate of Privilege'', FV–35, ''Onion Diversion Report'', and the new form ''Assessment Credit Report'', are being submitted to OMB through an emergency approval request of a new information collection. Upon approval, the new collection will be merged into OMB No. 0581–0178, Vegetable and Specialty Crops.

Title: Onions Grown in Designated Counties in Idaho, and Malheur County, Oregon.

OMB Number: 0581–NEW.

Expiration Date of Approval: Emergency request.

Type of Request: New collection.

Abstract: The information collection requirements in this request are essential to provide handlers with a procedure to receive credit for assessments paid on onions that are subsequently regraded, resorted, or repacked within the production area, or shipped into exempt special purpose outlets.

On June 15, 2006, the Committee unanimously recommended changing the order's reporting requirements. This rule establishes an application procedure for handlers to receive credit for assessments paid on onions that are subsequently regraded, resorted, or repacked within the production area or diverted to exempt special purpose outlets. In order to receive a credit, handlers would complete the ''Assessment Credit Report'' and submit it to the Committee.

This rule also changes reporting requirements for fresh onions for peeling, chopping, or slicing, by having handlers complete form FV–37, ''Fresh Cut Report.'' Finally, this rule changes the safeguards for special purpose shipments. Handlers who desire to make a special purpose shipment must complete form FV–34, ''Application to Make Special Purpose Shipments—Certificate of Privilege.'' This form would be completed for each volume or other sale of onions destined to be shipped outside the production area to canners, dehydrators, extractors, freezers, or picklers. The Committee will evaluate the application and issue a Certificate of Privilege permit number, if approved. The Committee may contact a receiver of a special purpose shipment to verify each application by having the receiver complete form FV–36, ''Special Purpose Shipment Receiver Certification.'' Finally, the handler will submit form FV–35, ''Onion Diversion Report'', for each Certificate of Privilege permit number with the frequency dependent upon the type of sale and container.

These changes are being made at the request of the industry to provide a procedure for handlers to obtain credit for assessments paid on onions that are subsequently regraded, resorted, or repacked within the production area or diverted into exempt special purpose outlets. These changes are also intended to improve the method of reporting fresh market onions for peeling, chopping, or slicing; improve and streamline the safeguards for special purpose shipments; and improve compliance with the order. Committee members are confident that these revisions will also improve the accuracy of the information submitted while responding to the needs of the handlers for efficiency.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs regional and headquarters' staff, and authorized employees of the Committee. Authorized Committee employees and the industry are the primary users of the information and AMS is the secondary user.

The request for approval of the new information collection under the order is as follows:

''Assessment Credit Report''

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 8 minutes per response.

Respondents: Idaho-Eastern Oregon onion handlers.

Estimated Number of Respondents: 35.

Estimated Number of Responses per Respondent: 20.

Estimated Total Annual Burden on Respondents: 91 hours.

The request for approval of the revised information collection under OMB No. 0581–0178, order is as follows:

Form FV–34, ''Application To Make Special Purpose Shipments—Certificate of Privilege''

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 8 minutes per response.

Respondents: Idaho-Eastern Oregon onion handlers.

Estimated Number of Respondents: 20.

Estimated Number of Responses per Respondent: 3.

Estimated Total Annual Burden on Respondents: 7.8 hours.

Form FV–35, ''Onion Diversion Report''

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 8 minutes per response.

Respondents: Idaho-Eastern Oregon onion handlers.

Estimated Number of Respondents: 20.

Estimated Number of Responses per Respondent: 100.

Estimated Total Annual Burden on Respondents: 260 hours.

Comments: Comments are invited on: (1) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility,

and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–NEW and Onions Grown in Designated Counties in Idaho, and Malheur County, Oregon, and be sent to the USDA in care of the Docket Clerk at the address above. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record. As mentioned before, because there was insufficient time for a normal clearance procedure and prompt implementation is needed, AMS is requesting emergency approval from OMB for the use of this collection of forms for the 2006 regulation period, which began in August 2006. Upon publication of the final rule, this collection will be merged with the forms currently approved for use under OMB No. 0581–0178 ''Generic OMB Vegetable Crops.''

As with other similar marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

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

Further, the Committee's meeting on June 15, 2006, was widely publicized throughout the onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the June 15, 2006, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Also, the Committee has a number of appointed sub-committees to review certain issues and make recommendation to the Committee. The Compliance Subcommittee met on May 16, 2006, and discussed these issues in detail. All interested persons were invited to attend this meeting and participate in the industry's deliberations. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

In summary, this rule establishes an application procedure for handlers to receive credit for assessments paid on onions that are subsequently regraded, resorted, or repacked within the production area or diverted to exempt special purpose outlets; changes the reporting requirements for fresh onions for peeling, chopping, or slicing; adds ''disposal'' as a special purpose shipment; changes the reporting requirements for special purpose shipments; and announces the Agricultural Marketing Service's intention to request emergency approval by the Office of Management and Budget (OMB) of a new information collection. This rule removes reporting requirements for receivers and streamlines handler reporting requirements. These changes are beneficial to the compliance of the special purpose shipment procedures established under the marketing order and contribute to the efficient operation of the program. This rule invites comments on these changes. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule reduces industry reporting and recordkeeping requirements; (2) the Idaho-Eastern Oregon onion marketing season began in August and these changes should be in effect as soon as possible to achieve their intended purpose; (3) the Committee unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; (4) this rule provides a 60-day comment period on the regulation changes which is deemed appropriate, and a 60-day comment period on the reporting requirement changes, and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 958

Onions, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 958 is amended as follows:

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

■ 1. The authority citation for 7 CFR part 958 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Add new subpart heading ''Subpart—Rules and Regulations'' before ''§ 958.112 Fiscal Period.''

■ 3. Remove Subpart heading ''Subpart—Assessment Rates'' after § 958.160.

■ 4. Add a new § 958.250 under subpart Rules and Regulations to read as follows:

§ 958.250 Assessment Credit Report.

Each handler may receive a credit for assessments on onions that have been levied in accordance with §§ 958.42 and 958.240 and are subsequently regraded, resorted, or repacked within the production area, or shipped in accordance with § 958.328(e) by furnishing the ''Assessment Credit Report'' and such other information as required to the committee.

■ 5. Revise paragraphs (d), (e) and (f) of § 958.328 to read as follows;

§ 958.328 Handling regulation.

* * * * *

(d) *Onions for peeling, chopping, or slicing.* Onions that have been inspected and certified as meeting the requirements of paragraphs (a) and (b) of this section and that are subsequently peeled, chopped, or sliced for fresh market within the production area may be handled without reinspection: *Provided the following:*

(1) Each handler making shipments of onions for alteration or performing alteration by peeling, chopping, or slicing must furnish the committee the following information on the ''Fresh Cut Report'' and such other documents as required:

(i) Business name, address, telephone number, signature, and the date the form was signed;

(ii) The date of peeling, chopping, or slicing;

(iii) Inspection certificate number;

(iv) The quantity of onions; and

(v) Such other information as may be required by the committee.

(2) Handlers who peel, chop, or slice onions produced outside the production area must provide the committee with documentation showing that the onions so prepared were produced outside the production area.

(e) *Special purpose shipments.* The minimum grade, size, maturity, assessment, and inspection requirements of this section shall not be applicable to shipments of onions for any of the following purposes:

(1) Planting,

(2) Livestock feed,

(3) Charity,

(4) Dehydration,

(5) Canning,

(6) Freezing,

(7) Extraction,

(8) Pickling, and

(9) Disposal.

In addition, the minimum grade, size, and maturity requirements set forth in paragraph (a) of this section shall not be applicable to shipments of pearl onions, but the maximum size requirement in paragraph (h) of this section and the assessment and inspection requirements shall be applicable to shipments of pearl onions.

(f) *Safeguards.* Each handler making shipments of onions outside the production area for dehydration, canning, freezing, extraction, or pickling pursuant to paragraph (e) of this section shall:

(1) Furnish ''Application to Make Special Purpose Shipments—Certificate of Privilege'' and such other information to the committee as required. The committee will review and verify each ''Application to Make Special Purpose Shipments—Certificate of Privilege'' and notify the handler of approval or disapproval. The committee may contact the receiver or receiver's agent of the special purpose shipment for verification and request the receiver or receiver's agent to complete a ''Special Purpose Shipment Receiver Certification'';

(2) Bill or consign each shipment directly to the applicable receiver or receiver's agent of the special purpose shipment;

(3) Furnish ''Onion Diversion Report'' and such other information to the committee as required. Failure of the handler to furnish such report and information as required to the committee may be cause for cancellation of such handlers' Certificate of Privilege. Upon cancellation of any such Certificate of Privilege the handler may appeal to the committee for reconsideration. The committee may audit a receiver or receiver's agent of the special purpose shipment to verify reports and information submitted by handlers. Failure of a receiver or receiver's agent of a special purpose shipment to comply with the committee may be cause for cancellation of the receiver's or receiver agent's eligibility to receive further special purpose shipments from the production area. Upon cancellation of any such Certificate of Privilege the receiver or the receiver's agent may appeal to the committee for reconsideration.

* * * * *

Dated: November 3, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–9112 Filed 11–3–06; 11:11 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26102; Directorate Identifier 2006–NE–36–AD; Amendment 39–14820; AD 2006–23–08]

RIN 2120–AA64

Airworthiness Directives; Societe de Motorisations Aeronautiques (SMA) SR305–230 and SR305–230–1 Reciprocating Engines

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: ''Over a period of time, the alteration of one electronic control unit (ECU) electronic component can cause a rapid uncontrolled power increase. Several occurrences have already been reported during engine start or during engine warm-up.''

The event can also occur in flight which can result in loss of control of the airplane.

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective November 22, 2006.

We must receive comments on this AD by November 22, 2006.

ADDRESSES: You may send comments by any of the following methods:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5227) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. This streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct

unsafe conditions on U.S.-certificated products.

This AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

Discussion

The European Aviation Safety Agency (EASA), which is the aviation authority for the European community, has issued Emergency Airworthiness Directive No. 2006–0312–E, dated October 13, 2006 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states that:

> Over a period of time, the alteration of one ECU electronic component can cause a rapid uncontrolled power increase. Several occurrences have already been reported during engine start or during engine warm-up.

The event can also occur in flight which can result in loss of control of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

SMA has issued Service Bulletin No. SB–01–76–004, dated October 10, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all the information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between the AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because of the several occurrences that have already been reported during engine start or during engine warm-up. The event can also occur in flight which can result in loss of control of the airplane. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2006–26102; Directorate Identifier 2006–NE–36–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2006–23–08 Societe de Motorisations Aeronautiques (SMA): Amendment 39–14820; Docket No. FAA–2006–26102; Directorate Identifier 2006–NE–36–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 22, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to SMA SR305–230 and SR305–230–1 reciprocating engines. These engines are installed on, but not limited to, Cessna 182, Maule M–7, and Piper PA–34 airplanes.

Reason

(d) European Aviation Safety Agency, (EASA), Emergency Airworthiness Directive No. 2006–0312–E, dated October 13, 2006 states:

Over a period of time, the alteration of one electronic control unit (ECU) electronic component can cause a rapid uncontrolled power increase. Several occurrences have already been reported during engine start or during engine warm-up.

The event described in the EASA AD can also occur in flight which can result in loss of control of the airplane.

Actions and Compliance

(e) Unless already done, do the following actions before further flight.

(1) Determine the serial number (SN) of the ECU installed on the aircraft. Do not operate the engine if the ECU SN is 131 and below, except SN 70, 71, 83, and 88.

(2) If the ECU SN is 131 and below, except 70, 71, 83, and 88, remove and replace the ECU with an ECU having a SN of 132 and above.

FAA AD Differences

(f) None.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Engine Certification Office, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to mandatory continuing airworthiness information (MCAI) EASA Airworthiness Directive No. 2006–0312–E, dated October 13, 2006, and SMA Service Bulletin No. SB–01–76–004, dated October 10, 2006, for related information.

Material Incorporated by Reference

(i) None.

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

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E6–18666 Filed 11–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25855; Directorate Identifier 2006–NE–29–AD; Amendment 39–14819; AD 2006–23–07]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc Trent 768–60, Trent 772–60, and Trent 772B–60 Turbofan Engines.

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Rolls-Royce plc Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines. This AD requires removing from service certain sets of fan blade annulus fillers at a new life limit. This AD results from six reports of fan annulus filler release into the engine. We are issuing this AD to prevent a dual-engine shutdown on twin-engine airplanes.

DATES: Effective November 22, 2006.

We must receive any comments on this AD by January 8, 2007.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone: (781) 238–7175, fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION: The European Aviation Safety Agency (EASA), which is the airworthiness authority for the European community, recently notified us that an unsafe condition may exist on Rolls-Royce plc Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines. EASA advises that six occurrences of the release of a fan annulus filler into the engine have occurred in 2005. Because of the number of events, there is a risk of a dual-engine shutdown on twin-engine airplanes.

Bilateral Airworthiness Agreement

These Rolls-Royce plc Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines are manufactured in the United Kingdom. They are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Under this bilateral airworthiness agreement, EASA kept the FAA informed of the situation described above. We have examined the findings of EASA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination and Requirements of This AD

Although no airplanes that are registered in the United States use these engines, the possibility exists that the engines could be used on airplanes that are registered in the United States in the future. The unsafe condition described previously is likely to exist or develop on other Rolls-Royce plc Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines of the same type design. We are issuing this AD to prevent a dual-engine shutdown on twin-engine airplanes. This AD requires the following:

- On or before December 31, 2006, if an airplane has fan annulus fillers, part number (P/N) FK21226, installed in both engines or has fan annulus fillers, P/N FK21226, in one engine and P/N FK22974, in the other engine, then the accumulated life of the fan annulus fillers on at least one engine must not exceed 7,500 cycles-in-service (CIS). Replace one of the engines, or one set of fan annulus fillers before further flight to comply with this requirement.
- After December 31, 2006, remove sets of fan annulus fillers, P/N FK21226, before exceeding the life limit of 6,500 CIS.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this engine model, notice and opportunity for public comment before issuing this AD are unnecessary.

A situation exists that allows the immediate adoption of this regulation.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''AD Docket No. FAA–2006–25855; Directorate Identifier 2006–NE–29–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

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

Examining the AD Docket

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2006–23–07 Rolls Royce plc: Amendment 39–14819. Docket No. FAA–2006–25855; Directorate Identifier 2006–NE–29–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 22, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce plc Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines. These engines are installed on, but not limited to, Airbus A330 airplanes.

Unsafe Condition

(d) This AD results from six reports of fan annulus filler release into the engine. We are issuing this AD to prevent a dual-engine shutdown on twin-engine airplanes.

Compliance

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

Actions to Take on or Before December 31, 2006

(f) On or before December 31, 2006, if an airplane has fan annulus fillers, part number (P/N) FK21226, installed in both engines or has fan annulus fillers, P/N FK21226, in one engine and P/N FK22974, in the other engine, then the accumulated life of the fan annulus fillers on at least one engine must not exceed 7,500 cycles-in-service (CIS). Replace one of the engines, or one set of fan annulus fillers before further flight to comply with this requirement.

Actions to Take After December 31, 2006

(g) After December 31, 2006, remove sets of fan annulus fillers, P/N FK21226, before exceeding the life limit of 6,500 CIS.

Alternative Methods of Compliance

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

Related Information

(i) EASA airworthiness directive No. 2006–0116, dated May 8, 2006, also addresses the subject of this AD.

(j) Rolls-Royce plc Alert Service Bulletin No. RB.211–72–AF109, dated March 28, 2006, pertains to the subject of this AD.

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

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E6–18702 Filed 11–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24958; Directorate Identifier 2006–NM–075–AD; Amendment 39–14818; AD 2006–23–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 Airplanes, Equipped With General Electric CF6–50 Series Engines

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Model A300 airplanes. This AD requires modifying the airplane and the engine/nacelle to install a third line of defense against inadvertent deployment of the thrust reverser in flight. This AD also requires two other actions that must be accomplished before or concurrently with the modification: installing a structural change in the fan cowl to avoid interference; and installing a dedicated, shielded electrical circuit. This AD results from a report that the manufacturer has developed a third line of defense against the inadvertent deployment of the thrust reverser of Model A300 airplanes that are equipped with General Electric CF6–50 series engines (in accordance with FAA guidelines). We are issuing this AD to prevent inadvertent deployment of the thrust reverser in flight, which could result in reduced controllability of the airplane.

DATES: This AD becomes effective December 12, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of December 12, 2006.

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

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Airbus Model A300 airplanes. That NPRM was published in the **Federal Register** on June 8, 2006 (71 FR 33264). That NPRM proposed to require modifying the airplane and the engine/nacelle to install a third line of defense against inadvertent deployment of the thrust reverser in flight. That NPRM also proposed to require two other actions that must be accomplished before or concurrently with the modification: installing a structural change in the fan cowl to avoid interference; and installing a dedicated, shielded electrical circuit.

Comments

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

Support for the NPRM

Air line Pilots Association supports the NPRM.

Request To Revise the ''Costs of Compliance''

GE Aviation requests that we revise the estimated costs for complying with the NPRM. GE Aviation specifically requests the changes shown in the following table.

REQUESTED CHANGES TO ESTIMATED COSTS

Action	Work hours in NPRM	Requested change	Parts cost in original NPRM	Requested change
Install third line of defense	6	282	$440	$172,744.
Install structural change in the fan cowl (prior/concurrent requirement)	312	328	5,680	No change requested.
Install dedicated, shielded electrical circuit (prior/concurrent requirement)	94	261	28,700	$18,320.

We agree to revise the cost information. This cost information is not provided in the Airbus service information that was referenced in the NPRM, but is available through Middle River Aircraft Systems (MRAS), a subsidiary of the General Electric Company. Therefore, we agree that the MRAS cost information provided by GE Aviation is valid. We have revised the estimated costs in this final rule as requested by GE Aviation. We have coordinated this change with Airbus.

Request To Revise Description of Service Bulletin

GE Aviation also requests that we revise the description of Airbus Service Bulletin A300–78–0022, dated September 27, 2005, which was included in the ''Relevant Service Information'' section of the NPRM. The NPRM referred to that service bulletin as the appropriate source of service information for accomplishing the proposed actions. GE Aviation specifically requests that we add the phrase ''installing the electro-pneumatic locking bar assembly on each thrust reverser half,'' before the phrase, ''and installing a dual switcher valve. * * *''

We agree with the commenter that the requested phrase clarifies our description of the service bulletin. However, since that section of the preamble does not reappear in the final rule, no change to this AD is necessary.

Conclusion

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

Costs of Compliance

This AD affects about 30 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD. The average labor rate is $80 per work hour.

ESTIMATED COSTS

Action	Work hours	Parts ($)	Cost per airplane ($)	Fleet cost ($)
Install third line of defense	282	172,744	195,304	5,859,120
Install structural change in the fan cowl (prior/concurrent requirement)	328	5,680	31,920	957,600
Install dedicated, shielded electrical circuit (prior/concurrent requirement)	261	18,320	39,200	1,176,000

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–23–06 Airbus: Amendment 39–14818. Docket No. FAA–2006–24958; Directorate Identifier 2006–NM–075–AD.

Effective Date

(a) This AD becomes effective December 12, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300 airplanes, certificated in any category; equipped with General Electric CF6–50 series engines.

Unsafe Condition

(d) This AD results from a report that the manufacturer has developed a third line of defense against the inadvertent deployment of the thrust reverser of Model A300 airplanes that are equipped with General Electric CF6–50 series engines (in accordance with FAA guidelines). We are issuing this AD to prevent inadvertent deployment of the thrust reverser in flight, which could result in reduced controllability of the airplane.

Compliance

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

Modification

(f) Within 48 months after the effective date of this AD, modify the airplane and the engine/nacelle to install a third line of defense against inadvertent deployment of the thrust reverser in flight, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–78–0022, dated September 27, 2005.

Prior/Concurrent Installations

(g) Prior to or concurrently with the modification required by paragraph (f) of this AD, do the installations specified in Table 1 of this AD in accordance with the Accomplishment Instructions of the service bulletins listed in Table 1 of this AD.

TABLE 1.—PRIOR/CONCURRENT ACTIONS

Action	Airbus service bulletin
(1) Install a structural change in the fan cowl to avoid interference between the third line of defense hardware installed on the thrust reverser and the fan cowl.	A300–54–0098, dated September 27, 2005.
(2) Install a dedicated, shielded electrical circuit, segregated from the current thrust reverser control system.	A300–78–0021, dated September 27, 2005.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(i) French airworthiness directive F–2005–206, dated December 21, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use the service information specified in Table 2 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

Airbus service bulletin—	Dated—
A300–54–0098	September 27, 2005.
A300–78–0021	September 27, 2005.
A300–78–0022	September 27, 2005.

Issued in Renton, Washington, on October 25, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–18663 Filed 11–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26242; Directorate Identifier 2006–NM–229–AD; Amendment 39–14817; AD 2006–23–05]

RIN 2120–AA64

Airworthiness Directives; Cessna Model 750 Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Cessna Model 750 airplanes. This AD requires inspecting the inboard-hinge brackets of the left and right elevators for cracking, and doing related investigative and corrective actions if necessary. This AD results from a report of cracking found on the elevator inboard-hinge brackets. We are issuing this AD to detect and correct cracking of the elevator inboard-hinge brackets, which could result in structural failure of the elevators and consequent loss of control of the airplane.

DATES: This AD becomes effective November 22, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of November 22, 2006.

We must receive comments on this AD by January 8, 2007.

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

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

Contact Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: T.N. Baktha, Aerospace Engineer, Airframe and Services Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4155; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

We have received a report indicating that, during a maintenance inspection, a crack was found in one of the lugs on the elevator inboard-hinge bracket of a Cessna Model 750 airplane; cracking was also found on the elevator inboard-hinge brackets on seven other Model 750 airplanes. The cracking was attributed to fatigue caused by excessive side loads on the bracket from the flexing of the elevator during flight. This condition, if not corrected, could result in structural failure of the elevators and consequent loss of control of the airplane.

Relevant Service Information

We have reviewed Cessna Alert Service Letter ASL750–27–21, excluding the attachment titled ''Inspection Results Form'' and including the attachment titled ''Flight Restrictions,'' dated October 13, 2006. The service letter describes procedures for performing a visual inspection of the inboard-hinge brackets of the left and right elevators. Related investigative and corrective actions include:

- *If any crack is found:* Perform an eddy current inspection of the bracket(s) to confirm the crack and its length.
- *If the crack is 0.30 inch or more:* Replace the bracket(s) before the next flight.
- *If the crack is less than 0.30 inch:* Continued flight for repositioning of the airplane and replacement of the bracket is allowed within the restricted flight envelope included in the attachment to the service letter titled ''Flight Restrictions,'' for a maximum of 10 flight hours'' time-in-service.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. For this reason, we are issuing this AD to detect and correct cracking of the elevator inboard-hinge brackets, which could result in structural failure of the elevators and consequent loss of control of the airplane. This AD requires inspecting the inboard-hinge brackets of the left and right elevators for cracking, and doing related investigative and corrective actions if necessary; except as discussed under ''Differences Between the AD and the Service Letter.''

Differences Between the AD and the Service Letter

While it is not our usual policy to allow flight with known cracks, to be consistent with the service letter, this AD permits further flight with cracks with certain restrictions, as specified in paragraph (g)(2) of this AD. In consideration of these restrictions and the FAA's criteria for flight with known cracking, continued flight for a maximum of 10 flight hours for repositioning of the airplane and replacement of the bracket is allowed, provided the airplane is operated in accordance with the revised flight restrictions specified in the service letter.

The procedures in the service letter refer only to a ''visual inspection'' for cracking of the inboard-hinge brackets. We have determined that the inspection should be described as a ''general visual inspection.'' Note 1 has been included in this AD to define this type of inspection.

The procedures in the service letter specify submitting a sheet related to inspection results to the manufacturer, but this AD does not require that action.

The procedures in the service letter also specify sending the elevator assembly to the manufacturer for replacement of the inboard-hinge bracket if a crack is found that is 0.30 inch or longer; however, this AD requires corrective actions be done using a method approved by us.

Interim Action

We consider this AD interim action. If final action is later identified, we may consider further rulemaking then.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include ''Docket No. FAA–2006–26242; Directorate Identifier 2006–NM–229–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

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

Examining the Docket

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–23–05 Cessna Aircraft Company: Amendment 39–14817. Docket No. FAA–2006–26242; Directorate Identifier 2006–NM–229–AD.

Effective Date

(a) This AD becomes effective November 22, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Cessna Model 750 airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report of cracking found on the elevator inboard-hinge brackets. We are issuing this AD to detect and correct cracking of the elevator inboard-hinge brackets, which could result in structural failure of the elevator and consequent loss of control of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within

the compliance times specified, unless the actions have already been done.

Inspection

(f) After the airplane accumulates 2,500 total flight hours: Perform a general visual inspection for cracking of the inboard-hinge brackets of the left and right elevators in accordance with the Accomplishment Instructions of Cessna Alert Service Letter ASL750–27–21, dated October 13, 2006. Do the inspection before the airplane accumulates 3,000 total flight hours, or within 10 flight hours after the effective date of this AD, whichever is later.

Note 1: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Related Investigative and Corrective Actions

(g) If any crack is found during the inspection required by paragraph (f) of this AD: Before further flight, perform an eddy current inspection of the inboard-hinge brackets to determine the crack length, in accordance with the Accomplishment Instructions of Cessna Alert Service Letter ASL750–27–21, dated October 13, 2006; and do the actions specified in paragraph (g)(1) or (g)(2) of this AD, as applicable, at the time specified. All corrective actions must be done using a method approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA. For a replacement method to be approved by the Manager, Wichita ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

(1) If the crack is 0.30 inch or more: Replace the bracket before further flight.

(2) If the crack is less than 0.30 inch: Continued flight for a maximum of 10 flight hours for repositioning of the airplane and replacement of the bracket is allowed, within the restricted flight envelope included in the attachment to the service letter titled ''Flight Restrictions.''

Special Flight Permits

(h) Special flight permits, as described in Section 39.23 of the Federal Aviation Regulations (14 CFR 39.23), are allowed with the limitations required by paragraph (g)(2) of this AD.

No Reporting or Return of Parts to Manufacturer

(i) Cessna Alert Service Letter ASL750–27–21, dated October 13, 2006, specifies submitting a sheet related to inspection results to the manufacturer; this AD does not include that requirement. The service letter also specifies sending the elevator assembly to the manufacturer for replacement of the inboard-hinge bracket if a crack is found that is 0.30 inch or more; however, this AD requires corrective actions be done using a method approved by us.

Alternative Methods of Compliance (AMOCs)

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

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

Material Incorporated by Reference

(k) You must use Cessna Alert Service Letter ASL750–27–21, excluding the attachment titled ''Inspection Results Form'' and including the attachment titled ''Flight Restrictions,'' dated October 13, 2006, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on October 26, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–18659 Filed 11–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 366 and 385

[Docket No. RM06–25–000; Order No. 685]

Electronic Filing of FERC Form No. 60

Issued October 19, 2006.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: In this Final Rule, the Federal Energy Regulatory Commission (Commission) is amending its regulations to further implement the Public Utility Holding Company Act of 2005 (PUHCA 2005). Specifically, the Commission is providing for electronic filing of the currently-effective FERC Form No. 60, Annual Report of Centralized Service Companies, for the 2006 and 2007 reporting years, to be filed by May 1, 2007 and May 1, 2008, respectively. No changes are being made to the currently-effective FERC Form No. 60 itself. The Commission has concluded that the automation of the FERC Form No. 60 filing will yield significant benefits, including reduced cost of data entry and retrieval, overall reduction of reporting burden, more timely analysis and publication of data, and increased data analysis capability.

DATES: *Effective Date:* The Final Rule will become effective January 8, 2007.

FOR FURTHER INFORMATION CONTACT: Julia A. Lake (Legal Information), Office of the General Counsel—Energy Markets, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, telephone: (202) 502–8370, e-mail: *julia.lake@ferc.gov.*

Michelle Veloso (Technical Information), Division of Financial Regulation, Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, telephone: (202) 502–8363, e-mail: *michelle.veloso@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff.

1. The Federal Energy Regulatory Commission (Commission) is amending its regulations to further implement the Public Utility Holding Company Act of 2005 (PUHCA 2005). Specifically, the Commission is providing for electronic filing of the currently-effective FERC Form No. 60, Annual Report of Centralized Service Companies, adopted in Order No. 667,[1] for the 2006 and 2007 reporting years, to be filed by May 1, 2007 and May 1, 2008, respectively.[2]

[1] Order No. 667, 70 FR 75592 (Dec. 20, 2005), FERC Stats & Regs., Regulations Preambles 2001–2005 ¶ 31,197 (2005), *order on reh'g,* Order No. 667–A, 70 FR 28446 (May 16, 2006), FERC Stats. & Regs. ¶ 31,213 (2006), *order on reh'g,* Order No. 667–B, 71 FR 42750 (July 28, 2006), FERC Stats. & Regs., ¶ 31,224 (2006).

[2] We note that, contemporaneously with this Final Rule, we are issuing, in Docket No. RM06–11–000, a Final Rule adding a new Uniform System of Accounts (USofA) for Centralized Service Companies, adding new records retention requirements for holding companies and service companies, and revising FERC Form No. 60, Annual Report for Centralized Service Companies to provide for financial reporting consistent with the new USofA. The Final Rule in that docket provides that revised FERC Form No. 60 will be filed electronically beginning with the 2008 reporting year and subsequent reporting years. *See Financial*

Continued

No changes are being made to data reported in the currently-effective FERC Form No. 60 itself.

Background

2. On August 8, 2005, the Energy Policy Act of 2005 (EPAct 2005) [3] was signed into law. In relevant part, it repealed the Public Utility Holding Company Act of 1935 (PUHCA 1935) [4] and enacted the Public Utility Holding Company Act of 2005 (PUHCA 2005),[5] which, with one exception not relevant here, became effective on February 8, 2006 (six months from the date of enactment). The intent of Congress in EPAct 2005 was to repeal the Securities and Exchange Commission's (SEC) regulatory regime established by PUHCA 1935 and to rely on this Commission and state regulatory authorities to protect energy customers, by supplementing the Commission's books and records authority under the Federal Power Act (FPA) and the Natural Gas Act (NGA) (and by enhancing the Commission's already significant authority over public utility mergers, acquisitions and dispositions of jurisdictional facilities [6]).

3. On December 8, 2005, the Commission issued Order No. 667, adding a new Subchapter U and part 366 to Title 18 of the Code of Federal Regulations to implement PUHCA 2005.[7] Among other things, the Commission required centralized service companies [8] to file an annual financial report, the new FERC Form No. 60.[9] Specifically, every centralized service company in a holding company system,[10] *i.e.*, was not a special-purpose company (such as, a fuel supply company or a construction company) that provides non-power goods or services to a Commission-jurisdictional public utility or natural gas company, was required to file with the Commission by May 1, 2006 and by May 1 each year thereafter, FERC Form No. 60, for the prior calendar year.[11]

4. Centralized service companies began filing FERC Form No. 60 beginning with the 2005 reporting year, due by May 1, 2006.[12] They filed FERC Form No. 60 in a paper format because, at the time Order No. 667 was issued, the Commission had not developed the form submission software to permit electronic filing.

Discussion

5. The Commission's regulations provide for electronic filing of annual reports submitted by entities subject to Commission jurisdiction, including: FERC Form No. 1, Annual Report of Major Electric Utilities, Licensees and Others; FERC Form No. 2, Annual Report for Major Natural Gas Companies; FERC Form No. 2–A, Annual Report for Nonmajor Natural Gas Companies; and FERC Form No. 6, Annual Report of Oil Pipeline Companies.[13] The electronic filing of these annual reports yields significant benefits, including reduced cost of data entry and retrieval, overall reduction of reporting burden, more timely analysis and publication of data, and increased data analysis capability.[14] And, in general, filers and users alike agree that electronic filing of these annual reports yields significant benefits in terms of process simplification and savings of time and expense.[15]

6. Electronic filing of the currently-effective FERC Form. No. 60 should result in similar benefits.[16] The Commission, therefore, will require centralized service companies to file the currently-effective FERC Form No. 60 in an electronic medium for the 2006 and 2007 reporting years, to be filed by May 1, 2007 and May 1, 2008, respectively.

7. No changes are being made to the information reported in the currently-effective FERC Form No. 60. However, the Commission will need to make minor formatting changes to the currently-effective FERC Form No. 60 to facilitate the development of form submission software. These minor changes will include the placement of instructions for each schedule at the top of each page, updating certain schedules so that the data and information is reported in a structured format on the schedule, renumbering of certain pages, and updating the General Instructions to the form to clarify that the respondents will no longer file two paper copies of the FERC Form No. 60, but rather the respondents will be required to use the form submission software to file the form.

8. In a separate notice, instructions will be provided concerning how a centralized service company may register as a respondent and download the form submission software for use in filing the FERC Form No. 60.

Information Collection Statement

9. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by an agency.[17] The Final Rule will not change the reporting requirements in the currently-effective FERC Form No. 60. This rule, therefore, is not subject to OMB review. The Commission is submitting a copy of the Final Rule to OMB for information purposes only. Interested persons may obtain information on these reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attn: Michael Miller, Information Services Division, (202) 502–8415]. Comments on the requirements of this rule can be sent to the Office of Information and Regulatory Affairs of OMB [Attn: Desk Officer for the Federal Energy Regulatory Commission; phone,

Accounting, Reporting and Records Retention Requirements Under the Public Utility Holding Company Act of 2005, Order No. 684, published elsewhere in this issue of the **Federal Register**, FERC Stats. & Regs. ¶ 31,229 (2006).

[3] Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

[4] 15 U.S.C. 79a *et seq.*

[5] EPAct 2005 at 1261 *et seq.*

[6] *Id.* at 1289.

[7] *See supra* note 1.

[8] ''Service companies'' are defined in 18 CFR 366.1 as ''any associate company within a holding company system organized specifically for the purpose of providing non-power goods or services or the sale of goods or construction work to any public utility in the same holding company system.'' ''Centralized service companies'' are defined in 18 CFR 367.1(a)(7) as a service company that provides services such as administrative, managerial, financial, accounting, recordkeeping, legal or engineering services, which are sold, furnished, or otherwise provided (typically for a charge) to other companies in the same holding company system. Centralized service companies are different from other service companies that only provide a discrete good or service.

[9] *See* Order No. 667, FERC Stats. & Regs. ¶ 31,197 at P 82–88 (*codified at* 18 CFR 366.23).

[10] As defined in 18 CFR 366.1, holding company means (i) any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public-utility company or of a holding company of any public-utility company; and (ii) any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public-utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties and liabilities imposed by this subtitle upon holding companies.

[11] *See* 18 CFR 366.23(a).

[12] The Commission provided centralized service companies in holding company systems exempted by the SEC from the reporting requirements of PUHCA 1935 a transition period for reporting years 2005 and 2006 during which time they need not file FERC Form No. 60. *See* 18 CFR 366.23(b).

[13] *See* 18 CFR 385.2011.

[14] *See, e.g.,* Electronic Filing of FERC Form No. 1, Order No. 574, 60 FR 1716 (Jan. 5, 1995), FERC Stats. & Regs. ¶ 31,013 at 31,257 (1995).

[15] *Id.* at 31,256–57.

[16] We note that, contemporaneously with this Final Rule, we are issuing a Final Rule in Docket No. RM06–11–000 that provides for electronic filing of a revised FERC Form No. 60 beginning with the 2008 reporting year. Commenters in that rulemaking docket did not oppose the Commission's proposal to require electronic filing of the revised form. *See supra* note 2.

[17] 5 CFR 1320.11.

(202) 395–4650, fax: (202) 395–7285, e-mail: *oira_submission@omb.eop.gov*].

Environmental Analysis

10. 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.[18] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[19] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective or procedural.[20] Because the electronic filing requirement for the currently-effective FERC Form No. 60 adopted in this Final Rule is merely procedural, no environmental statement is necessary.

Regulatory Flexibility Act Certification

11. The Regulatory Flexibility Act of 1980 (RFA)[21] generally requires either a description and analysis of a rule that will have a significant economic impact on a substantial number of small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities. Most centralized service companies and holding companies to which this Final Rule applies would not fall within the RFA's definition of small entity.[22] Consequently, the Commission certifies that this Final Rule will not have a ''significant economic impact on a substantial number of small entities.''

Document Availability

12. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

13. From the Commission's Home Page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

14. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance, please contact FERC Online Support at 1–866–208–3676 (toll free) or 202–502–6652 (e-mail at *FERCOnlineSupport@ferc.gov*) or the Public Reference Room at 202–502–8371, TTY 202–502–8659 (e-mail at *public.referenceroom@ferc.gov*).

Administrative Findings and Effective Date

15. The Administrative Procedure Act (APA)[23] requires rulemakings to be published in the **Federal Register**. The APA also mandates that an opportunity for comments be provided when an agency promulgates regulations. However, notice and comment are not required under the APA when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest.[24]

16. The Commission finds that notice and comment are unnecessary for this rulemaking. As explained above, this Final Rule is merely procedural in nature. The Commission is not revising the data the centralized service companies file in the currently-effective FERC Form No. 60. The Commission is merely requiring electronic filing of the currently-effective FERC Form No. 60. The Commission, therefore, finds good cause to make this Final Rule effective January 8, 2007.

Congressional Notification

17. The provisions of the Small Business Regulatory Enforcement Fairness Act of 1996[25] regarding Congressional review of Final Rules does not apply to this Final Rule, because the rule concerns agency procedure and practice and will not substantially affect the substantive rights of non-agency parties.[26]

List of Subjects

18 CFR Part 366

Electric power, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Magalie R. Salas,

Secretary.

■ In consideration of the foregoing, the Commission amends parts 366 and 385, Chapter I, Title 18, Code of Federal Regulations, as follows:

PART 366—PUBLIC UTILITY HOLDING COMPANY ACT OF 2005

■ 1. The authority citation for part 366 is revised to read as follows:

Authority: 42 U.S.C. 16451–16463.

■ 2. In § 366.23, the section heading and paragraph (a)(1) are revised to read as follows:

§ 366.23 FERC Form No. 60, Annual reports of centralized service companies, and FERC–61, Narrative description of service company functions.

(a) *General.* (1) *FERC Form No.* 60. Unless otherwise exempted or granted a waiver by Commission rule or order pursuant to §§ 366.3 and 366.4, every centralized service company (see § 367.2 of this chapter) in a holding company system must file an annual report, FERC Form No. 60, as provided in § 369.1 of this chapter. Every report must be submitted on the FERC Form No. 60 then in effect and must be prepared in accordance with the instructions incorporated in that form.

* * * * *

PART 385—RULES OF PRACTICE AND PROCEDURE

■ 3. The authority citation for part 385 is revised to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825v, 2601–2645; 28 U.S.C. 2461; 31 U.S.C. 3701, 9701; 42 U.S.C. 7101–7352, 16441, 16451–16463; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

■ 4. In § 385.2011, paragraph (a)(9) is added and paragraph (c)(3) is revised to read as follows:

[18] *Regulations Implementing the National Environmental Policy Act*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987) (*codified at* 18 CFR part 380).

[19] 18 CFR 380.4.

[20] 18 CFR 380.4(a)(2)(ii).

[21] 5 U.S.C. 601–612.

[22] 5 U.S.C. 601(3), *citing* to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a ''small business concern'' as a business that is independently owned and operated and that is not dominant in its field of operation. The Small Business Size Standards component of the North American Industry Classification System (NAICS) defines a small electric utility as one that, including its affiliates, is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal year did not exceed four million MWh. NAICS defines a small natural gas pipeline company as one that transports natural gas and whose annual receipts (total income plus cost of goods sold) did not exceed $6.5 million dollars for the preceding year. 13 CFR 121.201.

[23] 5 U.S.C. 551–59.

[24] 5 U.S.C. 553(B); *see, e.g., Mid-Tex Electric Cooperative, Inc.* v. *FERC*, 822 F.2d 1123 (D.C. Cir. 1987).

[25] 5 U.S.C. 801.

[26] 5 U.S.C. 804(3)(B).

§ 385.2011 Procedures for filing on electronic media (Rule 2011).

(a) * * *

(9) FERC Form No. 60, Annual report of centralized service companies.

* * * * *

(c) *What to file.* * * *

(3) With the exception of the Form Nos. 1, 2, 2–A, 6 and 60, the electronic media must be accompanied by the traditional prescribed number of paper copies.

* * * * *

[FR Doc. E6–18061 Filed 11–6–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Ivermectin, Pyrantel, and Praziquantel Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an original new animal drug application (NADA) filed by Virbac AH, Inc. The NADA provides for veterinary prescription use of chewable tablets in dogs containing ivermectin, pyrantel pamoate, and praziquantel for the treatment and control or prevention of various internal parasites.

DATES: This rule is effective November 7, 2006.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540, e-mail: *melanie.berson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Virbac AH, Inc., 3200 Meacham Blvd., Ft. Worth, TX 76137, filed NADA 141–257 for IVERHART MAX (ivermectin, pyrantel pamoate, praziquantel) Chewable Tablets that provides for veterinary prescription use of chewable tablets in dogs containing ivermectin, pyrantel pamoate, and praziquantel for the treatment and control or prevention of various internal parasites. The NADA is approved as of October 13, 2006, and 21 CFR part 520 is amended by adding new § 520.1199 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning October 13, 2006.

FDA has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

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

■ 2. Add § 520.1199 to read as follows:

§ 520.1199 Ivermectin, pyrantel, and praziquantel tablets.

(a) *Specifications.* Each chewable tablet contains:

(1) 34 micrograms (mcg) ivermectin, 28.5 milligrams (mg) pyrantel pamoate, and 28.5 mg praziquantel;

(2) 68 mcg ivermectin, 57 mg pyrantel pamoate, and 57 mg praziquantel;

(3) 136 mcg ivermectin, 114 mg pyrantel pamoate, and 114 mg praziquantel; or

(4) 272 mcg ivermectin, 228 mg pyrantel pamoate, and 228 mg praziquantel.

(b) *Sponsors.* See No. 051311 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* Administer monthly according to body weight as follows:

(i) 6 to 12 lb: one tablet as described in paragraph (a)(1) of this section.

(ii) 12.1 to 25 lb: one tablet as described in paragraph (a)(2) of this section.

(iii) 25.1 to 50 lb: one tablet as described in paragraph (a)(3) of this section.

(iv) 50.1 to 100 lb: one tablet as described in paragraph (a)(4) of this section.

(v) Greater than 100 lb: use the appropriate combination of tablets.

(2) *Indications for use.* Prevents canine heartworm disease by eliminating the tissue stage of heartworm larvae (*Dirofilaria immitis*) for 1 month (30 days) after infection and for the treatment and control of roundworm (*Toxocara canis, Toxascaris leonina*), hookworm (*Ancylostoma caninum, Uncinaria stenocephala, Ancylostoma braziliense*) and tapeworm (*Dipylidium caninum, Taenia pisiformis*) infections.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: October 23, 2006.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. E6–18684 Filed 11–6–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Lincomycin; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) that appeared in the **Federal Register** of September 1, 2006 (71 FR 51995). FDA is correcting the date of approval of an ANADA for a generic lincomycin injectable solution which was drafted in error. This correction is being made to improve the accuracy of the **Federal Register**.

DATES: This rule is effective November 7, 2006.

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

SUPPLEMENTARY INFORMATION: In FR Doc. E6–14509, appearing on page 51995 in the **Federal Register** of September 1, 2006, the following correction is made:

1. On page 51995, in the third column, in the third sentence of the **SUPPLEMENTARY INFORMATION** section, the date of ANADA approval ''July 27, 2006'' is corrected to read ''August 2, 2006''.

Dated: October 20, 2006.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. E6–18679 Filed 11–6–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Bambermycins

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to correct an inadvertent error in the conditions of use of bambermycins free-choice cattle feeds. This action is being taken to improve the accuracy of the animal drug regulations.

DATES: This rule is effective November 7, 2006.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–4567, e-mail: *george.haibel@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: FDA is amending the animal drug regulations in 21 CFR 558.95 to correct an inadvertent error in the conditions of use of bambermycins free-choice cattle feeds. The error was introduced in a final rule for liquid and free-choice medicated feeds that published May 27, 2004 (69 FR 30194). This action is being taken to improve the accuracy and readability of the animal drug regulations.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 2. In § 558.95, revise the last sentence of paragraph (d)(4)(iii)(*d*) to read as follows:

§ 558.95 Bambermycins.

* * * * *

(d) * * *

(4) * * *

(iii) * * *

(*d*) * * * Daily bambermycins intakes in excess of 20 mg/head/day have not been shown to be more effective than 20 mg/head/day.

* * * * *

Dated: October 20, 2006.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. E6–18680 Filed 11–6–06; 8:45 am]

BILLING CODE 4160–01–S

LEGAL SERVICES CORPORATION

45 CFR Part 1624

Prohibition Against Discrimination on the Basis of Disability

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This Final Rule amends the Legal Services Corporation's regulation on prohibitions against discrimination on the basis of disability. These changes are intended to improve the utility of the regulation for LSC, its grantees and other interested persons, by updating the terminology used throughout the regulation, to add a reference to compliance with the Americans with Disabilities Act and by adding language to the enforcement provision setting forth LSC policy regarding investigation of complaints of violation of this regulation.

DATES: This Final Rule is effective on December 7, 2006.

FOR FURTHER INFORMATION CONTACT: Mattie Cohan, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 3333 K Street, NW., Washington DC 20007; 202–295–1624 (ph); 202–337–6519 (fax); *mcohan@lsc.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 706), as amended, prohibits discrimination on the basis of handicap by recipients of Federal assistance. As recipients of federal assistance, Legal Services Corporation (LSC) grant recipients are subject to the non-discrimination requirements of Section 504. At the same time, while the Corporation is not obligated to enforce Section 504 of the Rehabilitation Act (since it is not an agency, department or instrumentality of the Federal government), it does have the authority to ensure that LSC grant recipients comply with its provisions. LSC chose to exercise this authority and adopted the Part 1624 regulation implementing the non-discrimination requirements in Section 504 in 1979. The regulation has not been amended since that time.

On October 29, 2005, the LSC Board of Directors directed that LSC initiate a rulemaking to consider revisions to LSC's regulation at 45 CFR part 1624. At the Board's further direction, prior to the development of this Notice of Proposed Rulemaking (''NPRM''), LSC convened a Rulemaking Workshop [1] to consider revisions to this Part. The intention of the rulemaking proceeding was intended to provide the opportunity for an unlimited and thorough review of the regulation with the intent of updating and improving the rule as appropriate.

LSC convened a Rulemaking Workshop on December 13, 2005 to discuss Part 1624. The following persons participated in the Workshop: John ''Chip'' Gray, South Brooklyn Legal Services; John Herrion, United Spinal Association; Linda Perle, Center for Law and Social Policy; Don Saunders, National Legal Aid and Defender Association; Helaine Barnett, LSC President (welcoming remarks only); Karen Sarjeant, LSC Vice President for Programs and Compliance; Charles Jeffress, LSC Chief Administrative Officer; Mattie Condray, LSC Office of Legal Affairs; Curtis Goffe, LSC Office of Compliance and Enforcement; Tillie Lacayo, LSC Office of Program Performance; Mark Freedman, LSC

[1] Under LSC's Rulemaking Protocol, a Rulemaking Workshop is a meeting at which the participants (which may include LSC Board members, staff, grantees and other interested parties) ''hold open discussions designed to elicit information about problems or concerns with the regulation (or certain aspects thereof) and provide an opportunity for sharing ideas regarding how to address those issues. * * * [A] Workshop is not intended to develop detailed alternatives or to obtain consensus on regulatory proposals.'' 67 FR 69762, 69763 (November 19, 2002).

Office of Legal Affairs; and Treefa Aziz, LSC Office of Government Relations and Public Affairs.

The discussion was wide-ranging. The highlights of the discussion are summarized as follows. There was a general assessment that grantees appear to be in compliance with the regulation and that LSC does not receive many complaints of non-compliance. It was noted that most of the complaints that do come to LSC are from grantee staff and are related to employment discrimination, rather than accessibility of services for applicants or clients with disabilities. LSC's staff practice is to refer such complainants to the appropriate Federal, state or local agency. At the same time, it was noted that the language of the regulation could be updated in places and that there are new assistive technologies which could be referenced in the regulation.

The participants discussed the fact that LSC's enforcement expertise and resources are limited and that claimants, with the passage of the Americans with Disabilities Act (''ADA''), have recourse to other agencies and private actions for the pursuit of redress for discrimination on the basis of disability. The notion that the regulation could be amended to reflect these facts was raised. In addition, the participants also discussed other avenues of raising awareness of accessibility issues, such as the issuance of guidance from LSC in the form of a Program Letter, focusing on accessibility in program visits and in competition, better sharing of best practices and emphasis on opportunities through LSC's Technology Initiative Grant Program.

LSC Management made a presentation to the Operations and Regulations Committee of the LSC Board of Directors on the Rulemaking Workshop at its meeting on January 27, 2006. The Committee then voted to recommend that the Board of Directors instruct Management to continue the rulemaking and develop an NPRM, proposing such changes as deemed appropriate. On January 28, 2006, the Board of Directors voted to accept the recommendation of the Operations and Regulations Committee. A Draft NPRM was then presented to the Operations and Regulations Committee at its meeting on April 28, 2006. The Committee voted to recommend that the Board of Directors approve the NPRM for publication. The following day the Board of Directors voted to accept the Committee's recommendation and directed LSC to issue an NPRM for public comment. The NPRM was subsequently published on May 12, 2006 (71 FR 27654).

LSC received five timely and one late comment on the NPRM. All of the comments have been carefully considered. The comments are discussed in detail below in the section-by-section analysis.

Summary of Proposed Changes

LSC is adopting only relatively minor changes to the regulation, but LSC believes that these changes will improve the utility of the regulation for LSC, its grantees and other interested persons. First, LSC is updating the nomenclature used throughout the regulation to refer to ''person with a disability'' or ''persons with disabilities'' instead of ''handicapped person(s).'' This change is not intended to create any substantive change in meaning, but rather is intended to reflect a more current terminology. Second, LSC is adding a reference to compliance with the Americans with Disabilities Act to the regulation. This change is discussed in greater detail in the section-by-section analysis section under the discussion of proposed section 1624.1. Third, LSC is adding language to the enforcement provision setting forth LSC policy regarding investigation of complaints of violation of this regulation. This change is discussed in greater detail in the section-by-section analysis section under the discussion of proposed section 1624.8. LSC is also proposing to make a number of technical and grammatical corrections to the regulation.

In addition, LSC proposed to eliminate the current section 1624.7 of the regulation on self-evaluation. This section required legal services programs to evaluate by January 1, 1980, their facilities, practices and policies to determine the extent to which they complied with the requirements of this Part. This section does not contain a continuing requirement for self-evaluation and, as such, is now obsolete.

Two commenters specifically opposed this proposal. One commenter notes that DOJ considers self-evaluation to be an ongoing requirement under section 504, while the other commenter notes that many recipients may never have conducted any self-evaluation. Both of the commenters recommend adoption of ongoing self-evaluation requirements.

Although DOJ may consider ongoing self-evaluation to part of the Section 504 obligations, DOJ's regulations at 28 CFR part 41 do not contain any explicit self-evaluation requirement. Moreover, the absence of a specific self-evaluation requirement does not necessarily mean that recipients do not engage in any self-evaluative process. Recipients are required to agree to be in compliance with the regulations (including this Part) and to so certify with each new grant cycle.[2] This gives both recipients and LSC sufficient opportunity for an annual look at recipients' efforts in this area. In addition, if LSC started to see an increase in complaints or an increase in the incidence of disability-based discrimination issues, LSC could ask recipients to conduct reviews as appropriate. Finally, LSC is concerned about adding new undue administrative burdens on recipients that become compliance responsibilities. For example, if LSC adopted a self-evaluation requirement, a recipient otherwise fully compliant but which misses reporting a self-evaluation would be in violation even if the recipient was otherwise a model program with respect to disability related issues. Accordingly, LSC is eliminating the obsolete self-evaluation requirement and declines to adopt an ongoing self-evaluation requirement.

Section-by-Section Analysis

Section 1624.1—Purpose

LSC proposed changing the terms ''handicapped persons'' as they appear in this section to ''persons with disabilities.'' In addition, LSC proposed adding language to make reference to the ADA. LSC received several comments supporting the proposed changes to this section and none in opposition. Accordingly, LSC is adopting the changes as proposed.

With respect to the new language being added making reference to the ADA, LSC notes that the provision states that requirements of this Part apply in addition to any responsibilities legal services programs may have under applicable requirements of the Americans with Disabilities Act and applicable implementing regulations of the Department of Justice and the Equal Employment Opportunity Commission. The new language is neither intended to impose any new obligations on grantees with respect to LSC-related regulatory compliance matters, nor assume LSC authority for enforcing the ADA that LSC does not possess.

Section 1624.2—Application

LSC did not propose any changes to this section. LSC received no suggestions for change to this section.

[2] This is also the reason why LSC does not believe that the lack of the originally required initial self-evaluation by ''newer'' recipients is problematic. For these recipients, unlike those recipients existing prior to the adopt of the regulation, Part 1624 has always been part of the regulatory landscape and compliance a necessity from the beginning of their operations.

Accordingly, LSC is not making any changes to this section.

Section 1624.3—Definitions

LSC proposed changing the term ''handicapped person'' to ''person with a disability'' in section 1624.3(c)(1). Similarly, LSC proposed to change the term ''qualified handicapped person'' in section 1624.3(d) to ''qualified person with a disability.'' LSC received several comments in support and no comments in opposition to these proposed changes. Accordingly, LSC is adopting them as proposed. In neither case is the change intended to create any substantive change to the regulation, but rather to reflect updated and preferred nomenclature.

LSC also proposed to add a definition of the term ''auxiliary aids and/or other assistive technology.'' Under the existing section 1624.4, grantees with more than fifteen employees have been required to provide appropriate ''auxiliary aids'' when necessary to clients and applicants to make services accessible. Although the current regulation uses the term ''auxiliary aids,'' it has not contained a formal definition of the term in the definition section. Rather, current section 1624.4 provides that for the purposes of that section, ''auxiliary aids include, but are not limited to, brailled and taped material, interpreters, telecommunications equipment for the deaf, and other aids for persons with impaired vision and hearing.'' Although this informal definition of ''auxiliary aids'' appears to be limited to aids for persons with impaired vision or hearing, the provision of the regulation which requires their use calls for auxiliary aids for persons ''with impaired sensory, manual or speaking skills,'' which is broader than simply vision or hearing impairments. LSC believes that this discrepancy should be rectified. In addition, although the term ''auxiliary aids'' is not currently used in the section on employment (1624.6), a similar concept appears there. Under section 1624.6(e), grantees are required to make reasonable accommodations for otherwise qualified employees and job applicants with disabilities. The regulation specifies that, among other things, ''reasonable accommodations'' include (but are not limited to) ''the modification of equipment or devices, the provision of readers or interpreters and other similar actions.''

Rather than continue to have these similar concepts set forth in different parts of the regulation with different terminology, LSC proposed to use the single term ''auxiliary aids and/or other assistive technology'' in both sections and to add a definition of that term to the definitions section. Since the original adoption of the regulation in 1979 there have been significant advances in technology which are available to persons with disabilities to help them access and benefit from legal services programs' services. The proposed definition is based on a definition of ''assistive technologies'' found in the Individuals with Disabilities Education Act, 20 U.S.C. 1400, et seq., and is intended to broadly refer to the range of aids or technologies which grantees can make available to applicants, clients and employees with disabilities, as appropriate and necessary, to comply with the requirements of this Part. LSC wishes to note that the list of technologies included in the definition is specifically intended to be illustrative and not exhaustive.

One commenter suggested that LSC failed to define the term ''auxiliary aids and/or other assistive technologies'' and proposed that LSC use the definition of ''auxiliary aids and services'' found in Title III of the ADA. Although this commenter was addressing a different section, because the comment is specifically about defining a term used throughout the regulation, LSC is responding to this comment here. LSC notes at the outset that LSC did in fact propose a definition for the term ''auxiliary aids and other assistive technologies.'' The proposed definition is discussed at length above.

Turning to the suggestion that LSC adopt the definition of the ''auxiliary aids and services'' in Title III of the ADA, LSC notes that the definitions section in Title III of the ADA (Section 301) does not contain a definition of the term ''auxiliary aids and services.'' However, LSC assumes that the commenter was referring to a provision of the Department of Justice regulations implementing Title III discussing auxiliary aids and services. That provision states:

The term ''auxiliary aids and services'' includes—

1. Qualified interpreters, notetakers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for people who are deaf (TDDs), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

2. Qualified readers, taped texts, audio recordings, Brailled materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments;

3. Acquisition or modification of equipment or devices; and,

4. Other similar services and actions.

28 CFR 36.303.

LSC believes that the definition it proposed for the term ''auxiliary aids and/or other assistive technologies'' is in no way inconsistent with the DOJ regulation quoted above. As such, and in light of the fact that no other commenters opposed the LSC proposed definition, LSC believes that its proposed definition is appropriate for LSC purposes. Accordingly, LSC adopts the definition of ''auxiliary aids and/or other assistive technologies'' as proposed.

The Equal Employment Opportunity Commission (EEOC) suggested that LSC cross-reference the definitions of ''reasonable accommodation,'' ''undue hardship'' and ''direct threat'' found in the EEOC's regulations at 29 CFR 1630.2 for the purposes of those terms' use in the proposed employment section, 1624.6. LSC agrees that the EEOC's definitions of these terms are appropriate for use in the context of the proposed employment section. However, rather than simply cross-reference the definitions in the text of the regulation, LSC believes it will be more useful for LSC and recipients for LSC to reprint those definitions in this preamble. This will provide LSC staff and recipients a ready reference without having to have a full copy of the EEOC's regulations at hand.

The EEOC's definitions of the terms ''reasonable accommodation,'' ''undue hardship'' and ''direct threat'' are, respectively:

Reasonable accommodation. (1) The term reasonable accommodation means:

(i) Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or

(ii) Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or

(iii) Modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities.

(2) Reasonable accommodation may include but is not limited to:

(i) Making existing facilities used by employees readily accessible to and

usable by individuals with disabilities; and

(ii) Job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities.

(3) To determine the appropriate reasonable accommodation it may be necessary for the covered entity to initiate an informal, interactive process with the qualified individual with a disability in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.

Undue hardship—(1) In general. Undue hardship means, with respect to the provision of an accommodation, significant difficulty or expense incurred by a covered entity, when considered in light of the factors set forth in paragraph (p)(2) of this section.

(2) Factors to be considered. In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include:

(i) The nature and net cost of the accommodation needed under this part, taking into consideration the availability of tax credits and deductions, and/or outside funding;

(ii) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, and the effect on expenses and resources;

(iii) The overall financial resources of the covered entity, the overall size of the business of the covered entity with respect to the number of its employees, and the number, type and location of its facilities;

(iv) The type of operation or operations of the covered entity, including the composition, structure and functions of the workforce of such entity, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the covered entity; and

(v) The impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.

Direct threat means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. The determination that an individual poses a ''direct threat'' shall be based on an individualized assessment of the individual's present ability to safely perform the essential functions of the job. This assessment shall be based on a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence. In determining whether an individual would pose a direct threat, the factors to be considered include:

(1) The duration of the risk;

(2) The nature and severity of the potential harm;

(3) The likelihood that the potential harm will occur; and

(4) The imminence of the potential harm.

29 CFR 1630.2(o), (p), and (r). LSC will refer to these definitions in interpreting and enforcing the provisions of proposed 1624.6.

Section 1624.4—Discrimination Prohibited

LSC proposed two notable amendments to this section. First, in each instance in which the term ''handicapped person'' or ''handicapped persons'' appears, LSC proposed to replace it with ''person with a disability'' or ''persons with disabilities'' as grammatically appropriate. As noted above, LSC intended no substantive change, but rather to reflect updated and preferred nomenclature. LSC also proposed to use the term ''auxiliary aids and/or other assistive technologies'' instead of the term ''auxiliary aids'' in section 1624.4(d)(1) and (2) and to delete the text appearing at 1624.4(d)(3). As discussed above, LSC believes that users of the regulation will be better served by having a formal definition of the term in the definitions section of the regulation than an informal definition elsewhere. In addition, LSC believes that expanding the term to include ''other assistive technologies,'' combined with the proposed definition, will better reflect the range of systems and devices existing in the market that grantees may choose from to help make their services accessible to persons with disabilities.

LSC received several comments supporting the proposed changes to this section. LSC also received one comment suggesting that this section as proposed is inconsistent with the ADA and ''misstates'' the law. At the outset, LSC believes that it is important to keep in mind that LSC's regulations are not implementing the ADA. Although the ADA may well impose additional requirements on recipients, LSC does not wish to place more of its own burdens on recipients. LSC does not intend to create new or additional requirements for which recipients will be responsible to LSC and which LSC will be responsible for enforcing.

Turning to the suggestion that the portion of the proposed regulation imposing the requirement that recipients with fifteen or more employees must provide auxiliary aids when necessary ''misstates'' the law, LSC notes that this provision dates to the original adoption of Part 1624 and that LSC is not proposing any substantive change to this particular requirement. Rather than misstating the ADA, this provision reflects LSC's policy determination from 1979:

> First, that a program with fifteen employees will have a sufficiently large budget to enable it to obtain access to such aids without jeopardizing the program's other activities; and second, that a program of that size will serve a sufficiently large population to have a significant number of clients who could benefit by the availability of the aids.

44 FR 22482, 22484 (April 16, 1979); *see also*, 44 FR 55175, 55176 (September 25, 1979). The reason why LSC made a distinction between recipients with fifteen employees and those with fewer employees continues to make sense today. Further, the current and proposed LSC requirement does not impose any responsibility which contradicts responsibilities recipients have under the ADA (*i.e.*, complying with the LSC requirement does not preclude compliance with ADA requirements). In fact, a recipient's compliance with a more stringent requirement will only serve to ensure that the recipient is in compliance with part 1624. As such, LSC does not believe it is necessary or desirable to change LSC's regulation in this matter.

LSC also received one comment suggesting that LSC substitute the term ''auxiliary aids and/or other assistive technologies'' for ''auxiliary aids'' in proposed 1624.4(d)(2). LSC agrees with this comment and adopts this suggestion.

Section 1624.5—Accessibility of Legal Services

LSC proposed two notable amendments to this section. First, in each instance in which the term ''handicapped person'' or ''handicapped persons'' appears, LSC proposed to replace it with ''person with a disability'' or ''persons with disabilities'' as grammatically appropriate. As noted above, LSC intended no substantive change, but rather to reflect updated and preferred

nomenclature. Second, LSC proposed to replace the reference to ''the appropriate Regional Office'' in section 1624.5(c) with ''LSC.'' At the time Part 1624 was originally adopted LSC had Regional Offices, but it no longer does. All LSC business is conducted out of its Washington, DC offices. As such, the statement required by section 1624.5(c) can no longer be submitted to a ''Regional Office'' and such statements are simply submitted to LSC. The regulation should reflect this fact. LSC received several comments supporting and no comments opposing these changes. Accordingly, LSC adopts them as proposed.

LSC received one comment suggesting that LSC add a subsection (e) to require recipients to ''make reasonable modifications in policies, practices and procedures'' to avoid engaging in discrimination on the basis of disability. LSC agrees with the commenter that recipients should not have policies, practices or procedures which have the effect of discriminating on the basis of disability and expects that part of a recipient's obligation to be in compliance with Part 1624 is to ensure that it does not have policies, practices or procedures which result in discrimination on the basis of disability. However, LSC is not convinced that it is necessary to add such an express provision to the regulation. Proposed sections 1624.4, 1624.5 and 1624.6 collectively set forth the substantive requirements that recipients not engage in discrimination on the basis of disability. If a recipient had policies, practices or procedures which had the effect of discriminating on the basis of disability, the recipient would be in violation of one or more of the sections referenced above. Put another way, for a recipient to be in compliance with the substantive requirements of Part 1624, the recipient cannot have policies, practices or procedures which result in or have the effect of discriminating on the basis of disability. As such, the imposition of an additional provision specifically and separately requiring recipients to modify policies, practices and procedures to avoid discrimination would not appear to add anything of substantive value to the regulation.

Section 1624.6—Employment

LSC proposed two notable amendments to this section. First, in each instance in which the term ''handicapped person'' or ''handicapped persons'' appears, LSC proposed to replace it with ''person with a disability'' or ''persons with disabilities'' as grammatically appropriate. As noted above, LSC intended no substantive change, but merely the use of updated and preferred nomenclature. LSC also proposed to use the term ''auxiliary aids and/or other assistive technologies'' instead of the words ''readers or interpreters'' in section 1626(e)(1). As discussed above, LSC believes that users of the regulation will be better served by using a standardized and formally defined term. LSC believes that using the term ''auxiliary aids and/or other assistive technologies'' in this section, combined with the proposed definition of that term, will better reflect the range of systems and devices existing in the market that grantees may choose from to make reasonable accommodations in employment for otherwise qualified job applicants and employees with disabilities. LSC received several comments supporting and no comments opposing these changes. Accordingly, LSC adopts them as proposed.

LSC also received a comment from the EEOC suggesting that the proposed provision appears to be modeled after a 1980 DOJ regulation and suggesting, as an alternative, that LSC add a cross-reference to the EEOC's regulations and should embody language contained in the 1994 joint EEOC/DOJ rule regarding coordination between Section 504 and the ADA. Proposed section 1624.6 is essentially the same as the existing section 1624.6, with the only changes proposed being the nomenclature changes and use of the term ''auxiliary aids and/or other assistive technologies'' as discussed above. The existing section predates the 1980 DOJ regulation and is actually modeled on the then-Department of Health, Education and Welfare (HEW) guidelines, with some modifications. *See* 44 FR at 22484; 44 FR at 55177. LSC chose the HEW guidelines as a model because the Executive Order obligating agencies to adopt regulations implementing Section 504 required them to use the HEW guidelines as the model. Although LSC was not obligated to comply with the Executive Order, LSC determined that using the HEW guidelines as a model was appropriate with respect to its voluntary adoption of Section 504 implementing regulations.

LSC believes the current LSC requirements continue to be appropriate. LSC notes also that the current DOJ rules implementing Section 504 with respect to employment (28 CFR 41.52–41.55) are essentially the same as LSC's current and proposed section 1624.6. The section that the EEOC cites to (28 CFR 37.12) does not substitute for the provisions cited above. Rather, that section addresses coordination between DOJ and EEOC in procedures for coordinating investigation of complaints. LSC is addressing enforcement issues in proposed section 1624.7. Moreover, LSC is not convinced it is necessary, given LSC's enforcement policy, to explicitly incorporate the ADA standards into this regulation and, further, to do so only in the context of complaints involving claims of discrimination in employment. Rather, to the extent that LSC might receive and investigate any complaint without deferring to the investigation of another agency, LSC would look to this Part and, as necessary, the current law of Section 504 in carrying out its duties. LSC is confident that recipients understand and anticipate that this is the case.

Section 1624.7—Enforcement

The current regulation specifies only that LSC's enforcement procedures at 45 CFR part 1618 shall apply to alleged violations of this part. Under part 1618, LSC is obligated to investigate complaints of violations of the LSC Act, appropriations acts, LSC regulations and grant assurances and to work with grantees to resolve matters informally when possible. Ultimately, if no informal resolution is agreed upon, LSC's enforcement powers involve reducing or eliminating funding generally. LSC does not have authority to represent individuals or to go to court on their behalf to obtain ''injunctive relief'' however, as do other Federal, state and local agencies charged with ADA and other disability-based discrimination law enforcement. Moreover, OCE, although taking those complaints of disability-based discrimination it receives seriously, has limited resources available and does not generally have significant expertise in investigating these types of claims.

In light of the above, LSC's policy when such complaints have been filed with OCE has been to recommend that complainants pursue claims with appropriate Federal, state or local agencies which may be in a better position to investigate their claims and assist them in obtaining specific relief. In cases where a claim is filed with another agency, LSC generally defers to that investigation during its pendency and relies upon the findings of the other agency in resolving the complaint filed with LSC. LSC has found this policy to be efficient and effective. Accordingly, LSC proposed to explicitly incorporate this policy into the regulation. LSC continues to believe this action will clarify expectations for LSC enforcement staff, grantees, and potential claimants alike. Of course, LSC retains the discretion and authority

to conduct its own investigations into any claim of disability-based discrimination grounded in this Part or the grant assurances and make its own findings upon the conclusion of such investigation, irrespective of whether a complaint based on the same circumstances is pending at another agency.

One commenter stated that it agreed with the substance of the policy and with LSC's proposal to formalize the policy by placing it in the regulation. The commenter expressed its concern, however, that the language proposed is ''not sufficiently clear or definitive.'' This commenter suggested the following alternative language:

> LSC will promptly refer a complainant who alleges a violation that appears to fall within the scope of this Part to the appropriate Federal, state or local agency or agencies with authority to investigate discrimination on the basis of disability. Pending completion of such agency's investigation, LSC may also investigate the complaint. As part of the investigation, LSC may also use such agency's findings, conclusion or information that the other agency makes available to LSC.

LSC does not agree that the proposed alternative language is preferable to the language LSC proposed. Elimination of the word ''generally'' in the first sentence of paragraph (b) does create more specificity, but at the expense of necessary LSC discretion. There may be good reason why LSC would not automatically refer a complainant to another agency; for example, if the complainant states that he/she is already pursuing or has pursued a complaint with another agency. Requiring LSC to refer a complainant to another agency under those circumstances would be unnecessary. Nor does LSC agree that elimination of the phrase ''retains the discretion'' and the use of the word ''may'' in its place would improve the clarity or definitiveness of the regulation. LSC prefers the language as proposed because it plainly indicates an exercise of discretion. The word ''may'' does also imply the exercise of discretion, but perhaps less explicitly. Since the commenter is not suggesting the development and adoption of specific published standards for making determinations about when LSC would choose to directly investigate a complaint rather than defer to another agency's investigation (which would be very difficult given the fact-specific nature of these cases), LSC prefers to be explicit about its discretion in this matter.

Another commenter took the opposite position, urging LSC not to codify its current policy. This commenter suggested that LSC should instead adopt a new policy under which LSC would commit to investigating and processing all complaints directly without referral or reference to any other agency's investigations. The commenter argues that LSC's expertise in legal services makes it uniquely qualified to do so and that LSC has better leverage to force recipients to provide specific relief to complainants.

LSC, like any other agency with oversight responsibilities, has limited resources available to it. Although LSC takes all complaints about violations (of any applicable LSC requirements) seriously and retains the discretion to fully process any complaint it receives, LSC must and does exercise discretion in the processing of complaints (regardless of subject matter), taking into account the specific facts of the case and the resources available to LSC. Thus, LSC believes that adopting any policy which expressly limits that discretion with respect to a particular subset of complaints is inappropriate.

In this particular area, although LSC has expertise in legal services, it is not an expert as to what constitutes discrimination on the basis of disability. Moreover, as difficult as it may be for a complainant to have DOJ or EEOC take an individual's case to court, LSC is not authorized to seek court-ordered relief for a complainant at all.[3] In addition, there may be a local enforcement agency option or direct legal action that would be available to a complainant—again, assistance that LSC cannot provide. With respect to LSC's ''leverage,'' it is LSC's experience that LSC's leverage is a blunt instrument not well suited to obtaining relief for individual complainants with these types of complaints. LSC can impose additional grant conditions at the time of grant renewal or put a recipient on month-to-month funding at the end of the grant term. Both of these actions, however, are dependent upon the recipient happening to be at the end of a grant year or grant term (respectively) for them to potentially be effective. During the grant term, LSC could institute suspension or termination proceedings, but these are resource intensive and likely a disproportionate response to all but the most egregious of violations. At the same time, the current policy appears to have functioned well for LSC and recipients, and as well for complainants as is practicable within LSC's authority. LSC, accordingly, declines to adopt the commenter's suggestion and instead adopts the language in proposed section 1624.7 as proposed.

LSC received one other comment on this section. This commenter suggests that LSC: (1) Create a tracking system to flag repeat offenders; (2) engage in increased efforts to represent individuals with disabilities who bring allegations of violations of the ADA to the attention of LSC, including obtaining consulting assistance and training for OCE staff; and (3) that the language of the regulation allow for LSC to retain for the purpose of enforcement cases at its discretion.

LSC reiterates that it receives very few complaints and has no reason to believe that there are ''repeat offenders'' going undetected. Nonetheless, current OCE policy and practice already enables LSC to identify repeat offenders (should there be any) and take action as necessary.

With respect to the second suggestion, LSC is, as noted above, without legal authority to represent individuals. In complaint investigations LSC is not representing the complainant, but rather is exercising its oversight authority over the recipient. As such, LSC can only take limited action against the recipient (as discussed above). Indeed, the inability of LSC to represent individual claimants and LSC's limited ability to force a recipient to provide specific relief to a complainant is exactly what led to the development and adoption of the current enforcement policy which LSC has proposed to codify. In addition, with respect to the suggestion that LSC obtain additional training or consultant assistance, although LSC agrees that such activities would be helpful to increase LSC's level of in-house expertise, LSC regrets that it is faced with the reality of limited resources. Given the infrequency of complaints received and the existence of other investigatory agencies with greater expertise, LSC does not believe that making a significant investment in the manner suggested would be the most effective or efficient use of its limited resources.

Regarding the commenter's third suggestion, LSC notes that the language proposed does expressly reserve to LSC the discretion to retain jurisdiction over any complaint it receives as the commenter proposes. Therefore, LSC believes that no change or addition to the proposed language is necessary.

[3] To the extent that the preamble to the NPRM may have appeared to suggest ''direct'' DOJ/EEOC enforcement authority, such a suggestion was not intended. Rather, LSC intended to note, as the commenter states, that DOJ and the EEOC have the authority to seek court ordered relief.

List of Subjects in 45 CFR Part 1624

Civil rights, Grant programs—law, Individuals with disabilities, Legal services.

For reasons set forth above, and under the authority of 42 U.S.C. 2996g(e), LSC revises 45 CFR part 1624 as follows:

PART 1624—PROHIBITION AGAINST DISCRIMINATION ON THE BASIS OF DISABILITY

Sec.

1624.1 Purpose.
1624.2 Application.
1624.3 Definitions.
1624.4 Discrimination prohibited.
1624.5 Accessibility of legal services.
1624.6 Employment.
1624.7 Enforcement.

Authority: 49 U.S.C. 794; 42 U.S.C. 2996f(a) (1) and (3).

§ 1624.1 Purpose.

The purpose of this part is to assist and provide guidance to legal services programs supported in whole or in part by Legal Services Corporation funds in removing any impediments that may exist to the provision of legal assistance to persons with disabilities eligible for such assistance in accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 and with sections 1007(a) (1) and (3) of the Legal Services Corporation Act, as amended, 42 U.S.C. 2996f(a) (1) and (3), with respect to the provision of services to and employment of persons with disabilities. The requirements of this Part apply in addition to any responsibilities legal services programs may have under applicable requirements of the Americans with Disabilities Act and applicable implementing regulations of the Department of Justice and the Equal Employment Opportunity Commission.

§ 1624.2 Application.

This part applies to each legal services program receiving financial assistance from the Legal Services Corporation.

§ 1624.3 Definitions.

As used in this part, the term:

(a) *Legal services program* means any recipient, as defined by § 1600.1 of this chapter, or any other public or private agency, institution, organization, or other entity, or any person to which or to whom financial assistance is extended by the Legal Services Corporation directly or through another agency, institution, organization, entity or person, including any successor, assignee, or transferee of a legal services program, but does not include the ultimate beneficiary of legal assistance;

(b) *Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property;

(c)(1) *Person with a disability* means any person who:

(i) Has a physical or mental impairment which substantially limits one or more major life activities,

(ii) has a record of such an impairment, or (iii) is regarded as having such an impairment;

(2) As used in paragraph (c)(1) of this section the phrase:

(i) *Physical or mental impairment* means: (A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities; The phrase includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism;

(ii) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;

(iii) *Has a record of such impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities;

(iv) *Is regarded as having an impairment* means: (A) Has a physical or mental impairment that does not substantially limit major life activities but is treated by a legal services program as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairments; or (C) has none of the impairments defined in paragraph (c)(2)(i) of this section but is treated by a legal services program as having such an impairment;

(d) *Qualified person with a disability* means:

(1) With respect to employment, a person with a disability who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) with respect to other services, a person with a disability who meets the eligibility requirements for the receipt of such services from the legal services program.

(e) *Auxiliary aids and/or other assistive technologies* means any item, piece of equipment, or product system whether acquired commercially off the shelf, modified or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities. Auxiliary aids and/or other assistive technologies include, but are not limited to, brailled and taped material, interpreters, telecommunications equipment for the deaf, voice recognition software, computer screen magnifiers, screen reader software, wireless amplification systems, and other aids.

§ 1624.4 Discrimination prohibited.

(a) No qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination by any legal services program, directly or through any contractual or other arrangement.

(b) A legal services program may not deny a qualified person with a disability the opportunity to participate in any of its programs or activities or to receive any of its services provided at a facility on the ground that the program operates a separate or different program, activity or facility that is specifically designed to serve persons with disabilities.

(c) In determining the geographic site or location of a facility, a legal services program may not make selections that have the purpose or effect of excluding persons with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity of the legal services program.

(d)(1) A legal services program that employs a total of fifteen or more persons, regardless of whether such persons are employed at one or more locations, shall provide, when necessary, appropriate auxiliary aids and/or other assistive technologies to persons with impaired sensory, manual or speaking skills, in order to afford such persons an equal opportunity to benefit from the legal services program's services. A legal services program is not required to maintain such aids at all times, provided they can be obtained on reasonable notice.

(2) The Corporation may require legal services programs with fewer than fifteen employees to provide auxiliary aids and/or other assistive technologies where the provision of such aids would not significantly impair the ability of the

legal services program to provide its services.

(e) A legal services program shall take reasonable steps to ensure that communications with its applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

(f) A legal services program may not deny persons with disabilities the opportunity to participate as members of or in the meetings or activities of any planning or advisory board or process established by or conducted by the legal services program, including but not limited to meetings and activities conducted in response to the requirements of 45 CFR part 1620.

§ 1624.5 Accessibility of legal services.

(a) No qualified person with a disability shall, because a legal services program's facilities are inaccessible to or unusable by persons with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination by any legal services program.

(b) A legal services program shall conduct its programs and activities so that, when viewed in their entirety, they are readily accessible to and usable by persons with disabilities. This paragraph does not necessarily require a legal services program to make each of its existing facilities or every part of an existing facility accessible to and usable by persons with disabilities, or require a legal services program to make structural changes in existing facilities when other methods are effective in achieving compliance. In choosing among available methods for meeting the requirements of this paragraph, a legal services program shall give priority to those methods that offer legal services to persons with disabilities in the most integrated setting appropriate.

(c) A legal services program shall, to the maximum extent feasible, ensure that new facilities that it rents or purchases are accessible to persons with disabilities. Prior to entering into any lease or contract for the purchase of a building, a legal services program shall submit a statement to LSC certifying that the facilities covered by the lease or contract will be accessible to persons with disabilities, or if the facilities will not be accessible, a detailed description of the efforts the program made to obtain accessible space, the reasons why the inaccessible facility was nevertheless selected, and the specific steps that will be taken by the legal services program to ensure that its services are accessible to persons with disabilities who would otherwise use that facility. After a statement certifying facility accessibility has been submitted, additional statements need not be resubmitted with respect to the same facility, unless substantial changes have been made in the facility that affect its accessibility.

(d) A legal services program shall ensure that new facilities designed or constructed for it are readily accessible to and usable by persons with disabilities. Alterations to existing facilities shall, to the maximum extent feasible, be designed and constructed to make the altered facilities readily accessible to and usable by persons with disabilities.

§ 1624.6 Employment.

(a) No qualified person with a disability shall, on the basis of disability, be subjected to discrimination in employment by any legal services program.

(b) A legal services program shall make all decisions concerning employment under any program or activity to which this part applies in a manner that ensures that discrimination on the basis of disability does not occur, and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of disability.

(c) The prohibition against discrimination in employment applies to the following activities:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the legal services program;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(d) A legal services program may not participate in any contractual or other relationship with persons, agencies, organizations or other entities such as, but not limited to, employment and referral agencies, labor unions, organizations providing or administering fringe benefits to employees of the legal services program, and organizations providing training and apprenticeship programs, if the practices of such person, agency, organization, or other entity have the effect of subjecting qualified applicants or employees with disabilities to discrimination prohibited by this paragraph.

(e) A legal services program shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability unless the accommodation would impose an undue hardship on the operation of the program.

(1) For purposes of this paragraph (e), reasonable accommodation may include:

(i) Making facilities used by employees readily accessible to and usable by persons with disabilities; and

(ii) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of auxiliary aids and/or other assistive technologies, and other similar actions.

(2) In determining whether an accommodation would impose an undue hardship on the operation of a legal services program, factors to be considered include, but are not limited to, the overall size of the legal services program with respect to number of employees, number and type of facilities, and size of budget, and the nature and costs of the accommodation needed.

(3) A legal services program may not deny any employment opportunity to a qualified employee or applicant with a disability if the basis for the denial is a need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

(f) A legal services program may not use employment tests or criteria that discriminate against persons with disabilities, and shall ensure that employment tests are adapted for use by persons who have disabilities that impair sensory, manual, or speaking skills.

(g) A legal services program may not conduct a pre-employment medical examination or make a pre-employment inquiry as to whether an applicant is a person with a disability or as to the nature or severity of a disability except under the circumstances described in 45 CFR 84.14(a) through (d)(2). The

Corporation shall have access to relevant information obtained in accordance with this section to permit investigations of alleged violations of this part.

(h) A legal services program shall post in prominent places in each of its offices a notice stating that the legal services program does not discriminate on the basis of disability.

(i) Any recruitment materials published or used by a legal services program shall include a statement that the legal services program does not discriminate on the basis of disability.

§ 1624.7 Enforcement.

(a) The procedures described in part 1618 of these regulations shall apply to any alleged violation of this Part by a legal services program.

(b) When LSC receives a complaint of a violation of this part, LSC policy is generally to refer such complainants promptly to the appropriate Federal, state or local agencies, although LSC retains the discretion to investigate all complaints and/or to maintain an open complaint file during the pendency of an investigation being conducted by such other Federal, state or local agency. LSC may use, at its discretion, information obtained by such other agency as may be available to LSC, including findings of such other agency of whether discrimination on the basis of disability occurred.

Victor M. Fortuno,

Vice President and General Counsel.

[FR Doc. E6–18709 Filed 11–6–06; 8:45 am]

BILLING CODE 7050–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 060525140–6221–02; I.D. 092606D]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Closure of the 2006 Golden Tilefish and Snowy Grouper Commercial Fisheries; Correction

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

ACTION: Temporary rule; closure; correction.

SUMMARY: This document contains a correction to the temporary rule that closes the commercial fisheries for golden tilefish and snowy grouper in the exclusive economic zone (EEZ) of the South Atlantic that was published in the **Federal Register** October 12, 2006.

DATES: Effective 12:01 a.m., local time, October 23, 2006, until 12:01 a.m., local time, on January 1, 2007.

FOR FURTHER INFORMATION CONTACT: Anik Clemens, telephone 727–824–5305; fax 727–824–5308; e-mail *Anik.Clemens@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

A temporary rule was published in the **Federal Register** on October 12, 2006 (71 FR 60076), closing the commercial fisheries for golden tilefish and snowy grouper in the EEZ of the South Atlantic from 12:01 a.m., local time, October 23, 2006, until 12:01 a.m., local time, on January 1, 2007. NMFS determined that this closure was necessary to protect the golden tilefish and snowy grouper resources.

Need for Correction

FR Doc. E6–16934, published on October 12, 2006 (71 FR 60076), contains an error in the subject heading and requires correction.

Correction

Accordingly, the temporary rule, published on October 12, 2006, at 71 FR 60076, is corrected as follows:

On page 60076, in the 3rd column, in the subject heading, remove the phrase ''Reef Fish Fishery of the Gulf of Mexico'' and add in its place the phrase ''Snapper-Grouper Fishery Off the Southern Atlantic States''.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 1, 2006.

James P. Burgess,

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

[FR Doc. E6–18747 Filed 11–6–06; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 71, No. 215

Tuesday, November 7, 2006

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26071; Directorate Identifier 2006–CE–51–AD]

RIN 2120–AA64

Airworthiness Directives; Mooney Airplane Company, Inc., (Mooney) Models M20M and M20R Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Mooney Airplane Company, Inc. Models M20M and M20R airplanes. This proposed AD would require you to retorque the upper left and upper right engine mounting hardware as an interim action. This proposed AD would also require you to remove the upper left and upper right engine mount attaching hardware, cut out and remove the upholstery and insulation between the fuselage tubular frame and the firewall, and replace the upper left and upper right engine mount attaching hardware with the new parts kit. This proposed AD results from failure of the engine mount attaching hardware to maintain torque as a result of firewall insulation and upholstery being compressed between the fuselage tubular frame and the firewall at the upper left and upper right engine mount attach points. We are proposing this AD to prevent the upper right and upper left engine mounting hardware from losing torque, which could result in a reduction in engine mount load carrying capability and could lead to engine mount failure.

DATES: We must receive comments on this proposed AD by December 7, 2006.

ADDRESSES: Use one of the following addresses to comment on this proposed AD:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

For service information identified in this proposed AD contact Mooney Airplane Company, Inc., 165 Al Mooney Road North, Kerrville, TX 78028; telephone (830) 896–6000.

FOR FURTHER INFORMATION CONTACT: Andrew McAnaul, Aerospace Engineer, ASW–150 (c/o MIDO–43), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; telephone: (210) 308–3365; fax: (210) 308–3370.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, ''FAA–2006–26071; Directorate Identifier 2006–CE–51–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive concerning this proposed AD.

Discussion

We received information from Mooney Airplane Company, Inc., that during the manufacturing process of Models M20M Serial Numbers 27–0317 through 27–0355 and Models M20R Serial Numbers 29–0290 through 29–0448, the firewall insulation and upholstery covering attached to the interior surface of the firewall, located behind the instrument panel, may be compressed between the fuselage tubular frame and the stainless steel firewall at the upper left and upper right engine mount points. This may prevent the engine mount attaching hardware from maintaining torque to engineering design.

This condition, if not corrected, could result in failure to maintain proper fastener torque, leading to reduced engine mount load carrying capability and possible engine mount failure.

Relevant Service Information

We have reviewed Mooney Airplane Company, Inc. Service Bulletin M20–292, dated September 22, 2006. The service information describes procedures for:

- Retorquing the upper left and upper right engine mounting hardware;
- Removing the upper left and upper right engine mount attaching hardware;
- Cutting out and removing the upholstery and insulation between the fuselage tubular frame and the firewall; and
- Replacing the upper left and upper right engine mount attaching hardware with the new parts kit.

FAA's Determination and Requirements of the Proposed AD

We are proposing this AD because we evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This proposed AD would require you to retorque the upper left and upper right engine mounting hardware as an interim action. This proposed AD would also require you to remove the upper left and upper right engine mount attaching hardware, cut out and remove the upholstery and insulation between the fuselage tubular frame and the firewall, and replace the upper left and upper right engine mount attaching hardware with the new parts kit.

Costs of Compliance

We estimate that this proposed AD would affect 198 airplanes in the U.S. registry.

We estimate the following costs for the proposed procedures:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
Retorquing of the upper left and upper right engine mounting hardware: .5 work-hours × $80 per hour = $40.	Not Applicable	$40	198 × $40 = $7,920.
Removing insulation and upholstery material at the engine mount upper right and upper left attaching points, and installing engine mount attaching hardware with the new parts kit: 2 work-hours × $80 per hour = $160.	$20	160	198 × $180 = $35,640.

Note: Mooney will provide warranty credit for parts and labor as specified in the Mooney Airplane Company, Inc. Service Bulletin M20–292, dated September 22, 2006.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket that contains the proposed AD, the regulatory evaluation, any comments received, and other information on the Internet at *http://dms.dot.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Mooney Airplane Company, Inc.: Docket No. FAA–2006–26071; Directorate Identifier 2006–CE–51–AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by December 7, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model M20M airplanes, serial numbers 27–0317 through 27–0355 and Model M20R airplanes, serial numbers 29–0290 through 29–0448, that are certificated in any category.

Unsafe Condition

(d) This AD results from failure of the engine mount attaching hardware to maintain torque as a result of firewall insulation and upholstery being compressed between the fuselage tubular frame and the firewall at the upper left and upper right engine mount attach points. We are issuing this AD to prevent the upper right and upper left engine mounting hardware from losing torque, which could lead to a reduction in engine mount load carrying capability and could result in engine mount failure.

Compliance

(e) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) Locate and retorque the upper left and upper right engine mount attaching hardware.	Within the next 25 hours time-in-service (TIS) after the effective date of this AD.	Follow Mooney Airplane Company, Inc. Service Bulletin M20–292 dated September 22, 2006.

Actions	Compliance	Procedures
(2) Replace the old engine mount attaching hardware by doing the following: (i) Remove and discard the upper left and upper right engine mount attaching hardware; (ii) Cut out and remove the upholstery and insulation material to allow full metal-to-metal contact of the fuselage tubular frame to the firewall; and (iii) Install the new upper left and upper right engine mount attaching hardware Parts Kit.	Within the next 100 hours TIS after the effective date of this AD.	Follow Mooney Airplane Company, Inc. Service Bulletin M20–292 dated September 22, 2006.
(3) If you do the actions of paragraph (e)(2) of this AD before the compliance time specified for the action in paragraph (e)(1) of this AD, it terminates the requirement for the action in paragraph (e)(1) of this AD.	As of the effective date of this AD	Follow Mooney Airplane Company, Inc. Service Bulletin M20–292 dated September 22, 2006.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Fort Worth Airplane Certification Office, FAA,ATTN: Andrew McAnaul, Aerospace Engineer, ASW–150 (c/o MIDO–43), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; telephone: (210) 308–3365; fax: (210) 308–3370, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(g) To get copies of the service information referenced in this AD, contact the Mooney Airplane Company, Inc., 165 Al Mooney Road North, Kerrville, TX 78028, telephone: 830–896–6000. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov.*

The docket number is Docket No. FAA–2006–26071; Directorate Identifier 2006–CE–51–AD.

Issued in Kansas City, Missouri, on October 30, 2006.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–18724 Filed 11–6–06; 8:45 am]

BILLING CODE 4910–13–P

LEGAL SERVICES CORPORATION

45 CFR Part 1621

Client Grievance Procedure

AGENCY: Legal Services Corporation.

ACTION: Notice of proposed rulemaking—reopening of comment period.

SUMMARY: On August 21, 2006, the Legal Services Corporation (LSC) issued a Notice of Proposed Rulemaking (NPRM) proposing to amend LSC's regulation on client grievance procedures. The comment period closed on September 20, 2006. LSC is reopening the comment period to allow additional time for interested parties to comment on the proposed changes.

DATES: Comments on the NPRM are due on December 22, 2006.

ADDRESSES: Written comments may be submitted by mail, fax or e-mail to Mattie Cohan, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 3333 K Street, NW., Washington, DC 20007; 202–295–1624 (ph); 202–337–6519 (fax); *mcohan@lsc.gov.*

FOR FURTHER INFORMATION CONTACT: Mattie Cohan, Senior Assistant General Counsel, 202–295–1624 (ph); *mcohan@lsc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Legal Services Corporation's (LSC) regulation on client grievance procedures, 45 CFR part 1621, adopted in 1977 and not amended since that time, requires that LSC grant recipients establish grievance procedures pursuant to which clients and applicants for service can pursue complaints with recipients related to the denial of legal assistance or dissatisfaction with the legal assistance provided. LSC initiated a rulemaking on October 29, 2005 to consider revisions to Part 1621 and published a Notice of Proposed Rulemaking proposing changes to the rule on August 21, 2006. 71 FR 48501.

The comment period on the NPRM closed on September 20, 2006. LSC received five timely comments on the proposed changes. The Operations and Regulations Committee of the LSC Board of Directors was scheduled to consider a Draft Final Rule prepared by Management at its meeting of October 27, 2006. Prior to that meeting, the Chairman of the Operations and Regulations Committee received a request from the National Legal Aid and Defender Association (NLADA) to file additional comments from NLADA's client representative committee. In response to that request, LSC determined that deferring action on the draft final rule to allow additional time for the client representative community (and any other interested parties) to submit comments was appropriate. Accordingly, LSC is reopening the comment period on the NPRM for a period of 45 days. Parties desiring to comment may find the NPRM on the LSC Web site at:*http://www.lsc.gov/pdfs/1621FedRegNotice.pdf.* Other pertinent docket materials in this rulemaking may be found at: *http://www.lsc.gov/laws/open_rulemaking.php*, under the heading ''Revision of 45 CFR Part 1621.''

Victor M. Fortuno,

Vice President & General Counsel.

[FR Doc. E6–18708 Filed 11–6–06; 8:45 am]

BILLING CODE 7050–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Colorado River Cutthroat Trout as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; opening of public comment period on status review, and announcement of informational workshop.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the

opening of a public comment period regarding the status of Colorado River cutthroat trout (*Oncorhynchus clarki pleuriticus*) in the United States. This status review has been initiated pursuant to a recent court order requiring us to prepare a 12-month finding on a petition to list the subspecies as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). Through this action, we encourage all interested parties to provide us information regarding the status of, and any potential threats to, this fish.

DATES: Comments must be submitted on or before January 8, 2007. The informational workshops will be held on December 6, 2006, from 1 p.m. to 5 p.m. and on December 7, 2006, from 8 a.m. to 12 p.m.

ADDRESSES: *Written comments:* If you wish to comment, you may submit your comments and materials by any one of the following methods:

(1) You may mail or hand-deliver written comments and information to Colorado River Cutthroat Trout Comments, U.S. Fish and Wildlife Service, 764 Horizon Drive, Building B, Grand Junction, Colorado 81506–3946.

(2) You may electronic mail (e-mail) your comments to *coloradorivercut@fws.gov.* For directions on how to submit comments by e-mail, see the ''Public Comments Solicited'' section of this notice. In the event that our Internet connection is not functional, please submit your comments by mail, hand-delivery, or fax to (970) 245–6933.

Informational workshop: The informational workshop will be held at the Holiday Inn, 755 Horizon Drive, Grand Junction, Colorado.

FOR FURTHER INFORMATION CONTACT: Patty Gelatt, U.S. Fish and Wildlife Service, 764 Horizon Drive, Building B, Grand Junction, Colorado 81506–3946 (fax 970–245–6933; telephone 970–243–2778, extension 26; e-mail *patty_schradergelatt@fws.gov*). Additional information is available at *http://mountain-prairie.fws.gov/species/fish/crct/.*

SUPPLEMENTARY INFORMATION:

Background

On December 16, 1999, we received a formal petition from the Center for Biological Diversity (CBD) and other petitioners to list the Colorado River cutthroat trout as threatened or endangered. On January 12, 2000, we notified CBD that we could not immediately address the petition because of other higher priority listing activities. In October 2000, CBD filed a complaint in the U.S. District Court for the District of Columbia alleging that we had failed to make a timely 90-day finding. We subsequently completed the 90-day review process, and on April 20, 2004, we published a 90-day finding in the **Federal Register** (69 FR 21151) that determined the petition failed to present substantial scientific and commercial information indicating that listing this subspecies may be warranted.

After our 90-day finding was published, plaintiffs amended their October 2000 complaint alleging that we used the wrong procedures and standards to assess the petition. From approximately January 2002 through April 2004, we received important information relevant to the status of Colorado River cutthroat trout from the Game and Fish Departments of Colorado, Utah, and Wyoming, and from the National Park Service, Bureau of Land Management, and the U.S. Forest Service. According to CBD's complaint, this information was used inappropriately in our 90-day finding because we solicited information and opinions only from limited outside sources. On September 7, 2006, the Court ruled in favor of the plaintiffs and ordered us to produce a status review and 12-month finding for Colorado River cutthroat trout within 9 months.

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) requires that we make a 12-month finding as to whether a petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded by other pending proposals to determine whether other species are threatened or endangered, and we are making expeditious progress to list or delist qualified species. The 12-month finding is to be based on a status review that is initiated by a ''substantial information'' finding.

At this time, we are opening a 60-day comment period to allow all interested parties an opportunity to provide information on the status of the Colorado River cutthroat trout and potential threats to the subspecies. We will base our 12-month finding on a review of the best scientific and commercial information available, including all such information received during the public comment period.

Informational Workshop

An informational workshop will be held on December 6, 2006, from 1 p.m. to 5 p.m. and on December 7, 2006, from 8 a.m. to 12 p.m. at the Holiday Inn, 755 Horizon Drive, Grand Junction, Colorado. The purpose of the workshop is to provide an opportunity for dialogue between the Service's decision-makers and parties interested in providing information regarding the status of, or threats to, Colorado River cutthroat trout. We invite State and Federal resource agencies, the petitioners, and any other interested parties to attend the workshop. Those interested in discussing their information may request a time slot by sending an e-mail to *coloradorivercut@fws.gov.* Please indicate the approximate presentation time desired, the name of the presenter, and the organization represented. It also will be possible to sign up for a time slot (maximum 15 minutes) at the workshop. Shorter time slots will be scheduled for December 7 at the conclusion of the prescheduled presentations.

Public Comments Solicited

When our 12-month review process has been completed, 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 names and home addresses, etc., but if you wish us to consider withholding this information, you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

Please include ''*Attn*: Colorado River cutthroat trout'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please submit your comments in writing using one of the alternate methods described above.

Author

The primary author of this document is Patty Gelatt, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service, Ecological Services, Grand Junction, Colorado.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 31, 2006.

Marshall Jones,

Acting Director, Fish and Wildlife Service.

[FR Doc. E6–18691 Filed 11–6–06; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 71, No. 215
Tuesday, November 7, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket Number FV06–374]

Privacy Act: Notice of Updated System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of updated System of Records—USDA/AMS—3, entitled Perishable Agricultural Commodities Act (PACA)—Oracle Database.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the United States Department of Agriculture (USDA), Agricultural Marketing Service (AMS), is giving notice that it has updated a system of records that is maintained for the purpose of enforcing the PACA, which AMS administers.

DATES: *Effective Date:* This notice will be effective without further notice on December 18, 2006, unless modified by a subsequent notice to incorporate comments received by the public. Written or electronic comments must be received by the contact person listed below on or before December 7, 2006 to be assured consideration.

ADDRESSES: You may submit written or electronic comments to:

(1) PACA System of Records Comments, AMS, F&V Programs, PACA Branch, 1400 Independence Avenue, SW., Room 2095–S, Stop 0242, Washington DC 20250–0242.

(2) Fax: 202–690–4413.

(3) E-mail comments to *Dexter.Thomas@usda.gov*.

(4) Internet: *http://www.regulations.gov*.

Instructions: All comments will become a matter of public record and should be identified as PACA System of Records Comments. Comments will be available for public inspection from AMS at the above address or over the AMS Web site at: *http://www.ams.usda.gov/paca*. Web site questions can be addressed to the PACA Webmaster, *Dexter.Thomas@usda.gov*.

FOR FURTHER INFORMATION CONTACT: Lorenzo A. Tribbett, Assistant Branch Chief, PACA Branch, at 202–720–4180.

SUPPLEMENTARY INFORMATION: The PACA was enacted by Congress in 1930 to establish a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables in interstate or foreign commerce. It protects growers, shippers, and distributors dealing in those commodities by prohibiting unfair and fraudulent trade practices.

The law provides a forum for resolving contract disputes and assessing damages against anyone who fails to meet contractual obligations. In addition, the PACA prohibits unfair trading practices in the fruit and vegetable industry and imposes sanctions against violating firms and firms' principals when violations of the law occur. The PACA also imposes a statutory trust that attaches to perishable agricultural commodities received by regulated entities, products derived from the commodities, and any receivables or proceeds from the sale of the commodities. The trust exists for the benefit of produce suppliers, sellers, or agents that have not been paid, and continues until they have been paid in full.

The PACA is enforced through a licensing system. All commission merchants, dealers, and brokers engaged in business subject to the PACA must be licensed. Those who engage in practices prohibited by the PACA may have their licenses suspended or revoked. Licensees must report principals, stockholders, home addresses, and business locations to allow for proper notification in the event of a commercial dispute. Sections 3 and 4 of the PACA (7 U.S.C 499c and 499d) and Sections 46.3 through 46.13 of the PACA regulations (7 CFR 46.3–46.13) establish the requirement for licensing and the type of information that must be reported.

The information collected and maintained in the PACA system of records is used to administer licensing provisions under the PACA, to adjudicate contract disputes, and to enforce the PACA and the PACA regulations. In accordance with Office of Management and Budget regulations (5 CFR part 1320) that implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collected and maintained by the PACA system of records was approved on October 5, 2004, and will expire on October 31, 2007.

This system maintains a database of PACA licensees, including personal and business information from individuals and entities licensed under the PACA to do business in the fruit and vegetable industry. The following information is contained in the system: Name, home address, Social Security number (SSN), and employer identification number.

In addition to the above information, this system tracks dates when licenses are due for renewal and automatically generates a renewal application, and if necessary, a reinstatement or termination notice of those licenses. Functions of this database include:

1. Adding a new customer to the database;
2. Editing or updating customer information;
3. Contacting a business about its need for a license;
4. Issuing a license;
5. Tracking of license fees;
6. Maintaining information on PACA reparation complaints;
7. Tracking violators;
8. Maintaining bankruptcy information;
9. Tracking surety bonds;
10. Tracking of complaint fees; and
11. Updating a customer's license status if the customer is found liable in a reparation complaint proceeding.

There is an inbuilt Query module that allows the user to query customers, its principals, and complaint information.

In addition to entering, tracking, and querying information, the user has the ability to print out a large number of documents, including items such as correspondence and complaint reports. Development of this system also included database backup and recovery and Internet security (Web-based application).

A ''Report on an Updated System,'' required by 5 U.S.C. 552a(r), as implemented by OMB Circular A–130, was sent to the Chairman, Senate Committee on Homeland Security and Governmental Affairs; the Chairman, House Committee on Government Reform; and the Acting Administrator, Office of Information and Regulatory

Affairs, of the Office of Management and Budget.

Dated: November 1, 2006.

Mike Johanns,

Secretary.

USDA/AMS–3

SYSTEM NAME:

Perishable Agricultural Commodities Act (PACA)—Oracle Database.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

This system of records is under the control of the Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250. The data are maintained in the Fruit and Vegetable Program's PACA Branch Oracle Database computer system.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The information in the system includes individuals' names, home addresses, Social Security numbers, employer identification numbers, license fees, surety bonds, and percentages of ownership that individuals may have in a company.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. *et seq.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information collected and maintained in the PACA system of records is used to administer licensing provisions under the PACA, to adjudicate contract disputes, and to enforce the PACA and PACA regulations.

This information may be used as follows:

1. Referral to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, or any record within this system when available information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant thereto.

2. Referral to a court, magistrate, or administrative tribunal, or to opposing counsel in a proceeding before any of the above, or any record with the system which constitutes evidence in that proceeding, or which is sought in the course of discovery.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in the system on a file server and in file folders in secure rooms at USDA. A backup of the entire database system is performed nightly and saved as an encrypted Oracle file on the server. A copy of the entire Oracle database file is transferred periodically to a secure offsite location, and also backed up nightly.

RETRIEVABLITY:

Records are retrievable by PACA license number, individual name, company name, and Social Security number.

SAFEGUARDS:

Access to records is limited to persons who process the records for the specific routine uses stated above. Records in such formats as those used for computer servers are kept in physically secured rooms. Various methods of computer security limit access to records in the database. Paper records are stored and maintained in file cabinets that are kept in physically secured rooms.

RETENTION AND DISPOSAL:

Records are maintained and destroyed in accordance with retention schedule number NN 165–106, approved by the 89th Congress, First Session, on April 1, 1965.

SYSTEM MANAGER(S) AND ADDRESS:

Branch Chief, PACA Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., 2095 South Building, Washington, DC 20250.

NOTIFICATION PROCEDURE:

Individuals may request from the system manager identified above information regarding this system of records and/or information on whether the system contains records pertaining to them. Any individual requesting such information must provide his or her name, address, and Social Security number.

RECORD ACCESS PROCEDURE:

Individuals may obtain information about records in the system pertaining to them by submitting a written request to the system manager listed above. The envelope and letter should be marked ''Privacy Act Request'' and should include the name, address, and Social Security number of the individual for which the request is made.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their requests to the system manager listed above, state the reason(s) for contesting the information, and provide all available documentation to support the requested action.

RECORD SOURCE CATEGORIES:

Information in this system is provided by the entities submitting applications for licenses under the Perishable Agricultural Commodities Act, 1930, as amended. Personal information in this system is also obtained from the owners and officers of such entities as reported on the applications for license.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E6–18699 Filed 11–6–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0163]

Notice of Request for Extension of Approval of an Information Collection; Untreated Oranges, Tangerines, and Grapefruit From Mexico Transiting the United States to Foreign Countries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for untreated oranges, tangerines, and grapefruit from Mexico transiting the United States to foreign countries.

DATES: We will consider all comments that we receive on or before January 8, 2007.

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

- *Federal eRulemaking Portal:* Go to *http://regulations.gov*, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2006–0163 to submit or view public comments and to

view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.

• *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0163, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0163.

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

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

FOR FURTHER INFORMATION CONTACT: For information regarding regulations for untreated oranges, tangerines, and grapefruit from Mexico transiting the United States to foreign countries, contact Mr. Dave Hanken, Senior Staff Officer, Quarantine Policy, Analysis, and Support, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1236; (301) 734–5395. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION: *Title:* Untreated Oranges, Tangerines, and Grapefruit from Mexico Transiting the United States to Foreign Countries.

OMB Number: 0579–0303.

Type of Request: Extension of approval of an information collection.

Abstract: As authorized by the Plant Protection Act (7 U.S.C. 7701 *et seq.*) (PPA), the Secretary of Agriculture may prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, means of conveyance, or other article if the Secretary determines that the prohibition or restriction is necessary to prevent a plant pest or noxious weed from being introduced into or disseminated within the United States. This authority has been delegated to the Animal and Plant Health Inspection Service (APHIS), which administers regulations to implement the PPA.

The plant quarantine safeguard regulations in 7 CFR part 352 allow certain products or articles that are classified as prohibited or restricted products or articles under other regulations in title 7 to be moved through the United States under certain conditions. Such articles include fruits and vegetables that are moved into the United States for: (1) A temporary stay where unloading or landing is not intended, (2) unloading or landing for transshipment and exportation, (3) unloading or landing for transportation and exportation, or (4) unloading and entry at a port other than the port of first arrival.

The regulations in § 352.30 address the movement of untreated oranges, tangerines, and grapefruit from Mexico into or through the United States in transit to foreign countries. These regulations require the trucking industry and shippers to obtain permits from APHIS that allow the untreated fruit to transit the United States.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.5 hours per response.

Respondents: Trucking industry; shippers.

Estimated annual number of respondents: 400.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 400.

Estimated total annual burden on respondents: 200 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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

Done in Washington, DC, this 1st day of November 2006.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–18737 Filed 11–6–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Waivers of Requirement for Timely Presentation of Certificates of Quota Eligibility for Sugar Imported From Mexico in Fiscal Year (FY) 2006

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Department of Agriculture will consider requests for a waiver of the requirement for presentation, at the time of entry into U.S. Customs territory, of certificates for quota eligibility for sugar imported under tariff-rate quotas allocated to Mexico during FY 2006 (October 1, 2005–September 30, 2006).

Background

There were numerous disruptions to the U.S. sugar market in FY 2006, leading to spot shortages and increased U.S. import requirements. Importers of sugar under tariff-rate quotas allocated to Mexico experienced delays in receiving certificates for quota eligibility, due in part to processing delays in both the United States and in Mexico. There were also numerous cases of delays at ports of entry into the United States for sugar under tariff-rate quotas even when the certificate for quota eligibility was available, and importers sometimes avoided delays by entering sugar under a high-duty tariff line which did not require a certificate for quota eligibility. Under 15 CFR 2011.104, the Secretary has authority to grant a waiver, with respect to individual shipments, various requirements regarding use of certificates for quota eligibility, if he

determines that a waiver will not impair the proper operation of the sugar quota system, that it will not have the effect of modifying the allocation of sugar under Additional U.S. Note 5 to Chapter 17 of the Harmonized Tariff Schedule, and that such waiver is justified by unusual, unavoidable, or otherwise appropriate circumstances.

Therefore, the Department will consider requests for a waiver of the requirement for presentation of certificates of quota eligibility for sugar imported from Mexico during FY 2006. This notice does not apply to requests for a waiver of a deadline to enter sugar within a tariff-rate quota period, and applies only to sugar imported from Mexico during FY 2006. To receive full consideration, written requests for a waiver of the requirement for presentation of a sugar certificate for quota eligibility along with the original entry of sugar from Mexico must be received by December 1, 2006. If Mexico's FY 2006 sugar tariff-rate quota fills, no more waivers will be considered. Individual entries affected by this notice will be processed in the order they are received.

FOR FURTHER INFORMATION CONTACT: Ron Lord, Deputy Director, Import Policies and Programs Division, FAS, USDA, (202) 720–2916, e-mail: *Ronald.lord@usda.gov*, fax (202) 720–0876.

Dated: October 30, 2006.

W. Kirk Miller,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 06–9088 Filed 11–6–06; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers To Be Used for Publication of Legal Notice of Appealable Decisions and Publication of Notice of Proposed Actions for Southern Region; Alabama, Kentucky, Georgia, Tennessee, Florida, Louisiana, Mississippi, Virginia, West Virginia, Arkansas, Oklahoma, North Carolina, South Carolina, Texas, Puerto Rico

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: Deciding Officers in the Southern Region will publish notice of decisions subject to administrative appeal under 36 CFR parts 215 and 217 in the legal notice section of the newspapers listed in the **SUPPLEMENTARY INFORMATION** section of this notice. As provided in 36 CFR part 215.5 and 36 CFR part 217.5(d), the public shall be advised through **Federal Register** notice, of the newspaper of record to be utilized for publishing legal notice of decisions. Newspaper publication of notice of decisions is in addition to direct notice of decisions to those who have requested it and to those who have participated in project planning. Responsible Officials in the Southern Region will also publish notice of proposed actions under 36 CFR part 215 in the newspapers that are listed in the **SUPPLEMENTARY INFORMATION** section of this notice. As provided in 36 CFR part 215.5, the public shall be advised, through **Federal Register** notice, of the newspaper of record to be utilized for publishing notices on proposed actions. Additionally, the Deciding Officers in the Southern Region will publish notice of the opportunity to object to a proposed authorized hazardous fuel reduction project under 36 CFR part 218.4 in the legal notice section of the newspapers listed in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: Use of these newspapers for purposes of publishing legal notice of decisions subject to appeal under 36 CFR parts 215 and 217, notices of proposed actions under 36 CFR part 215, and notices of the opportunity to object under 36 CFR part 218 shall begin on or after the date of this publication.

FOR FURTHER INFORMATION CONTACT: Cheryl Herbster, Regional Appeals and Litigation Coordinator, Southern Region, Planning, 1720 Peachtree Road, NW., Atlanta, GA 30309, Phone: 404–347–5235.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Southern Region will give legal notice of decisions subject to appeal under 36 CFR part 217, the Responsible Officials in the Southern Region will give notice of decisions subject to appeal under 36 CFR part 215 and opportunity to object to a proposed authorized hazardous fuel reduction project under 36 CFR part 218 in the following newspapers which are listed by Forest Service administrative unit. Responsible Officials in the Southern Region will also give notice of proposed actions under 36 CFR part 215 in the following newspapers of record which are listed by Forest Service administrative unit. The timeframe for comment on a proposed action shall be based on the date of publication of the notice of the proposed action in the newspaper of record. The timeframe for appeal shall be based on the date of publication of the legal notice of the decision in the newspaper of record for 36 CFR parts 215 and 217. The timeframe for an objection shall be based on the date of publication of the legal notice of the opportunity to object for projects subject to 36 CFR part 218.

Where more than one newspaper is listed for any unit, the first newspaper listed is the newspaper of record that will be utilized for publishing the legal notice of decisions and calculating timeframes. Secondary newspapers listed for a particular unit are those newspapers the Deciding Officer/Responsible Official expects to use for purposes of providing additional notice.

The following newspapers will be used to provide notice.

Southern Region

Regional Forester Decisions: Affecting National Forest System lands in more than one Administrative unit of the 15 in the Southern Region, *Atlanta Journal-Constitution,* published daily in Atlanta, GA.

Affecting National Forest System lands in only one Administrative unit or only one Ranger District will appear in the newspaper of record elected by the National Forest, National Grassland, National Recreation Area, or Ranger District as listed below.

National Forests in Alabama, Alabama

Forest Supervisor Decisions: Affecting National Forest System lands in more than one Ranger District of the 6 in the National Forests in Alabama, *Montgomery Advertiser,* published daily in Montgomery, AL. Affecting National Forest System lands in only one Ranger District will appear in the newspaper of record elected by the Ranger District as listed below.

District Ranger Decisions: Bankhead Ranger District: Northwest Alabamian, published bi-weekly (Wednesday & Saturday) in Haleyville, AL.

Conecuh Ranger District: The Andalusia Star News, published daily (Tuesday through Saturday) in Andalusia, AL.

Oakmulgee Ranger District: The Tuscaloosa News, published daily in Tuscaloosa, AL.

Shoal Creek Ranger District: The Anniston Star, published daily in Anniston, AL.

Talladega Ranger District: The Daily Home, published daily in Talladega, AL.

Tuskegge Ranger District: Tuskegee News, published weekly (Thursday) in Tuskegee, AL.

Caribbean National Forest, Puerto Rico

Forest Supervisor Decisions: El Nuevo Dia, published daily in Spanish in San Juan, PR.

San Juan Star, published daily in English in San Juan, PR.

Chattahoochee-Oconee National Forest, George

Forest Supervisor Decisions: The Times, published daily in Gainesville, GA.

District Ranger Decisions: Armuchee-Cohutta Ranger District: Daily Citizen, published daily in Dalton, GA.

Brasstown Ranger District: North Georgia News, (newspaper of record) published weekly (Wednesday) in Blairsville, GA.

Towns County Herald, (secondary) published weekly (Thursday) in Hiawassee, GA.

The Dahlonega Nuggett, (secondary) published weekly (Wednesday) in Dahlonega, GA.

Chattooga Ranger District: Northeast Georgian, (newspaper of record) published bi-weekly (Tuesday & Friday) in Cornelia, GA.

Chieftain & Toccoa Record, (secondary) published bi-weekly (Tuesday & Friday) in Toccoa, GA.

White County News Telegraph, (secondary) published weekly (Thursday) in Cleveland, GA.

The Dahlonega Nuggett, (secondary) published weekly (Thursday) in Dahlonega, GA.

Oconee Ranger Districts: Eatonton Messenger, published weekly (Thursday) in Eatonton, GA.

Tallulah Ranger District: Clayton Tribune, published weekly (Thursday) in Clayton, GA.

Toccoa Ranger District: The News Observer (newspaper of record) published bi-weekly (Tuesday & Friday) in Blue Ridge, GA.

The Dahlonega Nuggett, (secondary) published weekly (Wednesday) in Dahlonega, GA.

Cherokee National Forest, Tennessee

Forest Supervisor Decisions: Knoxville News Sentinel, published daily in Knoxville, TN.

District Ranger Decisions: Nolichucky-Unaka Ranger District: Greeneville Sun, published daily (except Sunday) in Greeneville, TN.

Ocoee-Hiwassee Ranger District: Polk County News, published weekly (Wednesday) in Benton, TN.

Tellico Ranger District: Monroe County Advocate & Democrat, published tri-weekly (Wednesday, Friday, and Sunday) in Sweetwater, TN.

Watauga Ranger District: Johnson City Press, published daily in Johnson City, TN.

Daniel Boone National Forest, Kentucky

Forest Supervisor Decisions: Lexington Herald-Leader, published daily in Lexington, KY.

Cumberland Ranger District: Lexington Herald-Leader, published daily in Lexington, KY.

London Ranger District: The Sentinel-Echo, published tri-weekly (Monday, Wednesday, and Friday) in London, KY.

Redbird Ranger District: Manchester Enterprise, published weekly (Thursday) in Manchester, KY.

Stearns Ranger District: McCreary County Record, published weekly (Tuesday) in Whitley City, KY.

National Forests in Florida, Florida

Forest Supervisor Decisions: The Tallahassee Democrat, published daily in Tallahassee, FL.

District Ranger Decisions: The Tallahassee Democrat, published daily in Tallahassee, FL.

District Ranger Decisions: Apalachicola Ranger District: Calhoun-Liberty Journal, published weekly (Wednesday) in Bristol, FL.

Lake George Ranger District: The Ocala Star Banner, published daily in Ocala, FL.

Osceola Ranger District: The Lake City Reporter, published daily (Monday-Saturday) in Lake City, FL.

Seminole Ranger District: The Daily Commercial, published daily in Leesburg, FL.

Wakulla Ranger District: The Tallahassee Democrat, published daily in Tallahassee, FL.

Francis Marion & Sumter National Forests, South Carolina Forest Supervisor Decisions: The State, published daily in Columbia, SC.

District Ranger Decisions: Andrew Pickens Ranger District: The Daily Journal, published daily (Tuesday through Saturday) in Seneca, SC.

Enoree Ranger District: Newberry Observer, published tri-weekly (Monday, Wednesday, and Friday) in Newberry, SC.

Long Cane Ranger District: The State, published daily in Columbia, SC.

Wambaw Ranger District: Post and Courier, published daily in Charleston, SC.

Witherbee Ranger District: Post and Courier, published daily in Charleston, SC.

George Washington and Jefferson National Forests, Virginia and West Virginia

Forest Supervisor Decisions: Roanoke Times, published daily in Roanoke, VA.

District Ranger Decisions: Clinch Ranger District: Coalfield Progress, published bi-weekly (Tuesday and Thursday) in Norton, VA.

North River Ranger District: Daily News Record, published daily (except Sunday) in Harrisonburg, VA.

Glenwood-Pedlar Ranger District: Roanoke Times, published daily in Roanoke, VA.

James River Ranger District: Virginian Review, published daily (except Sunday) in Covington, VA.

Lee Ranger District: Shenandoah Valley Herald, published weekly (Wednesday) in Woodstock, VA.

Mount Rogers National Recreation Area: Bristol Herald Courier, published daily in Bristol, VA.

Eastern Divide Ranger District: Roanoke Times, published daily in Roanoke, VA.

Warm Springs Ranger District: The Recorder, published weekly (Thursday) in Monterey, VA.

Kisatchie National Forest, Louisiana

Forest Supervisor Decisions: The Town Talk, published daily in Alexandria, LA.

District Ranger Decisions: Calcasieu Ranger District: The Town Talk, (newspaper of record) published daily in Alexandria, LA.

The Leesville Ledger, (secondary) published tri-weekly (Tuesday, Friday, and Sunday) in Leesville, LA.

Caney Ranger District: Minden-Press Herald, (newspaper of record) published daily in Minden, LA.

Homer Guardian Journal, (secondary) published weekly (Wednesday) in Homer, LA.

Catahoula Ranger District: The Town Talk, published daily in Alexandria, LA.

Kisatchie Ranger District: Natchitoches Times, published daily (Tuesday thru Friday and on Sunday) in Natchitoches, LA.

Winn Ranger District: Winn Parish Enterprise, published weekly (Wednesday) in Winnfield, LA.

Land Between the Lake National Recreation Area, Kentucky and Tennessee

Area Supervisor Decisions: The Paducah Sun, published daily in Paducah, KY

National Forests in Mississippi, Mississippi

Forest Supervisor Decisions: Clarion-Ledger, published daily in Jackson, MS.

District Ranger Decisions: Bienville Ranger District: Clarion-Ledger, published daily in Jackson, MS.

Chickasawhay Ranger District: Clarion-Ledger, published daily in Jackson, MS.

Delta Ranger District: Clarion-Ledger, published daily in Jackson, MS.

De Soto Ranger District: Clarion-Ledger, published daily in Jackson, MS.

Holly Springs Ranger District: Clarion-Ledger published daily in Jackson, MS.

Homochitto Ranger District: Clarion-Ledger published daily in Jackson, MS.

Tombigbee Ranger District: Clarion-Ledger, published daily in Jackson, MS.

National Forests in North Carolina, North Carolina

Forest Supervisor Decisions: The Asheville Citizen-Times, published daily in Asheville, NC.

District Ranger Decision: Appalachian Ranger District: The Asheville Citizen-Times, published daily in Asheville, NC.

Cheoah Ranger District: Graham Star, published weekly (Thursday) in Robbinsville, NC.

Croatan Ranger District: The Sun Journal, published daily in New Bern, NC.

Grandfather Ranger District: McDowell News, published daily in Marion, NC.

Highlands Ranger District: The Highlander, published weekly (mid May–mid Nov Tues & Fri; mid Nov–mid May Tues only) in Highlands, NC.

Pisgah Ranger District: The Asheville Citizen-Times, published daily in Asheville, NC.

Tusquitee Ranger District: Cherokee Scout, published weekly (Wednesday) in Murphy, NC.

Uwharrie Ranger District: Montgomery Herald, published weekly (Wednesday) in Troy, NC.

Wayah Ranger District: The Franklin Press, published bi-weekly (Tuesday and Friday) in Franklin, NC.

Quachita National Forest, Arkansas and Oklahoma

Forest Supervisor Decisions: Arkansas Democrat-Gazette, published daily in Little Rock, AR.

District Ranger Decisions:

Caddo-Womble Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR.

Jessieville-Winona-Fourche Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR.

Mena-Oden Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR.

Oklahoma Ranger District (Choctaw; Kiamichi; and Tiak): Tulsa World, published daily in Tulsa, OK.

Poteau-Cole Springs Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR.

Ozark-St. Francis National Forests, Arkansas

Forest Supervisor Decisions: The Courier, published daily (Tuesday through Sunday) in Russellville, AR.

District Ranger Decisions: Bayou Ranger District: The Courier, published daily (Tuesday through Sunday) in Russellville, AR.

Boston Mountain Ranger District: Southwest Times Record, published daily in Fort Smith, AR.

Buffalo Ranger District: Newton County Times, published weekly in Jasper, AR.

Magazine Ranger District: Southwest Times Record, published daily in Fort Smith, AR.

Pleasant Hill Ranger District: Johnson County Graphic, published weekly (Wednesday) in Clarksville, AR.

St. Francis National Forest: The Daily World, published daily (Sunday through Friday) in Helena, AR.

Sylamore Ranger District: Stone County Leader, published weekly (Wednesday) in Mountain View, AR.

National Forests and Grasslands in Texas, Texas

Forest Supervisor Decisions: The Lufkin Daily News, published daily in Lufkin, TX.

District Ranger Decisions: Angelina National Forest: The Lufkin Daily News, published daily in Lufkin, TX.

Caddo & LBJ National Grasslands: Denton Record-Chronicle, published daily in Denton, TX.

Davy Crockett National Forest: The Lufkin Daily News, published daily in Lufkin, TX.

Sabine National Forest: The Lufkin Daily News, published daily in Lufkin, TX.

Sam Houston National Forest: The Courier, published daily in Conroe, TX.

Dated: October 31, 2006.

Thomas A. Peterson,

Deputy Regional Forester, Natural Resources.

[FR Doc. 06–9101 Filed 11–6–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 061026279–6279–01]

Annual Retail Trade Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: The Bureau of the Census (Census Bureau) is conducting the Annual Retail Trade Survey (ARTS). The Census Bureau has determined a need to collect data covering annual sales, e-commerce sales, percent of e-commerce sales to customers located outside the United States, year-end inventories, total operating expenses, purchases, accounts receivables and, for select industries, merchandise line sales and percent of sales by class of customer.

ADDRESSES: The Census Bureau will furnish report forms to organizations included in the survey. Additional copies are available upon written request to the Director, U.S. Census Bureau, Washington, DC 20233–0101.

FOR FURTHER INFORMATION CONTACT: Mr. John Miller, Service Sector Statistics Division, at (301) 763–2747.

SUPPLEMENTARY INFORMATION: The ARTS is a continuation of similar retail trade surveys conducted each year since 1951 (except 1954). This survey provides, on a comparable classification basis, annual sales, e-commerce sales, purchases, and year-end inventories for 2006. These data are not publicly available from non-governmental or other governmental sources on a timely basis.

The Census Bureau will require a selected sample of firms operating retail establishments in the United States (with sales size determining the probability of selection) to report in the 2006 ARTS. We will furnish report forms to the firms covered by this survey and will require their submissions within 30 days after receipt. The sample will provide, with measurable reliability, statistics on the subjects specified above.

The Census Bureau is authorized to take surveys that are necessary to furnish current data on the subjects covered by the major censuses authorized by Title 13, United States Code (U.S.C.), Sections 182, 224, and 225. This survey will provide continuing and timely national statistical data on retail trade for the period between economic censuses. For 2006, the survey will, as it has in the past, operate as a separate sample of retail companies. The data collected in this survey will be similar to that collected in the past and within the general scope and nature of those inquiries covered in the economic census. These data will provide a sound statistical basis for the formation of policy by various government agencies.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) Control Number. In accordance with the PRA, Title 44, U.S.C., Chapter 35, the OMB approved

the ARTS under OMB Control Number 0607–0013.

Based upon the foregoing, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: November 1, 2006.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. E6–18718 Filed 11–6–06; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 061025278–6278–01]

Service Annual Survey for 2006

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of Determination.

SUMMARY: In accordance with Title 13, United States Code (U.S.C.), Sections 182, 224, and 225, the Bureau of the Census (Census Bureau) has determined that limited financial data (revenue, expenses, and the like) for selected service industries are needed to provide a sound statistical basis for the formation of policy by various governmental agencies. These data also apply to a variety of public and business needs. To obtain the desired data, the Census Bureau announces the administration of the 2006 Service Annual Survey (SAS).

ADDRESSES: The Census Bureau will furnish report forms to respondents included in the survey, and additional copies are available upon written request to the Director, Census Bureau, Washington, DC 20233–0101.

FOR FURTHER INFORMATION CONTACT: Ron Farrar, Chief, Health and Consumer Services Branch, Service Sector Statistics Division, at (301) 763–6782.

SUPPLEMENTARY INFORMATION: The Census Bureau conducts surveys necessary to furnish current data on subjects covered by the major censuses authorized by Title 13, U.S.C. The SAS provides continuing and timely national statistical data each year. Data collected in this survey are within the general scope, type, and character of those inquiries covered in the economic census.

The Census Bureau needs reports only from a limited sample of service sector firms in the United States. The SAS now covers all or some of the following nine sectors: Transportation and Warehousing; Information; Finance, and Insurance; Real Estate and Rental and Leasing; Professional, Scientific, and Technical Services; Administrative and Support and Waste Management and Remediation Services; Health Care and Social Assistance; Arts, Entertainment, and Recreation; and Other Services. The probability of a firm's selection is based on its revenue size (estimated from payroll); that is, firms with a larger payroll will have a greater probability of being selected than those with smaller ones. We are mailing report forms to the firms covered by this survey and require their submission within 30 days after receipt. These data are not publicly available from non-government or other government sources.

Based upon the foregoing, the Census Bureau is conducting the 2006 SAS for the purpose of collecting these data.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, Title 44 U.S.C., Chapter 35, the OMB approved the SAS under OMB Control Number 0607–0422.

Dated: October 30, 2006.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. E6–18719 Filed 11–6–06; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–892]

Carbazole Violet Pigment 23 From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review and Rescission in Part

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

SUMMARY: The Department of Commerce (the Department) is conducting the administrative review of the antidumping duty order on carbazole violet pigment 23 (CVP 23) from the People's Republic of China (PRC) for the period June 24, 2004, through November 30, 2005. We are rescinding this review with respect to Trust Chem Co., Ltd./Boson Enterprises Ltd. (collectively Trust Chem) and Nantong Haidi Chemical Company (Haidi). We have preliminarily determined that sales have not been made below normal value (NV) by the respondent, Tianjin Hanchem International Trading Co., Ltd. (Hanchem). If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to liquidate the appropriate entries without regard to antidumping duties.

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

DATES: *Effective Date:* November 7, 2006.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Brian Smith, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4007 or (202) 482–1766, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 2005, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on CVP 23 from the PRC for the period June 24, 2004, through November 30, 2005. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 72109 (December 1, 2005). On December 27, 2005, the Department received a request to conduct an administrative review from Trust Chem, an exporter of the subject merchandise during the review period. On December 28, 2005, we received a request for review from Haidi, a producer/exporter of CVP 23, and from Hanchem, an exporter of CVP 23 to the United States during the review period. On February 1, 2006, we published in the **Federal Register** a notice of the initiation of the antidumping duty administrative review of CVP 23 from the PRC for the period June 24, 2004, through November 30, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 71 FR 5241 (February 1, 2006).

On February 6, 2006, we issued an antidumping duty questionnaire to Trust Chem, Haidi, and Hanchem. On March 2, 2006, and May 1, 2006, Trust Chem and Haidi, respectively, timely withdrew their requests for administrative review. Both companies requested that the Department rescind the review with respect to them, in accordance with 19 CFR 351.213(d)(1). We received questionnaire and

supplemental questionnaire responses from Hanchem between March and July 2006.

On April 4, 2006, we invited interested parties to comment on surrogate country selection and to provide publicly available information for valuing the factors of production (FOP). On July 7, 2006, we received comments on surrogate country selection from the petitioners, Nation Ford Chemical Co. and Sun Chemical Corp. Between July 21, 2006, and October 12, 2006, the petitioners and Hanchem filed information for valuing the FOPs, as well as argument with respect to the valuation of one particular input, chloranil.

On August 21, 2006, we extended the time limit for the preliminary results in this review until November 1, 2006. *See Carbazole Violet Pigment 23 from the People's Republic of China: Notice of Extension of Time Limit for 2004–2005 Administration* {*sic*} *Review*, 71 FR 50386 (August 25, 2006).

Period of Review

The period of review (POR) is June 24, 2004, through November 30, 2005.

Scope of Order

The merchandise covered by this order is carbazole violet pigment 23 identified as Color Index No. 51319 and Chemical Abstract No. 6358–30–1, with the chemical name of *diindolo [3,2-b:3',2'-m]triphenodioxazine, 8,18-dichloro-5, 15-diethy-5,15-dihydro-*, and molecular formula of $C_{34}H_{22}Cl_2N_4O_2$.[1] The subject merchandise includes the crude pigment in any form (*e.g.*, dry powder, paste, wet cake) and finished pigment in the form of presscake and dry color. Pigment dispersions in any form (*e.g.*, pigments dispersed in oleoresins, flammable solvents, water) are not included within the scope of this order. The merchandise subject to this order is classifiable under subheading 3204.17.9040 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department may rescind an administrative review in whole, or in part, if interested parties that requested a review withdraw their requests within 90 days of the date of publication of notice of initiation of the requested review. As noted above in the ''Background'' section of this notice, Trust Chem and Haidi withdrew their requests for an administrative review on March 2, 2006, and May 1, 2006, respectively. Because the petitioners did not request an administrative review for these companies and the requests to withdraw were made within the time limit specified under section 19 CFR 351.213(d)(1), we are rescinding this administrative review with respect to Trust Chem and Haidi.

Non-Market Economy Country Status

Hanchem did not contest the Department's treatment of the PRC as a non-market economy (NME) country, and the Department has treated the PRC as a NME country in all past antidumping duty investigations and administrative reviews and continues to do so in this case. *See*, *e.g.*, *Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 71 FR 34893 (June 16, 2006) (*Honey*); and *Final Determination of Sales at Less than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006) (*Sawblades*). No interested party in this case has argued that we should do otherwise. Designation as a NME country remains in effect until it is revoked by the Department. *See* section 771(18)(C)(i) of the Tariff Act of 1930, as amended (Act).

Surrogate Country

Section 773(c)(1) of the Act directs us to base NV on the NME producer's FOPs, valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market-economy countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.

The Department has previously determined that India, Sri Lanka, Indonesia, the Philippines, and Egypt are countries comparable to the PRC in terms of economic development. See the February 9, 2006, memorandum from Ron Lorentzen, Director, Office of Policy, to Irene Darzenta Tzafolias, Acting Director, Office 2, entitled, ''Antidumping Duty Administrative Review of Carbazole Violet Pigment 23 (CVP23) from the People's Republic of China (PRC): Request for a List of Surrogate Countries.'' Customarily, we select an appropriate surrogate country based on the availability and reliability of data from the countries that are significant producers of comparable merchandise. For PRC cases, the primary surrogate country has often been India if it is a significant producer of comparable merchandise. In this case, we found that India is a significant producer of comparable merchandise. *See* the August 3, 2006, memorandum to the file entitled ''2004–2005 Administrative Review of the Antidumping Duty Order on Carbazole Violet Pigment 23 from the People's Republic of China: Selection of a Surrogate Country.''

The Department used India as the surrogate country and, accordingly, calculated NV using Indian prices to value the PRC producer's FOPs, when available and appropriate. The sources of the surrogate factor values are discussed under the ''Normal Value'' section below and in the November 1, 2006, memorandum to the file entitled, ''Preliminary Results of Review of the Antidumping Duty Order on Carbazole Violet Pigment 23 from the People's Republic of China: Factor Valuation Memorandum'' (Factor Valuation Memorandum). We obtained and relied upon publicly available information whenever possible.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of this administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty rate. It is the Department's policy to assign all exporters of subject merchandise subject to review in a NME country a single rate unless an exporter can demonstrate that it is sufficiently independent of government control to be entitled to a separate rate. *See*, *e.g.*, *Honey from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 74764, 74765 (December 16, 2005) (unchanged in final results); and *Sawblades*, 71 FR at 29307.

We have considered whether the reviewed company based in the PRC is eligible for a separate rate. The Department's separate-rate test to

[1] The bracketed section of the product description, *[3,2-b:3',2'-m]*, is not business proprietary information, but is part of the chemical nomenclature.

determine whether an exporter is independent from government control does not consider, in general, macroeconomic/border-type controls, *e.g.*, export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See*, *e.g.*, *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Administrative Review*, 62 FR 61276, 61279 (November 17, 1997); and *Preliminary Determination of Sales at Less than Fair Value: Honey from the People's Republic of China*, 60 FR 14725,14727–28 (March 20, 1995).

To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of select criteria, discussed below. *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20585, 22587 (May 6, 1991) (*Sparklers*); and *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under this test, exporters in NME countries are entitled to separate, company-specific margins when they can demonstrate an absence of government control over exports, both in law (*de jure*) and in fact (*de facto*).Hanchem provided company-specific separate-rate information and stated that it met the standards for receiving a separate rate. Hanchem has stated that there is no element of government control over its export activities and has requested a separate, company-specific rate.

A. Absence of De Jure *Control*

The Department considers the following de jure criteria in determining whether an individual exporter may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR 20588.

Hanchem has placed on the record statements and documents to demonstrate an absence of *de jure* control including its list of shareholders, business license, and the Company Law of the People's Republic of China, as revised Ocotber 27, 2005 (Company Law). Other than limiting Hanchem to activities referenced in the business license, we found no restrictive stipulations associated with the license. In addition, in previous cases the Department has analyzed the Company Law and found that it establishes an absence of *de jure* control. *See*, *e.g.*, *Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China: Final Results, Partial Rescission and Termination of a Partial Deferral of the 2002–2003 Administrative Review*, 69 FR 65148, 65150 (November 10, 2004). We have no information in this segment of the proceeding that would cause us to reconsider this determination. Therefore, based on the foregoing, we have preliminarily found an absence of *de jure* control for Hanchem.

B. Absence of De Facto *Control*

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255 (December 31, 1998). Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether a particular exporter is subject to *de facto* government control of its export functions: (1) Whether the exporter sets its own export prices independent of the government and without the approval of a government authority; (2) whether the exporter has authority to negotiate and sign contracts and other agreements; (3) whether the exporter has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the exporter retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See*, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

With regard to *de facto* control, Hanchem reported that: (1) It independently set prices for sales to the United States with customers and these prices are not subject to review by any government organization; (2) it did not coordinate with other exporters or producers to set the price or to determine to which market the companies will sell subject merchandise; (3) the PRC Chamber of Commerce does not coordinate the export activities of Hanchem; (4) its general manager has the authority to contractually bind it to sell subject merchandise; (5) its shareholders appoint its general manager; (6) there is no restriction on its use of export revenues; and (7) its shareholders ultimately determine the disposition of its profits. Additionally, Hanchem's questionnaire responses did not suggest that pricing is coordinated among exporters. Furthermore, our analysis of Hanchem's questionnaire responses reveals no other information indicating government control of its export activities. Therefore, based on the information on the record, we preliminarily determine that there is an absence of *de facto* government control with respect to Hanchem's export functions, and that Hanchem has met the criteria for the application of a separate rate.

Normal Value Comparisons

To determine whether sales of CVP 23 to the United States by Hanchem were made at less than NV, we compared export price (EP) to NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice, pursuant to section 771(35) of the Act.

Export Price

Because Hanchem sold subject merchandise to unaffiliated purchasers in the United States prior to importation into the United States (or to unaffiliated resellers outside the United States with knowledge that the merchandise was destined for the United States) and use of a constructed export price methodology is not otherwise indicated, we have used EP in accordance with section 772(a) of the Act.

We calculated EP for Hanchem based on FOB port prices to unaffiliated purchaser(s) in the United States. We made deductions from the U.S. sale price for movement expenses, in accordance with section 772(c)(2)(A) of the Act, consisting of inland freight from the plant to the port of exportation. To value truck freight, we used the freight rates published by the Indian Freight Exchange, available at *http://www.infreight.com.* The truck freight rates are contemporaneous with the POR; therefore, we made no adjustments for inflation. *See* the November 1, 2006, memorandum to the file entitled, ''U.S. Price and Factors of Production Adjustments for the Preliminary

Results'' (Preliminary Calculation Memorandum), and the Factor Valuation Memorandum.

Normal Value

Section 773(c)(1) of the Act provides that, in the case of a NME, the Department shall determine NV using an FOP methodology if the merchandise is exported from a NME country and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

The Department will base NV on FOP because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. Therefore, we calculated NV based on FOP in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). The FOPs include: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. We used the FOPs reported by respondents for materials, energy, labor, and packing.

In accordance with 19 CFR 351.408(c)(1), when a producer sources an input from a market-economy country and pays for it in market-economy currency, the Department will normally value the factor using the actual price paid for the input. *See* 19 CFR 351.408(c)(1); see also *Lasko Metal Products* v. *United States*, 43 F.3d 1442, 1445–1446 (Fed. Cir. 1994) (affirming the Department's use of market-based prices to value certain FOPs). Where a portion of the input is purchased from a market-economy supplier and the remainder from a NME supplier, the Department will normally use the price paid for the inputs sourced from market-economy suppliers to value all of the input, provided the volume of the market-economy inputs as a share of total purchases from all sources is ''meaningful.'' *See* Antidumping Duties; Countervailing Duties; Final rule, 62 FR 27295, 27366 (May 19, 1997); *Shakeproof* v. *United States*, 268 F.3d 1376, 1382 (Fed. Cir. 2001). See also 19 CFR 351.408(c)(1).

With regard to both the Indian import-based surrogate values and the market-economy input values, we have disregarded prices that we have reason to believe or suspect may be subsidized. *See* Omnibus Trade and Competitiveness Act of 1988 (OCTA), Conference Report to Accompany H.R. 3, H. Report No. 100–578, 590–91, 1988 U.S. Code and Adm. N. 1547, 1623 (1988) (H.R. Rep. 100–578 (1988)); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1999–2000 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part*, 66 FR 57420 (November 15, 2001), and accompanying Issues and Decision Memorandum at Comment 1. We have found that India, Indonesia, South Korea, and Thailand maintain broadly available, non-industry-specific export subsidies, and it is reasonable to infer that exports to all markets from these countries may be subsidized. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 54007, 54011 (September 13, 2005) (unchanged in final results); and *China National Machinery Import & Export Corporation* v. *United States*, 293 F. Supp. 2d 1334 (CIT 2003), aff'd 104 Fed. App. 183 (Fed. Cir. 2004).

We are also guided by the statute's legislative history that explains that it is not necessary to conduct a formal investigation to ensure that such prices are not subsidized. *See* H.R. Rep. 100–578 (1988). Rather, the Department bases its decision on information that is available to it at the time it is making its determination. Therefore, we have not used prices from these countries either in calculating the Indian import-based surrogate values or in calculating market-economy input values. *See* Factor Valuation Memorandum.

Factor Valuations

To calculate NV, we multiplied the reported per-unit factor quantities by publicly available Indian surrogate values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to the Indian import surrogate values a surrogate freight cost calculated using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest port of export to the factory where appropriate (*i.e.*, where the sales terms for the market-economy inputs were not delivered to the factory). This adjustment is in accordance with the decision of the Court of Appeals for the Federal Circuit in *Sigma Corp.* v. *United States*, 117 F. 3d 1401 (Fed. Cir. 1997).

We valued benzene, bromoethane, chlorobenzene, benzene sulfonyl chloride, caustic soda, caustic soda solution, chloranil, solvent, nekal, ethyl alcohol, methyl alcohol, sodium sulfide, trithylamine, catalyst, paper bags, plastic film, plastic bags, pallets, and steam coal using India import statistics as published by the *World Trade Atlas.* We valued hydrochloric acid, nitric acid, salt, and dimethyl formamide using Indian domestic market prices reported in *Chemical Weekly.* Where necessary, we adjusted the surrogate values to reflect inflation/deflation using the Indian Wholesale Price Index as published in the *International Financial Statistics* of the International Monetary Fund. We further adjusted these prices to account for freight costs incurred between the supplier and respondent. The Factor Valuation Memorandum includes a detailed description of all surrogate values used for the respondent.

Hanchem reported that meaningful percentages of its purchases of o-dichlorobenzene and carbazole were sourced from market-economy countries and paid for in market-economy currencies. Pursuant to 19 CFR 351.408(c)(1), we used the actual price paid by Hanchem for these inputs. We adjusted these values to account for freight costs incurred between the supplier and respondent. *See* Factor Valuation Memorandum and Preliminary Calculation Memorandum. We obtained surrogate electricity rates from retail pricing data for India found in the International Energy Agency's ''Energy Prices & Taxes Quarterly Statistics 2003'' report which we inflated to the POR. We valued water using rates from the Maharashtra Industrial Development Corporation.

For direct labor, indirect labor, and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate as reported on Import Administration's Web site, Expected Wages of Selected NME Countries, revised in November 2005. *See* Expected Wages of Selected NME Countries (revised November 2005) (available at *http://ia.ita.doc.gov/wages*). The source of these wage rate data on the Import Administration's Web site is the Yearbook of Labour Statistics 2003, ILO (Geneva: 2003), Chapter 5B: Wages in Manufacturing. Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by the respondent. *See* Factor Valuation Memorandum and Preliminary Calculation Memorandum.

To determine factory overhead, depreciation, selling, general, and administrative expenses, interest expenses, and profit for the finished

product, we relied on rates derived from the financial statements of Pidilite Industries, Ltd., an Indian producer of comparable merchandise. We applied these ratios to Hanchem's costs (determined as noted above) for materials, labor, and energy. *See* Factor Valuation Memorandum and Preliminary Calculation Memorandum.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results of Review

The weighted-average dumping margin is as follows:

Manufacturer/producer/exporter	Margin percentage
Tianjin Hanchem International Trading Co., Ltd.	0.00

Disclosure

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will generally be held two days after the scheduled date for submission of rebuttal briefs. *See* 19 CFR 351.310(d). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. *See* 19 CFR 351.309(d). Further, parties submitting written comments should provide the Department with an additional copy of those comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any comments, and at a hearing, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

Pursuant to 19 CFR 351.212(b)(1), we will calculate, where applicable, the importer-specific *ad valorem* duty assessment rate based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis*.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For Hanchem, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis*, no cash deposit will be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all 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 217.94 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

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

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b).

Dated: November 1, 2006.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E6–18787 Filed 11–6–06; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–274–804)

Carbon and Alloy Steel Wire Rod from Trinidad and Tobago; Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: On December 1, 2005, the Department of Commerce (''the Department'') initiated an administrative review of the antidumping duty order on carbon and alloy steel wire rod (''wire rod'') from Trinidad and Tobago for the period of review (''POR'') October 1, 2004, through September 30, 2005.

We preliminarily determine that during the POR, Mittal Steel Point Lisas Limited (''MSPL'') and its affiliates Mittal Steel North America Inc. (''MSNA'') and Mittal Walker Wire Inc. (collectively ''Mittal'') did not make sales of subject merchandise at less than normal value (''NV'') (*i.e.*, sales were made at *de minimis* dumping margins). If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection (''CBP'') to liquidate appropriate entries without regard to antidumping duties.

Interested parties are invited to comment on these preliminary results. Parties who submit comments in this segment of the proceeding should also submit with them: (1) a statement of the issues and (2) a brief summary of the comments. Further, parties submitting written comments are requested to provide the Department with an electronic version of the public version of any such comments on diskette.

EFFECTIVE DATE: November 7, 2006.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or Stephanie Moore, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution

Avenue, NW, Washington, DC 20230; telephone: (202) 482–5973 or (202) 482–3692, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 29, 2002, the Department published in the **Federal Register** the antidumping duty order on wire rod from Trinidad and Tobago; *see Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine*, 67 FR 65945 (''*Wire Rod Orders*''). On October 3, 2005, we published in the **Federal Register** the *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 57558.

We received timely requests for review from petitioners[1], and Mittal[2], in accordance with 19 CFR 351.213(b)(2). On December 1, 2005, we published the notice of initiation of this antidumping duty administrative review covering the period October 1, 2004, through September 30, 2005, naming Mittal as the respondent. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Reviews*, 70 FR 72107 (December 1, 2005). On December 21, 2005, we sent a questionnaire to Mittal.[3]

Mittal submitted its responses to section A of the Department's questionnaire on February 10, 2006, and to sections B through E on February 21, 2006. On March 2, 6, and 14, 2006, the petitioners submitted comments on Mittal's questionnaire response.

On March 16, 2006, the Department issued a section A through C supplemental questionnaire to Mittal. We received the responses to the supplemental questionnaire on April 24, and May 1, 2006. We issued a second supplemental questionnaire for sections A and D on April 17, 2006. We received the response to the second supplemental questionnaire on May 22, 2006. On May 30, 2006, the petitioners submitted comments on the April 24, 2006, supplemental sales questionnaire response. On June 21, 2006, we issued a third supplemental questionnaire to Mittal. We received the response to the third supplemental questionnaire on July 12, 2006.

On September 15, 2006, we met with the petitioners regarding these preliminary results. *See Ex Parte Meeting Memos from Stephanie Moore to the File* dated September 15, 2006, and October 4, 2006. On September 18, 2006, we issued an additional questionnaire to Mittal. Mittal submitted its response on October 4, 2006.

On October 10, 2006, the Department received a reconciliation of Mittal's home market and U.S. sales database to its income statements. On October 16, 2006, the petitioners submitted comments with regard to the preliminary results.

Scope of the Order

The merchandise subject to this order is certain hot–rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above–noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (''HTSUS'') definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) Grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non–deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) Grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non–deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

For purposes of the grade 1080 tire cord quality wire rod and the grade 1080 tire bead quality wire rod, an inclusion will be considered to be deformable if its ratio of length (measured along the axis - that is, the direction of rolling - of the rod) over thickness (measured on the same inclusion in a direction perpendicular to the axis of the rod) is equal to or greater than three. The size of an inclusion for purposes of the 20 microns and 35 microns limitations is the measurement of the largest dimension observed on a longitudinal section measured in a direction perpendicular to the axis of the rod. This measurement methodology applies only to inclusions on certain grade 1080 tire cord quality wire rod and certain grade 1080 tire bead quality wire rod that are entered, or withdrawn from warehouse, for consumption on or after July 24, 2003. *Carbon and Certain Alloy Steel Wire*

[1] The petitioners are ISG Georgetown Inc. (formerly Georgetown Steel Company), Gerdau Ameristeel US Inc. (formerly Co-Steel Raritan, Inc.), Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc.

[2] On July 6, 2005, we found that Mittal Steel Point Lisas Limited is the successor-in-interest to CIL. *See Notice of Final Results of Antidumping Duty Changed Circumstances Review: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago*, 70 FR 38871.

[3] Section A: Organization, Accounting Practices, Markets and Merchandise

Section B: Comparison Market Sales

Section C: Sales to the United States

Section D: Cost of Production and Constructed Value

Section E: Cost of Further Manufacture or Assembly Performed in the United States

Rod from Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Final Results of Changed Circumstances Review, 68 FR 64079, 64081 (November 12, 2003).

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end–use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under review are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Product Comparisons

In accordance with section 771(16) of the Tariff Act of 1930, as amended (''the Act''), all products produced by the respondent covered by the description in the Scope of the Order section, above, and sold in Trinidad and Tobago during the POR are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on eight criteria to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: grade range, carbon content range, surface quality, deoxidation, maximum total residual content, heat treatment, diameter range, and coating. These characteristics have been weighted by the Department where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed above. Furthermore, pursuant to section 771(16) of the Act, we did not use the wire rod which was not identified as prime on MSPL's price list for matching purposes. *See Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago*, 70 FR 69512 (November 16, 2005) (''*Second Review*'') and accompanying Issues and Decision Memorandum at Comment 4.

Comparisons to Normal Value

To determine whether sales of wire rod from Trinidad and Tobago were made in the United States at less than NV, we compared the export price (''EP'') or constructed export price (''CEP'') to the NV, as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted–average prices for NV and compared these to individual U.S. transactions.

Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP, in accordance with sections 772(a) and (b) of the Act. We calculated EP when the merchandise was sold by the producer or exporter outside the United States directly to the first unaffiliated purchaser in the United States prior to importation and when CEP was not otherwise warranted based on the facts on the record. We calculated CEP for those sales where a person in the United States, affiliated with the foreign exporter or acting for the account of the exporter, made the sale to the first unaffiliated purchaser in the United States of the subject merchandise. We based EP and CEP on the packed prices charged to the first unaffiliated customer in the United States and the applicable terms of sale. When appropriate, we reduced these prices to reflect discounts and increased the prices to reflect billing adjustments.

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including inland freight, international freight, demurrage expenses, marine insurance, survey fees, U.S. customs duties and various U.S. movement expenses from arrival to delivery.

For CEP, in accordance with section 772(d)(1) of the Act, when appropriate, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (cost of credit, warranty, and further manufacturing). In addition, we deducted indirect selling expenses that related to economic activity in the United States. These expenses include certain indirect selling expenses incurred by affiliated U.S. distributors. We also deducted from CEP an amount for profit in accordance with sections 772(d)(3) and (f) of the Act. Furthermore, we recalculated MSNA's credit expense and inventory carrying costs as we did in the final results of the first and second administrative reviews. *See Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago*, 70 FR 12648 (March 15, 2005) and accompanying Issues and Decision Memorandum at Comment 6; and *Second Review* and accompanying Issues and Decision Memorandum at Comment 2.

Normal Value

A. Selection of Comparison Markets

To determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Mittal's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) and 773(a)(1)(C) of the Act, because Mittal had an aggregate volume of home market sales of the foreign like product that was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable.

B. Cost of Production Analysis

In the most recently completed segment of the proceeding in which Mittal participated, the Department found that the respondent made sales in the home market at prices below the cost of producing the merchandise and excluded such sales from the calculation of NV. *See Preliminary Results of Antidumping Duty Administrative Review: Carbon and Alloy Steel Wire Rod From Trinidad and Tobago*, 70 FR 39990, 39993 (July 12, 2005) and *Second Review* at 69512. Therefore, pursuant to section 773(b)(2)(A)(ii) of the Act, the

Department determined that there were reasonable grounds to believe or suspect that Mittal made steel wire rod sales in Trinidad and Tobago at prices below the cost of production (''COP'') in this administrative review. As a result, we initiated a COP inquiry for Mittal.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted–average COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative expenses (''SG&A''), packing expenses, and interest expense.

2. Test of Comparison Market Prices

As required under section 773(b)(2) of the Act, we compared the weighted–average COP to the per–unit price of the comparison market sales of the foreign like product, to determine whether these sales were made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below–cost test by subtracting from the gross unit price any applicable movement charges, discounts, rebates, direct and indirect selling expenses and packing expenses which were excluded from COP for comparison purposes.

3. Results of COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard any below–cost sales of that product because we determined that the below–cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we determined such sales to have been made in ''substantial quantities.'' See section 773(b)(2)(C) of the Act. Further, the sales were made within an extended period of time, in accordance with section 773(b)(2)(B) of the Act, because we examined below–cost sales occurring during the entire POR. In such cases, because we compared prices to POR–average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, for purposes of this administrative review, we disregarded below–cost sales of a given product and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. *See Preliminary Calculation Memorandum for Mittal*, dated October 31, 2006, on file in the Central Records Unit, room B099 of the main Department building, for our calculation methodology and results.

C. Calculation of Normal Value Based on Comparison Market Prices

We based home market prices on packed prices to unaffiliated purchasers in Trinidad and Tobago. We adjusted the starting price for inland freight pursuant to section 773(a)(6)(B)(ii) of the Act. In addition, for comparisons made to EP sales, we made adjustments for differences in circumstances of sale (''COS'') pursuant to section 773(a)(6)(C)(iii) of the Act. We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit expense) and adding U.S. direct selling expenses (credit and warranty directly linked to sales transactions). No other adjustments to NV were claimed or allowed.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise, using POR–average costs.

D. Level of Trade/Constructed Export Price Offset

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level–of-trade (''LOT'') as the EP or CEP transaction. The NV LOT is that of the starting–price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP sales, the U.S. LOT is also the level of the starting–price sale, which is usually from exporter to importer. For CEP transactions, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP–offset provision).

In the investigation and previous two reviews, Mittal reported services similar to this review, such as strategic and economic planning, sales forecasting, sales force development, solicitation of orders, technical advice, price negotiation, processing purchase orders, invoicing, extending credit, freight and delivery arrangements, managing accounts receivable, and making arrangements for warranties related to sales. In the final results of the second review, we noted that in our LOT analysis for CEP sales we only consider the selling activities reflected in the price after the deduction of the expenses incurred for the U.S. economic activity and the record indicates that for Mittal's CEP sales there are substantially fewer services performed than the sales in its home market. Therefore, we determined that Mittal's home market sales were made at a more advanced stage of the marketing process than the CEP sales to the affiliates and therefore are at a different LOT within the meaning of 19 CFR 351.412. For the final results of the second review, we explained in Comment 3 that we disagreed with Mittal's characterization of the level of activity reported for certain services, but on balance we agreed with Mittal's CEP offset claim. *See Second Review* and accompanying Issues and Decision Memorandum at Comment 3.

In analyzing this issue in this review, we obtained information from Mittal about the marketing stages involved in the reported U.S. and home market sales, including a description of the selling activities performed by Mittal for each channel of distribution. In identifying LOTs for EP and home market sales, we considered the selling functions reflected in the starting price before any adjustments. For CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses pursuant to section 772(d) of the Act.

In the home market, Mittal reported sales to end–users as its only channel of distribution. In the U.S. market, Mittal reported sales through two channels of distribution, one involving sales made directly by Mittal to an unaffiliated

trading company, and the second involving sales made by Mittal's affiliated U.S. resellers to trading companies, OEMs, distributors, and end–users. We have determined that the sales made by Mittal directly to U.S. customers are EP sales and those made by Mittal's affiliated U.S. resellers constitute CEP sales. Furthermore, we have found that U.S. sales and home market sales were made at the same LOT, whereas in the previous review we found that there were more selling functions with a greater level of activity in the home market. Accordingly, we did not find it necessary to make a LOT adjustment or CEP offset. For further explanation of our LOT analysis see the *Preliminary Sales Calculation Memorandum for Mittal Steel Point Lisas Limited* from Dennis McClure and Stephanie Moore to the file dated October 31, 2006.

Currency Conversion

For purposes of these preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the official exchange rates in effect on the dates of U.S. sales, as obtained from the Federal Reserve Bank.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted–average dumping margin exists for the period October 1, 2004, through September 30, 2005:

Producer/Manufacturer	Weighted–Average Margin
Mittal Steel Point Lisas Limited	0.06% (*i.e.*, *de minimis*

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter, unless the Department alters the date pursuant to 19 CFR 351.310(d). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs limited to issues raised in the case briefs, may be filed no later than 35 days after the date of publication. *See* 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Further, parties submitting written comments are requested to provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, or at a hearing, within 120 days of publication of these preliminary results. *See* section 751(a)(3)(A) of the Act.

Assessment Rate

The Department shall determine and CBP shall assess antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this administrative review, if any importer–specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will issue appraisement instructions directly to CBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculated importer–specific assessment rates for the subject merchandise by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the period of review produced by companies included in these final results of reviews for which the reviewed companies did not know that the merchandise it sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

To calculate the cash deposit rate for each producer and/or exporter included in this administrative review, we divided the total dumping margins for each company by the total net value for that company's sales during the review period.

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of wire rod from Trinidad and Tobago entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the company listed above will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and, (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 11.40 percent, the ''All Others'' rate established in the LTFV investigation. *See Wire Rod Orders*.

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and increase the subsequent assessment of the antidumping duties by the amount of antidumping duties reimbursed.

These preliminary results of this administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 31, 2006.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E6–18784 Filed 11–6–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–489–807

Certain Steel Concrete Reinforcing Bars From Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part

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

SUMMARY: On May 5, 2006, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain steel concrete reinforcing bars (rebar) from Turkey (71 FR 26455). This review covers 14 producers/exporters of the subject merchandise to the United States. The period of review (POR) is April 1, 2004, through March 31, 2005. We are rescinding the review with respect to 19 companies because either: 1) these companies had no shipments of subject merchandise during the POR; or 2) the questionnaires sent to these companies were returned to the Department because of undeliverable addresses.

Based on our analysis of the comments received, we have made certain changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted–average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: November 7, 2006.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Alice Gibbons, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone (202) 482–0656 and (202) 482–0498, respectively.

SUPPLEMENTARY INFORMATION:

Background

This review covers the following 14 producers/exporters: Colakoglu Metalurji A.S. and Colakoglu Dis Ticaret (collectively ''Colakoglu''); Diler Demir Celik Endustrisi ve Ticaret A.S., Yazici Demir Celik Sanayi ve Turizm Ticaret A.S., and Diler Dis Ticaret A.S. (collectively ''Diler''); Ege Metal Demir Celik Sanayi ve Ticaret A.S. (Ege Metal); Ekinciler Demir ve Celik Sanayi A.S. and Ekinciler Dis Ticaret A.S. (collectively ''Ekinciler''); Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas); Ilhanlar Rolling and Textile Industries, Ltd., Sti. and Ilhanlar Group (collectively ''Ilhanlar''); Intermet A.S. (Intermet); Iskenderun Iron & Steel Works Co. (Iskenderun); Koc Dis Ticaret A.S. (Koc); Nurmet Celik Sanayi ve Ticaret A.S. (Nurmet); Nursan Celik Sanayi ve Haddecilik A.S. (Nursan); Sozer Steel Works (Sozer); Ucel Haddecilik Sanayi ve Ticaret A.S. (Ucel); and the Yolbulan Group (Yolbulanlar Nak. ve Ticaret A.S., Yolbulan Metal Sanayi ve Ticaret A.S. and Yolbulan Dis Ticaret Ltd. Sti.).

On May 5, 2006, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on rebar from Turkey. *See Certain Steel Concrete Reinforcing Bars from Turkey; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 26455 (May 5, 2006) (*Preliminary Results*).

Prior to the preliminary results, the following companies informed the Department that they had no shipments to the United States during the POR: Buyurgan Group Steel Division and Metalenerji A.S. (Buyurgan), Cag Celik Demir ve Celik Endustrisi A.S. (Cag Celik), Cebitas Demir Celik Endustrisi A.S. (Cebitas), Cemtas Celik Makina Sanayi ve Ticaret A.S. (Cemtas), Demirsan Haddecilik Sanayi ve Ticaret A.S. (Demirsan), DHT Metal (DHT), Efesan Demir Sanayi ve Ticaret A.S. and Efe Demir Celik (Efesan), Ege Celik Endustrisi Sanayi ve Ticaret A.S. (Ege Celik), Izmir Demir Celik Sanayi A.S. (Izmir), Kaptan Demir Celik Endustrisi ve Ticaret A.S. (Kaptan), Kardemir - Karabuk Demir Celik Sanayi ve Ticaret A.S. (Kardemir), Kurum Demir Sanayi ve Ticaret Metalenerji A.S. (Kurum), Tosyali Demir Celik Sanayi A.S. (Tosyali), and Yesilyurt Demir Celik/ Yesilyurt Demir Cekme San ve Tic Ltd. Sirketi (Yesilyurt). We reviewed U.S. Customs and Border Protection (CBP) data and confirmed that there were no entries of subject merchandise from any of these companies. *See* the Memorandum to the File from Brianne Riker entitled, ''Placing Customs Entry Documents on the Record of the 2004–2005 Antidumping Duty Administrative Review of Certain Steel Concrete Reinforcing Bars from Turkey,'' dated May 2, 2005. Consequently, in accordance with 19 CFR 351.213(d)(3) and consistent with our practice, we are rescinding our review for Buyurgan, Cebitas, Cemtas, Demirsan, DHT, Efesan, Ege Celik, Izmir, Kaptan, Kardemir, Kurum, Tosyali, and Yesilyurt. For further discussion, see the ''Partial Rescission of Review'' section of this notice, below.

The antidumping duty questionnaires sent to Akmisa Foreign Trade Ltd. Co. (Akmisa), Cukurova Celik Endustrisi A.S. (Cukurova), Metas Izmir Metalurji Fabrikasi Turk A.S. (Metas), Sivas Demir Celik Isletmeleri A.S. (Sivas), and ST Steel Industry and Foreign Trade Ltd. Sti. (ST Steel) were returned to the Department because of undeliverable addresses. Subsequently, we contacted the petitioners in this review and requested that they provide alternate addresses for these companies; however, they were unable to do so. Consequently, we are also rescinding our review with respect to these companies. For further discussion, see the ''Partial Rescission of Review'' section of this notice.

In addition, we are reversing our preliminary decision to base the margin for Kroman Celik Sanayi A.S. (Kroman) on adverse facts available (AFA) because we find Kroman's explanation as to why it did not respond to the questionnaire (*i.e.*, because it did not receive it) plausible. As a result, we are also rescinding the review for Kroman. For further discussion, see the ''Partial Rescission of Review'' section of this notice and the accompanying Issues and Decision Memorandum (Decision Memo) at *Comment 22*.

Finally, in April 2006, it came to our attention that one of Diler's affiliated rebar producers, Yazici Demir Celik Sanayi ve Ticaret A.S. (Yazici), changed its corporate structure prior to the initiation of this review and is now doing business under the name Yazici Demir Celik Sanayi ve Turizm Ticaret A.S. (Yazici Turizm). As a result, we solicited information on this change from Diler. Diler supplied this information in April 2006. After analyzing this information, we find that Yazici Turizm is the successor–in-interest to Yazici. For further discussion, see the ''Successor–in-Interest'' section of this notice, below.

We invited parties to comment on our preliminary results of review. In June and July 2006, we received case briefs from the petitioners (*i.e.*, Gerdau AmeriSteel Corporation, Commercial Metals Company (SMI Steel Group), and Nucor Corporation), Colakoglu, Habas, and Kroman, and we received rebuttal briefs from the petitioners, Colakoglu, Diler, Ekinciler, and Habas.

The Department has conducted this administrative review in accordance

with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The product covered by this order is all stock deformed steel concrete reinforcing bars sold in straight lengths and coils. This includes all hot–rolled deformed rebar rolled from billet steel, rail steel, axle steel, or low–alloy steel. It excludes (i) plain round rebar, (ii) rebar that a processor has further worked or fabricated, and (iii) all coated rebar. Deformed rebar is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7213.10.000 and 7214.20.000. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Successor–in-Interest

As noted above, in April 2006, Diler informed the Department that its affiliated producer, Yazici, merged with another group company and is now doing business under the name Yazici Turizm. Based on Diler's submission addressing the four factors with respect to this change in corporate structure (*i.e.*, management, production facilities for the subject merchandise, supplier relationships, and customer base), in the preliminary results, we found that Yazici Turizm's organizational structure, management, production facilities, supplier relationships, and customers have remained essentially unchanged. Further, we found that Yazici Turizm operates as the same business entity as Yazici with respect to the production and sale of rebar. Therefore, we preliminarily found that Yazici Turizm was the successor–in-interest to Yazici. *See Preliminary Results*, 71 FR at 26456. Since the preliminary results, no party to this proceeding has commented on this issue and we have found no additional information that would compel us to reverse our preliminary finding. Thus, for purposes of these final results, we find that Yazici Turizm is the successor–in-interest to Yazici, and, as a consequence, its exports of rebar are subject to this administrative review. For further discussion, see the *Preliminary Results*, 71 FR at 26456.

Period of Review

The POR is April 1, 2004, through March 31, 2005.

Partial Rescission of Review

As noted above, Buyurgan, Cebitas, Cemtas, Demirsan, DHT, Efesan, Ege Celik, Izmir, Kaptan, Kardemir, Kurum, Tosyali, and Yesilyurt notified the Department that they had no shipments and/or entries of subject merchandise to the United States during the POR. We have confirmed this with CBP data. Therefore, in accordance with 19 CFR 351.213(d)(3), and consistent with the Department's practice, we are rescinding our review with respect to these companies. *See*, *e.g.*, *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part*, 70 FR 67665, 67666 (Nov. 8, 2005); *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not To Revoke in Part*, 69 FR 64731, 64732 (Nov. 8, 2004).

In addition, the questionnaires sent to Akmisa, Cukurova, Metas Izmir, Sivas, and ST Steel were returned to the Department because of undeliverable addresses. Although we requested that the petitioners provide alternate addresses for these companies, they were unable to do so. For further discussion, see the Memorandum to the File from Brianne Riker entitled, ''Placing Information on the Record in the 2004–2005 Antidumping Duty Administrative Review of Certain Steel Concrete Reinforcing Bars (Rebar) from Turkey,'' dated September 20, 2005. Because we were unable to locate these companies, we are also rescinding our review with respect to them.

Finally, we are reversing our preliminary decision to base the margin for Kroman on AFA. Rather, we are rescinding the review for this company because it did not receive the questionnaire. For further discussion, see the Decision Memo at *Comment 22*.

Cost of Production

As discussed in the *Preliminary Results*, we conducted an investigation to determine whether Colakoglu, Diler, Ekinciler, and Habas made home market sales of the foreign like product during the POR at prices below their costs of production (COP) within the meaning of section 773(b)(1) of the Act. We performed the cost test for these final results following the same methodology as in the *Preliminary Results*, except as discussed in the Decision Memo.

We found 20 percent or more of each respondent's sales of a given product during the reporting period were at prices less than the weighted–average COP for this period. Thus, we determined that these below–cost sales were made in ''substantial quantities'' within an extended period of time and at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade. *See* sections 773(b)(2)(B) - (D) of the Act.

Therefore, for purposes of these final results, we found that Colakoglu, Diler, Ekinciler, and Habas made below–cost sales not in the ordinary course of trade. Consequently, we disregarded these sales for each respondent and used the remaining sales as the basis for determining NV pursuant to section 773(b)(1) of the Act.

Facts Available

In the preliminary results, we determined that, in accordance with section 776(a)(2)(A) of the Act, the use of facts available was appropriate as the basis for the dumping margins for the following producer/exporters: Ege Metal, Ilhanlar, Intermet, Iskenderun, Koc, Kroman, Nurmet, Nursan, Sozer, Ucel, and the Yolbulan Group. *See Preliminary Results*, 71 FR at 26457–58. We find that it continues to be appropriate to apply facts available to these respondents, with the exception of Kroman. Section 776(a) of the Act, provides that the Department will apply ''facts otherwise available'' if, *inter alia*, necessary information is not available on the record or an interested party: (1) withholds information that has been requested by the Department; (2) fails to provide such information within the deadlines established, or in the form or manner requested by the Department; (3) significantly impedes a proceeding; or (4) provides such information, but the information cannot be verified.

On August 26, 2005, the Department requested that Ege Metal, Ilhanlar, Intermet, Iskenderun, Koc, Nurmet, Nursan, Sozer, Ucel, and the Yolbulan Group respond to the Department's antidumping duty questionnaire. The deadline to file a response was October 3, 2005. The Department did not receive a response from these companies. On October 31, 2005, the Department placed documentation on the record confirming delivery of the questionnaires to each company. *See* the Memorandum to the File from Brianne Riker entitled, ''Placing Information on the Record of the 2004–2005 Antidumping Duty Administrative Review of Certain Steel Concrete Reinforcing Bars (Rebar) from Turkey,'' dated October 31, 2005. Thus, because these companies did not respond to the Department's questionnaire, as in the preliminary results, the Department must use facts otherwise available with regard to Ege Metal, Ilhanlar, Intermet, Iskenderun, Koc, Nurmet, Nursan, Sozer, Ucel, and the Yolbulan Group, pursuant to sections 776(a)(2)(A) and (C)

of the Act of the Act. *See Preliminary Results*, 71 FR at 26457–58.

Adverse Facts Available

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See*, *e.g.*, *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025–26 (Sept. 13, 2005); *see also Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (Aug. 30, 2002). Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316, Vol. 1, at 870 (1994). Furthermore, ''affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.'' *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997). *See also*, *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon*). We find that Ege Metal, Ilhanlar, Intermet, Iskenderun, Koc, Nurmet, Nursan, Sozer, Ucel, and the Yolbulan Group did not act to the best of their abilities in this proceeding, within the meaning of section 776(b) of the Act, because they failed to respond to the Department's questionnaire. Therefore, an adverse inference is warranted in selecting facts otherwise available. *See Nippon*, 337 F.3d at 1382–83.

Section 776(b) of the Act provides that the Department may use as AFA information derived from: (1) the petition; (2) the final determination in the investigation; (3) any previous review; or (4) any other information placed on the record.

The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the margin is sufficiently adverse ''as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See*, *e.g.*, *Carbon and Certain Alloy Steel Wire Rod from Brazil: Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances*, 67 FR 55792, 55796 (Aug. 30, 2002); *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (Feb. 23, 1998). Additionally, the Department's practice has been to assign the highest margin determined for any party in the less–than-fair–value (LTFV) investigation or in any administrative review of a specific order to respondents who have failed to cooperate with the Department. *See*, *e.g.*, *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews*, 71 FR 40064, 40066 (July 14, 2006); *Final Determination of Sales at Less Than Fair Value: Certain Cold–Rolled Flat–Rolled Carbon Quality Steel Products from the People's Republic of China*, 65 FR 34660 (May 31, 2000), and accompanying Issues and Decision Memorandum at the ''Facts Available'' section.

In order to ensure that the margin is sufficiently adverse so as to induce cooperation, we have assigned a rate of 41.80 percent, which was the rate alleged in the petition, as adjusted at the initiation of the LTFV investigation, to Ege Metal, Ilhanlar, Intermet, Iskenderun, Koc, Nurmet, Nursan, Sozer, Ucel, and the Yolbulan Group. This rate was assigned in a previous segment of this proceeding and is the highest rate determined for any respondent in any segment of this proceeding. *See Notice of Amendment of Final Determinations of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey*, 62 FR 9737 (Mar. 4, 1997). The Department finds that this rate is sufficiently high as to effectuate the purpose of the AFA rule (*i.e.*, we find that this rate is high enough to encourage participation in future segments of this proceeding in accordance with section 776(b) of the Act). We continue to find that the information upon which this margin is based has probative value and thus satisfies the requirements of section 776(c) of the Act. *See Preliminary Results*, 71 FR at 26457–58.

Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review, and to which we have responded, are listed in the Appendix to this notice and addressed in the Decision Memo, which is adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099, of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/* . The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. These changes are discussed in the relevant sections of the Decision Memo.

Final Results of Review

We determine that the following weighted–average margin percentages exist for the period April 1, 2004, through March 31, 2005:

Manufacturer/Producer/Exporter	Margin Percentage
Colakoglu Metalurji A.S. and Colakoglu Dis Ticaret A.S.	0.27 (*de minimis*)
Diler Demir Celik Endustrisi ve Ticaret A.S./Yazici Demir Celik Sanayi ve Turizm Ticaret A.S./Diler Dis Ticaret A.S.	0.02 (*de minimis*)
Ege Metal Demir Celik Sanayi ve Ticaret A.S.	41.80
Ekinciler Demir ve Celik Sanayi A.S. and Ekinciler Dis Ticaret A.S.	8.59
Habas Sinai ve Tibbi Gazlar Istithsal Endustrisi A.S.	0.04 (*de minimis*)
Ilhanlar Rolling and Textile Industries, Ltd., Sti. and Ilhanlar Group	41.80
Intermet A.S.	41.80
Iskenderun Iron & Steel Works Co.	41.80
Koc Dis Ticaret A.S.	41.80
Nurmet Celik Sanayi ve Ticaret A.S.	41.80
Nursan Celik Sanayi ve Haddecilik A.S.	41.80
Sozer Steel Works	41.80
Ucel Haddecilik Sanayi ve Ticaret A.S.	41.80

Manufacturer/Producer/Exporter	Margin Percentage
Yolbulanlar Nak. ve Ticaret A.S./Yolbulan Metal Sanayi ve Ticaret A.S./Yolbulan Dis Ticaret Ltd., Sti.	41.80

Assessment

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. On March 9, 2006, Mitsui, an interested party to this proceeding, submitted evidence demonstrating that it was the importer of record for certain of Diler's POR sales. We examined the information submitted by Mitsui and tied it to the U.S. sales listing, as well as to documentation obtained at the sales verification of Diler. We noted that Mitsui was indeed the importer of record for the sales in question. Therefore, for purposes of calculating the importer–specific assessment rates, we have treated Mitsui as the importer of record for Diler's relevant POR shipments.

Pursuant to 19 CFR 351.212(b)(1), for all sales made by Habas and Colakoglu, as well as for certain sales made by Diler, because we have the reported entered value of the U.S. sales, we have calculated importer–specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales.

Regarding certain of Diler's and all of Ekinciler's sales, we note that these companies did not report the entered value for the U.S. sales in question. Accordingly, we have calculated importer–specific assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were de minimis, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer–specific ad valorem ratios based on the estimated entered value.

In addition, we will inform CBP that Yazici Turizm is the successor–in-interest to Yazici, and we will assign a new company–specific number to Yazici Turizm (as part of the Diler Group). We will instruct CBP that it should apply to Yazici Turizm the cash deposit rate determined for Yazici in these final results (*i.e.*, 0.00 percent). This cash deposit rate will apply to all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results. *See Granular Polytetrafluoroethylene Resin from Italy; Final Results of Antidumping Duty Changed Circumstances Review*, 68 FR 25327 (May 12, 2003). This deposit rate shall remain in effect until publication of the final results of the next administrative review in which Yazici Turizm (as part of the Diler Group) is reviewed. Further, pursuant to the final results of this administrative review, for Yazici Turizm sales examined, we will instruct CBP to liquidate all unliquidated entries during the POR at the importer–specific assessment rates determined for the Diler Group.

Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent). The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these preliminary results of review for which the reviewed companies did not know their merchandise was destined for the United States, as well as any companies for which we are rescinding the review based on certifications of no shipments. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction.

Cash Deposit Requirements

Further, the following deposit requirements will be effective for all shipments of rebar from Turkey entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: 1) the cash deposit rates for the reviewed companies will be the rates sown above, except if the rate is less than 0.50 percent, *de minimis* within the meaning of 19 CFR 351.106(c)(1), the cash deposit will be zero; 2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; 3) if the exporter is not a firm covered in this review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) the cash deposit rate for all other manufacturers or exporters will continue to be 16.06 percent, the all–others rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

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

We are issuing and publishing these results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 1, 2006.

Joseph A. Spetrini,

Acting Assistant Secretaryfor Import Administration.

Appendix – Issues in Decision Memorandum

General Issues

1. Cost of Ferro–vanadium for Colakoglu Metalurji A.S./Colakoglu Dis Ticaret A.S. (Colakoglu) and Habas Sinai Ve Tibbi Gazlar Istithsal Endustrisi A.S. (Habas)

Company–Specific Issues

2. Whether to Apply Adverse Facts Available (AFA) to Colakoglu
3. Indirect Selling Expense (ISE) Calculation for Colakoglu
4. Depreciation Expenses for Colakoglu
5. Affiliated Party Transaction for Colakoglu
6. Net Financial Expense Ratio Calculation for Colakoglu
7. Depreciation Expenses for Diler Demir Celik Endustrisi ve Ticaret A.S./Yazici Demir Celik Sanayi ve

Turizm Ticaret A.S./Diler Dis Ticaret A.S (Diler)
8. Affiliated Party Transaction for Diler
9. General and Administrative (G&A) Offsets for Diler
10. Defective Bars and Edges Offset Exclusion from the G&A and Financial Expense Ratio Calculation for Diler
11. Depreciation Expenses for Ekinciler Demir ve Celik Sanayi A.S./Ekinciler Dis Ticaret A.S. (Ekinciler)
12. Allocation Methodology of G&A Expenses for Ekinciler
13. Shutdown Costs for Ekinciler
14. G&A Offsets to Costs Not Included in the Reported Costs for Ekinciler
15. G&A Offsets to Costs Related to Prior Periods for Ekinciler
16. Calculation of the G&A and Financial Expense Denominator for Ekinciler
17. Financial Expense Exclusions from Ekinciler's Reported Costs
18. Clerical Error for Habas
19. Depreciation Expenses for Habas
20. Bartered Billets for Habas
21. Habas' Financial Statements
22. Whether to Apply AFA to Kroman

[FR Doc. E6–18767 Filed 11–6–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082906A]

RIN 0648–AU89

Atlantic Highly Migratory Species; Atlantic Shark Management Measures

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

ACTION: Notice of intent to prepare an environmental impact statement; request for comments.

SUMMARY: Based on several new shark stock assessments, NMFS has determined that a number of shark fisheries are overfished. As a result, NMFS announces its intent to prepare an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA) to assess the potential effects on the human environment and to initiate an amendment to the Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP). The EIS and amendment will examine management alternatives available to rebuild sandbar, dusky, and porbeagle sharks, consistent with the shark stock assessments, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and other relevant Federal laws. NMFS is requesting comments on a range of commercial and recreational management measures including, but not limited to, quota levels, regional and seasonal quotas, retention limits, minimum sizes, and time/area closures.

DATES: Comments on this action must be received no later than 5 p.m., local time, on February 5, 2007.

ADDRESSES: Written comments on this action should be mailed to Karyl Brewster-Geisz, Highly Migratory Species Management Division by any of the following methods:

• E-mail: *SF1.082906A@noaa.gov*. Include in the subject line the following identifier: ''I.D. 082906A.''

• Written: 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope ''Scoping Comments on Amendment 2 to HMS FMP.''

• Fax: (301) 713–1917.

For a copy of the stock assessments, please contact Sarah McTee or Karyl Brewster-Geisz at (301) 713–2347.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz (301) 713–2347 or Jackie Wilson (404) 806–7622.

SUPPLEMENTARY INFORMATION:

Determination of Overfished Shark Fisheries

The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Act. The Consolidated HMS FMP is implemented by regulations at 50 CFR part 635. NMFS' determination of the status of a stock relative to overfishing and an overfished condition is based on both the removal of fish from the stock through overfishing (the exploitation rate) and the current stock size. Thresholds used to determine the status of Atlantic HMS are fully described in Chapter 3 of the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks. A species is considered overfished when the current biomass is less than the minimum stock size threshold. The minimum stock size threshold is determined based on the natural mortality of the stock and the biomass at maximum sustainable yield (B_{MSY}). Maximum sustainable yield is the maximum long-term average yield that can be produced by a stock on a continuing basis. The biomass can be lower than B_{MSY}, and the stock not declared overfished as long as the biomass is above the biomass at the minimum stock size threshold.

Overfishing may be occurring on a species if the current fishing mortality is greater than the fishing mortality (F) at maximum sustainable yield (F_{MSY}) ($F > F_{MSY}$). In the case of F, the maximum fishing mortality threshold is F_{MSY}. Thus, if F exceeds F_{MSY}, the stock is experiencing overfishing.

Background

Large Coastal Sharks (LCS)

The LCS complex is comprised of 11 species including sandbar, silky, tiger, blacktip, spinner, bull, lemon, nurse, scalloped hammerhead, great hammerhead, and smooth hammerhead sharks. Since the 1993 Shark FMP, LCS have been considered overfished, and management has been based on the results of assessments on the complex as a whole. The 2002 LCS stock assessment found that the LCS complex was overfished with overfishing occurring; sandbar sharks were not overfished but overfishing was occurring; and blacktip sharks were rebuilt and healthy. The latest 2005/2006 stock assessment of LCS in the U.S. Atlantic and Gulf of Mexico was recently completed (July 24, 2006; 71 FR 41774). This assessment was conducted according to the Southeast Data, Assessment, and Review (SEDAR) process, was peer-reviewed, provides an update on the status of LCS stocks, and projects their future abundance under a variety of catch levels in waters off the U.S. Atlantic and Gulf of Mexico coasts. The 2005/2006 assessment includes catch estimates, new biological data, and a number of fishery-independent catch rate series, as well as extended fishery-dependent catch rate series.

Unlike past assessments, the 2005/2006 LCS stock assessment determined that it is inappropriate to assess the LCS complex as a whole. Due to the variation in life history parameters, different intrinsic rates of increase, and different catch and abundance data for all the species included in the LCS complex, the peer reviewers felt it was unclear what exactly the results of the assessment represented, making it impossible to support the use of the results for management of the complex. The peer reviewers also felt that previous assessments that used the same approach and similar data would receive the same criticisms. NMFS is continuing to examine viable options to assess shark populations. Based on these results, NMFS is changing the status of the LCS complex from overfished to unknown.

Sandbar Sharks

According to the 2005/2006 LCS stock assessment, sandbar sharks are overfished with the current stock abundance at 35 percent of the virgin biomass. The assessment also indicates overfishing is occurring (F_{2004}/F_{MSY} = 3.72). The assessment recommends that rebuilding could be achieved with 70 percent probability by 2070 with a total allowable catch across all fisheries (commercial and recreational) of 220 metric tons (mt) whole weight (ww) each year and an F between 0.009 and 0.011. Based on these results, NMFS is declaring the status of sandbars sharks to be overfished with overfishing occurring.

Blacktip Sharks

The 2005/2006 LCS stock assessment assessed blacktip sharks for the first time as two separate populations: a Gulf of Mexico population and an Atlantic population. The results from the stock assessment indicate that the Gulf of Mexico population is rebuilt. The peer reviewers indicated that current catches should not increase in order to keep this population at a sustainable level. Based on these results, NMFS is declaring the status of Gulf of Mexico blacktip shark population as not overfished with no overfishing occurring.

The assessment also indicates that the current status for the Atlantic blacktip shark population is unknown. The assessment scientists were unable to provide estimates of stock status or reliable population projections. The peer reviewers agreed with the assessment scientists and indicated that current catch levels should not change. Based on these results, NMFS is declaring the status of the Atlantic blacktip shark population to be unknown.

Dusky Sharks

In 1999, dusky sharks, which were in the LCS complex, were placed on the prohibited species list due to their low population growth rate and low reproductive potential. In 2003, in Amendment 1 to the FMP for Atlantic Tunas, Swordfish, and Sharks (68 FR 74746), NMFS established a Mid-Atlantic shark closure to protect dusky sharks and juvenile sandbar sharks. Due to high catch rates of dusky sharks in the shark bottom longline fishery in the closed area and the high mortality of dusky sharks on bottom longline gear, NMFS closed this area to bottom longline fishing from January 1 through July 31 of every year, starting in January 2005. The first dusky-specific shark assessment was released in May 2006 (71 FR 30123). The 2006 dusky shark stock assessment used data through 2003 and indicates that dusky sharks are overfished with overfishing occurring. The estimated stock depletions are between 62–80 percent with respect to virgin biomass. Given the heavy fishing impact on this stock and high vulnerability to exploitation, the assessment scientists recommend that rebuilding for dusky sharks could require 100 to 400 years. Based on these results, NMFS is declaring the status of dusky sharks as overfished with overfishing occurring.

Porbeagle Sharks

Canada has conducted stock assessments on porbeagle sharks in 1999, 2001, 2003, and 2005. Based on the 2001 stock assessment, the Committee on the Status of Endangered Wildlife in Canada designated the porbeagle shark as endangered. Reduced Canadian porbeagle quotas in 2002 brought the 2004 exploitation rate to a sustainable level. According to the 2005 recovery assessment report conducted by Canada, the North Atlantic porbeagle stock has a 70 percent probability of recovery in approximately 100 years if F is less than or equal to 0.04. To date, the United States has not conducted a stock assessment on porbeagle sharks.

NMFS has reviewed the Canadian stock assessment and deems it to be the best available science appropriate to use for U.S. domestic management purposes. The Canadian assessment indicates that porbeagle sharks are overfished with the 2005 abundance less than 15 percent (for female spawner abundance) or 24 percent (for total abundance) of the virgin biomass. However, the Canadian assessment indicates that overfishing is not occurring. Based on these results, NMFS is declaring the status of porbeagle sharks as overfished, but overfishing is not occurring.

Copies of the assessments are available for review (see **ADDRESSES**).

Request for Comments

NMFS anticipates significant changes to shark management via an amendment to the Consolidated HMS FMP as a result of the latest stock assessments and requests comments on a variety of management options for this action. Analyses of these changes would likely need to be done via an EIS. As such, NMFS specifically requests comments on commercial management options including, but not limited to, quota levels, regional and seasonal quotas, trip limits, minimum sizes, quota monitoring, applying dead discards and state landings after a Federal closure to the quota, counting quota over- and underages, authorized gears, permit structure, prohibited species, and the Mid-Atlantic shark closure. In addition, NMFS is seeking comments on recreational management options including retention limits, minimum sizes, authorized gears, and landing requirements. NMFS also seeks comments on display quotas and collection of sharks through exempted fishing permits, display permits, and scientific research permits. Comments received on this action will assist NMFS in determining the options for ways to conserve and manage shark resources and shark fisheries, consistent with the Magnuson-Stevens Act, the Consolidated HMS FMP, NEPA, and other relevant domestic laws. Within the comment period established in this action, NMFS will hold scoping meetings to gather public comment on the implementation of new management measures for Atlantic sharks (time and location details of which will be announced in a subsequent **Federal Register** notification).

Based on the 2005 and 2006 stock assessments, NMFS believes the implementation of new management measures via an amendment to the Consolidated HMS FMP is necessary to rebuild sandbar, dusky, and porbeagle sharks while providing an opportunity for the sustainable harvest of blacktip sharks in the Gulf of Mexico. NMFS anticipates completing this amendment and any related documents by January 1, 2008.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 1, 2006.

James P. Burgess,

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

[FR Doc. E6–18782 Filed 11–6–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101606B]

RIN 0648–AV00

Atlantic Highly Migratory Species; Essential Fish Habitat

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

ACTION: Notice of intent to prepare an environmental impact statement; request for comments.

SUMMARY: NMFS has reviewed all new and existing Essential Fish Habitat (EFH) information in its Consolidated Atlantic Highly Migratory Species Fishery Management Plan (HMS FMP) and has determined that EFH for some Atlantic HMS may need to be updated. Through the publication of this notice, NMFS announces its intent to prepare an environmental impact statement (EIS) pursuant to the National Environmental Policy Act (NEPA) to: examine management alternatives to revise existing HMS EFH; consider additional Habitat Areas of Particular Concern (HAPCs); and to minimize, to the extent practicable, adverse fishing impacts on EFH consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other relevant Federal laws. To complete the EIS and assess the potential effects on the human environment NMFS is requesting: new EFH information not considered previously in the Consolidated HMS FMP, comments on potential HAPCs, and information regarding potential fishing/non-fishing impacts that may adversely affect EFH. This information will be used to propose amendments to the Consolidated HMS FMP.

DATES: Comments on this action must be received no later than 5 p.m., local time, on December 22, 2006.

ADDRESSES: Written comments on this action should be mailed to Chris Rilling, Highly Migratory Species Management Division by any of the following methods:

- E-mail: *SF1.101606B@noaa.gov*. Include in the subject line the following identifier: ''I.D. 101606B.''
- Written: 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope ''Comments on EFH Amendment to HMS FMP.''
- FAX: 301–713–1917.

FOR FURTHER INFORMATION CONTACT: Chris Rilling, Sari Kiraly, or Mike Clark at (301) 713–2347, or Jackie Wilson at (404) 806–7622.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) as amended by the Sustainable Fisheries Act (Public Law 104–297) provided for the establishment of EFH in FMPs and the consideration of actions to ensure the conservation and enhancement of such habitat. The EFH regulatory guidelines (50 CFR 600.815) state that NMFS should periodically review the EFH provisions of FMPs and revise or amend EFH as warranted based on available information. The EFH guidelines further state that NMFS should review all EFH information at least once every five years.

EFH, including HAPCs, for HMS was identified and described in the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks, and in the 1999 Amendment 1 to the Atlantic Billfish FMP. EFH for five shark species was updated in the 2003 Amendment 1 to the FMP. As part of the five-year review required by the Magunson-Stevens Act, and set forth by schedule in the EFH regulatory guidelines, NMFS reviewed all new and existing EFH data in the Consolidated HMS FMP and determined that revisions to existing EFH for some Atlantic HMS may be warranted. The EIS will be used to propose alternatives to amend some of the existing EFH identifications and descriptions.

In addition to considering possible revisions to EFH identification and descriptions, the EFH guidelines require FMPs to identify fishing and non-fishing activities that may adversely affect EFH. Each FMP must include an evaluation of the potential adverse impacts of fishing on EFH designated under the FMP, effects of each fishing activity regulated under the FMP, as well as the effects of other Federal FMPs and non-federally managed fishing activities (i.e., state fisheries) on EFH. The FMPs must describe each fishing activity and review and discuss all available relevant information such as the intensity, extent, and frequency of any adverse effects on EFH; the type of habitat within EFH that may be adversely affected; and the habitat functions that may be disturbed (50 CFR 600.815(a)(2)). If adverse effects of fishing activities are identified, then the Magnuson-Stevens Act requires the effects of such fishing activities on EFH to be minimized to the extent practicable (Magnuson-Stevens Act, Section 303(a)(7)).

NMFS completed the original analysis of fishing and non-fishing impacts in the 1999 FMP, and presented all new information gathered during the five-year review, including a comprehensive review of all fishing gears and non-fishing activities that could potentially impact EFH, in the Consolidated HMS FMP. Some new information regarding gear impacts was incorporated into the review. For example, information presented in the Gulf of Mexico and Caribbean Fishery Management Council EFH FEIS's (2004) suggests that bottom longline gear may have an adverse affect on coral reef habitat which serves as EFH for certain reef fishes. As a result, NMFS has made a preliminary determination that bottom longline gear may have an adverse affect on EFH for other federally-managed species. An assessment of whether HMS bottom longline gear is fished in EFH, and if so, the intensity, extent, and frequency of such impacts, including any measures to minimize potential impacts, will be addressed in the EIS.

Copies of the Consolidated HMS FMP are available for review (see **ADDRESSES**).

Request for Comments

NMFS anticipates completing this EIS and any related documents by January 1, 2008.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 31, 2006.

James P. Burgess,

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

[FR Doc. E6–18783 Filed 11–6–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110206C]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit

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

ACTION: Notice; receipt of exempted fishing permit application.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator) has made a preliminary determination that the subject exempted fishing permit (EFP) application contains all the required information and warrants further consideration. The Assistant Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Assistant Regional Administrator proposes to recommend that an EFP be issued that would allow one commercial fishing vessel to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP, which would enable researchers to investigate the efficacy of

two experimental flounder trawl designs to reduce bycatch of cod and sublegal-sized flounders, would allow for exemptions from the FMP as follows: U.S./Canada Management Area gear requirements for flounder trawl nets, and the NE multispecies possession restrictions.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before November 22, 2006.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on the Massachusetts Flounder Trawl Study.'' Comments may also be sent via facsimile (fax) to (978) 281–9135, or submitted via e-mail to the following address: *DA6327@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Management Specialist, (978) 281–9273, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: A complete application for an EFP was submitted on October 23, 2006, by David Chosid and Michael Pol of the Massachusetts Division of Marine Fisheries (DMF). The project was funded by the Saltonstall-Kennedy Grant Program. The primary goal of the research is to test the efficacy of two experimental flounder trawl designs to reduce the bycatch of cod and sublegal-sized flounders. The intent of the researchers is that the experimental nets, if successful, could potentially be an acceptable alternative trawl design to be used in the future in flounder fisheries and/or in Special Access Programs.

The project continues previous work conducted by DMF, which has preliminarily shown that these net designs significantly reduce the bycatch of cod and sublegal yellowtail flounder, as compared to the standard 2–seam flounder trawl. Specifically, DMF will test the effectiveness of two modified 2–seam flounder trawl designs, referred to as the ''Ribas'' net and the ''Topless'' net. The Ribas net is constructed of 6–inch (15.24 cm) diamond mesh with 75 meshes of 6.5–inch (16.51 cm) square knotless mesh in the codend, 25 meshes wide on the top and bottom. The 6–inch (15.24 cm) diamond mesh normally found on the top middle of flounder nets is replaced with 25 meshes wide of 8–inch (20.32 cm) square mesh from the headrope to the codend. This design has a headrope and footrope length of 60 ft (18.3 m). The Topless net has an identical bottom half and codend to the Ribas net, but has no top wings, and much of the top webbing of the net is removed. The headrope of the Topless net tapers into the top belly of the net, and has a length of 89 ft (27.1 m).

The species of principal interest in the study are cod and yellowtail flounder, but the study will also have implications for other flatfishes, including winter flounder, witch flounder, and American plaice. All fish would be sorted and weighed, and fish of legal size would be retained for sale. All discards would be released as quickly as practicable to reduce incidental mortality. Based on catch data from previous experimental tows, the researchers anticipate that a total of 79,300 lb (35,970 kg) of fish would be harvested throughout the course of the study along with 204,479 lb (92,750 kg) of regulatory discards. All proceeds from the sale of the fish will be returned to DMF for the purpose of enhancing future research.

All at-sea research would be conducted from the F/V Mary Elena (Permit # 330739, O.N. 970254). The vessel intends to fish in the Eastern and Western U.S./Canada Management Areas. The vessel would fish exclusively outside of all closed areas. A total of 11 days would be used for testing the experimental trawls, carried out under A days-at-sea (DAS). An anticipated 70, 2-hour tows, using a twin trawl rig, would be conducted during that time. This effort would result in a total of 140 hours of bottom time for the experimental trawls.

Based on preliminary review of this project, and in accordance with NOAA Administrative Order 216–6, a Categorical Exclusion (CE) from requirements to prepare either an Environmental Impact Statement (EIS) or an Environmental Assessment (EA) under the National Environmental Policy Act (NEPA) appears to be justified. The applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 2, 2006.

James P. Burgess,

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

[FR Doc. E6–18721 Filed 11–6–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 103106A]

U.S. Climate Change Science Program Synthesis and Assessment Product Draft Prospectus 1.2

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability and request for public comments.

SUMMARY: The National Oceanic and Atmospheric Administration publishes this notice to announce the availability of the draft Prospectus for one of the U.S. Climate Change Science Program (CCSP) Synthesis and Assessment Products for public comment. This draft Prospectus addresses the following CCSP Topic:

Product 1.2 Past Climate Variability and Change in the Arctic and at High Latitudes.

After consideration of comments received on the draft Prospectus, the final Prospectus along with the comments received will be published on the CCSP web site.

DATES: Comments must be received by December 7, 2006.

ADDRESSES: The draft Prospectus is posted on the CCSP Program Office web site. The web addresses to access the draft Prospectus is:

Product 2.4

http://www.climatescience.gov/Library/sap/sap2–4/default.htm

Detailed instructions for making comments on the draft Prospectus is provided with the Prospectus. Comments should be prepared in accordance with these instructions.

FOR FURTHER INFORMATION CONTACT: Dr. Fabien Laurier, Climate Change Science Program Office, 1717 Pennsylvania Avenue NW, Suite 250, Washington, DC 20006, Telephone: (202) 419 3481.

SUPPLEMENTARY INFORMATION: The CCSP was established by the President in 2002 to coordinate and integrate scientific research on global change and climate change sponsored by 13 participating departments and agencies of the U.S. Government. The CCSP is charged with preparing information resources that

support climate-related discussions and decisions, including scientific synthesis and assessment analyses that support evaluation of important policy issues. The Prospectus addressed by this notice provides a topical overview and describes plans for scoping, drafting, reviewing, producing, and disseminating one of 21 final synthesis and assessment Products that will be produced by the CCSP.

Dated: November 1, 2006.

William J. Brennan,

Deputy Assistant Secretary of Commerce for International Affairs, and Acting Director, Climate Change Science Program.

[FR Doc. E6–18750 Filed 11–6–06; 8:45 am]

BILLING CODE 3510–12–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 103106B]

U.S. Climate Change Science Program Synthesis and Assessment Product Draft Prospectus 3.4

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability and request for public comments.

SUMMARY: The National Oceanic and Atmospheric Administration publishes this notice to announce the availability of the draft Prospectus for one of the U.S. Climate Change Science Program (CCSP) Synthesis and Assessment Products for public comment. This draft Prospectus addresses the following CCSP Topic:

Product 3.4 Abrupt Climate Change.

After consideration of comments received on the draft Prospectus, the final Prospectus along with the comments received will be published on the CCSP web site.

DATES: Comments must be received by December 7, 2006.

ADDRESSES: The draft Prospectus is posted on the CCSP Program Office Web site. The Web addresses to access the draft Prospectus is:

Product 2.4

http://www.climatescience.gov/Library/sap/sap2–4/default.htm

Detailed instructions for making comments on the draft Prospectus is provided with the Prospectus. Comments should be prepared in accordance with these instructions.

FOR FURTHER INFORMATION CONTACT: Dr. Fabien Laurier, Climate Change Science Program Office, 1717 Pennsylvania Avenue NW, Suite 250, Washington, DC 20006, Telephone: (202) 419 3481.

SUPPLEMENTARY INFORMATION: The CCSP was established by the President in 2002 to coordinate and integrate scientific research on global change and climate change sponsored by 13 participating departments and agencies of the U.S. Government. The CCSP is charged with preparing information resources that support climate-related discussions and decisions, including scientific synthesis and assessment analyses that support evaluation of important policy issues. The Prospectus addressed by this notice provides a topical overview and describes plans for scoping, drafting, reviewing, producing, and disseminating one of 21 final synthesis and assessment Products that will be produced by the CCSP.

Dated: November 1, 2006.

William J. Brennan,

Deputy Assistant Secretary of Commerce for International Affairs, and Acting Director, Climate Change Science Program.

[FR Doc. E6–18761 Filed 11–6–06; 8:45 am]

BILLING CODE 3510–12–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of Agreed Import Levels for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China; Correction

November 2, 2006.

In the letter to the Commissioner, Bureau of Customs and Border Protection published in the **Federal Register** on October 27, 2006 (71 FR 62999), on page 62999, in Column 3, in the table listing restraint levels, please change ''Restraint Period'' to ''Restraint Level'' and change the limit for Category 222 from ''18,631,460 kilograms'' to ''18,361,460.'' A letter has been sent to the Commissioner, Bureau of Customs and Border Protection to make the same changes.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E6–18765 Filed 11–6–06; 8:45 am]

BILLING CODE 3510–DS

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0007]

Federal Acquisition Regulation; Information Collection; Summary Subcontract Report

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

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0007).

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 summary subcontract report. A request for public comments was published in the **Federal Register** at 71 FR 42838, July 28, 2006. No comments were received. The OMB clearance currently expires on October 31, 2006.

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 December 7, 2006.

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

FOR FURTHER INFORMATION CONTACT: Rhonda Cundiff, Contract Policy Division, GSA, (202) 501–0044.

SUPPLEMENTARY INFORMATION:

A. Purpose

In accordance with the Small Business Act (15 U.S.C. 631, *et seq.*), contractors receiving a contract for more than $10,000 agree to have small and small disadvantaged business concerns participate in the performance of the contract as far as practicable. Contractors receiving a contract or a modification to a contract expected to exceed $500,000 ($1 million for construction) must submit a subcontracting plan that provides maximum practicable opportunities for small and small disadvantaged business concerns. Specific elements required to be included in the plan are specified in section 8(d) of the Small Business Act and are implemented in FAR Subpart 19.7.

B. Annual Reporting Burden

Number of Respondents: 4,253.
Responses Per Respondent: 1.66.
Total Responses: 7,098.
Average Burden Hours Per Response: 15.90.
Total Burden Hours: 112,864.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VIR), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–0007, Summary Subcontract Report, in all correspondence.

Dated: November 1, 2006

Ralph De Stefano,

Director, Contract Policy Division.

[FR Doc. 06–9092 Filed 11–6–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0129]

Federal Acquisition Regulation; Information Collection; Cost Accounting Standards Administration

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

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0129).

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 cost accounting standards administration. A request for public comments was published in the **Federal Register** at 71 FR 40998, July 19, 2006. No public comments were received. The clearance currently expires on January 31, 2007.

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 December 7, 2006.

ADDRESSES: Submit comments including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VIR), Room 4035 1800 F Street, NW, Washington, DC 20405.

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

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR Subpart 30.6 and the provision at 52.230–5 include pertinent rules and regulations related to the Cost Accounting Standards along with necessary administrative policies and procedures. These administrative policies require certain contractors to submit cost impact estimates and descriptions in cost accounting practices and also to provide information on CAS-covered subcontractors.

B. Annual Reporting Burden

Number of Respondents: 644.
Responses Per Respondent: 2.27.
Total Responses: 1,462.
Average Burden Hours Per Response: 175.00.
Total Burden Hours: 255,829.
OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VIR), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–0129, Cost Accounting Standards Administration, in all correspondence.

Dated: October 31, 2006.

Ralph De Stefano,

Director, Contract Policy Division.

[FR Doc. 06–9093 Filed 11–6–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

Office of the Secretary

National Defense University Visitors (BOV) Open Meeting

AGENCY: Department of Defense, National Defense University

ACTION: Notice.

SUMMARY: On October 23, 2006 the Department of Defense published a notice on National Defense University Visitors (BOV) open meeting. This notice corrects an error in the summary.

FOR FURTHER INFORMATION CONTACT: Mr. Roy Austin, 202–685–2649.

Correction

In **Federal Register** at 71 FR 62096, the **SUMMARY** of the notice, ''President'' is corrected to read ''Designated Federal Officer''. All other information remains unchanged.

Dated: November 1, 2006.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 06–9097 Filed 11–6–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Air Force

U.S. Air Force Academy Board Of Visitors Meeting

AGENCY: Department of the Air Force, Air University Headquarters, DOD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 9355, Title 10, United States Code, the U.S. Air Force Academy Board of Visitors will meet at the Pentagon on November 15, 2006, and at the House Armed Services Committee Conference Room in the Rayburn Building in Washington, DC on November 16, 2006. The purpose of the meeting is to consider the morale and discipline, curriculum, instruction,

physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy.

A portion of the meeting will be open to the public while the other will be closed to the public to discuss matters listed in Paragraphs (2) and (6) of Subsection (c) of Section 552b, Title 5, United States Code. The determination to close one session is based on the consideration that portions of the briefings and discussion will relate to information of a personal nature that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy. The balance of the closed session will address the internal policies and administrative practices of the Board of Visitors of the Academy. Meeting sessions will be held in the House Armed Services Committee Conference Room in the Rayburn Building in Washington, DC. A delay in publishing this notification within fifteen, calendar days resulted from the need to ensure proper administrative coordination and approval to close a portion of the meeting.

FOR FURTHER INFORMATION CONTACT: Or to attend the 15 & 16 November Board of Visitors meeting, contact Captain Brad Head, Chief, USAFA Programs Assessment, Directorate of Airman Development, Deputy Chief of Staff, Manpower & Personnel, AF/A1DOA, 1040 Air Force Pentagon, Washington, DC, 20330–1040, (703) 697–8650. Contact Ms. Beverly Houtz, Academic Affairs Office, Air Force Institute of Technology, (937) 255–6565 ext 4424.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E6–18738 Filed 11–6–06; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Seahawk Biosystems Corporation

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Seahawk Biosystems Corporation, a revocable, non-assignable, exclusive license to practice in the fields of pathogen and toxin detection, and genetic testing in food products derived from vegetables and other organic and non-organic food stuff; pathogen and toxin detection in, and monitoring of, environmental and waste samples such as solid/particulate matter (e.g. soil, dirt, dust, powder, solid waste, etc.), gases (e.g. air, etc.), and liquids; and pathogen and toxin detection, and disease and infection diagnostic testing in solid, liquid, and gaseous material, animals and humans as performed by first responders, field operatives, laboratories, clinics, or other similar confidential and non-confidential uses by private industry or government for biodefense (measures against attacks using biological agents or for the prevention or monitoring thereof), anti-bioterrorism (measures for the prevention or monitoring of real, potential, or perceived terrorist acts involving the use of real, potential, or perceived biological warfare agents such as disease-causing viruses, bacteria, or toxins), national security (measures for the defense of a country and the protection of the interests/assets of a country from biological threats), or intelligence (measures for the collection of information directly or indirectly about a threat or potential threat from an enemy or potential enemy that may pose real, potential, or perceived biological warfare risks to a country or its assets) applications in the United States and certain foreign countries, the Government-owned inventions described in U.S. Patent Application Serial No. 10/457,705: Force Discrimination Assay, Navy Case No. 84,529.//U.S. Patent Application Serial No. 11/424,643: Method for Modifying Nitride Substrates for Covalent Immobilization of Aminated Molecules, Navy Case No. 97,198 and any continuations, divisionals, or re-issues thereof.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than November 22, 2006.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone 202–767–7230. Due to U.S. Postal delays, please fax 202–404–7920, *e-mail: techtran@utopia.nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: October 31, 2006.

M.A. Harvison,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E6–18769 Filed 11–6–06; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

International Energy Agency Meeting

AGENCY: Department of Energy.

ACTION: Notice of meetings.

SUMMARY: The Industry Advisory Board (IAB) to the International Energy Agency (IEA) will meet on November 14–16, 2006, at the headquarters of the IEA in Paris, France, including in connection with a joint meeting of the IEA's Standing Group on Emergency Questions (SEQ) and the IEA's Standing Group on the Oil Market on November 14 and 15, and a meeting of the SEQ on November 16.

DATES: November 14–16, 2006.

ADDRESSES: 9, rue de la Fédération, Paris, France.

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Assistant General for International and National Security Programs, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–6738.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)) (EPCA), the following notice of meeting is provided:

Meetings of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held at the headquarters of the IEA, 9, rue de la Fédération, Paris, France, on November 14, 2006, beginning at 10:45 a.m. and continuing on November 15, 2006 at 9 a.m.; at 3 p.m. on November 15, and on November 16, 2006, commencing at 9 a.m. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at a joint meeting of the IEA's Standing Group on Emergency Questions (SEQ) and the IEA's Standing Group on the Oil Market (SOM) on November 14 and 15, at a meeting of the IAB on November 15, and at a meeting of the SEQ on November 16.

The agenda of the joint SEQ/SOM meeting on November 14 and 15 is under the control of the SEQ and the SOM. It is expected that the SEQ and the SOM will adopt the following agenda:

1. Review provisional agenda of the joint SEQ/SOM session.

Part I: Speculation

2. Speculators, index funds and their recent impact on the market: what we know, what we don't know.

3. Index funds: could they influence future supply?

A. Demand

4. The outlook to 2011—which countries, which fuels, how much uncertainty.

5. Economic forecasts—understanding the risks.

B. Supply Outlook

6. World oil supply outlook, supply risks, changes to crude quality?

7. Historical relationship between oil prices and exploration and production investment.

C. Biofuels

8. Biofuels—the outlook to 2011: the value to energy security.

D. Refining

9. Product supply risks—refinery outlook, product balances, potential bottlenecks.

Part II: Energy Security: The Impact of Short- and Medium-Term Issues

10. Setting the scene: current oil and gas market updates.

11. The near-term risks in oil supply disruptions.

12. Completing the picture: oil market balances, risks, and outlook.

13. Medium-term oil market report—closing comments.

The expected agenda of the IAB meeting on November 15, 2006, is as follows:

1. 2006 IEA World Energy Outlook (presentations by IEA).

2. Program of Work of the SEQ for 2007–8 (presentations by IEA).

3. Data collection during emergencies (presentations by IEA and discussion).

4. Potential improvements in emergency stock release procedures (Comments from IAB members and discussion with IEA).

5. Review of agenda for November 16, 2006, SEQ meeting.

The agenda of the SEQ meeting on November 16, 2006 is under the control of the SEQ. It is expected that the SEQ will adopt the following agenda:

1. Adoption of the Agenda.

2. Approval of the Summary Record of the 117th Meeting.

Approval of the Summary Record of the Joint Session of the SEQ/SOM.

3. Status of Compliance with IEP Stockholding Commitments.

— Reports by non-complying Member countries.

4. Program of Work.

—The SEQ Program of Work for 2007–2008.

—SEQ Follow-up Work on Katrina.

—Update on IEA Outreach Strategy.

5. Emergency Response Review Program.

—Emergency response review of Turkey.

—Emergency response review of the Czech Republic.

—Emergency response review of Norway.

—Emergency response review of Japan.

—Emergency response review of France.

—Emergency response review of Korea.

6. Report on Current Activities of the IAB.

7. Policy and Other Developments in Member Countries.

—United States.

—Germany.

8. Other Emergency Response Activities.

—Progress report on study: ''A comparative analysis of the IEA emergency oil stockholding systems''.

9. Activities with Non-Member Countries and International Organizations.

—Update on situation of applicant countries.

—Report on IEA/China Workshop on Oil Security, October 30–31, Beijing.

—Reports on upcoming 6th JODI conference in Riyadh, November 25–26 and Training Session on Emergency Preparedness and Statistics for Chinese, October 9–13.

10. Documents for Information.

—Emergency Reserve Situation of IEA Member Countries on July 1, 2006.

—Emergency Reserve Situation of IEA Candidate Countries on July 1, 2006.

—Base Period Final Consumption: 3Q 2005–2Q 2006.

—Monthly Oil Statistics: August 2006.

—Update of Emergency Contacts List.

11. Other Business.

—Dates of Next SEQ Meetings (tentative):

—February 21–22, 2007.

—June 18–19, 2007.

—November 13–15, 2007.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), the meetings of the IAB are open to representatives of members of the IAB and their counsel; representatives of members of the IEA's Standing Group on Emergency Questions and the IEA's Standing Group on the Oil Markets; representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of Congress, the IEA, and the European Commission; and invitees of the IAB, the SEQ, the SOM, or the IEA.

Issued in Washington, DC, November 1, 2006.

Samuel M. Bradley,

Assistant General Counsel for International and National Security Programs.

[FR Doc. E6–18751 Filed 11–6–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy; National Coal Council

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the National Coal Council. Federal Advisory Committee Act (Pub. L. 92–483, 86 Stat. 770) requires notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, November 29, 2006, 9 a.m. to 12 Noon.

ADDRESSES: Fairmont Hotel, 2401 M Street, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Kane, Phone: (202) 586–4753, or Ms. Estelle W. Hebron, Phone: (202) 586–6837, U.S. Department of Energy, Office of Fossil Energy, Washington, DC 20585.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the National Coal Council is to provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues:

Tentative Agenda

- Call to Order by Ms. Georgia Nelson, Chair.
- Remarks by The Honorable Samuel W. Bodman, Secretary of Energy.
- Council Business.

Status Report on New Study—Mr. Mike McCall, Study Group Chair.

Finance Committee Report—Mr. Richard Eimer, Chair.

Education Committee Report—Ms. Barbara Altizer, Chair.

Communications Committee Report—Mr. David Surber, Chair.

- Presentation of Guest Speaker—Mr. Kenneth J. Nemeth, Southern States Energy Board.
- Presentation of Guest Speaker—Mr. Michael Mudd, Electric Power Electric Institute.
- Presentation of Guest Speaker—(TBD)—Association of American Railroads.
- Presentation of Guest Speaker—Mr. Kraig R. Naasz, President and CEO, National Mining Association.

- Other Business.
- Adjourn.

Public Participation: The meeting is open to the public. The Chair of the NCC will conduct the meeting to facilitate orderly business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Mr. Robert Kane or Ms. Estelle Hebron at the address and telephone number listed above. You must make your request for an oral statement at lease five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 10 minute rule.

Minutes: The minutes will be available for public review and copying within 30 days at the Freedom Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on November 2, 2006.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E6–18752 Filed 11–6–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–35–000]

Chandeleur Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

October 30, 2006.

Take notice that on October 25, 2006, Chandeleur Pipe Line Company (Chandeleur) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective December 1, 2006:

Sixth Revised Sheet No. 3
Nineteenth Revised Sheet No. 5
First Revised Sheet No. 64

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18676 Filed 11–6–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–146–002]

Independent Energy Producers Association v. California Independent System Operator Corporation; Notice of Compliance Filing

October 30, 2006.

Take notice that on October 20, 2006, California Independent System Operator Corporation filed a compliance filing pursuant to the Commission's September 27, 2006 Order on Clarification.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to service motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 13, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18677 Filed 11–6–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–12–000]

Manitowoc Public Utilities; Notice of Filing

October 30, 2006.

Take notice that on October 23, 2006, Manitowoc Public Utilities filed an initial Rate Schedule FERC No. 2, pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d, and Part 35 of the Commission's Regulations, to become effective December 1, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the

Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to service motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 17, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18673 Filed 11–6–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TS07–1–000]

Rendezvous Pipeline Company, L.L.C., Notice of Filing

October 30, 2006.

Take notice that on October 20, 2006, Rendezvous Pipeline Company, L.L.C. pursuant to section 358.1(d) of the regulations of the Commission, tendered for filing a request for a partial exemption from the Standards of Conduct issued by the Commission in Order No. 2004 for natural gas pipelines.

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.

Comment Date: 5 p.m. Eastern Time November 20, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18671 Filed 11–6–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–604–001]

Transwestern Pipeline Company, LLC; Notice of Tariff Filing

October 30, 2006.

Take notice that on October 25, 2006, Transwestern Pipeline Company, LLC (Transwestern) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute First Revised Sheet No. 5B.01, to become effective October 23, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18675 Filed 11–6–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–13–000]

City of Truman, MN; Notice of Filing

October 30, 2006.

Take notice that on October 25, 2006, City of Truman, Minnesota filed a petition for declaratory order pursuant to the Rule 207 of the Rules of Practice and Procedure, 18 CFR 385.207 and an exemption of filing fees, pursuant to the

Commission Regulations, 18 CFR 381.108.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 24, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18674 Filed 11–6–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–11–000]

Town of Stowe Electric Department, Town of Hardwick Electric Department, Village of Hyde Park Electric Department, Village of Johnson Water & Light Department, Village of Morrisville Water & Light, Department, Complainants v. Vermont Transco LLC, Vermont Electric Power Company, Respondents; Notice of Complaint

October 30, 2006.

Take notice that on October 23, 2006, the Town of Stowe Electric Department, the Town of Hardwick Electric Department, the Village of Hyde Park Electric Department, the Village of Johnson Water & Light Department, and the Village of Morrisville Water & Light Department (collectively, the ''Lamoille County Systems) filed a formal complaint against Vermont Transco LLC and Vermont Electric Power Company (VELCO) pursuant to section 206 of the Federal Power Act and Rules 206 and 207 of the Commission's Rules of Practice and Procedure. The complaint alleges that the cost allocation provisions, and the lack of a withdrawal, expiration or termination provision, in the 1991 Transmission Agreement between Vermont Transco LLC (as successor to VELCO) and each of them, are unjust, unreasonable, unduly discriminatory and contrary to the public interest. The Lamoille County Systems request an order declaring that they are entitled to withdraw from said agreement upon reasonable notice and take network integration transmission service under Schedule 21–VTransco of the ISO New England Inc. FERC Electric Tariff No. 3.

The Lamoille County Systems certify that copies of the complaint were served on the contacts for Vermont Transco LLC and VELCO as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 13, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18672 Filed 11–6–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

October 31, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12746–000.

c. *Date Filed:* October 24, 2006.

d. *Applicant:* Public Utility District No. 2 of Grant County, Washington.

e. *Name of Project:* Cle Elum Project.

f. *Location:* The project would be located on the Cle Elum River, in Kittitas County, Washington. The project would utilize the U.S. Bureau of Reclamation's Cle Elum Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Tim Culbertson, Public Utility District No. 2 of Grant County, Washington, 30 C Street, P.O. Box 878, Ephrata, WA 98823, (509) 554–0500.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor 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 Project:* The proposed project would use the existing Bureau of Reclamation's Cle Elum Dam, and would consist of: (1) A proposed 1,000-foot-long, 12-foot-diameter steel penstock liner fitted within the existing outlet tunnel, (2) a proposed powerhouse containing two generating with a total installed capacity ranging from 17.86 to 30.2 megawatts, (3) a proposed transmission line, and (4) appurtenant facilities. The project would have an annual generation ranging from 30.1 to 43.7 gigawatt hours that would be used for sale to its customers.

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 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 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. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. 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.

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 ''e-filing'' link. The Commission strongly encourages electronic filing.

s. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''COMPETING APPLICATION'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18678 Filed 11–6–06; 8:45 am]

BILLING CODE 6717–01–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Sunshine Act Meeting

ACTION: Notice of a Partially Open Meeting of the Board of Directors of the Export-Import Bank of the United States.

TIME AND PLACE: Thursday, November 9, 2006 at 10:30 a.m. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

OPEN AGENDA ITEM: Ex-Im Bank Advisory Committee for 2007.

PUBLIC PARTICIPATION: The meeting will be open to public participation for Item No. 1 only.

FOR FURTHER INFORMATION: For further information, contact: Office of the Secretary, 811 Vermont Avenue, NW.,

Washington, DC 20571 (Tele. No. 202–565–3957).

Howard A. Schweitzer,

General Counsel.

[FR Doc. 06–9130 Filed 11–3–06; 3:31 pm]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 06–101; Report No. AUC–06–68–B (Auction No. 68); DA 06–1949]

Auction of FM Broadcast Construction Permits Scheduled for January 10, 2007; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 68

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming auction of certain FM Broadcast construction permits. This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for this auction.

DATES: Short Form applications to participate in Auction No. 68 must be filed before 6 p.m. on November 13, 2006. Auction No. 68 is scheduled to begin on January 10, 2007.

FOR FURTHER INFORMATION CONTACT: Auctions Spectrum Access Division, Wireless Telecommunications Bureau: *For legal questions:* Lynne Milne at (202) 418–0660. *For general auction questions:* Debbie Smith or Lisa Stover at (717) 338–2868. Audio Division, Media Bureau: *For service rule questions:* Lisa Scanlan or Thomas Nessinger at (202) 418–2700. To request materials in accessible formats (Braille, large print, electronic files, or audio format) for people with disabilities, send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 or (202) 418–0432 (TTY).

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 68 Procedures Public Notice* released on October 6, 2006. The complete text of the *Auction No. 68 Procedures Public Notice,* including attachments, as well as related Commission documents, are available for public inspection and copying from 8 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8 a.m. to 11:30 a.m. on Friday at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The *Auction No. 68 Procedures Public Notice* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street SW., Room CY-B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or by contacting BCPI at its Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI please provide the appropriate FCC document number, for example, DA 06–1949 for the *Auction No. 68 Procedures Public Notice.* The *Auction No. 68 Procedures Public Notice* and related documents are also available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/68/.*

I. General Information

A. Introduction

1. The Media Bureau and Wireless Telecommunications Bureau (collectively the Bureaus) announce the procedures and minimum opening bid amounts for the upcoming auction of certain FM broadcast construction permits scheduled to begin on January 10, 2007 (Auction No. 68). On August 24, 2006, in accordance with Section 309(j)(3) of the Communications Act of 1934, as amended, the Bureaus released a public notice seeking comment on reserve prices or minimum opening bid amounts and the procedures to be used in Auction No. 68. Interested parties submitted six comments and one reply comment in response to the *Auction No. 68 Comment Public Notice,* 71 FR 51822, August 31, 2006.

i. Construction Permits To Be Auctioned

2. Auction No. 68 will offer nine construction permits in the FM broadcast service as listed in Attachment A of the *Auction No. 68 Procedures Public Notice.* The construction permits to be auctioned are nine unsold FM construction permits from Auction Nos. 37 and 62. These construction permits are for vacant FM allotments, reflecting FM channels assigned to the FM Table of Allotments, pursuant to the Commission's established rulemaking procedures, and are designated for use in the indicated communities.

3. Pursuant to the policies established in the *Broadcast Competitive Bidding First Report and Order,* 63 FR 48615, September 11, 1998, applicants may apply for any vacant FM allotment listed in Attachment A of the *Auction No. 68 Procedures Public Notice.* When two or more short-form applications (FCC Form 175) specifying the same FM allotment are accepted for filing, mutual exclusivity (MX) exists for auction purposes, and thus, that construction permit for the FM allotment will be awarded by competitive bidding procedures. Once mutual exclusivity exists for auction purposes, even if only one applicant within an MX group submits an upfront payment, that applicant is required to submit a bid in order to obtain the construction permit. Any applicant that submits a short-form application that is accepted for filing but fails to timely submit an upfront payment will retain its status as an applicant in Auction No. 68 and will remain subject to the Commission's anti-collusion rules, but will not be eligible to bid, having purchased no bidding eligibility.

4. A commenter contends that the *Auction No. 68 Comment Public Notice* is deficient in that it does not sufficiently encourage the submission of applications for noncommercial educational (NCE) broadcast stations. The commenter surmises that, because the construction permits available in Auction No. 68 were unsold previously in Auction Nos. 37 and 62, this shows a lack of interest in providing commercial service in these areas, and therefore suggests that encouraging applications for NCE stations might result in new NCE service to these locations. The commenter's suggestion rests on an erroneous premise that there was a lack of interest in these permits. Rather, as discussed further below, the permits in this auction received multiple bids in those prior auctions. These permits are available now because either a bidder withdrew a high bid during the previous auction or a winning bidder defaulted after the close of the auction.

5. The same commenter also suggests that the *Auction No. 68 Comment Public Notice* was deficient because it did not contain instructions for the submission of applications for NCE stations, citing a portion of 47 CFR 73.5002(a) which states that initial and other public notices will contain instructions for completing applications to participate in the broadcast auction, and applications for NCE stations. The commenter's argument fails to recognize that an initial auction public notice is limited to announcing the upcoming auction and specifying the period for short-form applications. The Commission's initial auction public notices for FM auctions do not supply specific application filing instructions. Rather, such instructions are typically supplied in a subsequent public notice, such as the *Auction No. 68 Procedures Public Notice,* which announces the

procedures to be followed for the upcoming broadcast auction and provides filing instructions. The instructions for the filing of short-form applications for both commercial and NCE stations are provided in the *Auction No. 68 Procedures Public Notice.* Moreover, the Commission's competitive bidding and broadcast service rules are specifically designed to accommodate applicants for NCE broadcast stations who seek to use nonreserved spectrum. In order to maximize opportunity for noncommercial broadcasters, the Commission permits applicants for NCE stations the opportunity to obtain licenses to use nonreserved spectrum by participating in auction filing windows. An applicant for an NCE station is permitted to submit an application for nonreserved spectrum in an auction filing window, subject to being returned as unacceptable for filing, if such application is mutually exclusive with an application for a commercial station. The opening of the upcoming window for nonreserved FM allotments for Auction No. 68 provides a filing opportunity for applications for both NCE and commercial stations. As with the previous two FM auctions, applicants will be allowed to submit short-form applications (FCC Forms 175) for NCE broadcast stations on the specific nonreserved spectrum to be auctioned in Auction No. 68 in the forthcoming filing window.

6. The broad principle of NCE auction participation is simply not a subject matter for which the Bureaus sought comment. The Bureaus released the *Auction No. 68 Comment Public Notice* pursuant to statutory directive. Section 309(j)(3) of the Communications Act requires the Commission to ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed before issuance of bidding rules, to permit notice and comment on proposed auction procedures. As stated in the *Auction No. 68 Comment Public Notice,* to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Bureaus sought comment on a variety of auction-specific procedures prior to the start of each auction. Specifically, the Bureaus sought comment on particular mechanisms related to auction conduct, including the structure of the bidding rounds, establishment of minimum opening bids, activity requirements, activity rule waivers and information relating to auction delay, suspension or cancellation. Thus, the concerns raised by this commenter lie outside of the scope of this proceeding.

7. Three entities filed jointly a petition for reconsideration in response to the *Auction No. 68 Comment Public Notice,* requesting that the Bureaus delete four permits from the Auction No. 68 inventory. In their view, the FM construction permits at Perry, Florida, Parowan, Utah, Cedar Key, Florida, and Tecopa, California should be removed from the inventory and awarded on a first-come, first-served basis. Each of these three entities had its short-form application for an NCE station dismissed in an earlier FM auction because each was mutually exclusive with one or more applications for a commercial station for the same FM construction permit. These entities contend that the Commission should follow a longstanding first come, first served policy, and should immediately issue construction permits for these four FM stations to them. These three former applicants claim that, because these permits were offered but not awarded in Auction Nos. 37 or 62, the permits should now be available to them. In the *Auction No. 68 Procedures Public Notice* the Bureaus denied this request. The Bureaus declined to adopt the proposal made by these three former applicants because it would violate the Commission's rules and policies as established in the *NCE Second Report and Order,* 68 FR 26220, May 15, 2003, concerning the processing of mutual exclusive NCE and commercial applications. Implementation of this proposal would require amendment of the Commission's competitive bidding and broadcast service rules. The Bureaus' process for seeking comment on auction procedures is not the appropriate forum in which either to challenge determinations made in a rulemaking proceeding or to propose additional rule changes.

B. Rules and Disclaimers

i. Relevant Authority

8. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules, including recent amendments and clarifications. Broadcasters should also familiarize themselves with the Commission's rules relating to the FM broadcast service contained in 47 CFR 73.201–73.333 and 73.1001–73.5009. Prospective bidders must also be familiar with the rules relating to broadcast auctions and competitive bidding proceedings contained in 47 CFR 1.2001–1.2112 and 73.5000–73.5009. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions contained in the Auction No. 68 Procedures Public Notice, the *Auction No. 68 Comment Public Notice,* the *Broadcast Competitive Bidding First Report and Order,* the *Broadcast Competitive Bidding First Reconsideration Order,* 64 FR 24523, May 7, 1999, and the *New Entrant Bidding Credit Reconsideration Order,* 64 FR 44856, August 18, 1999, and the *NCE Second Report and Order*.

9. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most auctions-related Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at *http://wireless.fcc.gov/auctions.*

ii. Prohibition of Collusion; Compliance With Antitrust Laws

10. Section 1.2105(c) of the Commission's rules prohibits applicants competing for construction permits in any of the same geographic license areas from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications (FCC Forms 175) as parties with whom they have entered into agreements pursuant to Section 1.2105(a)(2)(viii). Thus, applicants for construction permits in any of the same geographic license areas must affirmatively avoid all communications with each other that affect or, in their reasonable assessment, have the potential to affect bids or bidding strategy. In some instances, this prohibition extends to communications regarding the post-auction market structure. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.

11. The geographic license area is the market designation of the particular service. For the FM service, the market designation is the particular vacant FM allotment (*e.g.*, Covelo, California, Channel 245A, Market FM366–A). In Auction No. 68, for example, the rule would apply to applicants designating

on the short-form application any of the same FM allotments. Therefore, applicants that apply to bid for an FM construction permit for the same allotment would be precluded from engaging in prohibited communications during the period from the short-form application deadline until the down payment deadline following the close of the auction. In addition, even if auction applicants each designate only one common FM allotment, they may not discuss with each other their bids or bidding strategies relating to any FM allotment that either designates on its short-form application.

12. For purposes of this prohibition, Section 1.2105(c)(7)(i) defines applicant as including all officers and directors of the entity submitting a short-form application to participate in the auction, and all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application.

13. Applicants for construction permits for any of the same allotments must not communicate directly or indirectly about bids or bidding strategy. Accordingly, such applicants are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between such applicants. Also, if the authorized bidders are different individuals employed by the same organization (*e.g.*, law firm or engineering firm or consulting firm), a violation similarly could occur. In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule. A violation of the anti-collusion rule could occur in other contexts, such as an individual serving as an officer for two or more applicants. Moreover, the Commission has found a violation of the anti-collusion rule where a bidder used the Commission's bidding system to disclose its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets, and has placed auction participants on notice that the use of its bidding system to disclose market information to competitors will not be tolerated and will subject bidders to sanctions. Bidders are cautioned that the Commission remains vigilant about prohibited communications taking place in other situations. For example, the Commission has warned that prohibited communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly. Auction participants are hereby placed on notice that public disclosure of information relating to bidder interests, bids and bidder identities that typically has been revealed prior to and during past Commission auctions may violate the anti-collusion rule. Bidders should use caution in their dealings with other individuals, such as members of the press, financial analysts, or others who might become a conduit for the communication of prohibited bidding information.

14. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form application. If parties agree in principle on all material terms prior to the short-form filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application under Section 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the short-form filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiations, discussions or communications with any other applicants after the short-form filing deadline.

15. By electronically submitting its short-form application, each applicant certifies its compliance with Sections 1.2105(c) and 73.7002. However, the Bureaus caution that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted. The Commission has stated that it intends to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring. Any applicant found to have violated the anti-collusion rule may be subject to sanctions.

16. Applicants are also reminded that, regardless of compliance with the Commission's rules, they remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. Compliance with the disclosure requirements of the Commission's anti-collusion rule will not insulate a party from enforcement of the antitrust laws. For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submits a short form application. The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws: for example, actual or potential competitors may not agree to divide territories horizontally in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another for the other. Similarly, the Bureaus have long reminded potential applicants and others that even where the applicant discloses parties with whom it has reached an agreement on the short-form application, thereby permitting discussions with those parties, the applicant is nevertheless subject to existing antitrust laws. To the extent the Commission becomes aware of specific allegations that may give rise to violations of the federal antitrust laws, the Commission may refer such allegations to the United States Department of Justice for investigation. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.

17. In addition, 47 CFR 1.65 requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, Section 1.65 requires an auction applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form application. Applicants are therefore required by Section 1.65 to report to the Commission any communications they have made to or received from another applicant after the short-form filing deadline that affect or have the potential to affect bids or bidding strategy unless such communications are made to or received from parties to agreements identified under Section 1.2105(a)(2)(viii). In addition, Section

1.2105(c)(6) requires that any applicant that makes or receives a communication prohibited by Section 1.2105(c) must report such communication to the Commission in writing immediately, and in no case later than five business days after the communication occurs.

18. Applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in any bidding consortia, joint venture, partnership, or agreement or other arrangement entered into relating to the competitive bidding process.

19. A summary listing of documents issued by the Commission and the Bureau addressing the application of the anti-collusion rule may be found in Attachment D of the *Auction No. 68 Procedures Public Notice*. These documents are available on the Commission's auction anti-collusion Web page.

iii. Due Diligence

20. Potential applicants are reminded that they are solely responsible for investigating and evaluating all technical and market place factors that may have a bearing on the value of the broadcast facilities in this auction. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC permittee in the broadcast service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

21. In particular, potential applicants are strongly encouraged to review all underlying Commission orders, such as the specific report and order amending the FM Table of Allotments and allotting the FM channel(s) on which they plan to bid. Orders adopted in FM allotment rulemaking proceedings often include anomalies, such as, site restrictions or expense reimbursement requirements. Bidders are also responsible for reviewing all pending rulemaking petitions and open proceedings that might affect the FM allotment(s) on which they plan to bid. Additionally, potential bidders should perform technical analyses sufficient to assure themselves that, should they prevail in competitive bidding for a given FM allotment, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements.

22. Potential applicants are also strongly encouraged to conduct their own research prior to the beginning of bidding in Auction No. 68 in order to determine the existence of any pending administrative or judicial proceedings that might affect their decision to participate in the auction. Participants in Auction No. 68 are strongly encouraged to continue such research throughout the auction.

23. Applicants should also be aware that certain pending and future proceedings, including applications (including those for modification), petitions for rulemaking, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal oppositions, and applications for review, before the Commission may relate to particular applicants or incumbent permittees, or incumbent licensees, or the construction permits available in Auction No. 68. In addition, pending and future judicial proceedings may relate to particular applicants or incumbent permittees, or incumbent licensees, or the construction permits available in Auction No. 68. Prospective applicants are responsible for assessing the likelihood of the various possible outcomes, and considering their potential impact on construction permits available in this auction.

24. Applicants should perform due diligence to identify and consider all proceedings that may affect the construction permits being auctioned and that could have an impact on the availability of spectrum for Auction No. 68. In addition, although the Commission may continue to act on various pending applications, informal objections, petitions, and other requests for Commission relief, some of these matters may not be resolved by the beginning of bidding in the auction.

25. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the construction permits available in Auction No. 68. Potential applicants are strongly encouraged to physically inspect any prospective sites located in, or near, the service area for which they plan to bid, and also to familiarize themselves with the Commission's environmental assessment obligations.

26. Applicants may research the licensing database for the Media Bureau on the Internet in order to determine which channels are already licensed to incumbent licensees or previously-authorized to construction permittees. Licensing records for the Media Bureau are contained in the Media Bureau's Consolidated Data Base System (CDBS) and may be researched on the Internet at *http://www.fcc.gov/mb.*

27. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, applicants may obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases.

iv. Use of Integrated Spectrum Auction System

28. The Commission will make available a browser-based bidding system to allow bidders to participate in Auction No. 68 over the Internet using the Commission's Integrated Spectrum Auction System (ISAS or FCC Auction System). The Commission makes no warranty whatsoever with respect to the FCC Auction System. In no event shall the Commission, or any of its officers, employees or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning or use of the FCC Auction System that is accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming or other advice or service provided in connection with the FCC Auction System.

v. Bidder Alerts

29. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 68 to deceive and defraud unsuspecting investors. Information about deceptive telemarketing schemes is available from the Federal Trade Commission (FTC) at (202) 326–2222 and from the Securities and Exchange Commission (SEC) at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed

to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060.

vi. National Environmental Policy Act Requirements

30. Permittees or licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act (NEPA). The construction of a broadcast facility is a federal action and the permittee must comply with the Commission's NEPA rules for each such facility. The Commission's NEPA rules require, among other things, that the permittee or licensee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corps of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). In assessing the effect of facilities construction on historic properties, the permittee or licensee must follow the provisions of the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process. The permittee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The permittee also must prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

C. Auction Specifics

i. Auction Date

31. Bidding in Auction No. 68 will begin on Wednesday, January 10, 2007, as announced in the *Auction No. 68 Comment Public Notice.* The initial schedule for bidding will be announced by public notice at least one week before the start of the auction.

32. Unless otherwise announced, bidding on construction permits will be conducted on each business day until bidding has stopped on all construction permits.

ii. Auction Title

33. Auction No. 68—FM Broadcast

iii. Bidding Methodology

34. The bidding methodology for Auction No. 68 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet using the FCC Auction System. Qualified bidders are permitted to bid electronically via the Internet or by telephone. All telephone calls are recorded.

iv. Pre-Auction Dates and Deadlines

35. Dates and Deadlines

Short-Form Application (FCC Form 175) Filing Window Opens	November 6, 2006; 12 noon ET.
Short-Form Application (FCC Form 175) Filing Window Deadline	November 13, 2006; 6 p.m. ET.
Upfront Payments (via wire transfer)	December 11, 2006; 6 p.m. ET.
Mock Auction	January 8, 2007.
Auction Begins	January 10, 2007.

v. Requirements for Participation

36. Those wishing to participate in the auction must: (1) Submit a short-form application (FCC Form 175) electronically prior to 6 p.m. ET, November 13, 2006, following the electronic filing procedures set forth in Attachment B of the *Auction No. 68 Procedures Public Notice*; (2) submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) before 6 p.m. ET December 11, 2006, and (3) comply with all provisions outlined in this Public Notice and applicable Commission rules.

vi. General Contact Information

37. See the *Auction No. 68 Procedures Public Notice* for the General Contact Information provided in a table format.

II. Short-Form Application (FCC FORM 175) Requirements

38. An application to participate in an FCC auction, referred to as a short-form application or FCC Form 175, provides information used in determining whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or permits. The short-form application is the first part of the Commission's two-phased auction application process. In the first phase of this process, parties desiring to participate in the auction file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on the applicants' short-form applications and certifications, as well as their upfront payments. In the second phase of the process, winning bidders file a more comprehensive long-form application.

39. Entities and individuals seeking construction permits available in Auction No. 68 must file a short-form application electronically via the FCC Auction System before 6 p.m. ET on November 13, 2006, following the procedures prescribed in Attachment B to the *Auction No. 68 Procedures Public Notice.* If an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 will be used in determining whether the applicant is eligible for the claimed bidding credit. Applicants bear full responsibility for submitting accurate, complete and timely short-form applications. All applicants must certify under penalty of perjury on their short-form applications that they are legally, technically, financially and otherwise qualified to hold a license. Applicants should read the instructions set forth in Attachment B of the *Auction No. 68 Procedures Public Notice* carefully and should consult the Commission's rules to ensure that all the information that is required under the Commission's rules and relevant public notices is included with their short-form applications.

40. An entity may not submit more than one short-form application for a single auction. In the event that a party submits multiple short-form applications, only one application will be accepted for filing.

41. Applicants also should note that submission of a short-form application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true, complete and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

A. Noncommercial Educational Facilities

42. The opening of a window for nonreserved vacant FM allotments provides a filing opportunity for an applicant to apply for both noncommercial educational (NCE) and

commercial facilities. However, while non-mutually exclusive NCE applications will not be resolved through competitive bidding, any applications specifying NCE facilities that are mutually exlcusive with any applications specifying commercial facilities will be returned as unacceptable for filing pursuant to 47 CFR 73.5002(b).

B. New Entrant Bidding Credit

43. The Commission adopted a tiered New Entrant Bidding Credit for broadcast auction applicants with no, or very few, other media interests.

i. Eligibility

44. The interests of the applicant, and of any individuals or entities with an attributable interest in the applicant, in other media of mass communications, including both NCE and commercial full-power broadcast stations, shall be considered when determining an applicant's eligibility for the New Entrant Bidding Credit. The bidder's attributable interests shall be determined as of the short-form application (FCC Form 175) filing deadline—November 13, 2006. Thus, the applicant's maximum new entrant bidding credit eligibility will be determined as of the short-form application filing deadline. Applicants intending to divest a media interest or make any other ownership changes, such as resignation of positional interests, in order to avoid attribution for purposes of qualifying for the New Entrant Bidding Credit must have consummated such divestment transactions or have completed such ownership changes by no later than the short-form filing deadline—November 13, 2006. Prospective bidders are reminded, however, that events occurring after the short-form filing deadline, such as the acquisition of attributable interests in media of mass communications, may cause diminishment or loss of the bidding credit, and must be reported immediately.

45. Under traditional broadcast attribution rules, including 47 CFR 73.3555 Note 2, those entities or individuals with an attributable interest in a bidder include: (1) All officers and directors of a corporate bidder; (2) any owner of 5 percent or more of the voting stock of a corporate bidder; (3) all partners and limited partners of a partnership bidder, unless the limited partners are sufficiently insulated; and (4) all members of a limited liability company, unless sufficiently insulated.

46. In cases where an applicant's spouse or close family member holds other media interests, such interests are not automatically attributable to the bidder. The Commission decides attribution issues in this context based on certain factors traditionally considered relevant. Applicants should note that the mass media attribution rules were revised in 1999.

47. Bidders are also reminded that, by the *New Entrant Bidding Credit Reconsideration Order*, the Commission further refined the eligibility standards for the New Entrant Bidding Credit, judging it appropriate to attribute the media interests held by very substantial investors in, or creditors of, an applicant claiming new entrant status. Specifically, the attributable mass media interests held by an individual or entity with an equity and/or debt interest in an applicant shall be attributed to that bidder for purposes of determining its eligibility for the New Entrant Bidding Credit, if the equity and debt interests, in the aggregate, exceed 33 percent of the total asset value of the applicant, even if such an interest is non-voting.

48. Generally, media interests will be attributable for purposes of the New Entrant Bidding Credit to the same extent that such other media interests are considered attributable for purposes of the broadcast multiple ownership rules. Further, any bidder asserting new entrant status must have *de facto* as well as *de jure* control of the entity claiming the bidding credit pursuant to 47 CFR 73.5007. Typically, *de facto* control is evidence by ownership of at least 50.1 percent of an entity's voting stock or equivalent level of interest in cases where the bidder is not a corporate entity. *De facto* control is determined on a case-by-case basis.

49. However, attributable interests held by a winning bidder in existing low power television, television translator or FM translator facilities will not be counted among the bidder's other mass media interests in determining its eligibility for a New Entrant Bidding Credit. A medium of mass communications is defined in 47 CFR 73.5008(b). Full service noncommercial educational stations, on both reserved and nonreserved channels, are included among ''media of mass communications'' as defined in Section 73.5008(b).

C. Application Requirements

50. In addition to the ownership information required pursuant to Section 1.2112, applicants are required to establish on their short-form applications that they satisfy the eligibility requirements to qualify for a New Entrant Bidding Credit. In those cases where a New Entrant Bidding Credit is being sought, a certification under penalty of perjury must be provided in completing the applicant's short-form application. An applicant claiming that it qualifies for a 35 percent new entrant bidding credit must certify that neither it nor any of its attributable interest holders have any attributable interests in any other media of mass communications. An applicant claiming that it qualifies for a 25 percent new entrant bidding credit must certify that neither it nor any of its attributable interest holders have any attributable interests in more than three media of mass communications, and must identify and describe such media of mass communications.

i. Bidding Credits

51. Applicants that qualify for the New Entrant Bidding Credit, as specified in 47 CFR 73.5007, are eligible for a bidding credit that represents the amount by which a bidder's winning bid is discounted. The size of a New Entrant Bidding Credit depends on the number of ownership interests in other media of mass communications that are attributable to the bidder-entity and its attributable interest-holders: (1) A 35 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has no attributable interest in any other media of mass communications, as defined in 47 CFR 73.5008; (2) a 25 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has an attributable interest in no more than three mass media facilities, as defined in 47 CFR 73.5008; (3) no bidding credit will be given if any of the commonly owned mass media facilities serve the same area as the proposed broadcast station, as defined in 47 CFR 73.5007(b), or if the winning bidder, and/or any individual or entity with an attributable interest in the winning bidder, has attributable interests in more than three mass media facilities.

52. Bidding credits are not cumulative; qualifying applicants receive either the 25 percent or the 35 percent bidding credit, but not both. Attributable interests are defined in 47 CFR 73.3555 and Note 2 of that section. Applicants should note that unjust enrichment provisions apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license or construction permit to an entity not qualifying for the same level of bidding credit.

ii. Installment Payments

53. Installment payment plans will not be available in Auction No. 68.

D. Permit Selection

54. In Auction No. 68, applicants must select the construction permits on which they want to bid from the Eligible Permits list. There will be no opportunity to change construction permit selection after the short-form filing deadline. It is critically important that an applicant confirm its construction permit selections before submitting its short-form application because the FCC Auction System will not accept bids on construction permits that an applicant has not selected on its short-form application.

55. In reply comments, one commenter argues that the Commission should change its method of creating vacant FM allotments, and that the Commission on its own motion should reallocate these nine FM allotments in Auction No. 68 to new towns, as well as permitting winning bidders to petition to change the city of license for any construction permits won in auction as soon as final payment is made. In the *Auction No. 68 Procedures Public Notice*, the Bureaus declined to adopt this commenter's proposals to change the Commission's vacant FM allotment rules and procedures because this is not the appropriate forum and due to an insufficient record for such rule and procedural changes.

E. Disclosure of Bidding Arrangements

56. Applicants will be required to identify in their short-form applications all parties with whom they have entered into any agreements, arrangements, or understandings of any kind relating to the construction permits being auctioned, including any agreements relating to post-auction market structure. Applicants also will be required to certify under penalty of perjury in their short-form applications that they have not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in the application, regarding the amount of their bids, bidding strategies, or the particular construction permits on which they will or will not bid. If an applicant has had discussions, but has not reached a joint bidding agreement by the short-form application filing deadline, it would not include the names of parties to the discussions on its application and may not continue such discussions with any applicants after the deadline.

57. After the filing of short-form applications, the Commission's rules do not prohibit a party holding a non-controlling, attributable interest in one applicant from acquiring an ownership interest in or entering into a joint bidding arrangement with other applicants provided that: (1) The attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has entered into a joint bidding arrangement; and (2) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies. Such subject areas include, but are not limited to, issues such as management sales, local marketing agreements, rebroadcast agreements, and other transactional agreements. Further, as discussed above, compliance with the disclosure requirements of the Commission's anti-collusion rule will not insulate a party from enforcement of the antitrust laws.

F. Ownership Disclosure Requirements

58. The Commission specified in the *Broadcast Competitive Bidding First Report and Order* that, for purposes of determining eligibility to participate in a broadcast auction, all applicants must comply with the uniform Part 1 ownership disclosure standards and provide information required by 47 CFR 1.2105 and 1.2112. Specifically, in completing the short-form application, applicants will be required to fully disclose information on the real party or parties-in-interest and ownership structure of the applicant. The ownership disclosure standards for the short form are prescribed in Sections 1.2105 and 1.2112. Each applicant is responsible for information submitted in its short-form application being complete and accurate.

59. In certain circumstances an applicant's most current ownership information on file with the Commission, if in an electronic format compatible with the short-form application (FCC Form 175) (such as information submitted in an on-line FCC Form 602 or in an FCC Form 175 filed for a previous auction using ISAS) will automatically be entered into the applicant's short-form application. Applicants are responsible for ensuring that the information submitted in their short-form application for Auction No. 68 is complete and accurate. Accordingly, applicants should carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for filing the short-form application. Applicants can update any information that was entered automatically and needs to be changed directly in the short-form application.

G. Provisions Regarding Former and Current Defaulters

60. Each applicant must state under penalty of perjury on its short-form application whether or not the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by 47 CFR 1.2110, have ever been in default on any Commission construction permit or license or have ever been delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must certify under penalty of perjury on its short-form application that as of the short-form filing deadline, the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by Section 1.2110, are not in default on any payment for a Commission construction permit or license (including a down payment) and that they are not delinquent on any non-tax debt owed to any Federal agency. Prospective applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

61. Former defaulters, *i.e.*, applicants, including any of their affiliates, any of their controlling interests, or any of the affiliates of their controlling interests, that in the past have defaulted on any Commission construction permit or license or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies are eligible to bid in Auction No. 68, provided that they are otherwise qualified. However, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

62. Current defaulters, *i.e.*, applicants, including any of their affiliates, any of their controlling interests, or any of the affiliates of their controlling interests, that are in default on any payment for any Commission construction permit or

license (including a down payment) or are delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for applications to participate in this auction—are not eligible to bid in Auction No. 68.

63. Applicants are encouraged to review the Wireless Telecommunications Bureau's previous guidance on default and delinquency disclosure requirements in the context of the short-form application process. For example, it has been determined that to the extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for purposes of 47 CFR 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline. Therefore, with respect to regulatory or application fees, the provisions of Sections 1.2105(a) and 1.2106(a) regarding default and delinquency in connection with competitive bidding are limited to circumstances in which the relevant party has not complied with a final Commission payment deadline. In contrast, even where Commission rules expressly permit late payment, subject to payment of an additional late fee, and do not impose a final payment deadline, the Commission in some cases may issue a demand for payment by a date certain. Failure to comply with the terms of a particular demand letter in the time period provided may render the subject debt delinquent, notwithstanding rules generally permitting late payment.

64. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the red light rule, that implement the Commission's obligations under the Debt Collection Improvement Act of 1996, which governs the collection of claims owed to the United States. Under the red light rule, the Commission will not process applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission. In the same rulemaking order, the Commission explicitly declared, however, that the Commission's competitive bidding rules are not affected by the red light rule. As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of the Commission's competitive bidding rules, including the provisions and certifications of Sections 1.2105 and 1.2106, with regard to current and former defaults or delinquencies. Applicants are reminded, however, that the Commission's Red Light Display System, which provides information regarding debts owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of Section 1.2105. Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant's red light status is not necessarily determinative of its eligibility to participate in this auction or of its upfront payment obligation.

65. Prospective applicants in Auction No. 68 should note that any long-form applications filed after the close of competitive bidding will be reviewed for compliance with the Commission's red light rule, and such review may result in the dismissal of a winning bidder's long-form application. Applicants that have their long-form application dismissed will be deemed to have defaulted and will be subject to default payments under 47 CFR 1.2104(g) and 1.2109(c).

H. Other Information

66. Applicants owned by members of minority groups and/or women, as defined in Section 1.2110(c)(3), may identify themselves in filling out their short-form applications regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of designated entities, including rural telephone companies, in its auctions.

I. Minor Modifications to Short-Form Applications (FCC Forms 175)

67. After the deadline for filing short-form applications (FCC Forms 175) at 6 p.m. ET on November 13, 2006, applicants are permitted to make only minor changes to their applications. Applicants are not permitted to make major modifications to their applications (*e.g.*, change their construction permit selections, change control of the applicant, claim eligibility for a higher percentage of bidding credit or change their self-identification as noncommercial educational). Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons.

68. Any application amendment and related statements of fact must be certified by: (1) The applicant, if the applicant is an individual; (2) one of the partners, if the applicant is a partnership; (3) an officer, director, or duly authorized employee, if the applicant is a corporation; (4) by a member who is an officer, if the applicant is an unincorporated association; (5) the trustee if the applicant is an amateur radio service club; or (6) a duly elected or appointed official who is authorized to make such certifications under the laws of the applicable jurisdiction, if the applicant is a governmental entity.

69. An applicant must make permissible minor changes to its short-form application, as such changes are defined by Section 1.2105(b), electronically, using the FCC Auction System. Applicants must click on the SUBMIT button in the FCC Auction System for the changes to be submitted and considered by the Commission. After the revised application has been submitted, a confirmation page will be displayed that states the submission time and date, along with a unique file number. It is recommended that an applicant print and retain a copy of the confirmation page.

70. In addition, an applicant should submit a letter briefly summarizing the changes and subsequently update their short-form applications in ISAS as soon as possible.

Note: After the filing window has closed, the auction system will not permit applicants to make certain changes, such as legal classification, NCE status, and bidding credit. Any letter describing changes to an applicant's short-form application must be submitted by electronic mail to the following address: *auction68@fcc.gov.*

71. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System (ECFS), which was used for submitting comments regarding Auction No. 68 procedures.

J. Maintaining Current Information in Short-Form Applications (FCC Form 175)

72. As applicant is required by 47 CFR 1.65 to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Changes that cause a loss of or reduction in the percentage of bidding credit specified on the originally submitted Form 175 application must be reported immediately. If an amendment reporting substantial changes is a ''major amendment'' as defined by 47 CFR 1.2105, the major amendment will not be accepted and may result in the dismissal of the short-form application.

i. Maintaining the Accuracy of FCC Form 175 Information

73. After the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications, for example, deletion and addition of authorized bidders (to a maximum of three). Applicants must click on the SUBMIT button in the FCC Auction System for the changes to be submitted and considered by the Commission. In addition, applicants must submit a letter, briefly summarizing the changes, by electronic mail at the following address: *auction68@fcc.gov.*

74. Applicants must not submit application-specific material through ECFS into the record of the proceeding, which was used for submitting comments concerning Auction No. 68 procedures.

III. Pre-Auction Procedures

A. Auction Seminar

75. There will be no auction seminar for Auction No. 68. A previously held FM broadcast auction seminar is available for individuals to view from the FCC's Web page at *http://wireless.fcc.gov/auctions/62/.* To the extent that competitive bidding procedures discussed in that seminar presentation may have differed from those described in the Auction No. 68 Procedures Public Notice, the procedures and instructions described in the latter public notice will control and must be followed.

B. Short-Form Application (FCC Form 175)—Due Before 6 p.m. ET on November 13, 2006

76. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application electronically via the FCC Auction System. This application must be received at the Commission prior to 6 p.m. ET on November 13, 2006. Late applications or unconfirmed submissions of electronic data will not be accepted. There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment.

77. Applications may generally be filed at any time beginning at noon ET on November 6, 2006, until 6 p.m. ET on November 13, 2006. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their applications multiple times until the filing deadline on November 13, 2006. Information about accessing, completing and viewing the FCC Form 175 is included in Attachment B of the *Auction No. 68 Procedures Public Notice.*

78. An applicant must always click on the SUBMIT button on the Certifiy & Submit screen of the electronic form to successfully submit its FCC Form 175 or modifications. Any form that is not submitted will not be reviewed by the FCC. After the application has been submitted, a confirmation page will be displayed that states the submission time and date, along with a unique file number. It is recommended that an applicant print and retain a copy of the confirmation page.

C. Application Processing and Minor Corrections

79. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (1) Those applications accepted for filing; (2) those applications rejected; and (3) those applications which have minor defects that may be corrected, and the deadline for resubmitting corrected applications.

80. Non-mutually exclusive applications will be listed in a subsequent public notice to be released by the Bureaus. Such applications will not proceed to auction, but will proceed in accordance with instructions set forth in that public notice. All mutually exclusive applications will be considered under the relevant procedures for conflict resolution. Mutually exclusive commercial applications will proceed to auction. In the *NCE Second Report and Order*, the Commission held that applications for NCE FM stations on nonreserved spectrum, filed during an FM filing window, will be returned as unacceptable for filing, if mutually exclusive with any application for a commercial station. Accordingly, if an FCC Form 175 filed during the Auction No. 68 filing window identifying the station as noncommercial educational is mutually exclusive with any application filed during that window by an applicant for a commercial station, the former will be returned as unacceptable for filing. However, if stations are not identified by applicants on the short-form application as NCE, the applications will be considered as a matter of law as applications for commercial broadcast stations.

81. As described more fully in the Commission's rules, after the short-form filing deadline on November 13, 2006, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications.

D. Upfront Payments—Due December 11, 2006

82. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and sent by facsimile to Mellon Bank in Pittsburgh, PA. All upfront payments must be received in the proper account at Mellon Bank before 6 p.m. ET on December 11, 2006.

i. Making Auction Payments by Wire Transfer

83. Wire transfer payments must be received before 6 p.m. ET on December 11, 2006. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline.

84. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must send by facsimile a completed FCC Form 159 (Revised 2/03) to Mellon Bank at (412) 209–6045. On the cover sheet of the facsimile, write Wire Transfer—Auction Payment for Auction No. 68. In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account before the deadline. Applicants are responsible for obtaining confirmation from their financial institution that Mellon Bank has timely received their upfront payment and deposited it in the proper account.

85. Please note that: (1) All payments must be made in U.S. dollars; (b) all payments must be made by wire transfer; (3) upfront payments for Auction No. 68 go to a lockbox number different from the lockboxes used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments, and (4) failure to deliver the upfront payment by the specified deadline on December 11, 2006, will result in dismissal of the application and disqualification from participation in the auction.

ii. FCC Form 159

86. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be sent by facsimile to Mellon Bank to accompany each upfront payment. Proper completion of FCC

Form 159 (Revised 2/03) is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment C to the *Auction No. 68 Procedures Public Notice.* An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payors using a pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

iii. Upfront Payments and Bidding Eligibility

87. In the *Part 1 Order*, 62 FR 13540, March 21, 1997, the Commission delegated to the Bureaus the authority and discretion to determine appropriate upfront payment(s) for each auction. In addition, in the *Part 1 Fifth Report and Order*, 65 FR 52323, August 29, 2000, the Commission ordered that applicants that are former defaulters be required to pay upfront payments 50 percent greater than non-former defaulters. For purposes of this calculation, the applicant includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by 47 CFR 1.2110.

88. In the *Auction No. 68 Comment Public Notice*, the Bureaus proposed that the amount of the upfront payment would determine a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids. In order to bid on a construction permit, otherwise qualified bidders that selected that construction permit on FCC Form 175 must have a current eligibility level that meets or exceeds the number of bidding units assigned to that construction permit. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits selected on its FCC Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all construction permits the applicant selected on its FCC Form 175, but rather to cover the maximum number of bidding units that are associated with construction permits on which the bidder wishes to place bids and hold provisionally winning bids at any given time. Provisionally winning bids are bids that would become final winning bids if the auction were to close after the given round.

89. In the *Auction No. 68 Comment Public Notice*, the Bureaus proposed upfront payments for each construction permit taking into account various factors related to the efficiency of the auction process and the potential value of similar spectrum and sought comment on this proposal. The specific upfront payments and bidding units for each construction permit are set forth in Attachment A of the *Auction No. 68 Procedures Public Notice.*

90. In calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all construction permits on which it seeks to be active in any given round. Applicants should check their calculations carefully, because it is not possible to increase a bidder's eligibility after the upfront payment deadline.

91. Former defaulters should calculate their upfront payment for all construction permits by multiplying the number of bidding units on which they wish to be active by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit. If a former defaulter fails to submit a sufficient upfront payment to establish eligibility to bid on at least one of the construction permits for which the applicant applied on its FCC Form 175, the applicant will not be eligible to participate in the auction.

iv. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

92. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information be supplied to the FCC. Applicants can provide the information electronically during the initial application filing window after the application has been submitted. (Applicants are reminded that information submitted as part of an FCC Form 175 will be available to the public; for that reason, wire transfer information should not be included in an FCC Form 175.) Wire Transfer Instructions can also be manually sent by facsimile to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Gail Glasser, at (202) 418–2643. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.

E. Auction Registration

93. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the construction permits for which they applied.

94. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID® cards that will be required to place bids, the Integrated Spectrum Auction System (ISAS) Bidder's Guide, and the Auction Bidder Line phone number.

95. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder that has not received this mailing by noon on Thursday, January 4, 2007, should call (717) 338–2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

96. In the event that SecurID® cards are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacement registration material. Qualified bidders requiring the replacement of these items must call Technical Support.

F. Remote Electronic Bidding

97. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically and telephonically. Each applicant should indicate its bidding preference—electronic or telephonic—on the FCC Form 175. In either case, each authorized bidder must have its own SecurID® card, which the FCC will provide at no charge. Each applicant with one authorized bidder

will be issued two SecurID® cards, while applicants with two or three authorized bidders will be issued three cards. For security purposes, the SecurID® cards, the telephonic bidding telephone number, and the Integrated Spectrum Auction System (ISAS) Bidder's Guide are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID® card is tailored to a specific auction; therefore, SecurID® cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 68.

98. Please note that the SecurID® cards can be recycled, and the Bureaus encourage bidders to return the cards to the FCC. The Bureaus will provide pre-addressed envelopes that bidders may use to return the cards once the auction is closed.

G. Mock Auction—January 8, 2007

99. All qualified bidders will be eligible to participate in a mock auction on Monday, January 8, 2007. The mock auction will enable applicants to become familiar with the FCC Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

100. The first round of bidding for Auction No. 68 will begin on Wednesday, January 10, 2007. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is to be released approximately 10 days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round Auction

101. In the *Auction No. 68 Comment Public Notice,* the Bureaus proposed to auction all construction permits in Auction No. 68 in a single auction using the Commission's standard simultaneous multiple-round (SMR) auction format. This type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual construction permits. A bidder may bid on, and potentially win, any number of construction permits. Typically, bidding remains open on all construction permits until bidding stops on every construction permit, unless a modified stopping rule is invoked.

102. A commenter suggests that rather than keep bidding open until bidding stops on all permits, the Bureaus close bidding on each permit once there has been no activity on that permit for ten rounds. The commenter insists that keeping all permits open increases the administrative costs for the new entrant bidder because that bidder is forced to continue monitoring each round of the bidding despite the fact that their allotment may not have had any activity for ten or more rounds.

103. Through its experience with auctions, the Commission has found that the simultaneous multiple round bidding design best advances the goals of competitive bidding. This auction design generates the most information about relative prices during the course of the auction and provides bidders with the greatest flexibility to pursue back-up strategies. Adoption of the commenter's proposal would reduce the flexibility of bidders to implement backup strategies in response to price information developed as the auction continues. Furthermore, in addition to the informational and bidding flexibility advantages, simultaneous multiple round auctions engender vigorous competition and are more likely to place construction permits in the hands of the bidder with the highest valuation. The Bureaus therefore conclude that it is operationally feasible and appropriate to auction the FM broadcast stations construction permits through a simultaneous multiple round auction, and the Bureaus decline to adopt this commenter's proposal. Unless otherwise announced, bids will be accepted on all construction permits in each round of the auction.

ii. Eligibility and Activity Rules

104. In the *Auction No. 68 Comment Public Notice*, the Bureaus proposed that the amount of the upfront payment submitted by a bidder would determine the initial (maximum) eligibility (as measured in bidding units) for each bidder. The Bureaus received no comments concerning the eligibility rule.

105. Accordingly, the Bureaus adopt the proposed use of upfront payments to determine initial (maximum) eligibility (as measured in bidding units) for Auction No. 68. The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. As noted earlier, each construction permit is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 68 Procedures Public Notice* on a bidding unit per dollar basis. Bidding units for a given construction permit do not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific construction permits. Rather, a bidder may place bids on any of the construction permits selected on its FCC Form 175 as long as the total number of bidding units associated with those construction permits does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on or hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. The total upfront payment does not affect the total dollar amount a bidder may bid on any given construction permit.

106. In order to ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction.

107. In the *Auction No. 68 Comment Public Notice*, the Bureaus proposed to conduct this auction in one stage and employ a 100 percent activity rule. The Bureaus received no comments on their proposal for a single stage auction. Because the Bureaus expect their proposals in this regard to maintain an appropriate pace of bidding in this auction, the Bureaus adopt their proposal for one stage with the following activity requirement: a bidder is required to be active on 100 percent of its current eligibility during each round of the auction.

108. A bidder's activity level in a round is the sum of the bidding units associated with construction permits on which the bidder is active. A bidder is considered active on a construction permit in the current round if it is either the provisionally winning bidder at the end of the previous bidding round or if it submits a bid in the current round. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place bids in the auction.

iii. Activity Rule Waivers

109. In the *Auction No. 68 Comment Public Notice*, the Bureaus proposed that each bidder in the auction be provided with three activity rule

waivers. The Bureaus received no comments on this issue. Therefore, the Bureaus adopt their proposal that each bidder be provided three activity rule waivers. The Bureaus are satisfied that providing three waivers over the course of the auction will give bidders a sufficient number of waivers and flexibility, while also safeguarding the integrity of the auction.

110. Bidders may use an activity rule waiver in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum activity level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit. Activity rule waivers can be either applied proactively by the bidder (a proactive waiver) or applied automatically by the FCC Auction System (an automatic waiver) and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

111. The FCC Auction System assumes that bidders with insufficient activity would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round where a bidder's activity level is below the minimum required unless: (1) There are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility. If a bidder has no waivers remaining and does not satisfy the activity requirement, the FCC Auction System will permanently reduce the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

112. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility even if the round has not yet closed.

113. Finally, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity waiver (using the Apply Waiver function in the FCC Auction System) during a bidding round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver applied by the FCC Auction System in a round in which there are no new bids will not keep the auction open.

114. A bidder cannot submit a proactive waiver after submitting a bid in a round, and submitting a proactive waiver will preclude a bidder from placing any bids in that round. Applying a waiver is irreversible; once a proactive waiver is submitted that waiver cannot be unsubmitted, even if the round has not yet closed.

iv. Auction Stopping Rules

115. For Auction No. 68, the Bureaus proposed to employ a simultaneous stopping rule approach. The Bureaus also sought comment on a modified version of the simultaneous stopping rule (modified stopping rule). The modified stopping rule would close the auction for all construction permits after the first round in which no bidder applies a waiver or submits any new bids on any construction permit on which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule.

116. The Bureaus further proposed retaining the discretion to keep the auction open even if no new bids or proactive waivers are submitted in a round. In this event, the effect will be the same as if a bidder had applied a waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either use an activity rule waiver (if it has any left) or lose bidding eligibility.

117. In addition, the Bureaus proposed to reserve the right to declare that the auction will end after a specified number of additional rounds (special stopping rule). If the Bureaus invoke this special stopping rule, they will accept bids in the specified final round(s) and the auction will close.

118. The Bureaus proposed to exercise these options only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time. The Bureaus noted that before exercising these options, the Bureaus are likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of construction permits where there is still a high level of bidding activity.

119. The Bureaus received no comments on the proposals about stopping rules. The Bureaus find that the proposed stopping rules are appropriate for Auction No. 68, because of their experience in prior auctions demonstrates that these stopping rules balance interests of administrative efficiency and maximum bidder participation. Therefore the Bureaus adopt the proposals made in the *Auction No. 68 Comment Public Notice.* Auction No. 68 will begin under the simultaneous stopping rule approach, and the Bureaus will retain the discretion to employ the other versions of the stopping rule. Moreover, the Bureaus will retain the discretion to use the modified stopping rule with or without prior announcement during the auction.

v. Auction Delay, Suspension, or Cancellation

120. In the *Auction No. 68 Comment Public Notice*, the Bureaus proposed that, by public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair conduct of competitive bidding. The Bureaus received no comment on this issue.

121. Because the proposed approach for notification of delay during an auction has proven effective in resolving exigent circumstances in previous auctions, the Bureaus adopt their proposals regarding auction delay, suspension, or cancellation. By public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. The Bureaus emphasize that exercise of this authority is solely

within the discretion of the Bureaus, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

i. Round Structure

122. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will also be included in the qualified bidders public notice.

123. The Bureaus have the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureaus may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

ii. Reserve Price and Minimum Opening Bids

124. In the *Auction No. 68 Comment Public Notice*, pursuant to 47 U.S.C. 309(j) and authority delegated by the Commission, the Bureaus proposed to establish minimum opening bids for Auction No. 68, reasoning that a minimum opening bid, successfully used in other broadcast auctions, including Auction Nos. 25, 27, and 54 (Closed Broadcast); Auction No. 32 (AM Broadcast); and Auction Nos. 37 and 62 (FM Broadcast), is a valuable tool, effectively regulating the pace of the auction. Specifically, a minimum opening bid was proposed for each construction permit listed in Attachment A of the *Auction No. 68 Procedures Public Notice.* The minimum opening bid was determined by taking into account various factors relating to the efficiency of the auction and the potential value of the spectrum, including the type of service and class of facility offered, market size, population covered by the proposed FM broadcast facility, industry cash flow data, and recent broadcast transactions. Based on experience in using minimum opening bids in other auctions, the Bureaus believe that minimum opening bids speed the course of the auction and ensure that valuable assets are not sold for nominal prices, without unduly interfering with the efficient awarding of construction permits.

125. In the alternative, the Bureaus sought comment on whether, consistent with Section 309(j), the public interest would be served by having no minimum opening bid or reserve price. A commenter objects to the minimum opening bid amounts proposed in the *Auction No. 68 Comment Public Notice* and requests that the minimum opening bids be reduced to ten percent of the proposed amounts or a minimum of $500. The commenter's objections, however, proceed from the speculation that the permits being offered in Auction No. 68 were unsold in Auction Nos. 37 and 62 because the public found the minimum opening bids to be much too high. On the contrary, analysis of the Auction Nos. 37 and 62 bidding reveals that, in each case, multiple bidders placed bids on these nine permits that exceeded the minimum opening bid amount in that auction, and in most cases bids were substantially higher than the minimum opening bid. Moreover, the bidding history for these permits suggests that the minimum opening bid amounts continued to serve the intended purpose in those prior auctions, thereby promoting efficiency in the assignment of FM construction permits. The Bureaus thus reject the commenter's arguments that the specified minimum opening bid amounts are too high.

126. The commenter also states that the Bureaus must adopt procedures on how to handle vacant allotments that receive no auction bids or when there is a payment default. The commenter suggests that, if a permit remains unsold at the end of the auction, that allotment should be deleted. However, the commenter mistakenly assumes that most of the nine permits being offered in Auction No. 68 received no bids in Auction Nos. 37 and/or 62. To the contrary, all of these permits received multiple bids in prior FM auctions. The Bureaus find no basis to depart from the Commission's established procedures for the assignment of construction permits.

127. The Bureaus concluded that the proposed minimum opening bid amounts are appropriate, and the Bureaus adopted the previously-proposed amounts. The minimum opening bid amounts the Bureaus adopt for Auction No. 68 are reducible at the discretion of the Bureaus. The Bureaus emphasize, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureaus will not entertain requests to reduce the minimum opening bid amount on specific construction permits.

128. The specific minimum opening bid amounts for each construction permit available in Auction No. 68 are set forth in Attachment A of the *Auction No. 68 Procedures Public Notice.*

iii. Bid Amounts

129. In the *Auction No. 68 Comment Public Notice*, the Bureaus proposed to use a minimum acceptable bid increment of 10 percent. This means that the minimum acceptable bid amount for a construction permit will be approximately 10 percent greater than the provisionally winning bid amount for the construction permit. The minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount times one plus the minimum acceptable bid percentage—*i.e.* (provisionally winning bid amount) * (1.10). The Bureaus will round the result using our standard rounding procedures. The Bureaus further proposed to retain the discretion to change the minimum acceptable bid amounts and bid increments amounts if the Bureaus determine that circumstances so dictate. The commenter asserts that the proposed bid increments are too low. The Bureaus rejected the commenter's suggestion that bid increments be increased to two, three, four, and five times the current bid. Experience in the previous FM auctions assured the Bureaus that the bid increments in use are sufficient to ensure active bidding. Thus, the Bureaus will begin the auction with a minimum acceptable bid percentage of 10 percent.

130. If the bidder has sufficient eligibility to place a bid on the particular construction permit, each eligible bidder in each round will be able to place a bid on a particular construction permit for which it applied in any of nine different amounts. The FCC Auction System will list the nine bid amounts for each construction permit. The nine bid amounts for each construction permit consist of the minimum acceptable bid amount calculated using a bid increment percentage. There is one exception. In the event of duplicate bid amounts due to rounding, the FCC Auction System will omit the duplicates and will list fewer than nine acceptable bid amounts for the construction permit.

131. The calculation of the minimum acceptable bid amounts for each construction permit for the next round is made at the end of each round. The acceptable bid amounts in addition to

the minimum acceptable bid amount for each construction permit are calculated using a bid increment percentage. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded—*e.g.*, if the increment percentage is 10 percent, the calculation is (minimum acceptable bid amount) * (1 + 0.10), rounded, or (minimum acceptable bid amount) * 1.10, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.20, rounded; the third additional acceptable bid amount equals the minimum acceptable bid amount times one plus three times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.30, rounded; etc.

132. The Bureaus retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, and the bid increment percentage if they determine that circumstances so dictate. The Bureaus will do so by announcement in the FCC Auction System during the auction. The Bureaus may also use their discretion to adjust the minimum bid increment amount without prior notice if circumstances warrant.

iv. Provisionally Winning Bids

133. At the end of each bidding round, a provisionally winning bid will be determined based on the highest bid amount received for each construction permit. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round. Provisionally winning bids at the end of the auction become the winning bids. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.

134. In the *Auction No. 68 Comment Public Notice,* the Bureaus proposed to use a random number generator to select a single provisionally winning bid in the event of identical high bid amounts being submitted on a construction permit in a given round (*i.e.*, tied bids). No comments were received on this proposal. Therefore, the Bureaus adopt their proposal.

135. A pseudo-random number generator based on the L'Ecuyer algorithms will be used to assign a random number to each bid. The tied bid with the highest random number wins the tiebreaker, and becomes the provisionally winning bid. The remaining eligible bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the selected provisionally winning bid.

136. During a round, a bidder may submit bids for as many construction permits as it wishes (providing that it is eligible to bid), remove bids placed in the current bidding round, or permanently reduce eligibility. Bidders also have the option of submitting and removing multiple bids during a round. If a bidder submits multiple bids for a single construction permit in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with construction permits for which the bidder has removed its bid do not count towards the bidder's current activity.

137. All bidding will take place remotely either through the FCC Auction System or by telephonic bidding. There will be no on-site bidding during Auction No. 68. Please note that telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, five to ten minutes are necessary to complete a telephonic bid submission.

138. A bidder's ability to bid on specific construction permits is determined by two factors: (1) The construction permits selected on the bidder's FCC Form 175 and (2) the bidder's eligibility. The bid submission screens will allow bidders to submit bids on only those construction permits the bidder selected on its FCC Form 175.

139. In order to access the bidding function of the FCC Auction System, bidders must be logged in during the bidding round using the passcode generated by the SecurID® card and a personal identification number (PIN) created by the bidder. Bidders are strongly encouraged to print a round summary for each round after they have completed all of their activity for that round.

140. In each round, eligible bidders will be able to place bids on a given construction permit in any of nine different amounts, if the bidder has sufficient eligibility to place a bid on the particular construction permit. For each construction permit, the FCC Auction System will list the nine acceptable bid amounts in a drop-down box. Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC Auction System also includes an upload function that allows bidders to upload text files containing bid information.

141. Until a bid has been placed on a construction permit, the minimum acceptable bid amount for that construction permit will be equal to its minimum opening bid amount. Once there are bids on a construction permit, minimum acceptable bids for a construction permit for the following round will be determined.

v. Bid Removal and Bid Withdrawal

142. In the *Auction No. 68 Comment Public Notice*, the Bureaus proposed bid removal procedures. The Bureaus received no comments on the issue of bid removals. Therefore, the Bureaus adopted their proposals concerning bid removals for Auction No. 68. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the remove bids function in the FCC Auction System, a bidder may effectively unsubmit any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, i.e., a bid that is removed does not count toward bidding activity. Once a round closes, a bidder may no longer remove a bid.

143. With respect to bid withdrawals, the Bureaus proposed that bidders not be permitted to withdraw bids in any round. Two commenters argue that the Commission needs to eliminate a loophole in the Commission's withdrawal payment rule provisions. The commenters suggest that the Commission's rules governing bid withdrawal payments create an incentive for bidders to withdraw because of the time that may elapse before a withdrawing bidder's final withdrawal payment liability is determined. The commenters describe four instances of sequential withdrawals by the same bidders in FM Auction Nos. 37 and 62, resulting in delayed service to the public. The commenters argue that a withdrawing bidder should be barred from bidding on the same FM allotments in future auctions, such as Auction No. 68. Further, these commenters ask that the Commission clarify that a withdrawn bid is a failure to make payment on a provisionally winning bid and this: (1) Is a default on a payment for a Commission license within the meaning of the current defaulter certification specified at 47 CFR 1.2105(a)(1)(x), (2) must be disclosed on a short-form application

for subsequent auctions, and (3) bars participation by that withdrawing bidder in subsequent auctions, unless good cause is demonstrated.

144. In contrast, another commenter opposes the Commission's proposal not to permit bid withdrawals in Auction No. 68, specifically characterizing as idle speculation the assertion by the two commenters that withdrawals by four bidders in FM Auction Nos. 37 and 62 delayed the submission of at least $1,801,000 to the U.S. Treasury. That commenter claims that withdrawals facilitate potential deals with auction non-participants to trade licenses and make it easier for financially constrained small bidders to engage in parking of bids on construction permits in which they are not interested in order to avoid bidding up the prices of the construction permits in which they are interested. In reply comments that commenter asserts that there were no *bona fide* applicants who were harmed by the withdrawals in the two earlier auctions. The Bureaus reject that commenter's arguments and note that our auction procedures, including withdrawal and activity rules, are designed to encourage participation by all interested parties and straightforward bidding by auction participants, so that the auction mechanism will assign the permits directly to the parties that value them most highly.

145. In addition, the commenter argues against the suggestion of the two commenters, that bidders that withdrew bids in Auction Nos. 37 or 62 not be permitted to participate in Auction No. 68, and alternatively, suggests that the FCC privately offer those bidders the opportunity to reinstate their withdrawn bids. The commenter also challenges the Commission's withdrawal payment procedures from the previous auctions. In reply comments, the commenter proposes several revisions to the Commission's withdrawal payment rules, including a new flat 10 percent final withdrawal payment based on the amount of the withdrawn bid, to replace the current interim and final withdrawal payments based, in part, on the winning bid for the particular construction permit or license in the same or a subsequent auction.

146. Generally, these proposals all seek to change various aspects of the Commission's competitive bidding rules, which would require a rulemaking and is therefore outside of the scope of the issues upon which the Bureaus have invited comment. With respect to the commenter's suggestion to impose an additional bid withdrawal payment, the Bureaus note that the Commission's rules on withdrawal payments were recently revised to allow for such additional payments, and the Bureaus are making provision for such payments in this auction. Accordingly, the Bureaus adopt their proposal concerning bid withdrawals and will not permit bidders to withdraw bids in any round during the auction. Moreover, because there will be no bid withdrawals in Auction No. 68, the concerns raised by the other two commenters regarding sequential withdrawals will not arise in this auction. The Bureaus also decide that it is not necessary to take the extra precaution of barring bidders who withdrew high bids in the earlier FM auctions from participating in Auction No. 68.

147. Bidders are cautioned to select bid amounts carefully because no bid withdrawals will be allowed in Auction No. 68, even if a bid was mistakenly or erroneously made.

vi. Round Results

148. Bids placed during a round will not be made public until the conclusion of that round. After a round closes, the Bureaus will compile reports of all bids placed, current provisionally winning bids, new minimum acceptable bid amounts, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities for Auction No. 68 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

vii. Auction Announcements

149. The Commission will use auction announcements to announce items such as schedule changes. All auction announcements will be available by clicking a link in the FCC Auction System.

V. Post-Auction Procedures

A. Down Payments

150. After bidding has ended, the Commission will issue a public notice declaring the auction closed and identifying winning bidders, down payments and final payments due.

151. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction No. 68 to 20 percent of the net amount of its winning bids (gross bids less any applicable new entrant bidding credits).

B. Final Payments

152. Recognizing the public benefit of maintaining a consistent set of auction procedures across the various auctionable services, in the *CSEA/Part 1 Report and Order,* 71 FR 6214, February 7, 2006, the Commission recently conformed the broadcast final payment procedures to the analogous Part 1 requirements. Specifically, the Part 1 rules provide that, unless otherwise specified by public notice, auction winners are required to pay the balance of their winning bids in a lump sum within ten business days following the release of a public notice establishing the payment deadline. In recent spectrum auctions, the Commission has required each winning bidder to submit the balance of the net amount of its winning bid(s) within 10 business days after the deadline for submitting down payments. Consistent with this approach, for Auction No. 68, each winning bidder will be required to submit the balance of the net amount of its winning bids within 10 business days after the deadline for submitting down payments.

C. Long-Form Application

153. A commenter remarks that, because final payment is now due within approximately 20 days after release of the auction closing public notice announcing winning auction bidders, the time period for filing a long-form application (FCC Form 301) should be extended from 30 to 90 days from release of that public notice. However, the 30-day period for filing Form 301 is dictated by the Commission's Rules, which may not be changed outside of a formal rulemaking proceeding. The Bureaus cannot implement the commenter's proposed change of this filing deadline. Accordingly, within thirty days after the release of the auction closing notice, winning bidders must electronically submit a properly completed FCC Form 301, Application for FM Construction Permit, and required exhibits for each construction permit won through Auction No. 68. Winning bidders claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit. Further filing instructions will be provided to auction winners at the close of the auction.

D. Default and Disqualification

154. Any winning bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely

long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). The payments include both a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less. Pursuant to recent modifications to the rule governing default payments, the percentage of the applicable bid to be assessed as an additional payment for defaults in a particular auction is established in advance of the auction. Accordingly, in the *Auction No. 68 Comment Public Notice*, the Bureaus proposed to set the additional default payment for the auction of these FM broadcast construction permits at ten percent (10%) of the applicable bid. The Bureaus sought comment on their proposal. The two commenters support a 10 percent additional payment for each auction in which a bid is withdrawn. In reply, another commenter contends that the two commenters misunderstand the default rules; instead the commenter seeks changes to the default payment rules. The proposed changes to default payment rules are outside of the scope of this proceeding. Based on the Bureaus' experience and the record before the Bureaus, the additional default payment for this auction of FM broadcast construction permits was set at ten percent (10%) of the applicable bid.

155. Finally, the Bureaus note that in the event of a default, the Commission may re-auction the construction permit or offer it to the next highest bidder (in descending order) at its final bid amount. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing authorizations held by the applicant.

E. Refund of Remaining Upfront Payment Balance

156. All applicants that submit upfront payments but after the close of the auction are not winning bidders for a construction permit in Auction No. 68 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

157. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers and have no remaining bidding eligibility may also be eligible for a refund of their upfront payment before the close of the auction. If an applicant has completed the refund instructions electronically, the refund will be sent automatically. If an applicant has not completed the refund instructions electronically, a written request must be submitted for the refund and include wire transfer instructions, Taxpayer Identification Number (TIN) and FCC Registration Number (FRN). Send refund requests to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Attn: Gail Glasser, 445 12th Street, SW., Room 1–C864, Washington, DC 20554.

158. Following the close of the auction, the Commission may refund upfront monies on deposit that exceed the required final payment and/or default payment amounts. Such refunds will be made to the payer of record as identified on the FCC Form 159, provided the necessary refund request and wire transfer instructions have been received.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions Spectrum and Access Division, WTB.

[FR Doc. E6–18725 Filed 11–6–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Deletion of Agenda Item From November 3, 2006, Open Meeting

November 2, 2006.

The following item has been deleted from the list of Agenda items scheduled for consideration at the Friday, November 3, 2006, Open Meeting.

4	Wireline Competition	*Title:* AT&T Inc. and BellSouth Corporation Application for Transfer of Control (WC Docket No. 06–74). *Summary:* The Commission will consider a Memorandum Opinion and Order regarding the transfer of control application of AT&T and BellSouth.

Federal Communications Commission.

William F. Canton,

Deputy Secretary.

[FR Doc. 06–9114 Filed 11–3–06; 10:58 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Establishment of the FDIC Advisory Committee on Economic Inclusion

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice.

SUMMARY: The Chairman of the Federal Deposit Insurance Corporation has determined to establish the FDIC Advisory Committee on Economic Inclusion (''the Committee''). The Committee will provide advice and recommendations on initiatives to expand access to banking services by underserved populations. The Committee will review various issues that may include, but not be limited to, basic retail financial services such as check cashing, money orders, remittances, stored value cards, short-term loans, savings accounts, and other services to promote asset accumulation and financial stability. The Chairman certifies that the establishment of this advisory committee is in the public interest in connection with the performance of duties imposed on the FDIC by law.

FOR FURTHER INFORMATION CONTACT: Robert E. Feldman, Executive Secretary, FDIC, 550 17th Street, NW., Washington, DC 20429; telephone (202) 898–7043.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act (''FACA'') 5 U.S.C. App. 2, notice is hereby given that the Chairman of the FDIC intends to establish the FDIC Advisory Committee on Economic

Inclusion (''the Committee''). After consultation with the General Services Administration as required by section 9(a)(2) of FACA and 41 CFR 102–3.65, the Chairman of the FDIC certifies that she has determined that the establishment of the Committee is in the public interest in connection with the performance of duties imposed on the FDIC by law. The Committee will provide advice and recommendations on initiatives to expand access to banking services by underserved populations. The Committee will review various issues that may include, but not be limited to, basic retail financial services such as check cashing, money orders, remittances, stored value cards, short-term loans, savings accounts, and other services to promote asset accumulation and financial stability. The Committee will function solely as an advisory body, and in compliance with the provisions of the Federal Advisory Committee Act. The Committee will represent a cross-section of interests from the federal government, banking industry, state regulatory authorities, consumer or public advocacy organizations, community-based groups, as well as others impacted by banking-related practices.

Dated at Washington, DC, this 2nd day of November, 2006.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E6–18762 Filed 11–6–06; 8:45 am]

BILLING CODE 6714–07–P

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Notice of Updated Systems of Records

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The General Services Administration (GSA) is providing notice of a revision to the record system Labor-Management Relations Files (GSA/HRO–4). The system includes records of GSA employees who are union officials or who are in an exclusively recognized union.

EFFECTIVE DATE: The system of records will become effective without further notice on December 18, 2006. unless comments received on or before that date result in a contrary determination.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the GSA Privacy Act Officer: telephone 202–501–1452; e-mail *gsa.privacyact@gsa.gov*.

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street NW, Washington, DC 20405.

SUPPLEMENTARY INFORMATION: GSA reviewed this Privacy Act system of record to ensure that it is relevant, necessary, accurate, up-to-date, and covered by the appropriate legal or regulatory authority. Nothing in the revised system notice indicates a change in authorities or practices regarding the collection and maintenance of information. Nor do the changes impact individuals' rights to access or amend their records in the systems of records.

Dated: October 23, 2006.

Cheryl M. Paige

Acting Director, Office of Information Management

GSA/HRO–4.

SYSTEM NUMBER:

GSA\HRO–4.

SYSTEM NAME:

Labor-Management Relations Files.

SYSTEM LOCATION:

The system is in the Office of Human Resources Services at GSA (CPL) at 18th & F Streets NW, Washington, DC 20405, and service and staff offices throughout GSA. The Offices are as follows:

Central Office, Central Office Human Resources Division (CPL), General Services Administration, 1800 F Street, NW, Washington, DC 20405. (202) 501–0040.

National Capital Region, Human Resources Office (WCP), General Services Administration, 7th and D Streets, SW, Washington, DC 20407. (202) 708–5335.

New England Region, Human Resources Office (1CP), General Services Administration, 10 Causeway Street, Boston, MA 02222. (617) 565–6634.

Northeast and Caribbean Region, Human Resources Office (2AR), General Services Administration, 26 Federal Plaza, New York, NY 10278. (212) 264–8138

Mid-Atlantic Region, Human Resources Office (3CP), General Services Administration, The Strawbridge Building, 20 North Eighth Street, Philadelphia, PA 19107–3191. (215) 446–4951.

Southeast Sunbelt Region, Office of Human Resources (4AH), General Services Administration, 77 Forsyth Street, Suite 650,Atlanta, GA 30303. (404) 331–3186.

Great Lakes Region, Human Resources Office (5CP), General Services Administration, 230 South Dearborn Street, Chicago, IL 60604. (312) 353–5550.

The Heartland Region, Human Resources Office (6CP), General Services Administration, 1500 East Bannister Road,Kansas City, MO 64131. (816) 926–7206.

Greater Southwest Region, Human Resources Office (7CP),General Services Administration, 819 Taylor Street, Room 9A00, Forth Worth, TX 76102. (817) 978–3190.

Region 8 Human Resource Office (7CP–8), W. 6th Avenue & Kipling Street, Room: 210, Lakewood, CO 80225–0000.

Pacific Rim Region, Human Resources Office (9CP), General Services Administration, 450 Golden Gate Avenue, San Francisco, CA 94100. (415) 744–5185.

Auburn On-Site Support Group (9CPA), 400 15th Street SW,Room: 1008, Auburn, WA 98001.

PERSONS COVERED BY THE SYSTEM:

GSA employees who are union officials or who are in an exclusively recognized union. It includes GSA employees who file a grievance under the negotiated grievance procedure.

TYPES OF RECORDS IN THE SYSTEM:

Records include:

1. List of employees who are elected or appointed as National union officers or officials.

2. National arbitration awards based on an employee or union grievance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintaining the system comes from 5 U.S.C. Chapter 71.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING TYPES OF USERS AND THEIR PURPOSE IN USING THEM:

a. To identify and record employees who are included in an exclusively recognized union, are under dues withholding, are elected or appointed as union officers, whose grievances have been resolved by arbitration, and who use official time for representing employees.

b. To the Department of Labor in carrying out its functions regarding labor-management relations in the Federal service.

c. To officials of labor organizations recognized under Pub. L. 95–454, when needed for their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

d. In any legal proceeding, where pertinent, to which GSA is a party before a court our administrative body.

e. To authorized officials engaged in investigating or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.

f. By the Office of Personnel Management in producing descriptive statistics to support the function for which the records are collected and maintained or for related work force studies. While published statistics and studies do not identify individuals, in some instances data elements in a study may be structured so as to allow an individual to be identified by inference.

g. To disclose information to the Office of Management and Budget in reviewing private relief legislation at any stage of the clearance process.

h. To disclose information to officials of the Merit System Protection Board, including the Office of Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performing official duties.

i. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), or the Government Accountability Office (GAO) when the information is required for program evaluation purposes.

j. To a Member of Congress or staff on behalf of and at the requests of the individual who is the subject of the record.

k. To the extent that official personnel records in the custody of GSA are covered within systems of records published by the Office of Personnel Management as Government-wide system, they are considered part of the Government-wide system. Other official personnel records covered by notices published by GSA and considered to be separate systems of records may be transferred to the Office of Personnel Management under official personnel programs and activities as a routine use.

l. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

m. To the National Archives and Records Administration (NARA) for records management purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and/or system generated inquiries are stored in file cabinets.

RETRIEVABILITY:

The records are filed numerically and/or alphabetically by name.

SAFEGUARDS:

When not in use by an authorized person, the records are stored in locked metal file cabinets or in secured rooms.

RETENTION AND DISPOSAL:

The Office of Human Resources Services disposes of the records as scheduled in the HB, GSA Records Maintenance and Disposition System (OAD P 1820.2A).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Labor Relations Division (CPL), Office of Human Resources Services, 1800 F Street NW, Washington, DC 20405.

NOTIFICATION PROCEDURE:

Current employees may obtain information about whether they are a part of the system by contacting the designated office where the action was processed.

RECORD ACCESS PROCEDURES:

Requests from current employees to review information about themselves should be directed to the designated office where the action was processed. For the identification required, see 41 CFR part 105–64.

PROCEDURE TO CONTEST A RECORD:

GSA rules for reviewing a record, contesting the content, and appealing an initial decision are 41 CFR part 105–64.

RECORD SOURCES:

Officials who manage records pertaining to employees who are union officials or in an exclusively recognized union and employees who have filed a grievance under the negotiated grievance procedure.

[FR Doc. E6–18763 Filed 11–6–06; 8:45 am]

BILLING CODE 6820–34–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–07–06AK]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

CDC Web site Usability Evaluation—New—National Center for Health Marketing (NCHM), Coordinating Center for Health Information and Services (CoCHIS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Executive Order 12862 directs agencies that provide significant services directly to the public to survey customers to determine the kind and quality of services they need and their level of satisfaction with existing services. The Centers for Disease Control and Prevention (CDC), National Center for Health Marking (NCHM), seeks to obtain approval to conduct usability tests of the CDC Web site, *http://www.cdc.gov*, on an ongoing basis. By collecting Web site usability information, CDC will be better able to serve, and respond to, the ever-changing demands of Web site users. These users include individuals (such as patients, educators, students, etc.), interested communities, partners, healthcare providers, and businesses. Survey information will augment current Web content, delivery, and design research which is used to understand the Web user, and more specifically, the CDC user community. Primary objectives are to (1) ensure CDC's Web site meets its customer needs and (2) ensure the Web site meets the wants, preferences, and needs of its target audiences. Findings will help to: (1) Understand the user community and how to better serve Internet users; (2) discover areas requiring improvement in either content or delivery; (3) determine how to align Web offerings with identified user need(s); and (4) explore methods for offering, presenting and delivering information most effectively. There are no costs to respondents other than their time. The total estimated annualized burden hours are 41,041.

ESTIMATED ANNUALIZED BURDEN HOURS

Survey type	Number of respondents	Frequency of response per respondent	Average burden per response (hrs.)
In Person Surveys	7,500	1	1
Remote Surveys	67,000	1	30/60
Screener Only	500	1	5/60

Dated: November 1, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–18741 Filed 11–6–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–07–0021]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

National Coal Workers Autopsy Study (NCWAS) Consent Release and History Form—Renewal—(0920–0021) National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Under the Federal Coal Mine Health and Safety Act of 1977, Public Law 91–173 (amended the Federal Coal Mine and Safety Act of 1969), the Public Health Service has developed a nationwide autopsy program (NCWAS) for underground coal miners. The Consent Release and History Form is primarily used to obtain written authorization from the next-of-kin to perform an autopsy on the deceased miner. Because a basic reason for the post-mortem examination is research (both epidemiological and clinical), a minimum of essential information is collected regarding the deceased miners, including occupational history and smoking history. The data collected will be used by the staff at NIOSH for research purposes in defining the diagnostic criteria for coal workers' pneumoconiosis (black lung) and pathologic changes and will be correlated with x-ray findings.

It is estimated that only 5 minutes is required for the pathologist to put a statement on the invoice affirming that no other compensation is received for the autopsy. From past experience, it is estimated that 15 minutes is required for the next-of-kin to complete the Consent Release and History Form. Since an autopsy report is routinely completed by a pathologist, the only additional burden is the specific request of abstract of terminal illness and final diagnosis relating to pneumoconiosis. Therefore, only 5 minutes of additional burden is estimated for the autopsy report. There are no costs to respondents other than their time. The total estimated annualized burden hours are 20.9.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
Pathologist Invoice	50	1	5/60
Pathologist Report	50	1	5/60
Next-of-Kin	50	1	15/60

Dated: October 31, 2006.

Joan Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–18744 Filed 11–6–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–07–05AT]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information

is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

A Site Specific Modular Evaluation Instrument for Behavior Outcome Measurement—New—Agency for Toxic Substances and Disease Registry (ATSDR), Centers for Disease Control and Prevention (CDC).

ATSDR considers evaluation to be a critical component for enhancing program effectiveness and improving resource management. ATSDR's mandate under the Comprehensive Environmental Response, Compensation, and Liability Act (CERLCA), as amended, is to help prevent or reduce further exposures at hazardous waste sites and the illnesses that result from such exposures. A standardized methodology to monitor outcomes associated with agency intervention will provide the data needed for demonstrating effectiveness and efficiency as well as identifying areas for improvement.

ATSDR, in cooperation with our cooperative agreement partners, is developing a series of survey modules designed to measure individual attitudes, knowledge, and behaviors, and to provide mental and physical health self-assessments, that may be influenced by health education and health promotion efforts conducted by the agency at hazardous waste sites. These modules will be used to determine knowledge improvements, attitude shifts, and behavior change following specific ATSDR program efforts and activities. The module or modules used at each program site will vary depending on the contaminant(s) of concern and the health education/promotion actions undertaken. In addition, the timing of the data collection will vary depending on whether this is a new program site or one that has had health education/promotion activities underway for some time. In general, for new sites or existing sites with new intervention efforts, we would aim for two data collections: one baseline and one post-intervention. At existing sites where ATSDR interventions have been completed, we would conduct one post-intervention data collection.

Health education and promotion activities are conducted at approximately 250 sites annually. We estimate that 90% of the program sites will have populations of 10,000 or fewer persons who have been exposed, or potentially exposed, to contaminants of concern. We expect to survey up to 150 respondents at each site in this category. At sites with exposed or potentially exposed populations of more than 10,000 persons, we expect to survey up to 500 respondents at each site.

Using a standardized methodology and survey instrument to assess outcomes related to targeted intervention activities at hazardous waste sites will provide the agency with important feedback for program improvement. There will be no costs to respondents except for their time to participate in the survey.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of sites annually	Number of respondents	Responses per respondent	Average burden per response (in hours)	Total annual burden (in hours)
General Public at Existing Sites with Exposed Populations of 10,000 or Less	55	150	1	20/60	2,750
General Public at Existing Sites with New Interventions or New Sites with Exposed Populations of 10,000 or Less	170	150	2	20/60	17,000
General Public at Existing Sites with Exposed Populations of 10,000 or More	5	500	1	20/60	833
General Public at Existing Sites with New Interventions or New Sites with Exposed Populations of 10,000 or More	20	500	2	20/60	6,667
Total					27,250

Dated: November 1, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–18746 Filed 11–6–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: October 2006

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

Important Announcement: The Office of Inspector General (OIG) will discontinue publication of monthly exclusion actions in the **Federal Register** in 1 month. Downloadable files of exclusion actions taken each month are available on the OIG's Web site. In addition, the website has a downloadable data file and an online searchable database containing all exclusion actions currently in effect. This data is called the List of Excluded Individuals/Entities (LEIE) and is located at *http://oig.hhs.gov*. Click on Exclusions Database to access the LEIE and other important information about the OIG's exclusion program.

During the month of October 2006, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusions is imposed, no program payment is made to anyone for any items or services(other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services

provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject name	Address	Effective date
PROGRAM-RELATED CONVICTIONS		
ANTOON, PATRICK	ANTHONY, TX	11/20/2006
BABER, VICTOR	RUSHVILLE, MO	11/20/2006
BONNEAU, RICHARD	N DARTMOUTH, MA	11/20/2006
BUTLER, BRENDA	BATON ROUGE, LA	11/20/2006
CROUCH, JANET	ATCHISON, KS	11/20/2006
CROUCH, MARK	AYER, MA	11/20/2006
DE ALBA, CARLOS	SANTA FE SPRINGS, CA	11/20/2006
DHAFIR, PRISCILLA	FAYETTEVILLE, NY	11/20/2006
DHAFIR, RAFIL	FAIRTON, NJ	11/20/2006
GRUBESSI, WILLIAM	WESTBURY, NY	11/20/2006
GUILLEN, JASON	SAN ANTONIO, TX	11/20/2006
GUILLEN, ROXANNE	SAN ANTONIO, TX	11/20/2006
HARRIS, PAUL	BEAUMONT, TX	11/20/2006
HAWTHORNE, LORINE	BRYAN, TX	11/20/2006
KATZ, ALAN	MANUET, NY	11/20/2006
LEVY, ALLEN	FAIRFIELD, CT	11/20/2006
MAUSKAR, ANANT	HOUSTON, TX	11/20/2006
MCCLURE, SHIRELLE	COLUMBUS, OH	11/20/2006
MCFARLIN, MARY	KINGSTREE, SC	11/20/2006
MORGAN, LINDA	TALLAHASSEE, FL	11/20/2006
NEW BEDFORD PHARMACY, INC	N DARTMOUTH, MA	11/20/2006
OGBA, IFEANYI	MAGNOLIA, AR	11/20/2006
OGBA, IGNATIUS	OAKDALE, LA	11/20/2006
PAOLINI, SHEILA	WILLIAMSVILLE, NY	11/20/2006
PASQUINELLI, ARTHUR	SCHERERVILLE, IN	11/20/2006
PATEL, PIYUSH	OKLAHOMA CITY, OK	11/20/2006
RECINOS, MARIA	LYNWOOD, CA	11/20/2006
ROHE, PAUL	GREEN BROOK, NJ	11/20/2006
RUSSELL, PAMELA	GALENA PARK, TX	11/20/2006
TOWNSEND, SANDRA	RICHMOND, VA	11/20/2006
WISZOWATY, DEBRA	GRIFFITH, IN	11/20/2006
FELONY CONVICTION FOR HEALTH CARE FRAUD		
ANODIDE, PAUL	TRENTON, NJ	11/20/2006
HEATH, DORIS	VICKSBURG, MS	11/20/2006
MCALLISTER, MARY	WINIFRED, MT	11/20/2006
FELONY CONTROLLED SUBSTANCE CONVICTION		
BRAUD, VANESSA	VERO BEACH, FL	11/20/2006
SCHLESINGER, RICHARD	TIMONIUM, MD	11/20/2006
SMITH, ALEXANDER	BOLEY, OK	11/20/2006
SMITH, REBECCA	HOLLYWOOD, FL	11/20/2006
PATIENT ABUSE/NEGLECT CONVICTIONS		
BARDGETT, JOHN	NAHANT, MA	11/20/2006
CAMPUZANO, MARIO	LONG BEACH, CA	11/20/2006
DAGURO, CLAUDINE	KANEOHE, HI	11/20/2006
PINTO, LUIS	IRVINE, CA	11/20/2006
TARIFARD, SEYED	STOCKTON, CA	11/20/2006
LICENSE REVOCATION/SUSPENSION/SURRENDER		
AARON, BARBARA	JASPER, AL	11/20/2006
ACEVES, XOCHITL	OXNARD, CA	11/20/2006
ARREDONDO, KATHY	CLOVIS, CA	11/20/2006
ASCENCIO, ROSA	SPARKS, NV	11/20/2006
ASHLEY, TERESA	SHELBYVILLE, KY	11/20/2006
AVERY, SHERYL	SENECA FALLS, NY	11/20/2006
BAKER, NANCY	DENVER, CO	11/20/2006
BAUTISTA, ALAN	NEW YORK, NY	11/20/2006
BILBRO, MARY	BEAVER DAM, KY	11/20/2006
BLANTON, NATHAN	KNOXVILLE, TN	11/20/2006
BOBADILLA, ADELLA	PHOENIX, AZ	11/20/2006
BOLING, VICKIE	OWENSBORO, KY	11/20/2006

Subject name	Address	Effective date
BRAZIL, TINA	PHOENIX, AZ	11/20/2006
BROOKMAN, HARVEY	YARDLEY, PA	11/20/2006
BROWN, SANDRA	LOUISVILLE, KY	11/20/2006
BURKE, WILLIAM	NEW VERNON, NJ	11/20/2006
BYRD, PATRICIA	BOULEVARD, CA	11/20/2006
BYSTROM, MICHAEL	MODESTO, CA	11/20/2006
CARRILLO, CAROL	MESA, AZ	11/20/2006
CASTRO, ERIK	SUN VALLEY, NV	11/20/2006
CAULK, PAULA	LOUISVILLE, KY	11/20/2006
CLARK, SHARRON	FT WORTH, TX	11/20/2006
CONNEL, ALLAN	SAN DIEGO, CA	11/20/2006
COPELAND, KATHY	MAYFIELD, KY	11/20/2006
COREY, DARYL	ELMIRA, NY	11/20/2006
COVARRUBIAS, SARA	TUCSON, AZ	11/20/2006
CREGAR, STACY	RIVERSIDE, CA	11/20/2006
CUEVAS, ROSEMARIE	LAS VEGAS, NV	11/20/2006
CUNNINGHAM, JAMES	YAKIMA, WA	11/20/2006
CUPIT, DENNIS	MARTIN, GA	11/20/2006
DAVIS, KATHLEEN	SANTA ROSA, CA	11/20/2006
DEJAYNES, SHERRY	KINGMAN, AZ	11/20/2006
DELK, KIMBERLY	LEXINGTON, KY	11/20/2006
DI JOSEPH, AMY	BUFFALO, NY	11/20/2006
DURAN, PAUL	TOPANGA, CA	11/20/2006
FARNEY, FRANCES	TUCSON, AZ	11/20/2006
FAULKNER, PAULA	CRESTWOOD, KY	11/20/2006
FORD, TONY	HAMPTON, VA	11/20/2006
FRAZIER, CANDACE	HUNTSVILLE, AL	11/20/2006
FRENCH, JACKLYN	ELIZABETHTOWN, KY	11/20/2006
GAMBON, ALONA	OXNARD, CA	11/20/2006
GAMMILL, JOAN	ANNAPOLIS, MD	11/20/2006
GOLEY, CHRISTIAN	LOUISVILLE, KY	11/20/2006
GOODALE, FRANK	WELLS, ME	11/20/2006
GRAHAM, DONALD	PITTSBURGH, PA	11/20/2006
GREISS, TAREK	DULUTH, GA	11/20/2006
HAMPTON, KIMBERLY	LAUREL BLOOMERY, TN	11/20/2006
HARLING, THOMAS	BOULDER CITY, NV	11/20/2006
HARMON, JOHN	VICKSBURG, MS	11/20/2006
HARRELL, SAMI	OWENSBORO, KY	11/20/2006
HAYS, JEFFREY	BOWLING GREEN, KY	11/20/2006
HERNANDEZ, MAIDA	CAMP VERDE, AZ	11/20/2006
HERON, JOHN	PLANO, TX	11/20/2006
HOLMES, BARBARA	PHOENIX, AZ	11/20/2006
HOOKANO, DONNA	LAHAINA, HI	11/20/2006
HORTON, MARCIA	TUSCALOOSA, AL	11/20/2006
HURLEY, STEVEN	POWAY, CA	11/20/2006
ISAAC, PATRICIA	HOLLY HILL, FL	11/20/2006
JACKSON, LEONDRAS	RIVERSIDE, CA	11/20/2006
JEFFREYS, CHARLENE	CLIFTON, CO	11/20/2006
JOHNSON, LORI	GADSDEN, AL	11/20/2006
JONES, BECKY	MOREHEAD CITY, NC	11/20/2006
JONES, ERIC	PALM SPRINGS, CA	11/20/2006
KLEBER, DEENA	SEYMOUR, IN	11/20/2006
LABARKO, JACKIE	WINDBER, PA	11/20/2006
LEISTER, GLENN	HANOVER, PA	11/20/2006
LONG, STACEY	WEST LAFAYETTE, IN	11/20/2006
LOPEZ, JOSE	BLOOMFIELD, NJ	11/20/2006
LYTTON, MARY	FLOYD, VA	11/20/2006
MASTERS, DAWN	MOREHEAD, KY	11/20/2006
MCATEE, DENISE	SHERRARD, IL	11/20/2006
MCGILL, JOHN	FOLEY, AL	11/20/2006
MCNEAL, TANISHA	BRANDENTON, FL	11/20/2006
MEDINA, ANGELA	HOUSTON, TX	11/20/2006
MORGAN, MICHAEL	MARION, NC	11/20/2006
MOSKOWITZ, MYRON	UNION, NJ	11/20/2006
MUSCARELLA, JILL	MANCHESTER, NH	11/20/2006
NOBLIT, MICHAEL	LORETTO, TN	11/20/2006
NORTON, ROSARIO	MESA, AZ	11/20/2006
ORAFU, IJEOMA	MASON, OH	11/20/2006
OWENS, ANDREA	RICEVILLE, TN	11/20/2006
PAULSON, NICOLE	SAN DIEGO, CA	11/20/2006
PEAVY, SOPHIA	FORT PIERCE, FL	11/20/2006
PEREZ, FELIPA	ALAMEDA, CA	11/20/2006
PETTIT, DENISE	POMPANO BEACH, FL	11/20/2006
POTTER, KAREN	ROAN MOUNTAIN, TN	11/20/2006

Subject name	Address	Effective date
REDFORD, MELISSA	SPRING HILL, FL	11/20/2006
REED, CARLIE	SAN BERNARDINO, CA	11/20/2006
REGAILA, ADEL	JACKSONVILLE, FL	11/20/2006
REITZ, KRISTOPHER	LEXINGTON, KY	11/20/2006
REYNOLDS, DEBBYE	HYATTSVILLE, MD	11/20/2006
RIEDEMAN, ANTOINETTE	MESA, AZ	11/20/2006
ROBBINS, PAMELA	BULLHEAD, AZ	11/20/2006
ROTOLO, JOSEPH	PATCHOGUE, NY	11/20/2006
RYAN, COLLEEN	TUCSON, AZ	11/20/2006
SCHAAL, TRACY	IJAMSVILLE, MD	11/20/2006
SCHLACHTER, ANDREA	CRANFORD, NY	11/20/2006
SENDER, PAUL	MONSEY, NY	11/20/2006
SPRAGUE, MARGARET	LA JOLLA, CA	11/20/2006
STEPHENSON, KENDALL	MESA, AZ	11/20/2006
STOVALL, JENNIE	HAINES CITY, FL	11/20/2006
TREMO, GREGORY	CARROLLTON, VA	11/20/2006
TRUONG, HANH	MANGUM, OK	11/20/2006
TURNER, DANIEL	KNOXVILLE, TN	11/20/2006
VALDEZ, LOLITA	NORTH LAS VEGAS, NV	11/20/2006
VALDIVIESO, LAURETTA	LAKE ARIEL, PA	11/20/2006
VALENA, LOWELLA	UNION CITY, CA	11/20/2006
WALDROP, LINDA	HORNSBY, TN	11/20/2006
WALKER, EDNA	TAMPA, FL	11/20/2006
WALLACE, ETHEL	MEMPHIS, TN	11/20/2006
WARREN, LYNDA	HUDSON, FL	11/20/2006
WELLSPEAK, LISA	CHICOPEE, MA	11/20/2006
WILSON, CAROLYN	BESSEMER, AL	11/20/2006
WRIGHT, VICKY	COMPTON, NH	11/20/2006
ZIBELMAN, DANA	PHILADELPHIA, PA	11/20/2006
FEDERAL/STATE EXCLUSION/SUSPENSION		
ALTIMA TRANSPORTATION, LLC	BROOKLYN, NY	11/20/2006
BYERS, FAYE	HILLSIDE, NJ	11/20/2006
BYERS, RAYMOND	HILLSIDE, NJ	11/20/2006
HAND, EVELYN	PRINCE GEORGE, VA	11/20/2006
R&B MEDICAL TRANSPORTATION	HILLSIDE, NJ	11/20/2006
FRAUD/KICKBACKS/PROHIBITED ACTS/SETTLEMENT AGREEMENT		
JUSTIN MEDICAL	BIDWELL, OH	4/7/2006
MAY, TERRY	BIDWELL, OH	4/7/2006
OWNED/CONTROLLED BY EXCLUDED/CONVICTED INDIVIDUAL		
CHANNELVIEW LUNG & REHABILITATION, INC	SUGAR LAND, TX	11/20/2006
RGR MEDICAL MANAGEMENT CORP	MIAMI, FL	11/20/2006
WMC NWH, PA	SUGAR LAND, TX	11/20/2006
DEFAULT ON HEAL LOAN		
ABDUR-RAHIM, SHABIBUDHEEN	DANVILLE, IL	11/20/2006
DANIELS, PETER	SAN JOSE, CA	11/20/2006
DOOLEY, CAMBRAY	LEXINGTON, SC	11/20/2006
HASHEMI, KEYVAN	SAN JOSE, CA	11/20/2006
LEE, SIMON	SAN FRANCISCO, CA	11/20/2006
SHARAF, NISSAN	LOS ANGELES, CA	11/20/2006

Dated: November 1, 2006.

Maureen R. Byer,

Director, Exclusions Staff, Office of Inspector General.

[FR Doc. E6–18758 Filed 11–6–06; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*,

the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments the Federal Emergency Management Agency will use.

Title: National Flood Insurance Program—Mapping Needs Process Update Support System (MNUSS) Data Worksheet.

OMB Number: 1660–0081.

Abstract: To fulfill the mandate specified in section 575 of the National Flood Insurance Reform Act (NFIRA), the Federal Emergency Management Agency (FEMA) established the Mapping Needs Assessment process and the MNUSS database in order to effectively identify and document data regarding community flood hazard mapping needs. MNUSS is designed to store mapping needs at the community level. The current version of MNUSS is an interactive, web-enabled password protected database. In order to facilitate the identification and collection of communities' current flood hazard mapping needs for input into MNUSS, FEMA development the MNUSS Data Worksheet.

Flood hazard mapping needs information enable FEMA to be more responsive to ongoing changes affecting flood hazard areas that occur in communities participating in the National Flood Insurance Program (NFIP). The changes include, but are not limited to, new corporate limit boundaries, changes in the road network, and changes in flood hazard areas, which affect communities' flood risks. The information is also used in providing justification for FEMA when requesting funding for flood map updates and is used along with other information to prioritize the flood hazard mapping needs of all mapped communities participating in the NFIP to assist in the allocation of annual funds for flood hazard map updates.

Affected Public: State, local, and tribal governments.

Number of Respondents: 5,550.

Frequency of Response: Once every five years.

Hour Burden Per Response: 2.5 hours.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management Budget, Attention: Nathan Lesser, Desk Officer, Department of Homeland Security/FEMA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974. Comments must be submitted on or before December 7, 2006.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Chief, Records Management, FEMA, 500 C Street, SW., Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

Dated: October 31, 2006.

John A. Sharetts-Sullivan,

Chief, Records Management and Privacy, Information Resources Management Branch, Information Technology Services Division. Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–18748 Filed 11–6–06; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5041–N–44]

Notice of Proposed Information Collection: Comment Request; Real Estate Settlement Procedures Act (RESPA) Web Site Complaint Questionnaire

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* January 8, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Lillian Deitzer@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Ivy Jackson, Director, Office of Interstate Land Sales and Real Estate Settlement Procedures Act, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–0502 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Real Estate Settlement Procedures Act (RESPA) Website Complaint Questionnaire.

OMB Control Number, if applicable: 2502—Pending.

Description of the need for the information and proposed use: The Real Estate Settlement Procedures Act insures that consumers are provided with greater and timely information on the nature and costs of the settlement process and are protected from unnecessarily high settlement charges caused by abusive practices. The RESPA Web site Complaint Questionnaire will provide for a common Web site for consumers and settlement service providers to assist in the enforcement of RESPA. Members of the public may submit complaints to HUD. The Federal Government will use the disclosed information to investigate alleged violations of RESPA regulations by settlement service providers.

HUD published this announcement previously in the **Federal Register** on November 8, 2005 (Vol. 70, No. 215, pages 67736–67737). HUD received comments from the American Land Title Association (ALTA) and the National Association of Mortgage Brokers (NAMB). Generally, both commenters expressed support for increased enforcement of RESPA, but expressed concern that the Web site complaint could lead to improper investigations. Both stressed maintaining confidentiality. HUD responded that it currently receives complaints from individuals through other means, and that HUD intends to process complaints received through the Web site in the same manner as all other complaints.

Agency form numbers, if applicable: HUD–1974.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of respondents is estimated to be 1,246, generating approximately 1,869 responses annually. The frequency of response is on occasion, and the estimated time needed to prepare the response is approximately 0.33 hours, for total annual burden hours of 617.

Status of the proposed information collection: This is a new collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: November 1, 2006.

Frank L. Davis,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. E6–18785 Filed 11–6–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Trinity Adaptive Management Working Group

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Trinity Adaptive Management Working Group (TAMWG) affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River (California) restoration efforts to the Trinity Management Council. Primary objectives of the meeting will include: Integrated Assessment Plan, Trinity River Restoration Program (TRRP) budget process, flow scheduling for 2007, riparian land ownership, non-TRRP restoration activity in the Trinity basin, Klamath Basin (Oregon and California) initiatives, juvenile fish health, 2006 fish return information, and updates and reports on ongoing activities. Completion of the agenda is dependent on the amount of time each item takes. The meeting could end early if the agenda has been completed. The meeting is open to the public.

DATES: The Trinity Adaptive Management Working Group will meet from 8:30 a.m. to 5 p.m. on Tuesday, December 12, 2006.

ADDRESSES: The meeting will be held at the Weaverville Victorian Inn, 1709 Main St., 299 West, Weaverville, California 96093. For more information, please contact the U.S. Fish and Wildlife Service, 1655 Heindon Road, Arcata, California 95521. For background information and questions regarding the Trinity River Restoration Program, please contact Douglas Schleusner, Executive Director, Trinity River Restoration Program, P.O. Box 1300, 1313 South Main Street, Weaverville, California 96093.

FOR FURTHER INFORMATION CONTACT: Randy A. Brown of the U.S. Fish and Wildlife Service, Arcata Fish and Wildlife Office, telephone: (707) 822–7201. Randy A. Brown is the working group's Designated Federal Officer. For questions regarding the Trinity River Restoration Program, please contact Douglas Schleusner, Executive Director, *telephone:* (530) 623–1800.

SUPPLEMENTARY INFORMATION: Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), this notice announces a meeting of the Trinity Adaptive Management Working Group (TAMWG).

Dated: October 30, 2006.

Randy A. Brown,

Designated Federal Officer, Arcata Fish and Wildlife Office, Arcata, CA.

[FR Doc. E6–18736 Filed 11–6–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Pee Dee National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a Comprehensive Conservation Plan and Environmental Assessment for Pee Dee National Wildlife Refuge in Anson and Richmond Counties, North Carolina.

SUMMARY: The Fish and Wildlife Service, Southeast Region, intends to gather information necessary to prepare a comprehensive conservation plan and environmental assessment pursuant to the National Environmental Policy Act of 1969 and its implementing regulations. 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, plans identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation.

The purpose of this notice is to achieve the following:

(1) Advise other agencies and the public of our intentions, and

(2) Obtain suggestions and information on the scope of issues to include in the environmental document.

DATES: To ensure consideration, written comments must be received no later than December 7, 2006.

ADDRESSES: Address comments, questions, and requests for further information to: Jeff Bricken, Refuge Manager, Pee Dee National Wildlife Refuge, 5770 U.S. Highway 52 North, Wadesboro, North Carolina 28170; Telephone: 704/694–4424; Fax: 704/694–6570. You may find additional information concerning the refuge at its Internet site: *http://www.fws.gov/peedee/index.html.*

SUPPLEMENTARY INFORMATION: The comprehensive conservation planning process will consider many elements, including wildlife and habitat management, public recreational activities, and cultural resource protection. Public input to the planning process is essential. A public scoping meeting will be held. Please contact the refuge manager in the **ADDRESSES** section regarding the public scoping meeting. All comments received from individuals become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act and the Council on Environmental Quality's NEPA regulations [40 CFR 1506.6(f)].

Congress established Pee Dee National Wildlife Refuge in 1963 as a migratory bird refuge. Located along the Pee Dee River in North Carolina, it comprises 8,443 acres of bottomland hardwoods, mixed-pine hardwoods, upland pines, croplands, old fields, and moist-soil units. Management of the refuge includes cooperative farming that enhances wildlife food and cover, impoundment management for waterfowl and wading birds, timber management, field border and old field management, prescribed burning, deer heard management, and regional partnerships.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: October 4, 2006.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 06–9100 Filed 11–6–06; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Preparation of an Environmental Impact Statement for Issuance of an Incidental Take Permit Associated With a Habitat Conservation Plan for Pacific Gas & Electric Company's Operation, Maintenance, and Minor New Construction Activities in the San Francisco Bay Area, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), we, the Fish and Wildlife Service (Service) are issuing this notice to advise the public that we intend to gather information necessary to prepare, in coordination with the California Department of Fish and Game (DFG), and Pacific Gas & Electric Company (PG&E), a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) on the PG&E San Francisco Bay Area Operations, Maintenance, and Construction Program (Plan). The Plan is being prepared under Section 10(a)(1)(B) of the Federal Endangered Species Act of 1973, as amended, (Act). PG&E intends to request a permit to cover 66 species federally listed as threatened or endangered and 23 unlisted species that may become listed during the term of the permit. The permit is needed to authorize take of listed species that could occur as a result of implementation activities covered under the Plan.

The Service provides this notice to: (1) Describe the proposed action and possible alternatives; (2) advise other Federal and State agencies, affected Tribes, and the public of our intent to prepare an EIS/EIR; (3) announce the initiation of a public scoping period; and (4) obtain suggestions and information on the scope of issues and alternatives to be included in the EIS/EIR.

DATE: Written comments should be received on or before December 7, 2006. Three public meetings will be held on:

1. Tuesday, November 14, 2006 from 4 p.m. to 6 p.m., Petaluma, CA.
2. Wednesday. November 15, 2006 from 10 a.m. to 12 p.m., Santa Clara, CA.
3. Wednesday, November 15, 2006 from 4 p.m. to 6 p.m., Walnut Creek, CA.

ADDRESSES: The public meetings will be held at the following locations:

1. Tuesday, November 14, 2006, at the Petaluma Community Center, 320 North McDowell Boulevard, Petaluma, CA 94954.
2. Wednesday, November 15, 2006, at the Santa Clara City Hall-Council Chambers, 1500 Warburton Avenue, Santa Clara, CA 95050.
3. Wednesday November 15, 2006, at the Walnut Creek Public Library-Ygnacio Valley, 2661 Oak Grove Road, Walnut Creek, CA 94598.

Information, written comments, or questions related to the preparation of the EIS/EIR and NEPA process should be submitted to Lori Rinek, Chief, Conservation Planning and Recovery Division, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California 95825; FAX 916–414–6713.

FOR FURTHER INFORMATION CONTACT: Sheila Larsen, Fish and Wildlife Biologist, or Lori Rinek, Division Chief, Conservation Planning and Recovery Division, at the Sacramento Fish and Wildlife Office at 916–414–6600.

SUPPLEMENTARY INFORMATION:

Reasonable Accommodation

Persons needing reasonable accommodations in order to attend and participate in the public meeting should contact Lori Rinek at 916–414–6600 as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

Background

Section 9 of the Act and Federal regulations prohibit the ''take'' of a fish and wildlife species listed as endangered or threatened. Under the Act, the following activities are defined as take: harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). However, under section 10(a) of the Act, we may issue permits to authorize ''incidental take'' of listed species. ''Incidental take'' is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for threatened species and endangered species, respectively, are at 50 CFR 17.32 and 50 CFR 17.22.

Take of listed plant species is not prohibited under the Act and cannot be authorized under a section 10 permit. However, plant species may be included on a permit in recognition of conservation benefits provided for them under the Plan. All species included on the permit would receive assurances under the Service's ''No Surprises'' regulation 50 CFR 17.22(b)(5) and 17.32(b)(5).

Currently, PG&E intends to request a permit for 89 species under the Plan: 66 listed and 23 unlisted species (covered species). These include the endangered California freshwater shrimp (*Syncaris pacifica*), Conservancy fairy shrimp (*Branchinecta conservatio*), vernal pool tadpole shrimp (*Lepidurus packardi*), longhorn fairy shrimp (*Branchinecta longiantenna*), mission blue butterfly (*Icaricia icarioides missionensis*), callippe silverspot butterfly (*Speyeria callippe callippe*), Behren's silverspot butterfly (*Speyeria zerene behrensii*), Myrtle's silverspot butterfly (*Speyeria zerene myrtleae*), Lange's metalmark butterfly (*Apodemia mormo langei*), San Bruno elfin butterfly (*Incisalia mossii bayensis*), San Francisco garter snake (*Thamnophis sirtalis tetrataenia*), California clapper rail (*Rallus longirostris obsoletus*), California least tern (*Sterna antillarum browni*), salt marsh harvest mouse (*Reithrodontomys raviventris*), San Joaquin kit fox (*Vulpes macrotis mutica*), San Mateo thornmint (*Acanthomintha duttonii*), Sonoma alopecurus (*Alopecurus aegualis var. sonomensis*), marsh sandwort (*Arenaria paludicola*), Clara Hunt's milk-vetch (*Astragalus clarianus*), Baker's stickyseed = Sonoma sunshine (*Blennosperma bakeri*), white sedge (*Carex albida*), Tiburon paintbrush = Tiburon Indian paintbrush (*Castilleja affinis spp. neglecta*), Coyote ceanothus (*Ceanothus ferrisae*), robust spineflower (*Chorizanthe robusta ssp. robusta*), fountain thistle (*Cirsium fontinale var. fontinale*), Presidio clarkia (*Clarkia franciscana*), Vine Hill clarkia (*Clarkia imbricata*), soft bird's-beak (*Cordylanthus mollis ssp. mollis*), palmate-bracted bird's-beak (*Cordylanthus palmatus*), Pennell's bird's-beak (*Cordylanthus tenuis ssp. capillaris*), Baker's larkspur (*Delphinium bakeri*), yellow larkspur (*Delphinium luteum*), Santa Clara Valley dudleya (*Dudleya setchellii*), San Mateo woolly sunflower (*Eriophyllum latilobum*), Loch Lomond coyote-thistle (*Eryngium constancei*), Contra Costa

wallflower (*Erysimum capitatum ssp. angustatum*), Burke's goldfields (*Lasthenia burkei*), Contra Costa goldfields (*Lasthenia conjugens*), beach layia (*Layia carnosa*), San Francisco lessingia (*Lessingia germanorum*), Pitkin Marsh lily (*Lilium pardalinum ssp. pitkinense*), Sebastopol meadowfoam (*Limnanthes vinculans*), clover lupine = Tidestrom's lupine (*Lupinus tidestromii*), many-flowered navarretia (*Navarretia leucocephala ssp. plieantha*), Antioch dunes evening primrose (*Oenothera deltoides ssp. howellii*), white-rayed pentachaeta (*Pentachaeta bellidiflora*), Calistoga allocarya = Calistoga popcorn-flower (*Plagiobothrys strictus*), Napa bluegrass (*Poa napensis*), Hickman's potentilla = Hickman's cinquefoil (*Potentilla hickmanii*), Kenwood Marsh checkermallow (*Sidalcea oregana ssp. valida*), Metcalf Canyon jewelflower (*Streptanthus albidus ssp. albidus*), Tiburon jewelflower (*Streptanthus niger*), California seablight (*Suaeda californica*), showy Indian clover (*Trifolium amoneum*), and Solano grass (*Tuctoria mucronata*); and the threatened vernal pool fairy shrimp (*Branchinecta lynchi*), bay checkerspot butterfly (*Euphydryas editha bayensis*), valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*), Delta green ground beetle (*Elaphrus viridis*), California red-legged frog (*Rana aurora draytonii*), California tiger salamander (*Ambystoma californiense*), Alameda whipsnake (*Masticophis lateralis euryxanthus*), giant garter snake (*Thamnophis gigas*), bald eagle (*Haliaeetus leucocephalus*), northern spotted owl (*Strix occidentalis caurina*), marbled murrelet (*Brachyramphus marmoratus*), and Marin dwarf-flax = Marin western flax (*Hesperolinon congestum*); and their habitats.

The unlisted species proposed for coverage under the Plan include: golden eagle (*Aquila chrysaetos*), American peregrine falcon (*Falco peregrinus anatum*), Swainson's hawk (*Buteo swainsoni*), white-tailed (= black-shouldered) kite (*Elanus leucurus*), western burrowing owl (*Athene cunicularia hypugea*), California black rail (*Laterallus jamaicensis coturniculus*), purple martin (*Progne subis*), tricolored blackbird (*Agelaius tricolor*), San Francisco (= salt marsh) common yellowthroat (*Geothlypis trichas sinuosa*), Alameda (= South Bay) song sparrow (*Melospiza melodia pusillula*), Baker's manzanita (*Arctostaphylos bakeri ssp. bakeri*), Vine Hill manzanita (*Arctostaphylos densiflora*), San Bruno Mountain manzanita (*Arctostaphylos imbricata*), Point Reyes stickyseed = Point Reyes blennosperma (*Blennosperma nanum var. robustum*), Pitkin Marsh Indian paintbrush (*Castilleja uliginosa*), Geysers dichanthelium (*Dichanthelium lanuginosum var. thermale*), Boggs Lake hedge-hyssop (*Gratiola heterosepala*), Mason's lilaeopsis (*Liliaeopsis masonii*), Point Reyes meadowfoam (*Limnanthes douglasii ssp. sulphurea*), Dudley's lousewort (*Pedicularis dudleyi*), San Francisco popcorn-flower (*Plagiobothrys diffusus*), North Coast semaphore grass (*Pleuropogon hooverianus*), and rock sanicle (*Sanicula saxatilis*). Species may be added or deleted during the course of Plan development based on further analysis, new information, agency consultation, and public comment.

The Plan area includes the network of PG&E facilities in nine Bay Area Counties (Marin, Sonoma, Napa, Solano, Contra Costa, Alameda, Santa Clara, San Mateo, and San Francisco) and includes approximately 75,000 acres surrounding electric transmission facilities, 34,000 acres surrounding gas transmission facilities, and 500,000 acre areas surrounding electric and gas distribution facilities.

Activities that may be covered under the Plan include a variety of tasks associated with the operation, maintenance, and minor new construction of PG&E's gas and electric transmission and distribution system as mandated for public safety by the California Public Utilities Commission, the California Energy Commission, and the California Department of Transportation. More specifically, these activities may include: gas pipeline protection, recoating, repair and replacement; electric line protection, repair, reconductoring, and replacement; electric pole repair/replacement; vegetation management to maintain clearances around facilities; and minor construction for new gas and electric extensions. The Plan would not cover operation, maintenance, or construction of power generation facilities. Under the Plan, the effects on covered species of the covered activities are expected to be minimized and mitigated through participation in a conservation program, which will be fully described in the Plan. This conservation program would focus on providing long-term protection of covered species by protecting biological communities in the Plan area.

Components of this conservation program are now under consideration by the Service and PG&E. These components will likely include: avoidance and minimization measures, monitoring, adaptive management, and mitigation measures consisting of preservation, restoration and enhancement of habitat. The Service anticipates that PG&E will request a permit duration of 30 years.

Environmental Impact Statement/Report

PG&E and the Service have selected North State Resources to prepare the Draft EIS/EIR. The joint document will be prepared in compliance with NEPA and the California Environmental Quality Act (CEQA). Although North State Resources will prepare the EIS/EIR, the Service will be responsible for the scope and content of the document for NEPA purposes, and DFG will be responsible for the scope and content of the CEQA document, as the state lead agency pursuant to CEQA and the permitting entity pursuant to the California Endangered Species Act and Fish and Game Code 2081.

The EIS/EIR will consider the proposed action (i.e., the issuance of a section 10(a)(1)(B) permit under the Act), and a reasonable range of alternatives. A detailed description of the proposed action and alternatives will be included in the EIS/EIR. It is anticipated that several alternatives will be developed, which may vary by the level of conservation, impacts caused by the proposed activities, permit area, covered species, or a combination of these factors. Additionally, a No Action alternative will be considered. Under the No Action alternative, the Service would not issue a section 10(a)(1)(B) permit.

The EIS/EIR will also identify potentially significant impacts on land use and planning, agricultural resources, biological resources, aesthetics, geology and soils, water resources, cultural resources, transportation and circulation, noise and vibration, air quality, public health/environmental hazards, recreation, environmental justice, socioeconomics, and other environmental issues that could occur directly or indirectly with implementation of the proposed action and alternatives. For all potentially significant impacts, the EIS/EIR will identify mitigation measures where feasible to reduce these impacts to a level below significance.

Environmental review of the EIS/EIR will be conducted in accordance with the requirements of NEPA (42 U.S.C. 4321 *et seq.*), its implementing regulations (40 CFR 1500–1508), other applicable regulations, and Service procedures for compliance with those regulations. This notice is being furnished in accordance with 40 CFR 1501.7 of NEPA to obtain suggestions

and information from other agencies and the public on the scope of issues and alternatives to be addressed in the EIS/EIR. The primary purpose of the scoping process is to identify important issues raised by the public, related to the proposed action. Written comments from interested parties are invited to ensure that the full range of issues related to the permit request are identified. Only written comments will be accepted at the public meeting.

In addition, you may submit written comments by mail or facsimile transmission (see **ADDRESSES**). Our practice is to make comments, including names, home addresses, home phone numbers, and e-mail addresses of respondents, available for public review. Individual respondents may request that we withhold their names and /or homes addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organization or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

Dated: October 27, 2006.

Ken McDermond,

Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. E6–18704 Filed 11–6–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of 13 Applications for Incidental Take Permits for Residential Construction in Charlotte County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of incidental take permit (ITP) and Habitat Conservation Plan (HCP). Peter Famulari, Robert Lavelle, and Jeffrey Leonard (Applicants) each request ITPs pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Applicants anticipate taking about 5.42 acres combined of Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay) foraging and sheltering habitat incidental to lot preparation for the construction of 13 residential units and supporting infrastructure in Charlotte County, Florida (Project). The destruction of 5.42 acres of foraging and sheltering habitat is expected to result in the take of five families of scrub-jays. The Applicants' Habitat Conservation Plan (HCP) describes the mitigation and minimization measures proposed to address the effects of the Projects to the Florida scrub-jay.

DATES: Written comments on the ITP applications and HCP should be sent to the South Florida Ecological Services Office (see **ADDRESSES**) and should be received on or before December 7, 2006.

ADDRESSES: Persons wishing to review the applications and HCP may obtain a copy by writing the Service's South Florida Ecological Services Office. Please reference Deep Creek Batch HCP in such requests. Documents will also be available for public inspection by appointment during normal business hours at the South Florida Ecological Services Office, 1339 20th Street, Vero Beach, Florida 32960.

FOR FURTHER INFORMATION CONTACT: Ms. Trish Adams, Fish and Wildlife Biologist, South Florida Ecological Services Office, Vero Beach, Florida (see **ADDRESSES**), telephone: 772–562–3909, extension 232.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit comments by any one of several methods. Please reference permit numbers TE136149–0, TE136150–0, TE136151–0, TE136153–0, TE136154–0, TE136155–0, TE136157–0, TE136158–0, TE136159–0, TE136160–0, TE136161–0, TE136162–0, and TE136163–0, in such comments. You may mail comments to the Service's South Florida Ecological Services Office (see **ADDRESSES**). You may also comment via the Internet to *trish_adams@fws.gov.* Please also include your name and return address in your Internet message. If you do not receive a confirmation from us that we have received your Internet message, contact us directly at the telephone number listed under **FOR FURTHER INFORMATION CONTACT**. Finally, you may hand deliver comments to the Service office listed under **ADDRESSES**. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Residential construction for the Deep Creek Batch HCP will take place within Section 09, Township 40, Range 23, Punta Gorda, Charlotte County, Florida, on 13 lots. Each of these lots is within scrub-jay occupied habitat.

The lots combined encompass about 5.42 acres, and the footprint of the homes, infrastructure, and landscaping preclude retention of scrub-jay habitat on each of these respective lots. In order to minimize take on site, the Applicants propose to mitigate for the loss of 5.42 acre of scrub-jay habitat by contributing a total of $392,390 to the Florida Scrub-jay Conservation Fund administered by The Nature Conservancy or acquisition of 10.83 acres of credit at a Service approved conservation bank. The Florida Scrub-jay Conservation Fund is earmarked for use in the conservation and recovery of scrub-jays and may include habitat acquisition, restoration, and/or management.

The Service has determined that the Applicants' proposals, including the proposed mitigation and minimization measures, will individually and cumulatively have a minor or negligible effect on the species covered in the HCP. Therefore, the ITPs are ''low-effect'' projects and qualify as categorical exclusions under the National Environmental Policy Act (NEPA)(40 CFR 1506.6), as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1). This preliminary information may be revised based on our review of public comments that we receive in response to this notice. Low-effect HCPs are those involving (1) minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources.

The Service will evaluate the HCP and comments submitted thereon to determine whether the applications meet the requirements of section 10(a) of the Act (16 U.S.C. 1531 et. seq.). If it

is determined that those requirements are met, the ITPs will be issued for the incidental take of the Florida scrub-jay. The Service will also evaluate whether issuance of the section 10(a)(1)(B) ITPs comply with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITPs.

Authority: This notice is provided pursuant to Section 10 of the Endangered Species Act and NEPA regulations (40 CFR 1506.6).

Dated: October 5, 2006.

Paul Souza,

Field Supervisor, South Florida Ecological Services Office.

[FR Doc. E6–18766 Filed 11–6–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Fourteenth Regular Meeting; Proposed Resolutions, Decisions, and Agenda Items Being Considered; Taxa Being Considered for Amendments to the CITES Appendices; Public Meeting; Request for Comments or Information; Observer Information

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We, the United States, as a Party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), may submit proposed resolutions, decisions, and agenda items for consideration at meetings of the Conference of the Parties to CITES. We may also propose amendments to the CITES Appendices for consideration at meetings of the Conference of the Parties. The fourteenth regular meeting of the Conference of the Parties to CITES (CoP14) will be held in The Hague, Netherlands, June 3–15, 2007.

With this notice, we, the Fish and Wildlife Service (the Service): describe proposed resolutions, decisions, and agenda items that the United States is considering submitting for consideration at CoP14; describe proposed amendments to the CITES Appendices (species proposals) that the United States is considering submitting for consideration at CoP14; invite your comments and information on these proposals; announce a public meeting to discuss these proposals; and provide information on how non-governmental organizations based in the United States can attend CoP14 as observers.

DATES: The public meeting will be held on December 11, 2006, at 1:30 p.m. We will consider written information and comments you submit concerning potential species proposals, and proposed resolutions, decisions, and agenda items that the United States is considering submitting for consideration at CoP14, and other items relating to CoP14, if we receive them by December 22, 2006.

ADDRESSES:

Public Meeting

The public meeting will be held in the Rachel Carson Room, in the Department of the Interior at 18th and C Streets, NW., Washington, DC. Directions to the building can be obtained by contacting the Division of Management Authority (see **FOR FURTHER INFORMATION CONTACT**, below). Due to building security in the Department of the Interior, persons planning to attend the meeting must notify the Division of Management Authority by December 8, 2006, to allow us sufficient time to provide the building security staff with a list of persons planning to attend. For more information, see ''Announcement of Public Meeting'' under **SUPPLEMENTARY INFORMATION**.

Comment Submission

Comments pertaining to proposed resolutions, decisions, and/or agenda items should be sent to the Division of Management Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; Room 700; Arlington, VA 22203; or via E-mail at: *cop14@fws.gov;* or via fax at: 703–358–2298. Comments pertaining to species proposals should be sent to the Division of Scientific Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; Room 750; Arlington, VA 22203; or via e-mail at: *scientificauthority@fws.gov;* or via fax at: 703–358–2276.

FOR FURTHER INFORMATION CONTACT: For information pertaining to proposed resolutions, decisions, and agenda items contact: Acting Chief, Division of Management Authority, Branch of CITES Operations; phone 703–358–2095; fax 703–358–2298; E-mail: *cop14@fws.gov.* For information pertaining to species proposals contact: Robert R. Gabel, Chief, Division of Scientific Authority; phone 703–358–1708; fax 703–358–2276; E-mail: *scientificauthority@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, hereinafter referred to as CITES or the Convention, is an international treaty designed to control and regulate international trade in certain animal and plant species that are now or potentially may become threatened with extinction. These species are listed in Appendices to CITES, which are available on the CITES Secretariat's Web site at *http://www.cites.org/eng/app/index.shtml.* Currently, 169 countries, including the United States, are Parties to CITES. The Convention calls for biennial meetings of the Conference of the Parties, which reviews its implementation, makes provisions enabling the CITES Secretariat in Switzerland to carry out its functions, considers amendments to the list of species in Appendices I and II, considers reports presented by the Secretariat, and makes recommendations for the improved effectiveness of CITES. Any country that is a Party to CITES may propose amendments to Appendices I and II, and resolutions, decisions, and/or agenda items for consideration by all the Parties.

This is our second in a series of **Federal Register** notices that, together with announced public meetings, provide you with an opportunity to participate in the development of the U.S. negotiating positions for CoP14. We published our first CoP14-related **Federal Register** notice on January 20, 2006 (71 FR 3319), and with it we requested information and recommendations on species proposals and proposed resolutions, decisions, and agenda items for the United States to consider submitting for consideration at CoP14. You may obtain information on that **Federal Register** notice from the following sources: for information on proposed resolutions, decisions, and agenda items, contact the Division of Management Authority (**ADDRESSES**); and for information on species proposals, contact the Division of Scientific Authority (**ADDRESSES**). Our regulations governing this public process are found in 50 CFR 23.31–23.39.

CoP14 is scheduled to be held in The Hague, Netherlands, June 3–15, 2007.

I. Recommendations for Resolutions, Decisions, and Agenda Items for the United States To Consider Submitting for CoP14

In our **Federal Register** notice published on January 20, 2006 (71 FR

3319), we requested information and recommendations on potential resolutions, decisions, and agenda items for the United States to submit for consideration at CoP14. We received recommendations for resolutions, decisions, and agenda items from the following organizations: the Species Survival Network (SSN), the International Environmental Law Project (IELP), and the American Herbal Products Association (AHPA).

We considered all of the recommendations of the above organizations, as well as the factors described in the U.S. approach for CoP14 discussed in our January 20, 2006, **Federal Register** notice, when compiling a list of possible resolutions, decisions, and agenda items that the United States is likely to submit for consideration by the Parties at CoP14; and lists of resolutions, decisions, and agenda items for consideration at CoP14 that the United States either is currently undecided about submitting, is not considering submitting at this time, or plans to address in other ways. The United States may consider submitting documents on some of the issues for which it is currently undecided or not considering submitting at this time, depending on comments received and the outcome of discussions of these issues in the CITES Animals, Plants, and Standing Committees, or additional consultations with range country governments and knowledgeable experts.

Please note that, in sections A, B, and C below, we have listed only those resolutions, decisions, and agenda items that the United States is likely to submit, currently undecided about submitting, or currently not planning to submit. We have posted an extended version of this notice on our Web site at *http://www.fws.gov/international*, with text describing each of these issues and explaining the rationale for the tentative U.S. position on each issue. Copies of the extended version of the notice are also available from the Division of Management Authority at the above address.

We welcome your comments and information regarding the resolutions, decisions, and agenda items that the United States is likely to submit, currently undecided about submitting, or currently planning not to submit.

A. What Resolutions, Decisions, and Agenda Items Is the United States Likely To Submit for Consideration at CoP14?

1. Proposal to amend Resolutions Conf. 11.21 and Conf. 9.25 (Rev.) regarding use of annotations in Appendices II and III.

2. Discussion document to call for a review of the effectiveness of the CITES universal crocodilian tagging system (Res. Conf. 11.12).

3. Proposed decision for Parties to develop guidelines on the definition and use of purpose codes.

4. Discussion document regarding the procedures for changing text in the ''Interpretation'' section of the Appendices.

5. Resolution on the cooperation between CITES and the International Tropical Timber Organization (ITTO).

6. Document on production systems, including recommendations pertaining to use of the ''ranching'' code on CITES permits and certificates.

B. On What Resolutions, Decisions, and Agenda Items Is the United States Still Undecided, Pending Additional Information and Consultations?

1. Document strengthening the implementation of nationally established export quotas.

2. Resolution or discussion document on wildlife trade and the spread of infectious diseases.

3. Discussion document or proposed resolution on the issue of ''introduction from the sea.''

4. Discussion document on the tiger conservation crisis and efforts to halt illegal trade in tigers.

5. Discussion document regarding monitoring and control of international trade in caviar in customs-free zones and for airline and cruiseline catering.

6. Document welcoming the launch of the Coalition Against Wildlife Trafficking.

7. Resolution or discussion document concerning whaling and whale stocks under the competence of the International Whaling Commission (IWC).

C. What Resolutions, Decisions, and Agenda Items Is the United States Not Planning To Submit for Consideration at CoP14 Unless We Receive Significant Additional Information?

1. Document clarifying the role of non-detriment findings when establishing export quotas.

2. Proposed resolution establishing and clarifying guidelines for making non-detriment findings for the import of Appendix-I, and the export of Appendix-I and -II, species.

3. Draft decision encouraging Parties to implement National Enforcement Action Plans (NEAPs).

4. Resolution to suspend trade in bigleaf mahogany (*Swietenia macrophylla*) from Peru.

5. Resolution to create an action plan on Internet trade in wildlife.

6. Revision of Resolution Conf. 12.3 (Rev. CoP13) on permit verification requirements.

7. Proposed revision of Annotation #10 for plants listed in Appendix II or III.

II. Recommendations for Species Proposals for the United States To Consider Submitting at CoP14

In our **Federal Register** notice of January 20, 2006 (71 FR 3319), we requested information and recommendations on potential species proposals for the United States to consider submitting for CoP14. We received recommendations from the public for possible proposals involving 18 taxa. We have undertaken initial assessments of the available trade and biological information on all of these taxa. Based on these assessments, we have made provisional determinations of whether or not to proceed with the development of proposals to list or delist species, or transfer them from one Appendix to another. These determinations were made by considering the quality of biological and trade information available on the species; the presence, absence, and effectiveness of other mechanisms that may preclude the need for a CITES listing (*e.g.*, range country actions or other international agreements); and availability of resources. Furthermore, our assignment of a taxon to one of these categories, which reflects the likelihood of our submitting a proposal, included consideration of the following factors, which reflect the U.S. approach for CoP14 discussed in our January 20, 2006, **Federal Register** notice:

(1) Is it a native U.S. species that is or may be significantly affected by trade, or if it is a currently listed U.S. species, does the listing accurately reflect the biological and trade status of the species?

(2) Is it a native U.S. species that is not at this time significantly impacted by trade within the United States, but is being significantly impacted elsewhere in its range?

(3) Is it a foreign species, not native to the United States, but which is or may be significantly affected by trade, and the United States is a significant component of the trade (*i.e.*, as an importing country)?

(4) Is it a species for which the United States is neither a range country nor a country significantly involved in trade, but for which trade is a serious threat to the continued existence of the species, other mechanisms are lacking or ineffective for bringing trade under control, and action is urgently needed?

In sections A, B, and C below, we have listed the current status of each species proposal recommended by the public, as well as species proposals we have been developing on our own. Please note that we have only listed these possible proposals. We have posted an extended version of this notice on our Web site at *http://www.fws.gov/international*, with text describing each possible proposal and explaining the rationale for the tentative U.S. position on each possible proposal. Copies of the extended version of the notice are also available from the Division of Management Authority at the above address.

In addition to the species proposals recommended by the public, we are considering whether to submit proposals on five additional species based on work being done by the United States as part of the review of the Appendices by the CITES Animals and Plants Committees.

A. What Species Proposals Is the United States Likely To Submit for Consideration at CoP14?

The United States is likely to develop and submit proposals for the following taxa. We welcome your comments, especially if you are able to provide any additional biological or trade information on these species. For each species, more detailed information is on file in the Division of Scientific Authority than is presented on our Website. For some of the species below, particularly those not native to the United States, additional consultations with range countries and knowledgeable experts are proceeding (*see* discussion), and final decisions are pending, based on the outcomes of those consultations and any additional information received. Furthermore, some of these proposals have arisen from the Review of the Appendices by the CITES Animals and Plants Committees.

Plants

1. *Taxus cuspidata*—Annotate to exclude specimens of the hybrid *Taxus* x *media* and all cultivars thereof.

Invertebrates

2. Pink and red coral (*Corallium* spp.)—List in Appendix II.

Fish

3. Sawfishes (Pristidae)—List in Appendix I.

B. On What Species Proposals Is the United States Still Undecided, Pending Additional Information and Consultations?

The United States is still undecided on whether to submit proposals for CoP14 for the following taxa. In some cases, we have not completed our consultations with relevant range countries. In other cases, we expect meetings to occur in the immediate future at which participants will generate important recommendations, trade analyses, or biological information on the taxon in question. For each species, more detailed information is available in the Division of Scientific Authority than is presented on our Web site. We welcome your comments, especially if you are able to provide any additional biological and trade information on these species. On our Web site, we delineate what additional information we are seeking or have sought to assist us in making our decision.

Plants

1. Dehesa bear-grass (*Nolina interrata*)—Transfer from Appendix I to Appendix II.
2. Arizona agave or New River agave (*Agave arizonica*)—Transfer from Appendix I to Appendix II.
3. Santa Cruz striped agave (*Agave parviflora*)—Transfer from Appendix I to Appendix II.
4. Oconee bells (*Shortia galacifolia*)—Remove from Appendix II.

Fish

5. Porbeagle shark (*Lamna nasus*)—List in Appendix II.
6. Devil and manta rays (Family *Mobulidae*)—List in Appendix I or II.
7. Banggai cardinalfish (*Pterapogon kauderni*)—List in Appendix I or II.

Birds

8. Gyrfalcon (*Falco rusticolus*)—Transfer the North American population from Appendix I to Appendix II.

Mammals

9. Bobcat (*Lynx rufus*)—Remove from Appendix II.

C. What Species Proposals Is the United States Not Planning To Submit for Consideration at CoP14, Unless We Receive Significant Additional Information?

The United States does not intend to submit proposals for the following taxa unless we receive significant additional information indicating that a proposal is warranted. Information currently available for each of the taxa listed below does not support a defensible listing proposal. We welcome your comments, especially any biological and trade information on these species that may cause us to reconsider the submission of a proposal. For each species, more detailed information is available in the Division of Scientific Authority than is presented on our Website, where we describe external factors that diminish the need for a U.S. listing proposal, as well as critical information gaps that prohibit us from developing a proposal.

Plants

1. American ginseng (*Panax quinquefolius*)—Remove from Appendix II.
2. Goldenseal (*Hydrastis canadensis*)—Remove from Appendix II.

Invertebrates

3. Perlemoen (*Haliotis midae*)—Action to protect the species.

Fish

4. Spiny dogfish (*Squalus acanthias*)—List in Appendix II.
5. Orange roughy (*Hoplostethus atlanticus*)—List in Appendix II.

Amphibians

6. Morelet's or black-eyed tree frog (*Agalychnis moreletii*)—Include in an Appendix.
7. Madagascar microhylid frogs (*Scaphiophryne* species)—Include in Appendix II.

Reptiles

8. Central American river turtle (*Dermatemys mawii*)—Transfer from Appendix II to Appendix I.
9. Parson's chameleon (*Calumma parsonii parsonii*)—Transfer from Appendix II to Appendix I.

Birds

10. Timneh grey parrot (*Psittacus erithacus timneh*)—Transfer from Appendix II to Appendix I.

Request for Information and Comments

We invite any information and comments concerning any of the possible CoP14 species proposals, resolutions, decisions, and agenda items discussed above. You must submit your information and comments to us no later than the date specified in **DATES**. Comments and materials received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at either the Division of Management Authority or the Division of Scientific Authority.

Our practice is to make comments, including names and home addresses of

respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Announcement of Public Meeting

We will hold a public meeting to discuss with you species proposals, as well as proposed resolutions, decisions, and agenda items that the United States is considering submitting for consideration at CoP14. The public meeting will be held on the date specified in **DATES** at the address specified in **ADDRESSES**. You can obtain directions to the building by contacting the Division of Management Authority (*see* **FOR FURTHER INFORMATION CONTACT**, above). Please note that the Rachel Carson Room is accessible to the handicapped and all persons planning to attend the meeting will be required to present photo identification when entering the building. Due to building security in the Department of the Interior, persons planning to attend the meeting must notify the Division of Management Authority by December 8, 2006. Persons who plan to attend the meeting and who require interpretation for the hearing impaired should notify the Division of Management Authority as soon as possible.

Observers

Article XI, paragraph 7 of CITES states the following:

> Any body or agency technically qualified in protection, conservation or management of wild fauna and flora, in the following categories, which has informed the Secretariat of its desire to be represented at meetings of the Conference by observers, shall be admitted unless at least one-third of the Parties present object:
>
> (a) International agencies or bodies, either governmental or non-governmental, and national governmental agencies and bodies; and
>
> (b) National non-governmental agencies or bodies which have been approved for this purpose by the State in which they are located.
>
> Once admitted, these observers shall have the right to participate but not to vote.

Persons wishing to be observers representing international non-governmental organizations (which must have offices in more than one country) at CoP14 may request approval directly from the CITES Secretariat. Persons wishing to be observers representing U.S. national non-governmental organizations at CoP14 must receive prior approval from our Division of Management Authority. Once we grant our approval, a U.S. national non-governmental organization is eligible to register with the Secretariat and must do so at least one month prior to the opening of CoP14 to participate as an observer. Individuals who are not affiliated with an organization may not register as observers. An international non-governmental organization with at least one office in the United States may register as a U.S. non-governmental organization if it prefers.

A request submitted to us for approval as an observer should include evidence of technical qualifications in protection, conservation, or management of wild fauna and/or flora, on the part of both the organization and the individual representative(s). The request should also include copies of the organization's charter and/or bylaws and a list of representatives it intends to send to CoP14. An organization that we have previously approved as an observer at a meeting of the Conference of the Parties within the past 5 years must submit a request but does not need to provide as much detailed information concerning its qualifications as an organization seeking approval for the first time. Organizations seeking approval for the first time should detail their experience in the protection, conservation, or management of wild fauna and/or flora, as well as their purposes for wishing to participate in CoP14 as an observer. These requests should be sent to the Division of Management Authority (*see* **ADDRESSES**).

Once we approve an organization as an observer, we will send the organization instructions for registration with the CITES Secretariat in Switzerland, including a meeting registration form and relevant travel and hotel information. A list of organizations approved for observer status at CoP14 will be available upon request from the Division of Management Authority just prior to the start of CoP14.

Future Actions

We expect the CITES Secretariat to provide us with a provisional agenda for CoP14 within the next several months. Once we receive the provisional agenda, we will announce it in a **Federal Register** notice and provide the CITES Secretariat's Web site URL, as well as a link to it on our Web site (*http://www.fws.gov/international*).

The United States will submit any species proposals, and proposed resolutions, decisions, and agenda items for consideration at CoP14 to the CITES Secretariat 150 days prior to the start of the meeting (*i.e.*, by January 4, 2007). We will consider all available information and comments, including those presented at the public meeting (*see* **DATES**) or received in writing during the comment period, as we decide which species proposals, and proposed resolutions, decisions, and agenda items warrant submission by the United States for consideration by the Parties. Approximately 4 months prior to CoP14, we will post on our Web site an announcement of the species proposals, and proposed resolutions, decisions, and agenda items submitted by the United States to the CITES Secretariat for consideration at CoP14.

Through an additional notice and Web site posting in advance of CoP14, we will inform you about preliminary negotiating positions on resolutions, decisions, agenda items and amendments to the Appendices proposed by other Parties for consideration at CoP14. We will also publish an announcement of a public meeting tentatively to be held approximately 2 months prior to CoP14, to receive public input on our positions regarding items submitted by other Parties.

Authors: The primary authors of this notice are Frank Kohn and Clifton Horton, Division of Management Authority; under the authority of the U.S. Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Marshall P. Jones, Jr.,

Acting Director.

[FR Doc. E6–18722 Filed 11–6–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–964–1410–HY–P; F–14903–F]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an

appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Toghotthele Corporation. The lands are in the vicinity of Nenana, Alaska, and are located in:

Fairbanks Meridian, Alaska

T. 5 S., R. 3 W.,
Sec. 18.
Containing 2.70 acres.
T. 6 S., R. 3 W.,
Sec. 9, lots 1 and 2.
Containing 7.23 acres.
T. 4 S., R. 4 W.,
Sec. 34, lots 1 and 2.
Containing 4.20 acres.
Aggregating 14.13 acres.

The subsurface estate in these lands will be conveyed to Doyon, Limited, when the surface estate is conveyed to Toghotthele Corporation. Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until December 7, 2006 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from:

Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION, CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Barbara Opp Waldal,

Land Law Examiner, Branch of Adjudication II.

[FR Doc. E6–18764 Filed 11–6–06; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents; prepared for OCS mineral proposals on the Gulf of Mexico OCS.

SUMMARY: Minerals Management Service (MMS), in accordance with Federal Regulations that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA) and Findings of No Significant Impact (FONSI), prepared by MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section at the number below. Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394, or by calling 1–800–200–GULF.

SUPPLEMENTARY INFORMATION: MMS prepares SEAs and FONSIs for proposals that relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. These SEAs examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA Section 102(2)(C). A FONSI is prepared in those instances where MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the SEA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

This listing includes all proposals for which the Gulf of Mexico OCS Region prepared a FONSI in the period subsequent to publication of the preceding notice.

Activity/operator	Location	Date
Anadarko Petroleum Corporation & Partners, Surface Facilities & Subsea Development Project SEA MMS2005–064.	Independence Hub Project located in the Eastern and Central Planning Areas, Gulf of Mexico.	11/09/2005
ConocoPhillips, Tension Leg Well Platform Decommissioning SEA Complex ID 23583.	Green Canyon, Block 184, Lease OCS–G 04518, located 99 miles from the nearest Louisiana shoreline.	12/15/2005
Chevron U.S.A., Inc., Structure Removal SEA ES/SR 06–025	Ship Shoal, Block 208, Lease OCS–G 01228, located 34 miles from the nearest Louisiana shoreline.	7/11/2006
Chevron U.S.A., Inc., Structure Removal SEA ES/SR 06–072	Vermilion, Block 24, Lease OCS–G 03543, located 6 miles from the nearest Louisiana shoreline.	7/13/2006
Chevron U.S.A., Inc., Structure Removal SEA ES/SR 06–023, 06–024.	Ship Shoal, Block 169, Lease OCS–G 00820, located 35 miles from the nearest Louisiana shoreline.	7/14/2006
Mariner Energy, Inc., Structure Removal SEA ES/SR 06–081, 06–082.	West Cameron, Block 312, Lease OCS–G 07613, located 40 miles from the nearest Louisiana shoreline.	7/14/2006
Millennium Offshore Group Inc., Structure Removal SEA ES/SR 06–079.	Main Pass, Block 225, Lease OCS–G 14581, located 54 miles from the nearest Louisiana shoreline.	7/18/2006
Chevron U.S.A., Inc., Structure Removal SEA ES/SR 06–080	Vermilion, Block 24, Lease OCS–G 03542, located 6 miles from the nearest Louisiana shoreline.	7/18/2006
Apache Corporation, Structure Removal SEA ES/SR 06–073 ..	Eugene Island, Block 46, Lease OCS–G 13617, located 22 miles from the nearest Louisiana shoreline.	7/19/2006
Millennium Offshore Group, Inc., Structure Removal SEA ES/SR 06–077.	East Cameron, Block 171, Lease OCS–G 12836, located 53 miles from the nearest Louisiana shoreline.	7/20/2006
Apache Corporation, Structure Removal SEA ES/SR 06–074 ..	Eugene Island, Block 167, Lease OCS–G 11953, located 34 miles from the nearest Louisiana shoreline.	7/20/2006
Apache Corporation, Structure Removal SEA ES/SR 06–076 ..	Grand Isle, Block 082, Lease OCS–G 05659, located 29 miles from the nearest Louisiana shoreline.	7/20/2006

Activity/operator	Location	Date
SPN Resources, LLC, Permit to Modify Removal of Well No.10 Dry Hole Drive Pipe with Internal Casings SEA 177114101700.	Ship Shoal, Block 167, Lease OCS–G 00818, located 28 miles from the nearest Louisiana shoreline.	7/20/2006
Apache Corporation, Structure Removal SEA ES/SR 06–075 ..	Ship Shoal, Block 187, Lease OCS–G 18013, located 96 miles from the nearest Louisiana shoreline.	7/20/2006
Global GeoServices, Geological & Geophysical Exploration for Mineral Resources SEA M06–03, 06–04, 06–05.	Located in the eastern Gulf of Mexico south of Apalachicola, Florida.	7/24/2006
Millennium Offshore Group, Inc., Structure Removal SEA ES/SR 06–078.	High Island, Block 312, Lease OCS–G 14913, located 117 miles from the nearest Texas shoreline.	7/25/2006
Sampson Contour Energy E & P, Structure Removal SEA ES/SR 06–047.	Vermilion, Block 217, Lease OCS–G 01141, located 58 miles from the nearest Louisiana shoreline.	7/25/2006
Newfield Exploration Company, Structure Removal SEA ES/SR 06–095.	East Cameron, Block 286, Lease OCS–G 02051, located 85 miles from the nearest Louisiana shoreline.	7/27/2006
BP Exploration & Production, Inc., Geological & Geophysical Exploration for Mineral Resources SEA L06–38.	Located in the central Gulf of Mexico south of Morgan City, Louisiana.	7/27/2006
PGS Exploration (UK) LTD., Geological & Geophysical Exploration for Mineral Resources SEA T06–19.	Located in the central Gulf of Mexico south of Morgan City, Louisiana.	7/27/2006
Stone Energy Corporation, Structure Removal SEA ES/SR 06–083.	Vermilion, Block 131, Lease OCS–G 00775, located 32 miles from the nearest Louisiana shoreline.	7/27/2006
Tri-Union Development Corporation, Structure Removal SEA ES/SR 06–084.	South Timbalier, Block 162, Lease OCS–G 01249, located 33 miles from the nearest Louisiana shoreline.	7/31/2006
Century Exploration New Orleans, Inc., Structure Removal SEA ES/SR 06–085, 06–086, 06–087, 06–088, 06–089, 06–090.	West Cameron, Blocks 367, 368 & 369, Leases OCS–G 21054, 05315 & 22544 respectively, located 60 miles from the nearest Louisiana shoreline.	7/31/2006
Palace Operating Company, Structure Removal SEA ES/SR 06–096.	Chandeleur, Block 13, Lease OCS–G 25042, located 33 miles from the nearest Louisiana shoreline.	8/02/2006
Mariner Energy, Inc., Structure Removal SEA ES/SR 06–106 ..	East Cameron, Block 294, Lease OCS–G 17874, located 81 miles from the nearest Louisiana shoreline.	8/03/2006
El Paso Production Company, Structure Removal SEA ES/SR 06–092.	Eugene Island, Block 53, Lease OCS–G 00479, located 15 miles from the nearest Louisiana shoreline.	8/04/2006
Mariner Energy Resources, Inc., Structure Removal SEA ES/SR 06–093, 06–094.	South Marsh Island, Block 11, Lease OCS–G 01182, located 37 miles from the nearest Louisiana shoreline.	8/04/2006
Hunt Oil Company, Structure Removal SEA ES/SR 06–097, 06–098.	Eugene Island, Blocks 77 & 62, Leases 0CS–G 00466 & 00424, located 12 miles from the nearest Louisiana shoreline.	8/08/2006
Maritech Resources, Inc., Structure Removal SEA ES/SR 06–027.	South Marsh Island (South), Block 125, Lease OCS–G 02882, located 73 miles from the nearest Louisiana shoreline.	8/10/2006
Union Oil Company of California, Structure Removal SEA ES/SR 06–099.	Cameron, Block 195, Lease OCS–G 16123, located 41 miles from the nearest Louisiana shoreline.	8/14/2006
Chevron U.S.A. Inc., Structure Removal SEA ES/SR 06–022 ..	Eugene Island (South), Block 313, Lease OCS–G 02608, located 73 miles from the nearest Louisiana shoreline.	8/14/2006
Chevron U.S.A. Inc., Structure Removal SEA ES/SR 94–021 ..	Eugene Island, Block 238, Lease OCS–G 00982, located 48 miles from the nearest Louisiana shoreline.	8/14/2006
Energy Resources Technology, Inc., Structure Removal SEA ES/SR 06–110.	South Timbalier, Block 146, Lease OCS–G 18041, located 34 miles from the nearest Louisiana shoreline.	8/15/2006
Marlin Energy Offshore, LLC, Structure Removal SEA ES/SR 06–107.	South Timbalier Area, Block 21, Lease OCS–G 00263, located 4 miles from the nearest Louisiana shoreline.	8/15/2006
Energy Resources Technology, Inc., Structure Removal SEA ES/SR 06–109.	Vermilion, Block 201, Lease OCS–G 02075, located 52 miles from the nearest Louisiana shoreline.	8/15/2006
Apex Oil & Gas, Inc., Structure Removal SEA ES/SR 06–117	Galveston, Block A–50, Lease OCS–G 12520, located 43 miles from the nearest Texas shoreline.	8/16/2006
Maritech Resources, Inc., Structure Removal SEA ES/SR 06–108.	High Island, Block 208, Lease OCS–G 07286, located 25 miles from the nearest Texas shoreline.	8/16/2006
Mariner Energy, Inc., Structure Removal SEA ES/SR 06–100, 06–101, 06–102, 06–103, 06–104.	West Cameron, Blocks 312 and 313, Leases OCS–G 05303 and 07613, located 45 miles from the nearest Louisiana shoreline.	8/18/2006
Maritech Resources, Inc., Structure Removal SEA ES/SR 06–111.	Galveston, Block 273, Lease OCS–G 09037, located 14 miles from the nearest Texas shoreline.	8/22/2006
Maritech Resources, Inc., Structure Removal SEA ES/SR 06–121.	Matagorda Island, Block 688, Lease OCS–G 08548, located 14 miles from the nearest Texas shoreline.	8/22/2006
Apache Corporation, Structure Removal SEA ES/SR 06–049 ..	Mustang Island, Block A85, Lease OCS–G 03061, located 47 miles from the nearest Texas shoreline.	8/22/2006
Maritech Resources, Inc., Structure Removal SEA ES/SR 01–038B.	Eugene Island (South Addition), Block 305, OCS–G 02108, located 73 miles from the nearest Louisiana shoreline.	8/23/2006
F–W Oil Exploration L.L.C., Structure Removal SEA ES/SR 06–123.	North Padre Island, Block 996, OCS–G 23130, located 25 miles from the nearest Texas shoreline.	8/23/2006
Targa Midstream Services Limited, Structure Removal SEA ES/SR 98–061A.	West Cameron, Block 229, Lease OCS–G 01856, located 42 miles from the nearest Louisiana shoreline.	8/23/2006
Mariner Energy, Inc., Structure Removal SEA ES/SR 06–124 ..	West Cameron, Block 315, Lease OCS–G 08407, located 40 miles from the nearest Louisiana shoreline.	8/23/2006
Stone Energy Corporation, Structure Removal SEA ES/SR 06–122.	East Cameron, Block 64, Lease OCS–G 00089, located 22 miles from the nearest Louisiana shoreline.	8/24/2006

Activity/operator	Location	Date
Dominion Exploration & Production, Inc., Permit to Modify Removal of Well No. WC–132–001 (API No. 177004124500) and Well No. WC–202–001 (API No. 177004124202) and associated temporary caissons, SEA WC202–132.	West Cameron, Blocks 132 & 202, Leases OCS–G 27003 & 24718, located 48 miles from the nearest Louisiana shoreline.	8/25/2006
Apex Oil and Gas, Inc., Structure Removal SEA ES/SR 06–125.	Vermilion, Block 89, Lease OCS–G 22615, located 24 miles from the nearest Louisiana shoreline.	8/28/2006
Stone Energy, Structure Removal SEA ES/SR 06–126	West Cameron, Block 176, Lease OCS–G 00762, located 23 miles from the nearest Louisiana shoreline.	9/06/2006
Dominion Exploration & Production, Inc., Structure Removal SEA ES/SR 06–130.	West Cameron, Block 225, Lease OCS–G 00900, located 40 miles from the nearest Louisiana shoreline.	9/15/2006
Stone Energy Corporation, Structure Removal SEA ES/SR 06–128.	West Cameron, Block 56, Lease OCS–G 00301, located 10 miles from the nearest Louisiana shoreline.	9/15/2006
Chevron USA, Inc., Initial Development Operations Coordination SEA N–8693.	Mississippi Canyon, Blocks 650 (unleased), 695 & 696, Leases OCS–G 21182 & 16641 respectively, located in the central Gulf of Mexico approximately 70 miles from the nearest Louisiana shoreline.	9/19/2006
Devon Energy Production Company, L.P., Structure Removal SEA ES/SR 06–132.	South Marsh Island, Block 128, Lease OCS–G 02587, located 74 miles from the nearest Louisiana shoreline.	9/21/2006
Forest Oil Corporation, Structure Removal SEA ES/SR 06–005	Eugene Island, Block 266, Lease OCS 00911, located 61 miles from the nearest Louisiana shoreline.	9/22/2006

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about SEAs and FONSIs prepared for activities on the Gulf of Mexico OCS are encouraged to contact MMS at the address or telephone listed in the **FOR FURTHER INFORMATION CONTACT** section.

Dated: October 5, 2006.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. E6–18731 Filed 11–6–06; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Record of Decision for the Environmental Impact Statement on the Schoodic General Management Plan Amendment, Acadia National Park, ME

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of the Record of Decision for the Environmental Impact Statement on the Schoodic General Management Plan Amendment, Acadia National Park, Maine.

SUMMARY: The National Park Service (NPS) announces the availability of the Record of Decision (ROD) for the Schoodic General Management Plan Amendment, Acadia National Park, Maine. Acadia National Park includes 2,366 acres on the Schoodic Peninsula, which offers exceptional views of the rocky coast and surrounding islands in an uncrowded environment and attracts approximately 250,000 visits a year. The Schoodic District contains two ''Rare Natural Communities'' (Jack Pine Woodland and Maritime Shrubland), several rare plant species, and significant wildlife habitat, as identified by the Maine Natural Areas Program. Schoodic also protects pristine intertidal areas, exemplary geologic features, and extraordinary scenery. In addition, much of the Schoodic District is eligible for listing in the National Register of Historic Places because of its historically significant cultural landscape.

In 2002, the NPS acquired a former navy base located within the Schoodic District. The former base contains 36 major buildings, totaling approximately 206,000 square feet. Only two buildings on the former navy base, the Rockefeller Building (a 1935 apartment and office building) and its powerhouse, are eligible for listing in the National Register of Historic Places.

This ROD documents the decision by the NPS to implement the preferred alternative (Alternative C—Collaborative Management) of the Schoodic General Management Plan Amendment as the selected action. Under this alternative, the NPS will develop the Schoodic Education and Research Center (SERC) at the former navy base to facilitate research and education that promotes the understanding, protection, and conservation of natural and cultural resources of the National Park System and advance related research and education at the regional, national, and international levels.

The NPS will enter into a long-term cooperative agreement with an independent nonprofit organization to assist in carrying out the mission of SERC. The cooperative agreement will include the assignment of real property to the nonprofit organization for its direct use and possible reassignment to tenant partners. The nonprofit organization will, among other responsibilities, promote appropriate research and education, cultivate and facilitate partnerships, and manage facilities and services at SERC. The nonprofit organization will have sufficient autonomy to be creative and flexible in developing and managing SERC consistent with NPS laws, regulations, policies, and management documents. A full range of revenue-generating and fundraising approaches will be used to support SERC to ensure that its programs and activities are financially viable.

The NPS will collaborate with the nonprofit organization and other partners at SERC to provide research and educational opportunities. The NPS will provide security, law enforcement, emergency medical services, and fire protection for the SERC campus, and maintain its roads, grounds, building envelopes, and utility systems. The NPS and nonprofit organization will share responsibilities for site renovation and construction to convert buildings to research and education use and facilitate the efficient reuse of the site. The NPS will redesign the landscape of the former navy base to create a suitable setting for research and education activities, minimize impervious surfaces, and improve its appearance. Incompatible elements that diminish the safety, appearance, or efficient use of the campus will be mitigated or removed.

The NPS will manage resources and visitor use consistent with the management zone in which they are located. The NPS will implement management actions to ensure that

natural, cultural, and scenic resources and values are protected, and the character of the Schoodic District is preserved. The NPS will encourage compatible land use adjacent to the park on the Schoodic Peninsula and surrounding islands through acquisition of conservation easements and participation in the land use planning and regulatory processes of the State of Maine and neighboring jurisdictions. The NPS will also cooperate with the State of Maine, local governments, and others to achieve collective goals, such as land protection, mutual aid for emergency medical services and fire protection, and management of the Schoodic National Scenic Byway.

The ROD briefly discusses the selected action, other alternatives considered, basis for decision, and measures to minimize impacts and address public concerns.

ADDRESSES: The ROD and supporting documents can be found online at *http://www.nps.gov/acad/schoodic/home.htm.* Copies of the ROD are available on request from: John T. Kelly, Park Planner, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609. Telephone: (207) 288–8703.

FOR FURTHER INFORMATION CONTACT: John T. Kelly, Park Planner, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609. Telephone: (207) 288–8703.

SUPPLEMENTARY INFORMATION: The NPS completed an environmental impact statement for the Schoodic General Management Plan Amendment in 2005, consistent with the National Environmental Policy Act of 1969, and Council of Environmental Quality regulations (40 CFR part 1500). The NPS published a Notice of Intent to prepare an environmental impact statement in the **Federal Register** on July 29, 2002 (FR Doc. 02–19096, Vol. 67, No. 145, Page 49034), which formally initiated the environmental impact statement process. The Environmental Protection Agency noticed the availability of the draft environmental impact statement in the **Federal Register** on September 24, 2004 (FR Doc. 04–21492, Vol. 69, No. 185, Pages 57277–57278), which initiated a 60-day public comment period that ended November 23, 2004. The Environmental Protection Agency noticed the availability of the final environmental impact statement in the **Federal Register** on February 3, 2006 (FR Doc. E6–1510, Vol. 71, No. 23, Pages 5837—5838), which initiated a 30-day no action period. The final environmental impact statement described and analyzed the environmental impacts of two action alternatives and a no-action alternative. The NPS has selected the preferred alternative for implementation, as presented in the final environmental impact statement.

Acadia National Park began with the establishment of Sieur de Monts National Monument by Presidential Proclamation 1339 in 1916 (40 Stat. 1173), which was followed by the redesignation of the national monument as Lafayette National Park in 1919 (45 Stat. 1083). In 1929, legislation (45 Stat. 1083) changed the named to Acadia National Park and established the NPS's authority to expand the park through donations of property within Hancock County and certain islands in Knox County. This allowed the NPS to accept the donation of more than 2,000 acres on the Schoodic Peninsula as an addition to Acadia National Park.

Several laws have been enacted that are specific to the Schoodic District. In 1935, the first of these laws (49 Stat. 795) provided for the exchange of land between the NPS and U.S. Navy. The act transferred the control and jurisdiction of a 26-acre site within the Schoodic District to the U.S. Navy for ''naval radio purposes.'' In 1947, legislation (61 Stat. 519) transferred an additional 152 acres to the U.S. Navy with the provision that the land would revert to the park should it become ''surplus to the needs of the Department of the Navy.'' In 1977, the U.S. Navy exercised this provision and transferred 81 acres back to the park. In 2002, Section 2845 of Public Law 107–107 authorized transfer of the original parcel back to the park without consideration, along with buildings and personal property associated with the land. The law directed the U.S. Navy to transfer this parcel concurrently with the remaining land it had acquired in 1947. The U.S. Navy transferred control and jurisdiction of its remaining land within Acadia National Park (100 acres) to the NPS on July 1, 2002.

Public Law 107–206, enacted in 2002, directed the Secretary of Defense to obligate the funds made available under Public Law 107–117 for the conversion of the former navy base at Schoodic to a research and education center for Acadia National Park. In addition, Public Law 107–248, enacted in 2002, authorized the Secretary of Defense to use the funding for community adjustment activities related to the closure of the navy base and the reuse of the base as a research and education center consistent with the purposes of Acadia National Park.

Public Law 95–625, the National Parks and Recreation Act, requires the preparation and timely revision of a general management plan for each unit of the national park system. Section 604 of that act describes the requirements for general management plans as including: ''(1) measures for the preservation of the area's resources; (2) indications of types and general intensities of development * * * associated with public enjoyment and use of the area* * *; (3) identification of and implementation commitments for visitor carrying capacities for all areas of the unit; and (4) indications of potential modifications to the external boundaries of the unit and the reasons therefor.''

The NPS completed a general management plan for Acadia National Park in 1992; however, it does not address the transfer of the former navy base at Schoodic to the NPS. The primary purpose of the Schoodic General Management Plan Amendment is to provide guidance for future use, management, and development of the former navy base. The Schoodic General Management Plan Amendment identifies the mission, goals, and planning issues for the Schoodic District. It also provides a framework for guiding future decisions and outlines long-term, collaborative strategies for protecting park resources, providing high-quality visitor experiences, expanding partnership opportunities, and providing for efficient park operations.

Dated: September 26, 2006.

Chrysandra L. Walter,

Acting Regional Director, Northeast Region.

[FR Doc. E6–18756 Filed 11–6–06; 8:45 am]

BILLING CODE 4310–2N–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Capital Region; Notice/Request for Comments—The Christmas Pageant of Peace

SUMMARY: The National Park Service is seeking public comments and suggestions on the planning of the 2006 Christmas Pageant of Peace.

SUPPLEMENTARY INFORMATION: The National Park Service is seeking public comments and suggestions on the planning of the 2006 Christmas Pageant of Peace, which opens on December 7, 2006, on the Ellipse (President's Park), south of the White House. The meeting will be held at 9 a.m. on November 27, 2006 in Room 234 of the National Capital Region Headquarters Building, at 1100 Ohio Drive, SW., Washington, DC (East Potomac Park).

Persons who would like to comment at the meeting should notify the National Park Service by November 22,

2006 by calling the White House Visitor Center weekdays between 9 a.m. and 4 p.m., at (202) 208–1631. Written comments may be sent to the Park Manager, White House Visitor Center, 1100 Ohio Drive, SW., Washington, DC 20242, and will be accepted until November 27, 2006.

DATES: The meeting will be held on November 27, 2006. Written comments will be accepted until November 27, 2006.

ADDRESSES: The meeting will be held at 9 a.m. on November 27, 2006, in room 234 of the National Capital Region Headquarters Building, at 1100 Ohio Drive, SW., Washington, DC (East Potomac Park). Written comments may be sent to the Park Manager, White House Visitor Center, 1100 Ohio Drive, SW., Washington, DC 20242. Due to delays in mail delivery, it is recommended that comments be provided by telefax at 202–208–1643 or by e-mail to *John_Stanwich@nps.gov*. Comments may also be delivered by messenger to the White House Visitor Center at 1450 Pennsylvania Avenue, NW. in Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Stanwich at the White House Visitor Center weekdays between 9 a.m. and 4 p.m., at (202) 208–1631.

Dated: November 2, 2006.

Maria Santo,

Deputy NPS Liaison to the White House.

[FR Doc. E6–18816 Filed 11–6–06; 8:45 am]

BILLING CODE 4312–54–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:

- Patterson Irrigation District.
- Porterville Irrigation District.
- Pixley Irrigation District.
- Lower Tule River 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) 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 entities have developed a Plan, 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 December 7, 2006.

ADDRESSES: Please mail comments to Laurie Sharp, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825, or contact at 916–978–5232 (TDD 978–5608), or e-mail at *lsharp@mp.usbr.gov.*

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information, please contact Mrs. Sharp 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 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. Best Management Practices (BMPs) for Agricultural Contractors.
4. BMPs for Urban Contractors.
5. Plan Implementation.
6. Exemption Process.
7. Regional Criteria.
8. Five-Year Revisions.

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 Mrs. Sharp to find the office nearest you.

Dated: October 17, 2006.

Michael Heaton,

Acting Regional Resources Manager, Mid-Pacific Region, Bureau of Reclamation.

[FR Doc. E6–18760 Filed 11–6–06; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By notice dated May 17, 2006, and published in the **Federal Register** on May 25, 2006, (71 FR 30166), Mallinckrodt Inc., 3600 North Second Street, St. Louis, Missouri 63147, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Phenylacetone (8501)	II
Coca Leaves (9040)	II
Opium, raw (9600)	II
Poppy Straw (9650)	II
Poppy Straw Concentrate (9670)	II

The company plans to import the listed controlled substances for the manufacture of controlled substances in bulk for distribution to its customers.

One comment was received; however, pursuant to 21 U.S.C. 958 (i) and 21 CFR 1301.34 (a), the commenter which is not a registered bulk manufacturer of the above listed controlled substances, has no legal standing to object or to request a hearing on this application.

DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Mallinckrodt Inc., to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Mallinckrodt Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: October 31, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–18716 Filed 11–6–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 26, 2006, and August 17, 2006, Siegfried (USA), Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Dihydromorphine (9145)	I
Oxymorphone (9652)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/ODL; or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than January 8, 2007.

Dated: October 31, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–18714 Filed 11–6–06; 8:45 am]

BILLING CODE 4410–09–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities; No Fear Act Notice

AGENCY: National Endowment for the Humanities, National Foundation on the Arts and the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) is publishing this notice under the ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,'' which is known as the No FEAR Act, to inform current employees, former employees, and applicants for NEH employment of the rights and protections available to them under Federal antidiscrimination, whistleblower protection and retaliation laws.

FOR FURTHER INFORMATION CONTACT: Heather C. Gottry, Acting General Counsel, Office of General Counsel, NEH, 1100 Pennsylvania Ave., NW., Room 529, Washington, DC 20506; OGC Internet E-mail: *gencounsel@neh.gov* (for E-mail messages, the subject line should include the following reference—''No FEAR Act Notice''); *Telephone:* (202) 606–8322; TDD (202) 606–8282; *Fax:* (202) 606–8600. A copy of the No FEAR Act Notice will be posted on NEH's Web site (*http://www.neh.gov*). Persons who cannot access this No FEAR Act Notice through the Internet may request a paper or electronic copy by contacting Ms. Gottry at the address, e-mail address, telephone numbers, or Fax number listed above.

SUPPLEMENTARY INFORMATION: On May 15, 2002, Congress enacted the ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,'' which is now known as the No FEAR Act. One purpose of the Act is to require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws. In support of this purpose, Congress found that ''agencies cannot be run effectively if those agencies practice or tolerate discrimination.'' Public Law 107–174, Section 101(1), 116 Stat. 566. The Act also requires this Agency to provide this notice to Federal employees, former Federal employees and applicants for Federal employment to inform them of the rights and protections available to them under Federal antidiscrimination, whistleblower protection, and retaliation laws.

Antidiscrimination Laws

A Federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status or political affiliation. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b)(1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791, and 42 U.S.C. 2000e–16.

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin or disability, you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or, in the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination with your agency. *See, e.g.* 29 CFR part 1614. If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 calendar days of the alleged discriminatory action. If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (OSC) (see contact information below). In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through your agency's administrative or negotiated grievance procedures, if such procedures apply and are available.

Whistleblower Protection Laws

A Federal employee with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take,

a personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence violations of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint (Form OSC–11) with the U.S. Office of Special Counsel at 1730 M Street NW., Suite 218, Washington, DC 20036–4505 or online through the OSC Web site—*http://www.osc.gov.*

Retaliation for Engaging in Protected Activity

A Federal agency cannot retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protection laws listed above. If you believe that you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws sections or, if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

Disciplinary Actions

Under the existing laws, each agency retains the right, where appropriate, to discipline a Federal employee for conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection Laws up to and including removal. If OSC has initiated an investigation under 5 U.S.C. 1214, however, according to 5 U.S.C. 1214(f), agencies must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws or permits an agency to take unfounded disciplinary action against a Federal employee or to violate the procedural rights of a Federal employee who has been accused of discrimination.

Additional Information

For further information regarding the No FEAR Act regulations, refer to 5 CFR part 724, as well as the appropriate offices within your agency (e.g., EEO, Office of Human Resources, Office of the General Counsel). Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws can be found at the EEOC Web site—*http://www.eeoc.gov* and the OSC Web site—*http://www.osc.gov.*

Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands or reduces any rights otherwise available to any employee, former employee or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

Dated: November 2, 2006.

Heather C. Gottry,

Acting General Counsel, National Endowment for the Humanities.

[FR Doc. E6–18720 Filed 11–6–06; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board Commission on 21st Century Education in Science, Technology, Engineering, and Mathematics; Notice of Meeting

In accordance with the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463) the following meeting is being announced.

Name: Commission on 21st Century Education in Science, Technology, Engineering, and Mathematics (#29127).

Dates/Time: The meeting will take place on November 20 and 21, 2006. The meeting will be held from 11 a.m. to no later than 5:45 p.m. on November 20 and from 8:15 a.m. to no later than 12:45 p.m. on November 21.

Place: The meeting will be held in the Auditorium at the Museum of Science and Industry, 57th Street and Lakeshore Drive, Chicago, IL 60637. Directions to the Museum may be found at *http://www.msichicago.org.*

Type of Meeting: Open.

Contact Person: Dr. Elizabeth Strickland, Commission Executive Secretary, National Science Board Office, 4201 Wilson Boulevard, Arlington, VA 22230; *Phone:* 703–292–4527; *E-mail: estrickl@nsf.gov.*

Purpose of Meeting: The purpose of this meeting is for the Commission to discuss its ongoing work and to receive briefings relating to STEM education. Further information about the Commission and a provisional agenda for the meeting may be found at *http://www.nsf.gov/nsb/edu_com/.*

Agenda: Plenary Session I (11 a.m.–12:15 p.m., November 20): Invited speakers to address science, technology, engineering, and mathematics (STEM) education. Plenary Session II (1:15 p.m.–5:45 p.m., November 20): Presentations and discussions by Working Groups of the Commission. Plenary Session III (8:15 a.m.–10 a.m., November 21): Invited speakers to address STEM Education. Plenary Session IV (10:20 a.m.–12:45 p.m., November 21): Discussion among Commission Members.

Public Meeting Attendance: The public is welcome to attend the entire meeting. Those wishing to attend the meeting may follow posted signs to the West Pavilion North Entrance of the Museum building. Those requiring special assistance may make arrangements in advance by e-mailing *NSBEDdCom@nsf.gov.*

Public Comment: Written comments to the Commission may be submitted by e-mail to *NSBEdCom@nsf.gov.* Those wishing to make brief public comments during the meeting may register to do so either by signing up at the information table on the day of the meeting or in advance by sending an e-mail to *NSBEdCom@nsf.gov.*

Dated: November 1, 2006.

Susanne E. Bolton,

Committee Management Officer.

[FR Doc. 06–9091 Filed 11–6–06; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting Notice

Agenda

TIME AND DATE: 9:30 a.m., Tuesday, November 14, 2006.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The one item is open to the public.

MATTER TO BE CONSIDERED: 5299V, *Most Wanted Safety Recommendations Program*—November 2006; Update on Federal Issues.

NEWS MEDIA CONTACT: The Office of Public Affairs, Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Chris Bisett at (202) 314–6305 by Friday, November 10, 2006.

The public may view the meeting via a live or archived Webcast by accessing a link under ''News & Events'' on the NTSB home page at *http://www.ntsb.gov.*

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: November 3, 2006.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 06–9120 Filed 11–3–06; 1:57 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8968–ML]

Notice of Appointment of Adjudicatory Employees

Commissioners: Dale E. Klein, Chairman; Edward McGaffigan, Jr.; Jeffrey S. Merrifield; Gregory B. Jaczko; Peter B. Lyons.

In the Matter of Hydro Resources, Inc. (P.O. Box 777, Crownpoint, NM 87313)

Pursuant to 10 CFR 2.4, notice is hereby given that Mr. Jon Peckinpaugh, Commission employee of the Office of Nuclear Material Safety and Safeguards, Division of Waste Management and Environmental Protection, and Mr. Bruce Watson, Commission employee of the Office of Federal and State Materials and Environmental Management Programs, Decommissioning and Uranium Recovery Licensing Directorate, have been appointed as Commission adjudicatory employees within the meaning of Section 2.4, to advise the Commission regarding issues related to the pending Commission review of LBP–06–19. Messrs. Peckinpaugh and Watson have not previously performed any investigative or litigating function in connection with this or any related proceeding. Until such time as a final decision is issued in this matter, interested persons outside the agency and agency employees performing investigative or litigating functions in this proceeding are required to observe the restrictions of 10 CFR 2.780 and 2.781 [1] in their communications with Messrs. Peckinpaugh and Watson.

It is so ordered.

Dated at Rockville, Maryland this 1st day of November 2006.

For the Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E6–18715 Filed 11–6–06; 8:45 am]

BILLING CODE 7590–01–P

[1] These rule designations are from our former Part 2, which has been revised and renumbered. *See* ''Changes to Adjudicatory Process,'' 69 FR 2182 (Jan. 14, 2004). For cases such as this one, docketed prior to February 13, 2004, the previous procedural rules, including 10 CFR 2.780 and 2.781, continue to apply. Substantially equivalent rules now appear at 10 CFR 2.347 and 2.348.

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–298]

Nebraska Public Power District, Cooper Nuclear Station; Exemption

1.0 Background

Nebraska Public Power District (NPPD or the licensee) are the holders of Facility Operating License No. DPR–46 which authorizes operation of the Cooper Nuclear Station (CNS). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a boiling-water reactor located in Nemaha County, Nebraska.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR), section 50.54(o), requires primary reactor containments for water-cooled power reactors to be subject to the requirements of Appendix J to 10 CFR part 50. Appendix J specifies the leakage test requirements, schedules, and acceptance criteria for tests of the leak-tight integrity of the primary reactor containment, and systems and components that penetrate the containment. Option B of Appendix J is titled, ''Performance-Based Requirements.'' Option B, Section III.A., ''Type A Test,'' requires, among other things, that the overall integrated leakage rate must not exceed the allowable leakage rate (La) with margin, as specified in the Technical Specifications (TSs). The overall integrated leak rate, is defined in 10 CFR part 50, Appendix J as ''the total leakage rate through all tested leakage paths, including containment welds, valves, fittings, and components that penetrate the containment system.'' This includes the contribution from MSIV leakage. The licensee has requested exemption from Option B, Section III.A requirements to permit exclusion of MSIV leakage from the overall integrated leak rate test measurement. Main steam leakage includes leakage through all four main steam lines and the main steam drain line.

Option B, Section III.B of 10 CFR part 50, Appendix J, ''Type B and C Tests,'' requires, among other things, that the sum of the leakage rates at accident pressure of Type B tests and pathway leakage rates from Type C tests be less than the performance criterion (La) with margin, as specified in the TSs. The licensee also requests exemption from this requirement, to permit exclusion of the main steam pathway leakage contributions from the sum of the leakage rates from Type B and Type C tests.

The main steam leakage effluent has a different pathway to the environment, when compared to a typical containment penetration. It is not directed into the secondary containment and filtered through the standby gas treatment system as is other containment leakage. Instead, the main steam isolation valve (MSIV) leakage is directed through the main steam drain piping into the condenser and is released into the environment as an unfiltered ground level effluent.

In summary, the licensee analyzed the MSIV leakage pathway and the containment leakage pathways separately in a dose consequences analysis. The calculated radiological consequences of the combined leakage were found to be within the criteria of 10 CFR part 100 and General Design Criterion (GDC) 19. The NRC staff reviewed the licensee's analyses and found them acceptable as described in a safety evaluation dated September 1, 2004. By separating the MSIV leakage acceptance criteria from the overall integrated leak rate test criterion, and from the Type B and C leakage sum limitation, the CNS containment leakage testing will be made more consistent with the limiting assumptions used in the associated accident consequences analyses.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security, and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2):

(i) Application of the regulation in the particular circumstances conflicts with other rules or requirements of the Commission; or

(ii) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule; or

(iii) Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated; or

(iv) The exemption would result in benefit to the public health and safety that compensates for any decrease in safety that may result from the grant of the exemption; or

(v) The exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation; or

(vi) There is present any other material circumstance not considered when the regulation was adopted for which it would be in the public interest to grant an exemption. If such condition is relied on exclusively for satisfying paragraph (a)(2) of this section, the exemption may not be granted until the Executive Director for Operations has consulted with the Commission.

The licensee's exemption request was submitted in conjunction with a TS amendment application to increase the allowable leak rate for the MSIVs. The proposed amendment will be issued concurrently with this exemption. The exemption and amendment together would implement the recommendations of Topical Report NEDC–31858, ''BWR Report for Increasing MSIV Leakage Rate Limits and Elimination of Leakage Control Systems.'' The topical report was evaluated by the NRC staff and accepted in a safety evaluation dated March 3, 1999. The special circumstances associated with MSIV leakage testing are fully described in the topical report. These circumstances relate to the monetary costs and personnel radiation exposure involved with maintaining MSIV leakage limits more restrictive than necessary to meet offsite dose criteria and control room habitability criteria.

The underlying purpose of the rule which implements Appendix J (i.e., 10 CFR 50.54(o)) is to assure that containment leak tight integrity is maintained (a) as tight as reasonably achievable and (b) sufficiently tight so as to limit effluent release to values bounded by the analyses of radiological consequences of design-basis accidents. Based on the above, no new accident precursors are created by the exemption, thus, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. As such, the NRC staff has determined that the intent of the rule is not compromised by the proposed exemption.

The proposed exemption would permit exclusion of the main steam pathway leakage contributions from the overall integrated leakage rate Type A test measurement. This change has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

Based on the foregoing, the separation of the main steam pathways from the other containment leakage pathways is warranted because a separate radiological consequence term has been provided for these pathways. The revised design-basis radiological consequences analyses address these pathways as individual factors, exclusive of the primary containment leakage. Therefore, the NRC staff finds the proposed exemption from Appendix J to be acceptable.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants NPPD an exemption from the requirements of Sections III.A and III.B of Option B of Appendix J to 10 CFR part 50 for CNS.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (71 FR 61074).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 30th day of October 2006.

For the Nuclear Regulatory Commission.

Catherine Haney,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–18711 Filed 11–6–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Sunshine Act Meeting

DATES: Weeks of November 6, 13, 20, 27, December 4, 11, 2006.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of November 6, 2006

Wednesday, November 8, 2006

9:30 a.m. Briefing on Digital Instrumentation and Control (Public Meeting) (*Contact:* Paul Rebstock, 301–415–3295).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Thursday, November 9, 2006

9:25 a.m. Affirmation Session (Public Meeting) (Tentative). a. Pacific Gas & Electric Co. (Diablo Canyon ISFSI), Docket No. 72–26–ISFSI, ''Motion by San Luis Obispo Mothers for Peace, Sierra Club, and Peg Pinard for Partial Reconsideration of CLI–06–23'' (Tentative). b. System Energy Resources, Inc. (Early Site Permit for Grand Gulf ESP) (Tentative).

9:30 a.m. Briefing on Draft Final Rule—Part 52 (Early Site permits/ Standard Design Certification/ Combined Licenses) (Public Meeting) (*Contact:* Dave Matthews, 301–415–1199).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

1:30 p.m. Continuation of 10/24/06 Briefing on Transshipment and Domestic Shipment Security of Radioactive Material Quantities of Concern (RAMQC) (Closed—Ex. 3 & 9).

Week of November 13, 2006—Tentative

There are no meetings scheduled for the Week of November 13, 2006.

Week of November 20, 2006—Tentative

There are no meetings scheduled for the Week of November 20, 2006.

Week of November 27, 2006—Tentative

There are no meetings scheduled for the Week of November 27, 2006.

Week of December 4, 2006—Tentative

Thursday, December 7, 2006

9:30 a.m. Discussion of Security Issues (Closed—Ex. 2 & 3).

Week of December 11, 2006—Tentative

Monday, December 11, 2006

1:30 p.m. Briefing on Status of Decommissioning Activities (Public Meeting) (*Contact:* Keith McConnell, 301–415–7295).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Tuesday, December 12, 2006

9:30 a.m. Briefing on Threat Environment Assessment (Closed—Ex. 1).

1:30 p.m. Discussion of Security Issues (Closed—Ex. 1 & 3).

Wednesday, December 13, 2006

9:30 a.m. Briefing on Status of Equal Employment Opportunity (EEO) Programs (Public Meeting) (*Contact:* Barbara Williams, 301–415–7388).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Thursday, December 14, 2006

9:30 a.m. Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (*Contact:* John Larkins, 301–415–7360).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Deborah Chan, at 301–415–7041, TDD: 301–415–2100, or by e-mail at *DLC@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: November 2, 2006.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 06–9110 Filed 11–3–06; 9:57 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 13, 2006, to October 26, 2006. The last biweekly notice was published on October 24, 2006 (71 FR 62306).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a

request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(I)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: September 28, 2006.

Description of amendments request: The proposed amendments would revise certain Technical Specification (TS) requirements for mode change limitations in Limiting Condition for Operation 3.0.4 and Surveillance Requirement 3.0.4. This request is consistent with NRC-approved Industry/Technical Specification Task Force (TSTF) Traveler number TSTF–359, Revision 9, ''Increase Flexibility in Mode Restraints.'' In addition, the proposed amendments would correct TS Example 1.4–1, ''Surveillance Requirements,'' to accurately reflect the changes made by TSTF–359, which is consistent with NRC-approved TSTF–485, Revision 0.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises Section 1.4, Frequency, ''Example 1.4–1,'' to be consistent with Surveillance Requirement (SR) 3.0.4 and Limiting Condition for Operation (LCO) 3.0.4. This change is considered administrative in that it modifies the example to demonstrate the proper application of SR 3.0.4 and LCO 3.0.4. The requirements of SR 3.0.4 and LCO 3.0.4 are clear and are clearly explained in the associated Bases. As a result, modifying the example will not result in a change in usage

of the Technical Specifications (TS). The proposed change does not adversely affect accident initiators or precursors, the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Therefore, this change is considered administrative and will have no effect on the probability or consequences of any accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new or different accidents result from utilizing the proposed change. The change does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the change does not impose any new or different requirements or eliminate any existing requirements. The change does not alter assumptions made in the safety analysis. The proposed change is consistent with the safety analysis assumptions and current plant operating practice.

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 is administrative and will have no effect on the application of the Technical Specification requirements. Therefore, the margin of safety provided by the Technical Specification requirements is unchanged.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Michael G. Green, Senior Regulatory Counsel, Pinnacle West Capital Corporation, P.O. Box 52034, Mail Station 8695, Phoenix, Arizona 85072–2034.

NRC Branch Chief: David Terao.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit No. 2 New London County, Connecticut

Date of amendment request: March 17, 2006.

Description of amendment request: The proposed amendment would revise Millstone Power Station, Unit No. 2 Technical Specification (TS) 3.4.4 to replace the existing maximum and minimum pressurizer water volume and water level limits with a maximum water level limit. The associated TS bases will be updated to address the proposed change.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not change the accident analysis of record, maintains the current maximum operating pressurizer level at its present value, does not modify any plant equipment and does not impact any failure modes that could lead to an accident. Additionally, the proposed change has no effect on the consequences of any analyzed accident since the change does not affect the function of any equipment credited for accident mitigation. Therefore, the proposed amendment does not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Since the proposed change does not modify any plant equipment and there is no impact on the capability of existing equipment to perform its intended functions and no new failure modes are introduced by the proposed change, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety?

The proposed change maintains the current maximum operating pressurizer level at its present value, and the acceptance criterion for the maximum pressurizer level is unchanged. Since there are no changes, the proposed change does not involve a reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, Waterford, CT 06385.

NRC Branch Chief: Harold K. Chernoff.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: October 16, 2006.

Description of amendment request: The proposed change will add an NRC previously approved topical report to the analytical methods referenced in Technical Specification (TS) Section 5.6.5, ''Core Operating Limits Report (COLR).'' The current method of performing the loss-of-coolant accident (LOCA) analyses will be replaced by an updated method described in AREVA NP (formerly known as Framatome or Siemens) topical report, ''EXEM BWR–2000 [Boiling-Water Reactor—2000] ECCS [Emergency Core Cooling System] Evaluation Model.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Core operating limits are established each operating cycle in accordance with TS 3.2, ''Power Distribution'' and TS 5.6.5, ''Core Operating Limits Report (COLR)''. These core operating limits ensure that the fuel design limits are not exceeded during any conditions of normal operation or in the event of any Anticipated Operational Occurrence (AOO). In addition, the Average Planar Linear Heat Generation Rate (APLHGR) operating limits imposed by Technical Specification 3.2.1 also ensure that the peak cladding temperature (PCT) during the postulated design basis LOCA does not exceed the 2200 °F limit specified in 10 CFR 50.46. The APLHGR is a measure of the average linear heat generation rate of all the fuel rods in a fuel assembly at any axial location.

The methods used to determine the operating limits are those previously found acceptable by the NRC and listed in TS section 5.6.5.b. A change to TS section 5.6.5.b is requested to include an updated LOCA analysis method, EXEM BWR–2000. The updated method will be used to determine the APLHGR operating limits imposed by Technical Specification 3.2.1. EXEM BWR–2000 has been reviewed and approved by the NRC and is applicable to the RBS [River Bend Station] plant design and the AREVA NP fuel being used at RBS. The application of the LOCA analytical model will continue to ensure that the APLHGR

operating limits are established to protect the fuel cladding integrity during normal operation, AOOs, and the design basis LOCA.

The requested TS changes concern the use of analytical methods and do not involve any plant modifications or operational changes that could affect any postulated accident precursors or accident mitigation systems and do not introduce any new accident initiation mechanisms.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed TS amendment will not change the design function, reliability, performance, or operation of any plant systems, components, or structures. It does not create the possibility of a new failure mechanism, malfunction, or accident initiators not considered in the design and licensing bases. Plant operation will continue to be within the core operating limits that are established using NRC approved methods that are applicable to the RBS design and the RBS fuel.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The ECCS performance analysis methods are used to establish the APLHGR limits required by Technical Specification 3.2.1. The APLHGR limits are specified in the COLR and are the result of fuel design, design basis accident (DBA), and transient analyses. Limits on the APLHGR are specified to ensure that the fuel design limits are not exceeded during anticipated operational occurrences (AOOs) and that the peak cladding temperature (PCT) during the postulated design basis LOCA does not exceed the 2200 °F limit specified in 10 CFR 50.46.

The EXEM BWR–2000 evaluation model is an updated LOCA analytical method that has been approved by the NRC and is applicable to the RBS plant design and the fuel being used at RBS. A RBS plant specific ECCS performance analysis has been performed with the EXEM BWR–2000 evaluation model. This evaluation concluded that the resulting PCT still afforded adequate margin to the 2200 °F limit of 10 CFR 50.46.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn LLP, 1700 K Street, NW., Washington, DC 20006.

NRC Branch Chief: David Terao.

Entergy Nuclear Operations, Inc., Docket Nos. 50–247 and 50–286, Indian Point Nuclear Generating Unit Nos. 2 and 3, Westchester County, New York

Date of amendment request: September 25, 2006.

Description of amendment request: The amendment proposes revisions to the Technical Specifications that are editorial in nature and consist of typographical corrections, update of references, and deletion of obsolete notes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes are editorial in nature and have no affect on accident scenarios previously evaluated. The proposed changes include typographical corrections, consistent with the current version of the Standard Technical Specifications (NUREG 1431, Revision 3); updated references, consistent with the current version of the Entergy Quality Assurance Program Manual (Revision 13); and deletion of notes that provided one-time allowances or are otherwise now obsolete. The proposed changes do not affect initiating events for accidents previously evaluated and do not affect or modify plants systems or procedures used to mitigate the progression or outcome of those accident scenarios.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not involve the installation of new plant equipment or modification of existing plant equipment. No system or component setpoints are being changed and there are no changes being proposed for the way that the plant is operated. There are no new accident initiators or equipment failure modes resulting from the proposed changes. The proposed changes are editorial in nature, consisting of typographical corrections, reference updates, and deletion of obsolete notes.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes are editorial in nature and do not change setpoints or limiting parameters specified in the plant Technical Specifications.

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.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: Richard J. Laufer.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: August 31, 2006.

Description of amendment request: Entergy Operations, Inc., proposes to relocate Technical Specification (TS) 3.8.7 requirements associated with 120 Volt Inverter Y–28 and TS 3.8.9 requirements associated with 120 VAC electrical power distribution subsystem panel C–540 to the Technical Requirements Manual (TRM).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not physically alter any plant structures, systems, or components and does not affect or create new accident initiators or precursors. The loss of Y–28, in itself, has no significant impact on station operation because its associated instrument panel, C–540, remains energized from an Emergency Diesel Generator (EDG) backed vital AC source. A potential loss of vital instrument panel C–540 does not prevent the fulfillment of a safety function and does not cause Emergency Safeguard Features (ESF) systems actuations that could render multiple ESF-related trains incapable of performing their intended safety function. Therefore, there is no effect on probability of accidents previously evaluated.

The proposed change relocates operability requirements for Y–28 and C–540 to the TRM. The TRM is part of the Safety Analysis Report (SAR) and is controlled under 10 CFR 50.59. In addition, TS-related components powered by C–540 continue to be governed by other TSs that limit the time in which the

components can be out of service or provide compensatory measures during the out-of-service period.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not physically alter any structures, systems, or components, and does not affect or create new accident initiators or precursors. The accident analysis assumptions and results are unchanged. No new failures or interactions have been created. In addition, the proposed change does not introduce new failure modes or mechanisms associated with plant operation and will not create a new accident type.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The applicable margin of safety is the period of time that equipment important to safety is inoperable. There is no increase in risk that is a result of the proposed change because (1) affected non-TS components are not safety significant, (2) compensatory measures are procedurally established for those components governed by other regulation (i.e., 10 CFR [Part] 50, Appendix R), and (3) TS-related component out-of-service time or related compensatory actions are governed by other existing TSs. The proposed change does not affect any safety limits, other operational parameters, or setpoints in the TS, nor does it affect any margins assumed in the accident analyses. In addition, Y–28 and C–540 operability requirements will be relocated to the TRM, which is part of the Safety Analysis Report (SAR) and controlled by 10 CFR 50.59.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

NRC Branch Chief: David Terao.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendments request: June 30, 2006.

Description of amendments request: The amendments would relocate the movable incore detectors and radioactive gaseous effluent oxygen monitoring instrumentation from the Technical Specifications to the Updated Final Safety Analysis Report (UFSAR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed change[s] involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment would relocate Technical Specification (TS) 3/4.3.3.2, ''Movable Incore Detectors,'' and TS 3/4.3.3.9 from the TS to the UFSAR. Movable Incore Detectors and Radioactive Gaseous Effluent Oxygen Monitoring Instrumentation are not initiators to any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. Movable Incore Detectors and Radioactive Gaseous Effluent Oxygen Monitoring Instrumentation are not accident mitigating structures, systems, or components. No impact on the plant response to accidents will be created. Thus the consequences of accidents previously analyzed are unchanged between the existing TS requirements and the proposed changes.

The proposed revision to TS SR [Surveillance Requirement] 4.11.2.5 is an administrative change to a reference necessitated by the proposed relocation of TS Table 3.3–13 from the TS to the UFSAR. The proposed revision to the TS Index, page renumbering, and minor format changes to improve consistency are also administrative changes necessitated by the proposed relocation of TS 3/4.3.3.2 and TS 3/4.3.3.9 from the TS to the UFSAR.

Therefore, the proposed changes do not involve a significant increase in the probability or radiological consequences of an accident previously evaluated.

2. Do the proposed change[s] create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated in the UFSAR. No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes. Specifically, no new hardware is being added to the plant as part of the proposed changes, no existing equipment is being modified, and no significant changes in operations are being introduced.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed change[s] involve a significant reduction in a margin of safety?

Response: No.

The proposed changes will not alter any assumptions, initial conditions, or results of any accident analyses. The Movable Incore Detectors and oxygen monitoring instrumentation will continue to perform as before. The proposed changes relocate TS 3/4.3.3.2 and TS 3/4.3.3.9 from the TS to the UFSAR consistent with the guidance in NRC Generic Letter 95–10 and 10 CFR 50.36, and make conforming administrative changes to the TS Index, page renumbering, and minor format changes to improve consistency and to TS SR 4.11.2.5 to reflect the relocation of TS 3/4.3.3.9 from the TS to the Salem UFSAR.

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.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: Harold K. Chernoff.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendments request: September 26, 2006.

Description of amendments request: The amendments would revise Technical Specification 6.9.1.9 to remove the revision number and date for the topical reports that contain the analytical methods used in the Core Operating Limits Report (COLR). The effect of this change is to allow the licensee to use current topical reports, as long as they have been approved by the NRC. The amendments would also add an NCR-approved topical report to the Salem Nuclear Generating Station, Unit No. 2, COLR methods.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes affect the administrative controls section of Technical Specifications (TS) that govern the analytical methods used to determine core operating limits. Removal of revision levels and dates from NRC-approved methods listed in TS is

an administrative change that has no impact on the probability or consequences of an accident. TS 6.9.1.9.b will still require these methods to be reviewed and approved by [the] NRC. The proposed change does not affect the required TS actions to be taken in the event that any core operating limits are exceeded.

The proposed use of WCAP–10054–P–A, Addendum 2 for the Salem Unit 2 Small Break Loss of Coolant Accident (SBLOCA) analysis is consistent with the limitations and conditions of NRC approval. The parameters assumed in the analysis are within the design limits of the plant equipment. Therefore, there will be no increase in the probability of a loss of coolant accident. The consequences of a LOCA are not being increased, since it is shown that the Emergency Core Cooling System (ECCS) is designed so that its calculated cooling performance conforms to the criteria contained in 10 CFR 50.46, Paragraph b. No other accident is potentially affected by this change.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new modes of plant operation are being introduced. The parameters assumed in the analysis are within the design limits of the plant equipment. TS will continue to require operation within the core operating limits determined using NRC-approved analytical methods and the proposed change does not affect any actions required in the event the core operating limits are exceeded.

Therefore, the proposed change does not involve an increase in the probability or consequences of an accident previously evaluated.

3. Do the proposed change[s] involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not have any impact on plant equipment or safety analysis acceptance criteria. Core operating limits will continue to be determined using NRC-approved analytical methods. The ECCS acceptance criteria of 10 CFR 50.46 will continue to be met following the proposed use of WCAP–10054–P–A, Addendum 2 for the Salem Unit 2 SBLOCA analysis[.]

Therefore, the proposed change[s] do[es] not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: Harold K. Chernoff.

PSEG Nuclear LLC, Docket No. 50–311, Salem Nuclear Generating Station, Unit No. 2, Salem County, New Jersey

Date of amendment request: April 6, 2006.

Description of amendment request: The amendment would change the Technical Specifications to reduce the maximum allowable reactor power when two main steam safety valves (MSSVs) are inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do[es] the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change reduces the power level at which Salem Unit 2 may be operated with a maximum of two inoperable MSSVs in any steam generator. This change is consistent with analyses of the limiting transients for secondary system pressure (loss of load/turbine trip and rod withdrawal at power), performed to demonstrate the acceptance criterion of 110% of design pressure will continue to be met following steam generator replacement. The proposed change does not involve any changes to the MSSV actuation setpoints; they remain well above the Main Steam System operating pressures. The proposed change does not challenge the relief capacity of the MSSVs. Therefore, the probability of an event associated with mis-operation of the MSSVs (e.g., inadvertent depressurization of the Main Steam System) is not impacted by the proposed change. The proposed reduction in allowable power level establishes initial conditions consistent with the safety analyses, and does not affect the probability of any previously evaluated accident.

The proposed change is necessitated by analyses of limiting secondary system pressure transients, whose acceptance criteria continue to be met provided that plant operation is restricted to 58% RTP [rated thermal power] with a maximum of two inoperable MSSVs in any steam generator. There is no impact on any radiological consequences of an accident associated with the proposed reduction in maximum power level.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do[es] the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Reducing the allowable power level per the proposed change does not introduce any new accident scenarios or malfunctions. The proposed change establishes an operating restriction consistent with current safety analysis methodology. It represents a change to an input assumption used in analyses of limiting secondary pressurization transients to ensure plant operation does not challenge any design limits.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do[es] the proposed change involve a significant reduction in a margin of safety?

Response: No.

Acceptable margins of safety are inherent in the safety analysis acceptance criteria, including the limit on secondary system pressure to 110% of design pressure during a loss of load/turbine trip (LOL/TT) or rod withdrawal at power (RWAP) transient. The purpose of the proposed change is to limit operation with a maximum of two inoperable MSSVs for any steam generator, such that the acceptance criterion for secondary pressure continues to be met. The proposed change does not modify any acceptance criteria, nor would it cause any design limit to be exceeded.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: Harold K. Chernoff.

R.E. Ginna Nuclear Power Plant, LLC, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: September 29, 2006.

Description of amendment request: The proposed amendment would revise Technical Specification 3.7.8, ''Service Water (SW) System,'' to change the limiting conditions for operation (LCOs), Actions, Completion Times, and Surveillance Requirements (SRs). Specifically, the proposed amendment would change the LCO to require a specific number of SW pumps to be operable rather than the current SW train operability. The LCO Actions, Completion Times, and SRs would also be revised based on pump operability.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The safety related function of the Service Water (SW) System is to provide cooling for safety related equipment, mitigate the containment response effects of a Main Steam Line Break (MSLB) and design basis Loss of Coolant Accident (LOCA), and provide long term containment and core cooling in the event of a LOCA. The operation of the SW system, including the number of pumps operating or available, has no affect on the probability of these accidents.

The probability of a loss of SW event is not increased. The proposed TS provides for more restrictive actions for pump inoperability than the existing TS, thereby reducing the probability of this event.

The consequences of a[n] MSLB or LOCA or other design basis accidents are not increased beyond that assumed in the accident analysis. Two service water pumps are sufficient for all accident mitigation functions. The change provides for adequate service water supply (2 pumps) for both normal and accident conditions. The availability of associated power supplies is also considered. For a reduction in the total number of available pumps, appropriate LCO action statements ensure that the pumps are returned to service within a time limit commensurate with an acceptable level of plant safety and risk, or the plant is placed in a safe mode.

The loss of SW has been previously evaluated and measures implemented to mitigate the event. Since a loss of SW assumes no SW pumps are operating, the proposed amendment has no affect on consequences of this event.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The only accidents directly initiated from this system are the loss of SW or flooding concerns. Both of these accidents have been previously evaluated with acceptable results. Therefore, this change does not create the possibility of a new or different [kind] of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This change will ensure that sufficient SW pumps are available for accident mitigation at any one time while still providing the appropriate operational flexibility. A risk determination demonstrates that any increase in risk associated with this change is within the established regulatory guidelines. The technical analysis shows that appropriate action statements exist to ensure adequate SW is available for accident mitigation, considering emergency power supply availability. Therefore, this proposed change does not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Daniel F. Stenger, Ballard Spahr Andrews & Ingersoll, LLP, 601 13th Street, NW., Suite 1000 South, Washington, DC 20005.

NRC Branch Chief: Richard J. Laufer.

R.E. Ginna Nuclear Power Plant, LLC, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: October 12, 2006.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 4.3.3, ''Capacity,'' to change the limit on the number of fuel assemblies in the spent fuel pool. The proposed amendment would also revise TS 3.7.13, ''Spent Fuel Pool Storage,'' to remove the references to Type 4 spent fuel pool storage racks, which are not currently installed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change reduces the total number of fuel assemblies that can be stored in the current spent fuel pool storage locations and reduces the number of available locations. This will limit the potential inventory of spent fuel in the pool. The probability of an accident has not changed since the number of stored fuel assemblies is not a precursor for a spent fuel handling accident. A comparison of the criticality analysis of fuel assemblies to be used in subsequent Extended Power Uprate core reloads to the current criticality analysis has been performed. The design parameter assumptions used in the licensing basis criticality analyses are bounding.

There are no new components or new functions associated with the spent fuel cooling system so the probability of an accident has not changed. The effect of a single failure on the spent fuel pool system's capability to provide for heat removal from the fuel pool has been analyzed. The analysis concluded that the system remains within the parameters previously evaluated. The implementation of the Extended Power Uprate does not affect the capability of the system to perform its function.

The Extended Power Uprate conditions do not add any new or previously unevaluated materials to the spent fuel pool storage system and do not include any reductions in the boron concentration requirements so the probability of an accident has not changed. The total soluble boron concentration required to maintain the spent fuel pool in a subcritical condition with the transition to the new fuel has not changed. The conclusions in the Ginna UFSAR [Updated Final Safety Analysis Report], assuming the most limiting accident, remain valid.

Therefore, the consequences of a fuel handling accident, a loss of spent fuel cooling, and a boron reduction concentration event previously evaluated have not increased.

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 changes do not alter the function of the spent fuel pool or any related equipment, nor cause it to operate differently than it was designed to operate. All equipment required to mitigate the consequences of an accident would continue to operate as before. The proposed changes reduce the maximum number of fuel assemblies that can be stored in the spent fuel pool and the number of storage locations. Therefore, this change does not create the possibility of a new or different [kind] of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes reduce the maximum number of fuel assemblies that can be stored in the spent fuel pool and the number of storage locations. The changes are in accordance with conclusions supporting Extended Power Uprate and have been determined to be acceptable. The design parameter assumptions used in the licensing basis criticality analysis bound those of the new fuel assemblies. Although the individual heat load per assembly has increased due to the changed fuel design, the maximum spent fuel pool heat load has decreased due to the reduction in the number of fuel assemblies that will be stored based on future plans to use dry cask storage. Therefore, this proposed change does not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Daniel F. Stenger, Ballard Spahr Andrews & Ingersoll, LLP, 601 13th Street, NW., Suite 1000 South, Washington, DC 20005.

NRC Branch Chief: Richard J. Laufer.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: October 3, 2006.

Description of amendment request: The proposed amendment would revise the Technical Specifications surveillance requirements related to inspection of the containment sump trash racks and screens, inside recirculation spray (RS) pump wells, and outside RS and low head safety injection pump suction inlets resulting from Nuclear Regulatory Commission's (NRC's) Generic Safety Issue (GSI) 191 and Generic Letter (GL) 2004–02.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not impact the condition or performance of any plant structure, system or component. Furthermore, the proposed change does not affect the initiators of any previously analyzed event or the assumed mitigation of accident or transient events since the plant will be operated in the same manner and within the same operating limits that are currently in place. The proposed TS change is administrative in nature given that inspection of containment sump components for debris accumulation and structural integrity will continue to be performed. The revised TS surveillance wording is being implemented as a clarification to facilitate inspection of the containment sump in its current configuration, as well as after containment sump modifications have been implemented in response to GSI–191 and GL 2004–002. As a result, the proposed change to the Surry TS does not involve any increase in the probability or the consequences of any accident or malfunction of equipment important to safety previously evaluated since neither accident probabilities nor consequences are being affected by this proposed change.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change is administrative in nature and, as such, does not involve any changes in station operation or physical modifications to the plant. In addition, no changes are being made in the methods used to respond to plant transients that have been previously analyzed. No changes are being made to plant parameters within which the plant is normally operated or in the setpoints, that initiate protective or mitigative actions, since the plant will be operated in the same manner and within the same operating limits that are currently in place. Since plant operation will not be affected by this change, no new failure modes are being introduced. Therefore, the proposed change to the Surry TS does not create the possibility of a new or different kind of accident or malfunction of equipment important to safety from any previously evaluated.

3. Does the change involve a significant reduction in the margin of safety?

The proposed change is administrative in nature given that inspection of the containment sump components for debris accumulation and structural integrity will continue to be performed on an established frequency. The more general nature of the TS surveillance wording is being implemented as a clarification to facilitate inspection of the containment sump in its current configuration, as well as after containment sump modifications have been implemented in response to GSI–191 and GL 2004–002. The proposed change does not impact station operation or any plant structure, system or component that is relied upon for accident mitigation. Furthermore, the margin of safety assumed in the plant safety analysis is not affected in any way by the proposed change since the plant will be operated in the same manner and within the same operating limits and setpoints that are currently in place. Therefore, the proposed change to the Surry Technical Specifications does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Counsel, Dominion Resources Services, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Rt. 156, Waterford, Connecticut 06385.

NRC Branch Chief: Evangelos C. Marinos.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

Carolina Power & Light Company, Docket No. 50–261, H.B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: November 30, 2005.

Brief description of amendment: The amendment revises the surveillance requirements (SR) for the emergency diesel generator automatic trips bypass of SR 3.8.1.11 from 18 months to 24 months.

Date of issuance: October, 4, 2006.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No. 208.

Renewed Facility Operating License No. DPR–23. Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 28, 2006 (71 FR 10072).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 4, 2006.

No significant hazards consideration comments received: No.

Duke Power Company LLC, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Duke Power Company LLC, et al., Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: July 27, 2005, as supplemented May 4, 2006, and August 8, 2006.

Brief description of amendments: The amendments revise the Catawba and McGuire Technical Specification 3.4.15, ''RCS Leakage Detection Instrumentation.''

Date of issuance: September 30, 2006.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 234/230 and 235/217.

Renewed Facility Operating License Nos. NPF–35, NPF–52, NPF–9 and NPF–17: Amendments revised the licenses and the technical specifications.

*Date of initial notice in **Federal Register:*** August 30, 2006 (71 FR 51644).

The supplement dated August 8, 2006, provided clarifying information that did not expand the scope of the July 27, 2005, application as modified May 4, 2006.

The Commission's related evaluation, Final No Significant Hazards Finding, and State consultation of the amendments are contained in a Safety Evaluation dated September 30, 2006.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. STN 50–457, Braidwood Station, Unit No. 2, Will County, Illinois

Date of application for amendment: November 18, 2005, as supplemented by letters dated August 18 and September 28, 2006.

Brief description of amendment: The amendment revised TS 5.5.9, ''Steam Generator (SG) Tube Surveillance Program,'' regarding the required SG inspection scope for Braidwood Station, Unit No. 2, during refueling outage 12 and the subsequent operating cycle.

Date of issuance: October 24, 2006.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 141.

Facility Operating License No. NPF–77: The amendment revised the Technical Specifications and License.

*Date of initial notice in **Federal Register:*** (71 FR 29676; May 23, 2006).

The August 18 and September 28, 2006, supplements contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 24, 2006.

No significant hazards consideration comments received: No.

FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: March 23, 2006.

Description of amendment request: The amendment deleted License Condition 2.G, ''Reporting to the Commission,'' as described in the Notice of Availability published in the **Federal Register** on April 25, 2006 (71 FR 23955). The change was requested as part of the consolidated line item improvement process and consistent with the model safety evaluation published in the **Federal Register** on November 4, 2005 (70 FR 67202).

Date of issuance: October 17, 2006.

Effective date: As of its date of issuance, and shall be implemented within 90 days.

Amendment No.: 113.

Facility Operating License No. NPF–86: The amendment revised Facility Operating License No. NPF–86 and the Technical Specifications.

*Date of initial notice in **Federal Register:*** April 25, 2006 (71 FR 23955).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 17, 2006.

No significant hazards consideration comments received: No.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: June 16, 2006.

Brief description of amendment: The amendment revised the Technical Specification 3.10.1, ''Inservice Leak and Hydrostatic Testing Operation,'' to extend the scope to include provisions for temperature increases above 212 °F as a consequence of inservice leak or hydrostatic testing, and as a consequence of control rod scram time testing initiated in conjunction with the inservice leak test or hydrostatic test, when initial test conditions are below 212 °F.

Date of issuance: October 23, 2006.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 225.

Facility Operating License No. DPR–46: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** August 1, 2006 (71 FR 43535)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 23, 2006.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: December 7, 2005, as supplemented by letters dated July 20 and September 5, 2006.

Brief description of amendments: These amendments revised the Technical Specifications to delete Surveillance Requirement (SR) 4.9.2.b, which requires performance of a channel functional test (CFT) of each source range neutron flux monitor within 8 hours prior to the initial start of core alterations. An associated administrative change would renumber current SR 4.9.2.c as SR 4.9.2.b. The amendments would also eliminate the restriction in SRs 4.10.3.2 and 4.10.4.2 that the CFTs of the intermediate and power range monitors be performed within 12 hours prior to initiating physics tests.

Date of issuance: October 13, 2006.

Effective date: As of the date of issuance, to be implemented in 60 days.

Amendment Nos.: 275, 257.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the Technical Specifications and License.

*Date of initial notice in **Federal Register:*** August 2, 2006 (71 FR 43819). The supplements provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 13, 2006.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: November 15, 2005, as supplemented May 31, August 31, and September 29, 2006.

Brief description of amendment: The amendment revises the Virgil C. Summer Nuclear Station Technical Specifications (TS) 3/4.3 for the reactor trip instrumentation and the engineered safety feature actuation system instrumentation to implement the allowed outage time and bypass test time changes approved in WCAP–14333–P–A, Revision 1, ''Probabilistic Risk Analysis of the RPS and ESFAS Test Times and Completion Times,'' and makes several additional changes to TS outside of the scope of WCAP–14333.

Date of issuance: October 24, 2006.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No. 177.

Renewed Facility Operating License No. NPF–12: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 20, 2005 (70 FR 75496).

The supplemental letters provided clarifying information that was within the scope of the initial notice and did not change the initial proposed no significant hazards consideration. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 24, 2006.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–259 Browns Ferry Nuclear Plant, Unit 1, Limestone County, Alabama

Date of application for amendment: November 10, 2003 (TS–430), as supplemented by letter dated November 8, 2004.

Brief description of amendment: The amendment incorporates the necessary Technical Specification (TS) changes for the planned replacement of the power range monitoring portion of the existing Neutron Monitoring System with a digital upgrade. These changes expand the current allowable operating domain to the Maximum Extended Load Line Limit region of the power/flow chart.

Date of issuance: September 27, 2006.

Effective date: Date of issuance, to be implemented within 30 days.

Amendment No.: 262.

Facility Operating License No. DPR–33: Amendment revised the TSs.

Date of initial notice in ***Federal Register:*** February 3, 2004 (69 FR 5208). The November 8, 2004, supplement, contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 27, 2006.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: February 6, 2006.

Brief description of amendments: The amendments modify Technical Specification (TS) requirements for inoperable snubbers by adding Limiting Condition for Operation 3.0.7. This operating license improvement was made available by the Nuclear Regulatory Commission (NRC) on May 4, 2005 (70 FR 23252) as part of the consolidated line item improvement process and is consistent with NRC approved Technical Specification Task Force (TSTF) standard TS change TSTF–372, Revision 4.

Date of issuance: October 4, 2006.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos. 312/301.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revised the technical specifications.

Date of initial notice in ***Federal Register:*** March 28, 2006 (71 FR 15487).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 4, 2006.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 30th day of October 2006.

For the Nuclear Regulatory Commission.

Catherine Haney,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–18595 Filed 11–6–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Model License Amendment Request and Safety Evaluation on Technical Specification Improvement Regarding Revision to the Completion Time in STS 3.6.6A, ''Containment Spray and Cooling Systems'' for Combustion Engineering Pressurized Water Reactors Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the staff of the U.S. Nuclear Regulatory Commission (NRC) has prepared a model license amendment request (LAR), model safety evaluation (SE), and model proposed no significant hazards consideration (NSHC) determination related to changes to the completion times (CT) in Standard Technical Specification (STS) 3.6.6A, ''Containment Spray and Cooling Systems,'' contained in NUREG–1432 (Standard Technical Specifications for Combustion Engineering Plants, Rev. 3.0). The proposed changes would revise STS 3.6.6A by extending the CT for one containment spray system (CSS) train inoperable from 72 hours to seven days, and add a Condition, Required Actions and associated CT when one CSS train and one containment cooling system (CCS) train are inoperable. These changes are based on analyses provided in a joint applications report submitted by the Combustion Engineering Owner's Group (CEOG). The CEOG participants in the Technical Specifications Task Force (TSTF) proposed these changes to the STS in Change Traveler No. TSTF–409, Revision 2.

The purpose of these models is to permit the NRC to efficiently process amendments to incorporate these changes into plant-specific STS for Combustion Engineering pressurized water reactors (PWRs). Since TSTF–409 involves a risk-informed approach to extending the CT for one CSS inoperable, the NRC staff must verify that licensees who apply for this TS change have a valid, up-to-date probabilistic risk assessment (PRA) model that employs PRA principles to ensure that public health and safety are maintained when the CSS CT of 7 days is implemented. Therefore, the model LAR contains several conditions requiring licensees to make specific validations of their plant PRA quality and methods. The intent of using the CLIIP to adopt TSTF–409 is to eliminate

the need for additional technical review and requests for additional information (RAIs) on plant-specific amendments. Licensees of nuclear power reactors to which the models apply can request amendments conforming to the models. In such a request, a licensee should confirm the applicability of the model SE and NSHC determination to its plant, and provide the expected supplemental information requested in the model LAR.

DATES: The NRC staff issued a Federal Register Notice (71 FR 18380, April 11, 2006) which provided for public comment a model SE, model LAR, and NSHC determination related to changes to the CT for one CSS train inoperable in STS 3.6.6A. The NRC staff herein provides a revised model SE, revised model LAR, and NSHC determination. The NRC staff can most efficiently consider applications based upon the model LAR, which references the Model SE, if the application is submitted within one year of this **Federal Register** Notice.

FOR FURTHER INFORMATION CONTACT: Tim Kobetz, Mail Stop: O–12H2, Division of Inspection Program Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–1932.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Issue Summary 2000–06, ''Consolidated Line Item Improvement Process [CLIIP] for Adopting Standard Technical Specifications Changes for Power Reactors,'' was issued on March 20, 2000. The CLIIP is intended to improve the efficiency and transparency of NRC licensing processes. This is accomplished by processing proposed changes to the STS in a manner that supports subsequent license amendment applications. The CLIIP includes an opportunity for the public to comment on proposed changes to the STS following a preliminary assessment by the NRC staff and finding that the change will likely be offered for adoption by licensees. The CLIIP includes NRC staff evaluation of any comments received for a proposed change to the STS. In several instances, the staff's evaluation did result in changes to the model LAR and/or model SE. Those licensees opting to apply for the subject changes to TSs are responsible for reviewing the staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. The model LAR shows licensees the expected level of detail that needs to be included in order to adopt TSTF–409, Rev. 2, as well as guidelines for staff review. The NRC has established an internal review plan that designates the appropriate staff and approximate timelines to review plant-specific LARs that reference TSTF–409, Rev. 2. Each amendment application made in response to the notice of availability will be processed and noticed in accordance with applicable NRC rules and procedures.

This notice involves an increase in the allowed CT to restore an inoperable CSS train on Combustion Engineering PWRs. By letter dated November 10, 2003, the CEOG proposed this change for incorporation into the STS as TSTF–409, Revision 2. This change is based on the NRC staff-approved analyses contained in CE NPSD–1045–A, ''Joint Applications Report: Modification to the Containment Spray System, and Low Pressure Safety Injection System Technical Specifications,'' dated March 2000, as approved by the NRC in a SE dated December 21, 1999, accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet (ADAMS Accession No. ML993620241) 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 Public Document Room Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

This notice, along with TSTF–409, Rev. 2, will be posted on the NRC Web site at *http://www.nrc.gov/reactors/operating/licensing/techspecs/changes-issued-for-adoption.html*.

Applicability

This proposed change to revise the Technical Specification (TS) CT for one inoperable CSS train is applicable to Combustion engineering PWRs.

To efficiently process the incoming license amendment applications, the NRC staff requests that each licensee applying for the changes addressed by TSTF–409, Revision 2, use the CLIIP to submit a LAR that adheres to the following model. Any deviations from the model LAR should be explained in the licensee's submittal. When applying, licensees should ensure they address the eight conditions and one regulatory commitment listed in the model LAR and model SE.

The CLIIP does not prevent licensees from requesting an alternative approach, proposing changes without providing the information described in the eight model LAR conditions, or making the requested commitment. Variations from the approach recommended in this notice may, however, require additional review by the NRC staff and may increase the time and resources needed for the review. Significant variations from the approach, or inclusion of additional changes in the LAR, will result in staff rejection of the submittal under the CLIIP. Instead, licensees desiring significant variations and/or additional changes should either submit a LAR that does not claim to adopt TSTF–409, or specifically state in their LAR that they are adopting TSTF–409 without using the CLIIP.

Public Notices

In a notice in the **Federal Register** dated April 11, 2006 (71 FR 18380), the staff requested comment on the use of the CLIIP to process requests to revise the CE PWR TS regarding Containment Spray System completion time extensions as discussed in TSTF–409. In response to this notice, the staff received one set of comments (developed by the PWR Owners Group, and submitted by the Nuclear Energy Institute in a letter dating May 10, 2006 (ADAMs Accession No. ML061570029)). Specific comments on the model LAR and model SE were offered. These comments, along with the NRC staff's responses, are summarized and discussed below.

1. *Comment:* Based on discussions with the author regarding the intent of the ''Model SE,'' [i.e., to allow acceptance review without RAIs while satisfying the CLIIP] it is recommended that additional explanatory information be included. * * * At the very minimum, a clear preamble to the FRN should be provided that places the scope of the FRN in perspective.

Response: The following preamble has been inserted after the first sentence of the second paragraph of the FRN.

> ''Since TSTF–409 involves a risk-informed approach to extending the CT for one CSS inoperable, the NRC staff must verify that licensees who apply for this TS change have a valid, up to date probabilistic risk assessment (PRA) model that employs PRA principles to ensure that public health and safety are maintained when the CSS CT of 7 days is implemented. Therefore, the model LAR contains several conditions requiring licensees to make specific validations of their plant PRA quality and methods. The intent of using the CLIIP to adopt TSTF–409 is to eliminate the need for additional technical review and requests for additional information (RAIs) on plant-specific amendments.''

2. *Comment:* [The FRN] should equally note that existing strategies for

approval are valid and may also be used.

Response: The second to last paragraph of the FRN discusses how a licensee should proceed if it desires to deviate from the approach outlined in the CLIIP. The NRC's position is that, if a licensee is going to submit a LAR that adopts TSTF–409 using the CLIIP, then the plant-specific LAR should provide all the information requested in the model LAR. Any variations/deviations should be explained, and may require additional review by the staff (including issuance of RAIs). Significant variations from the CLIIP methodology should be submitted as normal license amendment requests. The staff has changed the last sentence of second to last paragraph of the FRN to read:

> ''Instead, licensees desiring significant variations and/or additional changes should either submit a LAR that does not claim to adopt TSTF–409, or specifically state in their LAR that they are adopting TSTF–409 without using the CLIIP.''

This will correctly define the scope of the review for the staff when processing an incoming LAR that does not conform to the CLIIP.

3. *Comment:* The essence of the proposed CSS TS change focuses on a single CSS train. Thus, the mention of ACTION G (regarding two CSS trains out-of-service) seems unnecessary.

Response: The staff agrees with this comment. Mention of ACTION G has been removed from Section 4.1 of the model LAR, and Section 3.1 of the model SE.

4. *Comment:* The last paragraph of section 4.2.1 item 1 notes that ''If a zero maintenance PRA model is used * * * in performing these calculations, then the licensee must commit to performing no other maintenance during the extended CSS CT * * *''. This restriction has no technical merit. The risk of maintenance is generated as incremental risks from the baseline. The initial submittal noted that for plants with emergency grade fan coolers (most of the applicants), the actual risk increases as a result of removing a CSS out of service is very low. Furthermore, CSS have very little (if any) overlap with other systems. Because the risk important function of CSSs is to maintain the containment pressure within acceptable limits (and control sump temperature to ensure adequate NPSH for ECCS equipment—a function left out of FRN Section 3), those functions can be accommodated by the redundant CS train or the fan coolers. Furthermore, by using RG 1.177 to support low risk, the risk impact of removal of the CSS for the duration of the 7 day AOT is small. Because plants perform maintenance on a frequent basis, not allowing repair or maintenance on another system (which is likely to be of greater risk importance than the CSS) is unnecessary and likely to have worse risk.

Another unusual aspect of the restriction implies that the incremental risk calculated using zero maintenance conditions is significantly different from that calculated using annualized plant-wide system out-of-service values. While the baseline PRA for zero maintenance is less than the baseline PRA value for nominal maintenance, its impact on incremental risk will be small.

Response: The staff accepts NEI's comment in that it creates a regulatory condition that is overly restrictive to plants using a zero maintenance PRA model. The staff has inserted alternate wording (from RG 1.177 Section 2.3.4. #2) to the last sentence of condition 1 in Section 4.2.1 of the model LAR as follows:

> If the licensee utilizes a ''zero maintenance'' PRA model for the assessment, they should state they are using a ''zero maintenance'' model in the evaluation, and provide a discussion as to the ability of that model to produce comparable results to the ''average maintenance'' assessment.

5. *Comment:* It is understood that documented quantitative external event information for the plants may be limited. However, reference to plant individual plant examination (IPE) and individual plant examination for external events (IPEEE) and the requirements to explain the evolution of the PRA since 1988 as identified in Section in item 4.2.1 part 2.b is unnecessary. Item 2.c requires that the peer review results be discussed along with the overall disposition of relevant facts and observations (F&Os) and item e (which includes an overall determination of the adequacy of the plant specific PRA with respect to this application). These assessment[s] are current and of more importance to the application. Where external events rely on IPEEE vintage information, a discussion/statement of the risk significance of the spray system in mitigating external events should be performed.

Response: The staff agrees that peer reviews of plant-specific PRA are important. However, it is equally important to have an understanding of PRA updates and upgrades since the IPE, IPEEE, and peer reviews were conducted, especially if plant improvements and/or commitments are cited and credited in the analyses as being implemented. Licensees who have given this information in prior submittals may incorporate the information by reference.

6. *Comment:* Section 4.2.1 item 3 requirements on consideration of fire and external events and the associated EXPECTATIONS are too restrictive and do not correspond to safety benefits. The CSS has limited risk overlap with fires or external initiating events. Challenges to power induced by tornadoes, high winds or seismic events have limited importance to the spray system and [are] more appropriate with AOTs associated with AC-power related components. It was our understanding that the intent of this restriction was to assure the regulator that the overall combined plant risk remains below a CDF of 10^{-4} per year (per requirements of RG 1.174). The intent of this section should be clarified. This requirement should be reduced to providing information regarding the reasons underlying low risk associated with this system.

Response: The staff acknowledges that, for many plants, the impact of the CT extension on external event risk will be minimal. If this is the case, the licensee needs to confirm this in its submittal and explain why there is limited overlap.

7. *Comment:* Section 4.2.1 item 3 ACCEPTANCE CRITERIA requires ''combining internal events, internal flooding, external events and shutdown PRA results.'' The requirements for the combination of events should be modified to have the utility provide a technical basis for demonstrating the plant CDF to be less than 10^{-4} per year or has no plant specific vulnerabilities (per SECY–88–20). Requirements for a fully quantified external events (including fire) PRA and shutdown PRA [are] beyond the state of the art. Few plants have all the above. The Fire PRA standard is just undergoing peer review and no shutdown PRA standard has been written. Methods for combining these PRA results [are] also not defined (particularly merging shutdown and ''at power'' PRA results). Instead, it should be noted that the utility may use existing external event evaluations including IPEEE results and qualitative external event assessments, where appropriate, to provide confidence that the overall plant CDF is not within RG 1.174 risk region 1.

Response: The staff is requesting that licensees provide ΔCDF and ΔLERF calculations for those external events for which the licensee has a PRA. For external events for which the licensee does not have a PRA, the licensee will need to confirm there are no vulnerabilities that would indicate that

the total CDF is $>10^{-4}$ or the total LERF is $>10^{-5}$ yr. this stipulation allows the staff to ensure that plans whose ΔCDF or ΔLERF calculation puts them in Region II of either Figure 3 or Figure 4 of RG 1.174 are still within the RG 1.174 Section 2.2.4 acceptance guidelines for total plant risk (CDF and LERF).

With regard to NEI's comments on a fully-quantified external events (including fire) PRA and shutdown PRA being beyond state-of-the-art, the staff believes the wording in the EXPECTATIONS for Section 4.2.1 condition 3 was misinterpreted. The wording has been revised to read ''(quantitatively and/or qualitatively, as appropriate).'' However, the staff notes that while fire and shutdown PRA standards have not yet been endorsed, there are available methods to quantify fire and shutdown PRA. Therefore, the staff does not believe such evaluations are beyond the state of the art. Rather, they are areas where some evaluation is still ongoing.

8. *Comment:* EXPECTATIONS supporting 4.2.1 item 4. The TS is structured to have a revised CT. Once the new CT is adopted the old CT will disappear as a regulatory item. Thus, there is no entry into an extended CSS CT. It is simply an entry into the CT. There are no significant external event interactions and the outage is limited to a single spray train. Therefore, The Tier 2 requirement should be limited to one CSS out of service, which is already governed in the TS with a cautionary note that Maintenance rule or tier 3 guidance to not simultaneously disable both the emergency grade fan coolers and the sprays.

Response: The staff agrees that ''extended CT'' should not be used in the model LAR. Appropriate changes will be made here and in other sections of the FRN where appropriate.

The staff believes that a tier 2 justification by the licensee is warranted with regard to removing one CSS train from service due to scheduled ''preventive'' maintenance for the 7-day period. If there are no risk-significant configurations or risk-significant external event conditions identified in the tier 2 evaluation, then the licensee should include a statement that there are no risk-significant configurations or external event conditions that would preclude them from using the 7-day CT.

9. *Comment:* End of [Section 4.2.1 item 7]. Note that the RGs provide guidelines. Risk values are not rigid thresholds. Thus small deviations to the guidance can be and are somewhat fuzzy to allow for the mathematical uncertainties inherent in these studies.

Response: The staff agrees that RG 1.174 and 1.177 guidelines are not rigid standards, and has revised condition 7 to delete the second paragraph of the EXPECTATIONS section. Note that Condition 5 of the model LAR requires licensees to confirm that their CRMP or associated (a)(4) program meets all aspects of Section 2.3.7.2 or RG 1.177.

Dated at Rockville, Maryland; this 19th day of October 2006.

For the Nuclear Regulatory Commission.

Timothy J. Kobetz,

Branch Chief, Technical Specifications Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation.

FOR INCLUSION ON THE TECHNICAL SPECIFICATION WEB PAGE THE FOLLOWING EXAMPLE OF A LICENSE AMENDMENT REQUEST (LAR) WAS PREPARED BY THE NRC STAFF TO FACILITATE THE ADOPTION OF TECHNICAL SPECIFICATIONS TASK FORCE (TSTF) TRAVELER TSTF–409, REVISION 2 ''CONTAINMENT SPRAY SYSTEM COMPLETION TIME EXTENSION (CE NPSD–1045–A).'' THE MODEL PROVIDES THE EXPECTED LEVEL OF DETAIL AND CONTENT FOR A LAR TO ADOPT TSTF–409, REVISION 2. LICENSEES REMAIN RESPONSIBLE FOR ENSURING THAT THEIR PLANT-SPECIFIC LAR FULFILLS THEIR ADMINISTRATIVE REQUIREMENTS AS WELL AS NRC REGULATIONS.

U.S. Nuclear Regulatory Commission
Document Control Desk
Washington, DC 20555

SUBJECT: [PLANT NAME] APPLICATION FOR TECHNICAL SPECIFICATION IMPROVEMENT TO EXTEND THE COMPLETION TIME FOR CONTAINMENT SPRAY SYSTEM INOPERABILITY IN ACCORDANCE WITH TSTF–409, REVISION 2

Dear Sir or Madam:

In accordance with the provisions of Section 50.90 of Title 10 of the Code of Federal Regulations (10 CFR 50.90), [LICENSEE] is submitting a request for an amendment to the technical specifications (TS) for [PLANT NAME, UNIT NOS.].

The proposed changes would revise TS 3.6.6A, ''Containment Spray and Cooling Systems,'' by extending from 72 hours to seven days the completion time (CT) to restore an inoperable containment spray system (CSS) train. In addition, a Condition would be added to the TS to allow one CSS train and one containment cooling system (CCS) train to be inoperable for a period of 72 hours.

The changes are consistent with NRC-approved Industry Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–409, Revision 2, ''Containment Spray System Completion Time Extension (CE NPSD–1045–A).''

Enclosure 1 provides a description and assessment of the proposed changes and confirmation of applicability. Enclosure 2 provides the existing TS pages marked-up to show the proposed changes. Enclosure 3 provides the existing TS Bases marked-up to reflect the proposed changes (for information only). Final TS Bases will be provided in a future update to the Updated Final Safety Analysis Report (UFSAR) in accordance with the Bases Control Program. Attachments 1 through 8 provide the discussions of [LICENSEE'S] evaluations and supporting information with regard to the conditions stipulated in Section 4.2.1 of Enclosure 1.

[LICENSEE] requests approval of the proposed license amendment by [DATE], with the amendment being implemented [BY DATE OR WITHIN X DAYS]. in accordance with 10 CFR 50.91, a copy of this application, with enclosures, is being provided to the designated [STATE] Official.

I declare under penalty of perjury under the laws of the United States of America that I am authorized by [LICENSEE] to make this request and that the foregoing is true and correct. [Note that request may be notarized in lieu of using this oath or affirmation statement]. If you should have any questions regarding this submittal, please contact [ ].

Sincerely,
Name, Title

Enclosures:
1. Description and Assessment of Proposed Changes
2. Proposed Technical Specification Changes
3. Proposed Technical Specification Bases Changes (if applicable)

Attachments:
1. Licensee's supporting information for condition 1
2. Licensee's supporting information for condition 2
3. Licensee's supporting information for condition 3
4. Licensee's supporting information for condition 4
5. Licensee's supporting information for condition 5
6. Licensee's supporting information

for condition 6
7. Licensee's supporting information for condition 7
8. Licensee's supporting information for condition 8

cc:
NRR Project Manager
Regional Office
Resident Inspector
State Contact
ITSB Branch Chief

1.0 Description

The letter is a request to amend Operating License(s) [LICENSE NUMBER(S)] for [PLANT/UNIT NAME(S)].

The proposed changes would revise Technical Specification (TS) 3.6.6A, ''Containment Spray and Cooling Systems,'' by extending from 72 hours to seven days the completion time (CT) to restore an inoperable containment spray system (CSS) train to operable status, and would add a Condition describing the required action and CT when one CSS train and one containment cooling system (CCS) train are inoperable.

The changes are consistent with NRC approved Industry Owner's Group Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler TSTF–409, Revision 2 (Rev. 2), ''Containment Spray System Completion Time Extension (CE NPSD–1045–A).'' TSTF–409, Rev. 2 was approved by the NRC on [DATE].

2.0 Proposed Change

Specifically, the proposed revision extends the CT (or allowed outage time) that one CSS train is permitted to remain inoperable from 72 hours to seven days based on Reference 1, as accepted by, and subject to the limitations specified in, Reference 2. TSTF–409, Rev. 2 states that the longer CT will enhance overall plant safety by avoiding potential unscheduled plant shutdowns and allowing greater availability of safety significant components during shutdown. In addition, TSTF–409, Rev. 2 states that this extension provides for increased flexibility in scheduling and performing maintenance and surveillance activities in order to enhance plant safety and operational flexibility during lower modes of operation.

The revision also adds a Condition to allow one CSS train and one CCS train to be inoperable for up to 72 hours. Since Reference 1 did not evaluate the concurrent inoperabilities of one CSS train and one CCS train, the CT for this Condition was limited to 72 hours.

[LICENSEE] also proposes to make changes to the supporting TS Bases in accordance with TSTF–409, Rev. 2. Changes to the Bases include supporting information justifying the addition of the Condition for one CSS train and one CCS train inoperable. The Bases changes also include a reviewer's note that requires [LICENSEE] to adopt Reference 1 and meet the requirements of References 1 and 2 prior to utilizing the 7-day CT for one inoperable CSS. Finally, a reference to Reference 1 is added to the Bases. Markups of the TS Bases are provided in enclosure 3. Changes to the Bases will be implemented in accordance with [LICENSEE's] bases control program.

In summary, [LICENSEE] proposes to extend the CT for one inoperable CSS train from 72 hours to 7 days based on Reference 1, and add a Condition to allow one CSS train and one CCS train to be inoperable for up to 72 hours.

3.0 Background

The function of the containment heat removal systems under accident conditions is to remove heat from the containment atmosphere, thus maintaining the containment pressure and temperature at acceptably low levels. The systems also serve to limit offsite radiation levels by reducing the pressure differential between the containment atmosphere and the external environment, thereby decreasing the driving force for fission product leakage across the containment. The two containment heat removal systems are the CCS and the CSS. The CCS fan coolers are designed to operate during both normal plant operations and under loss-of-coolant accident [LOCA] or main steam line break (MSLB) conditions. The CSS is designed to operate during accident conditions only.

The heat removal capacity of the CCS and CSS is sufficient to keep the containment temperature and pressure below design conditions for any size break, up to and including a double-ended break of the largest reactor coolant pipe. The systems are also designed to mitigate the consequences of any size break, up to and including a double-ended break of a main stream line. The CCS and CSS continue to reduce containment pressure and temperature and maintain them at acceptable levels post-accident.

The CCS and CSS at [PLANT NAME] each consist of [Substitute plant-specific configuration if it differs from the following description] two redundant loops and are designed such that a single failure does not degrade their ability to provide the required heat removal capability. Two of four containment fan coolers and one CSS loop are powered from one safety-related bus. The other two containment fan coolers and CSS loop are powered from another independent safety-related bus. The loss of one bus does not affect the ability of the containment heat removal systems to maintain containment temperature and pressure below the design values in a post-accident mode.

The [PLANT NAME] CSS consists of [Substitute plant-specific configuration if it differs from the following description] two independent and redundant loops each containing a spray pump, shutdown heat exchanger, piping, valves, spray headers, and spray nozzles. It has two modes of operation, which are:

1. The injection mode, during which the system sprays borated water from the refueling water tank (RWT) into the containment, and
2. The recirculation mode, which is automatically initiated by the recirculation actuation signal (RAS) after low level is reached in the RWT. During this mode of operation, the safety injection system (SIS) sump provides suction for the spray pumps.

Containment spray is automatically initiated by the containment spray actuation signal coincident with the safety injection actuation signal and high containment pressure signal. If required, the operator can manually activate the system from the main control room.

Each CSS pump, together with a CCS loop, provides the flow necessary to remove the heat generated inside the containment following a LOCA or MSLB. Upon system activation, the pumps are started and the borated water flows into the containment spray headers. When low level is reached in the RWT, sufficient water has been transferred to the containment to allow for the recirculation mode of operation. Spray pump suction is automatically realigned to the SIS sump upon a RAS.

During the recirculation mode, the spray water is cooled by the shutdown heat exchangers prior to discharge into the containment. The shutdown heat exchangers are cooled by the component cooling water system. Post-LOCA pH control is provided by [Substitute plant-specific configuration if it differs from the following description] trisodium phosphate dodecahydrate, which is stored in stainless steel baskets located in the containment near the SIS sump intake.

The longer CT for an inoperable CSS train will enhance overall plant safety by avoiding potential unscheduled plant

shutdowns and allowing greater availability of safety significant components during shutdown. In addition, this extension provides for increased flexibility in scheduling and performing maintenance and surveillance activities in order to enhance plant safety and operational flexibility during lower modes of operation.

4.0 Technical analysis

[LICENSEE] has reviewed References 1 and 2, as well as TSTF–409, Rev. 2, and the model SE published on [DATE] ([] FR []) as part of the CLIIP Notice of Availability. [LICENSEE] has applied the methodology in Reference 1 to develop the proposed TS changes. [LICENSEE] has also concluded that the justifications presented in TSTF–409, Rev. 2 and the model SE prepared by the NRC staff are applicable to [PLANT NAME], and justify this amendment for the incorporation of changes to the [PLANT NAME] TS.

In determining the suitability and safety impact of its adoption of TSTF–409, Rev. 2, [LICENSEE] analyzed the effect of increasing the CT for one CSS train to remain out of service using both traditional engineering considerations and probabilistic risk assessment (PRA) methods.

4.1 Traditional (Deterministic) Engineering Analysis

The functions and operation of the CSS and CCS were described in Section 3.0 of this application. Based on a review of the design-basis requirements for the CSS, [LICENSEE] concluded that the loss of one CSS train is well within the design-basis analyses. This conclusion is based on the fact that each CSS pump, together with a CCS loop, provides the flow necessary to remove the heat generated inside the containment following a LOCA or MSLB. Therefore, the combination of one CSS pump and one CCS loop can carry out the design functions of maintaining the containment pressure and temperature at acceptably low levels following a design-basis accident (DBA), and limiting offsite radiation levels by reducing the pressure differential between the containment atmosphere and the external environment, thereby decreasing the driving force for fission product leakage across the containment.

The plant status with one CSS train and one CCS train inoperable is covered by TS 3.6.6A, ACTION [D], which states:

''[With] one containment spray and one containment cooling train inoperable, restore containment spray train to OPERABLE status within 72 hours, or restore containment cooling train to OPERABLE status within 72 hours.''

ACTION [D] ensures that the iodine removal capabilities of the CSS are available, along with 100 percent of the heat removal needs after an accident. The supporting analyses performed in Reference 1 did not evaluate the concurrent inoperabilities of one CSS train and one CCS train, therefore, the current CT of 72 hours is retained in Condition [D]. The 72 hour Completion Time was developed taking into account the redundant heat removal capabilities afforded by combinations of the CSS and CCS, the iodine removal function of the CSS, and the low probability of a DBA occurring during this period.

4.2 Probabilistic Risk Assessment Evaluation

[LICENSEE] evaluated the proposed CT extension for the CSS using Reference 3 and Reference 4. This is the same methodology that the NRC staff used in Reference 2. The Key Principles of A Risk-Informed Integrated Decisionmaking Process listed in Reference 3 are as follows:

Principle I: The proposed change meets the current regulations.

Principle II: The proposed change is consistent with the defense-in-depth philosophy.

Principle III: The proposed change maintains sufficient safety margin.

Principle IV: When the proposed change results in an increase in core damage frequency or risk, the increase should be small and consistent with the Commission's Safety Goal Policy Statement.

Principle V: The impact of the proposed change should be monitored using performance measurement strategies.

In Reference 2, the NRC staff found, and [LICENSEE] agrees, that in risk-informed TS CT applications, Principle I is met, since regulations do not require specific CTs, but, rather, require ''remedial actions'' when an LCO cannot be met. Additionally, in its analysis of Principle III, the NRC staff found, and [LICENSEE] agrees, that the proposed CT extension maintains sufficient safety margins, For [PLANT NAME], the loss of one CSS train is well within the plant's design basis.

In Reference 2, the NRC staff determined that the intent of Principles II, IV, and V would be met by a three-tiered approach to evaluate the plant-specific risk impact associated with the proposed TS changes, consistent with the requirements of Reference 4. The first tier evaluates the plant-specific PRA model and the impact of the proposed CT extension on plant operational risk. The second tier addresses the need to preclude potentially high risk configurations by identifying the need for any additional constraints or compensatory actions that, if implemented, would avoid or reduce the probability of a risk-significant configuration during the time when one CSS train is out of service. The third tier evaluates [LICENSEE'S] proposed Configuration Risk Management Program (CRMP) to ensure that the applicable plant configuration will be appropriately assessed from a risk perspective before entering into or during the proposed CT.

In addition, the NRC staff determined in Reference 2, that the risk analysis methodology and approach used by the CEOG to estimate the risk impact of increasing the CT were reasonable. For most plants that participated in the joint application report, the NRC staff found that the risk impact was shown to be consistent with the acceptance guidelines for change in core damage frequency (ΔCDF), change in large early release frequency (ΔLERF), incremental conditional core damage probability (ICCDP), and incremental conditional large early release probability (ICLERP) specified in References 3 and 4 and Chapters 19.0 and 16.1 of Reference 5. However, not all Combustion Engineering (CE) plants participated in the joint application report, and the estimated risk impacts for some plans exceeded the Reference 3 and/or Reference 4 acceptance guidelines, which would require additional justifications and/or compensatory measures to be provided for these plants to be determined to have acceptable risk impacts.

In addition, the NRC staff found that the Tier 2 and Tier 3 evaluations, as described in Reference 4, could not be approved generically since they were not complete, which would require that each individual plant-specific license amendment seeking adoption of TSTF–409, Rev. 2 would need to include an assessment with respect to the Tier 2 and Tier 3 principles of Reference 4.

4.2.1 Conditions and Supporting Information

The following conditions are provided to support adoption of TSTF–409, Rev. 2 by [PLANT NAME]. Responses to the conditions are contained in Attachments 1 through 8 to this application: [NOTE: Licensees who cannot meet the Expectation and Acceptance Criteria listed in these conditions, or choose not to submit the associated information, should not

submit an application to adopt TSTF–409, Rev. 2 under the CLIIP.]

1. As shown in Attachment 1, the plant-specific Tier 1 information associated with extending the CSS CT meets the acceptance guidelines of References 3 and 4 associated with ΔCDF, ΔLERF, ICCDP, and ICLERP.

[**EXPECTATIONS/ACCEPTANCE CRITERIA:** the licensee's submittal must provide the ΔCDF, ΔLERF, ICCDP, and ICLERP values related to the CSS 7-day CT and confirm that these values meet the associated acceptance guidelines of References 3 and 4 as no more than a small risk increase (i.e., are in Region II or III of the acceptance guidelines figures). The licensee should utilize an ''average maintenance'' PRA model for this assessment. If the licensee utilizes a ''zero maintenance'' PRA model for the assessment, they should state they are using a ''zero maintenance'' model in the evaluation, and provide a discussion as to the ability of that model to produce comparable results to the ''average maintenance'' assessment.]

2. As shown in Attachment 2, the technical adequacy (quality) of [PLANT NAME'S] plant-specific PRA is acceptable for this application in accordance with the guidance provided in Reference 3. Specifically, the supporting information addresses the following areas:

a. Justification that the plant-specific PRA reflects the as-built, as-operated plant.

b. Discussion of plant-specific PRA updates and upgrades since the individual plant examination (IPE), individual plant examination of external events (IPEEE), and subsequent peer reviews and self-assessment. Reference to past submittals discussing this information is acceptable.

c. Discussion of plant-specific PRA peer reviews and/or self-assessments performed, their overall conclusions, any facts and observations (F&Os) applicable to this application, and the licensee evaluation and resolution (e.g., by implementing model changes and/or sensitivity studies) of these F&Os to demonstrate the conclusions of the plant-specific analyses for this application are not adversely impacted (i.e., continued acceptability of the proposed extension of the CSS CT).

d. Description of the licensee's plant-specific PRA configuration control (quality assurance) program and associated procedures.

e. Overall determination of the adequacy of the plant-specific PRA with respect to this application.

[**EXPECTATION:** The licensee's submittal must describe the scope of the plant-specific PRA and must justify its technical adequacy (quality) for this application in accordance with the guidance provided in Reference 3. Specifically, the supporting information must address each area in sufficient detail as shown in the following **ACCEPTANCE CRITERIA:**

a. The licensee must provide a justification that confirms that the plant-specific PRA reflects the as-built, as-operated plant. This should include a description of the licensee's data and model update process, and the frequency of these activities. The licensee should also describe how the plant/corporate PRA staff are involved in (and/or made aware of) plant and operational/procedural modifications.

b. The licensee must provide a summary description of the plant-specific PRA updates and upgrades since the IPE and peer review of their plant and confirm that the changes identified during the IPEEE have been implemented or otherwise dispositioned.

c. The licensee must discuss their plant-specific PRA peer reviews and/or any self-assessments performed (especially noting those conducted per the Nuclear Energy Institute (NEI) industry peer review guidelines and American Society of Mechanical Engineers (ASME) PRA Standard), their overall conclusions, any A&B level F&Os applicable to this application, and the licensee's evaluation and resolution (e.g., by implementing model changes and/or sensitivity studies) of these A&B level F&Os to demonstrate the conclusions of the plant-specific analyses for this application are not adversely impacted (i.e., continued acceptability of the proposed extension of the CSS CT).

d. The licensee must describe their plant-specific PRA configuration control (quality assurance) program and associated procedures.

e. The licensee must make an overall determination of the adequacy of their plant-specific PRA, confirming it is adequate with respect to this application.]

3. Attachment 3 provides supporting information verifying that the plant risk impact associated with external events (e.g., fires, seismic, tornados, high winds, etc.) does not adversely impact or has no impact on the conclusions of the plant-specific analyses for this application and that the overall combined plant CDF and LERF are expected to be within the acceptance guidelines as identified in References 3 and Reference 4 (i.e., total CDF <1E–4/year and total LERF <1E–5/year)

[**EXPECTATIONS:** The licensee's submittal must discuss the plant risks associated with external events and specifically identify (quantitatively and/or qualitatively, as appropriate) that the impact of CSS train CT extension on the risks associated with external events is small. The NRC staff acknowledges that any increase in the external event risk associated with the CSS train CT extension should be minimal. The licensee must address this impact and discuss why the risk overlap with external events (including internal fires) is negligible. Key insights from the IPEEE screening or quantitative approaches may be used to support qualitative arguments.

If the licensee has performed updated analyses of an external event since the staff review and acceptance of their IPEEE, and a quantitative PRA demonstration is used to support the submittal, the licensee must describe the significant changes involved in their updated analyses and the impact of these changes on plant risk associated with this external event and with respect to this application.

ACCEPTANCE CRITERIA: For the NRC staff to conclude the quantified risk associated with the extension request is acceptable, the total CDF and LERF values must meet Reference 3 and Reference 4 acceptance guidelines. For external events for which the licensee has a PRA, and the licensee provides those risk values (i.e., CDF and LERF) and risk metrics (i.e., ΔCDF, ΔLERF, ICCDP, and ICLERP) associated with the specifically analyzed external events, the licensee must also provide the total ''at-power'' plant risk and total ''at-power'' change in risk due to all PRA-analyzed contributors (combining internal events, internal flooding, internal fires, and external events. Results may be provided as a summation of values from separate PRA analyses or as a result of an integrated analysis (using a common PRA model for all contributors) or a combination of the above.

For external events for which the licensee does not have a PRA (and it is not screened out as above), but rather relies on a non-PRA method (e.g., seismic margins analysis (SMA) or fire-induced vulnerability evaluation (FIVE)), to determine if the plant risk is acceptable, the licensee must confirm for this application that there were and still are either no vulnerabilities or outliers associated with these external events, or confirm that any vulnerabilities or outliers that were identified in their documented analyses (most likely in their IPEEE) have been resolved and, as needed, the appropriate

plant/procedural modifications have been implemented as described in their documented analyses.]

4. Supporting information is provided in Attachment 4, consistent with the evaluation summary and conclusions (Sections 7 and 8) provided in Reference 2, in which licensees discuss implementation of procedures that prohibited entry into a 7-day CSS CT for scheduled maintenance purposes if external event conditions or warnings (e.g., severe weather warnings for ice, tornados, high winds, etc.) are in effect or confirm that these external events do not impact the submittal. [LICENSEE'S] discussion confirms that [PLANT NAME'S] procedures include compensatory measures and normal plant practices that help avoid potentially high risk configurations during the proposed extension of the CSS CT. This supporting information must also address the Tier 2 aspects of Reference 4.

[**EXPECTATIONS:** The licensee's submittal must discuss (including licensee commitments related to) implementation of procedures that prohibit entry into a 7-day CSS CT for scheduled maintenance purposes if external event conditions or warnings are in effect. If the licensee does not want to implement this prohibition for specific severe weather conditions or warnings, the licensee must explicitly identify these event conditions/warnings and provide a justification for not including them. If there are no risk significant configurations or risk significant external event conditions identified in the Tier 2 evaluation, then the licensee should include a statement that there are no risk significant configurations that would preclude them from using a 7-day CT.

The licensee must also confirm that its procedures include compensatory measures and normal plant practices that help avoid potentially high risk configurations during the proposed extension of the CSS train CT. This supporting information must also address the Tier 2 aspects of Reference 4. The Tier 2 evaluation is meant to be an early evaluation (at the license submittal stage) to identify and preclude potentially high-risk plan configurations that could result if equipment, in addition to that associated with the proposed license amendment, is taken out of service simultaneously, or if other risk-significant operational factors, such as concurrent system or equipment testing, are also involved.

ACCEPTANCE CRITERIA: The Tier 2 evaluation needs to identify, as part of the licensee's submittal, potentially high-risk plant configurations associated with the CSS train CT extension that need to be precluded, if any, and identify how this is implemented (i.e., typically these aspects result in licensees establishing compensatory measures/commitments to ensure these configurations are precluded). If, in conducting the evaluation, the licensee identifies no high-risk plant configurations, then the licensee needs to explicitly state this fact.]

5. Attachment 5 provides supporting information, consistent with the evaluation summary and conclusions (Sections 7 and 8) provided in Reference 2, that describes the plant-specific risk-informed CRMP to assess the risk associated with the removal of equipment from service during the 7-day CSS CT. If the licensee utilizes the Maintenance Rule (a)(4) program to evaluate the risk significance of configurations, it should state so in its submittal. In this description, [LICENSEE] confirms that the program provides the necessary assurances that appropriate assessments of plant risk configurations are sufficient to support the proposed CSS CT extension request. This supporting information also addresses the Tier 3 aspects of Reference 4.

[**EXPECTATIONS/ACCEPTANCE CRITERIA:** The licensee's submittal must describe its CRMP or associated (a)(4) program (as appropriate), including how it reflects the current plant PRA model (specifically identifying any deviations and simplifications in the CRMP model from the plant-specific PRA model) and how the CRMP is updated to remain consistent with the plant-specific PRA.

The licensee's submittal must also describe how the CRMP or associated (a)(4) program provides the necessary assurances that appropriate assessments of plant risk configurations are sufficient to support the proposed CT extension request for the CSS.

Finally, the licensee's submittal must address the Tier 3 aspects of Reference 4, including he description of the CRMP, and must confirm that its CRMP or associated (a)(4) program meets all aspects of Section 2.3.7.2 of Reference 4, specifically describing how its program meets each of the four Key Components identified in this Section. The Tier 3 evaluation ensures that the CRMP or associated (a)(4) program is adequate when maintenance is about to commence, as opposed to the early (submittal stage) evaluation performed for Tier 2.]

6. Attachment 6 provides supporting information, consistent with the evaluation summary (Section 7) provided in Reference 2, describing the relationship between components of the CSS and the shutdown cooling system (SDCS). For plants where components of the two systems may be used as backup to the other, the licensee must either confirm that Tier 2 conditions exist in the licensee's CRMP or associated (a)(4) program that will not allow ''at power'' maintenance of the CSS and SDCS at the same time or that the risk significance of such maintenance configurations is low. If the CSS and SDCS have backup components, the plant should also describe how this backup capability is considered as part of the plant's shutdown operations program (SOP). If this backup feature is not considered when one train of the SDCS is in maintenance or otherwise unavailable, it should be stated in the licensee's application.

[**EXPECTATION:** The licensee's submittal must describe the relationship/interfaces between the CSS and SDCS.

ACCEPTANCE CRITERIA: If the SDCS can be used as a backup to the CSS, then the licensee must confirm that ''at power'' maintenance of the CSS and SDCS will not be allowed at the same time and describe how this is controlled (e.g., specifically identified in the CRMP as a configuration that is not allowed) or provide justification that the risks associated with a simultaneous ''at-power'' outage of one SDCS train and one CSS train is small. If the SDCS cannot be used (and is not credited) as a backup to CSS, then the licensee needs to explicitly state this fact.

If CSS pumps can be used as a backup to the SDCS pumps, then the licensee must confirm that at least one CSS pump is required to be operable when maintenance of the CSS is performed in lower modes of operation (consistent with the plant's Technical Specifications) and must describe how this is controlled or demonstrate that the SOP provides adequate risk management for that configuration. If CSS pumps cannot be used (and are not credited) as a backup to SDCS pumps in lower modes of operation, then the licensee needs to explicitly state this fact.]

7. Attachment 7 provides supporting information confirming that the licensee's Maintenance Rule program includes the ability to compute ICDP (incremental core damage probability), and ILERP (incremental large early release probability).

[**EXPECTATIONS/ACCEPTANCE CRITERIA:** The licensee must confirm that their CRMP quantitative model (e.g., model used to provide quantitative assessments in support of 10 CFR 50.65 (a)(4)) calculates ICDP and ILERP, and

that their CRMP quantitative model (e.g., model used to provide quantitative assessment in support of 10 CFR 50.65 (a)(4)) explicitly models the CSS or has been modified to include the CSS, which will be used whenever CSS components are made unavailable.

8. Attachment 8 provides information addressing how plant-specific systems, structures and components (SSC) are monitored and assessed at the plant under the Maintenance Rule (i.e. 10 CFR 50.65). Maintenance Rule unavailability and unreliability targets for CSS are also provided. These targets will be monitored in accordance with provisions of the Maintenance Rule.

[**EXPECTATIONS/ACCEPTANCE CRITERIA:** The licensee must describe how plant-specific SSC reliability and availability are monitored and assessed at the plant under the Maintenance Rule (i.e., 10 CFR 50.65) to confirm that performance continues to be consistent with the analyses used to justify the 7-day CT. In providing this description, the licensee should also indicate how it periodically assesses previous risk-informed licensing action decisions to ensure that these decisions remain valid (i.e., continue to meet the Reference 3 and Reference 4 acceptance guidelines) for the current plant operations and plant-specific PRA and what actions it takes if a previously-approved risk-informed licensing action decision is determined to no longer meet these acceptance guidelines.]

4.2.2 Regulatory Commitment

The Reference 4 Tier 3 program ensures that, while the plant is following the TS ACTIONS associated with a 7-day CT for restoring an inoperable CSS to operable status, additional activities will not be performed that could further degrade the capabilities of the plant to respond to a condition that the inoperable CSS is designed to mitigate and, as a result, increase plant risk beyond that determined by the Reference 1 analyses. [LICENSEE's] implementation of Reference 4 Tier 3 guidelines generally implies the assessment of risk with respect to CDF. However, the proposed CSS 7-day CT impacts accident sequences that can be mitigated following core damage and, consequently, impacts LERF as well as CDF. Therefore, [LICENSEE] has enhanced its CRMP, [OPTIONAL: as implemented under 10 CFR 50.65(a)(4), the Maintenance Rule,] to include a LERF assessment to support this application.

5.0 Regulatory Analysis

5.1 No Significant Hazards Consideration

[LICENSEE] has reviewed the proposed no significant hazards consideration determination published in the **Federal Register** on [DATE] ([ ] FR [ ]) as part of the CLIP. [LICENSEE] has concluded that the proposed determination presented in the notice is applicable to [PLANT NAME] and the determination is hereby incorporated by reference to satisfy the requirements of 10 CFR 50.91(a).

5.2 Applicable Regulatory Requirements/Criteria

Based on its answers to the Section 4.2.1 questions provided in Attachments 1 through 8 to this application [LICENSEE] determines is based on the following:

1. The traditional engineering evaluation reveals that the loss of one CSS train is well within [PLANT NAME's] design basis analyses. Key principles 1,2,3, and 5 in Section 2 of Reference 3 are met.

2. By meeting the conditions identified in Section 4.2.1, [LICENSEE] believes that its PRA model is acceptable for this application and also concludes that there is minimal impact of the CT extensions for the CSS system on plant operational risk (Tier 1 evaluation).

3. By meeting the conditions identified in Section 4.2.1, [LICENSEE] will ensure that its implementation will identify potentially high risk configurations and the need for any additional constraints or compensatory actions that, if implemented, would avoid or reduce the probability of a risk-significant configuration (Tier 2 evaluation), or state that no Tier 2 limitations have been identified.

4. By meeting the conditions identified in Section 4.2.1, [PLANT NAME] will ensure that its risk-informed CRMP will satisfactorily assess the risk associated with the removal of equipment from service during the proposed CSS CT (Tier 3 evaluation) and the CRMP and plant risk will be managed by plant procedures, including implementation and monitoring of SSCs (CSS).

In conclusion, based on the consideration discussed above, (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public.

6.0 Environmental Consideration

[LICENSEE] has reviewed the environmental evaluation included in the model safety evaluation as pat of the CLIIP. [LICENSEE] concluded that the staff's findings presented in that the evaluation are applicable to [PLANT NAME] and the evaluation is hereby incorporated by reference for this application.

7.0 References

[Licensee should include an applicable list of references, including but not limited to]

1. Joint Applications Report: Modification to the Containment Spray System, and Low Pressure Safety Injection System Technical, CE Owners Group, CE NPSD–1045, March 2000.

2. Safety Evaluation by the Office of Nuclear Reactor Regulation Related to CE Owners Group CE–NPSD–1045, ''Joint Application Report, Modification to the Containment Spray System, and the Low Pressure Safety Injection System Technical Specifications, December 21, 1999.''

3. USNRC Regulatory Guide 1.174, ''An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis,'' Revision 1, November 2002.

4. USNRC Regulatory Guide 1.177, ''An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications,'' August 1998.

5. NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants,'' June 1996.

PROPOSED TECHNICAL SPECIFICATION CHANGES (MARK-UP)

Enclosure 2

CHANGES TO TS BASES

Enclosure 3

CONDITION (1)
[LICENSEE'S] EVALUATION AND SUPPORTING INFORMATION

	Attachemnt 1
CONDITION (2) [LICENSEE'S] EVALUATION AND SUPPORTING INFORMATION	Attachemnt 2
CONDITION (3) [LICENSEE'S] EVALUATION AND SUPPORTING INFORMATION	Attachemnt 3
CONDITION (4) [LICENSEE'S] EVALUATION AND SUPPORTING INFORMATION	Attachemnt 4
CONDITION (5) [LICENSEE'S] EVALUATION AND SUPPORTING INFORMATION	Attachemnt 5
CONDITION (6) [LICENSEE'S] EVALUATION AND SUPPORTING INFORMATION	Attachemnt 6
CONDITION (7) [LICENSEE'S] EVALUATION AND SUPPORTING INFORMATION	Attachemnt 7
CONDITION (8) [LICENSEE'S] EVALUATION AND SUPPORTING INFORMATION	Attachemnt 8

MODEL SAFETY EVALUATION

U.S. Nuclear Regulatory Commission

Office of Nuclear Reactor Regulation

Consolidated Line Item Improvement

Technical Specification Task Force TSTF–409, Revision 2

''Containment Spray System Completion Time Extension''

1.0 Introduction

By letter to the Nuclear Regulatory Commission (NRC, Commission) dated [DATE] (Agencywide Documents Access and Management System (ADAMS) Accession Number MLXXXXXXXXX), [LICENSEE] (the licensee) requested changes to the Technical Specifications (TSs) for [PLANT NAME]. The proposed changes would revise TS 3.6.6A, ''Containment Spray and Cooling Systems,'' by extending from 72 hours to seven days the completion time (CT) to restore an inoperable containment spray system (CSS) train to operable status, and would add a Condition describing the required action and CT when one CSS train and one containment cooling system (CCS) train are inoperable.

The changes are based on Technical Specification Task Force (TSTF) Change Traveler, TSTF–409, Revision 2 (Rev.), ''Containment Spray System Completion Time Extension (CE NPSD–2045–A)'' and associated TS Bases. TSTF–409, Rev. 2, submitted to the NRC by the TSTF in a letter dated November 10, 2003 (ADMS Accession Number MLO33280006), was approved by the NRC on [DATE].

TSTF–409, Rev. 2 is based on Combustion Engineering Owner's Group (CEOG) Joint Application Report CE NPSD–1045–A, ''Joint Applications Report for Modifications to the Containment Spray System Technical Specifications,'' dated March 2000 (Reference 1), as accepted by, and subject to the limitations specified in, the associated NRC safety evaluation (SE), dated December 212, 1999 (ADMS Accession Number ML993620241) (Reference 2).

In TSTF–409, Rev. 2, the CEOG states that the longer CT for restoring an inoperable CSS train to operable status will enhance overall plant safety by avoiding potential unscheduled plant shutdowns and allowing greater availability of safety significant components during shutdown. In addition the CEOG states that this extension provides for increased flixibility in scheduling and performing maintenance and surveillance activities in order to enhance plant safety and operational flexibility during lower modes of operation.

2.0 Regulatory Evaluation

Since the mid-1980's, the NRC has been reviewing and granting improvements to TS that are based, at least in part, on probabilistic risk assessment (PRA) insights. In its final policy statement on TX improvements dated July 22, 1993 (58 FR 39132), the NRC stated that it:

> * * * expects that licensees, in preparing their Technical Specification related submittals, will utilize any plant-specific PSA [probabilistic safety assessment] [1] or risk survey and any available literature on risk insights and PSAs * * * Similarly, the NRC staff will also employ risk insights an PSAs in evaluating Technical Specifications related submittals. Further, as a part of the Commission's ongoing program of improving Technical Specifications, it will continue to consider methods to make better use of risk and reliability information for defining future generic Technical Specification requirements.

The NRC reiterated this point when it issued the revision to 10 CFR 50.36, ''Technical Specifications,'' in July 1995. In August 1995, the NRC adopted a final policy statement on the use of PRA methods in nuclear regulatory activities that encouraged greater use of PRA to improve safety decision-making and regulatory efficiency. The PRA policy statement included the following points:

1. The use of PRA technology should be increased in all regulatory matters to the extent supported by the state-of-the-art in PRA methods and data, and in a manner that complements the NRC's deterministic approach and supports the NRC's traditional defense-in-depth philosophy.

2. PRA and associated analyses (e.g., sensitivity studies, uncertainty analyses, and importance measures) should be used in regulatory matters; where practical within the bounds of the state-

[1] PSA and PRA are used interchangeably herein.

of-the-art, to reduce unnecessary conservatism associated with current regulatory requirements.

3. PRA evaluations in support of regulatory decisions should be as realistic as practicable and appropriate supporting data should be publicly available for review.

In March 1998, the CEOG submitted a joint applications report for the NRC staff's review entitled, ''Joint Applications Report for Modifications to the Containment Spray System and Low Pressure Safety System Technical Specifications.'' The NRC review accepting this joint applications report for referencing in license applications for Combustion Engineering (CE) plants, including appropriate exclusions, conditions, and limitations, is documented in Reference 2. The final, NRC-approved joint applications report, (Reference 1) is dated March 2000.

3.0 Technical Evaluation

The NRC staff evaluated the licensee's proposed amendment to extend the TS CT for one CSS train out of service from 72 hours to seven days using insights derived from traditional engineering considerations and the use of PRA methods to determine the safety impact of extending the CT.

3.1 Traditional Engineering Evaluation

The function of the containment heat removal systems under accident conditions is to remove heat from the containment atmosphere, thus maintaining the containment pressure and temperature at acceptably low levels. The systems also serve to limit offsite radiation levels by reducing the pressure differential between the containment atmosphere and the external environment, thereby decreasing the driving force for fission product leakage across the containment. The two containment heat removal systems are the CCS and CSS. The CCS fan coolers are designed to operate during both normal plant operations and under loss-of-coolant accident (LOCA) or main stream line break (MSLB) conditions. The CSS is designed to operate during accident conditions only.

The heat removal capacity of the CCS and CSS is sufficient to keep the containment temperature and pressure below design conditions for any size break, up to and including a double-ended break of the largest reactor coolant pipe. The systems are also designed to mitigate the consequences of any size break, up to and including a double-ended break of a main stream line. The CCS and CSS continue to reduce containment pressure and temperature and maintain them at acceptable levels post-accident.

The CCS and CSS at [PLANT NAME] each consist of [Substitute plant-specific configuration if it differs from the following description] two redundant loops and are designed such that a single failure does not degrade their ability to provide the required heat removal capability. Two of four containment fan coolers and one CSS loop are powered from one safety-related bus. The other two containment fan coolers and one CSS loop are powered from another independent safety related bus. The loss of one bus does not affect the ability of the containment heat removal systems to maintain containment temperature and pressure below the design values in a post-accident mode.

The [PLANT NAME] CSS consists of [Substitute plant-specific configuration if it differs from the following description] two independent and redundant loops each containing a spray pump, shutdown heat exchanger, piping, valves, spray headers, and spray nozzles. It has two modes of operation, which are:

1. The injection mode, during which the system sprays borated water from the refueling water tank (RWT) into the containment, and

2. The recirculation mode, which is automatically initiated by the recirculation actuation signal (RAS) after low level is reached in the RWT. During this mode of operation, the safety injection system (SIS) sump provides suction for the spray pumps.

Containment spray is automatically initiated by the containment spray actuation signal coincident with the safety injection actuation signal and high containment pressure signal. If required, the operator can manually activate the system from the main control room.

Each CSS pump, together with a CCS loop, provides the flow necessary to remove the heat generated inside the containment following a LOCA or MSLB. Upon system activation, the pumps are started, and borated water flows into the containment spray headers. When low level is reached in the RWT, sufficient water has been transferred to the containment to allow for the recirculation mode of operation. Spray pump suction is automatically realigned to the SIS sump upon a RAS.

During a recirculation mode, the spray water is cooled by the shutdown heat exchangers prior to discharge into the containment. The shutdown heat exchangers are cooled by the component cooling water system. Post-LOCA pH control is provided by [Substitute plant-specific configuration if it differs from the following description] trisodium phosphate dodecahydrate, which is stored in stainless steel baskets located in the containment near the SIS sump intake.

Based on a review of the design-basis requirements for the CSS, the NRC staff concluded that the loss of one CSS train is well within the design-basis analyses. The plant status with one CSS train and one CCS train inoperable is covered by TS3.6.6A, ACTION D, which states:

> ''[With] one containment spray and one containment cooling train inoperable, restore containment spray train to OPERABLE status within 72 hours, or restore containment cooling train to OPERABLE status within 72 hours.''

ACTION D ensures that the iodine removal capabilities of the CSS are available, along with 100 percent of the heat removal needs after an accident. The supporting analyses performed in Reference 1 did not evaluate the concurrent inoperabilities of one CSS train and one CCS train. Therefore, the current CT of 72 hours is retained in Condition D. The 72-hour CT was development taking into account the redundant heat removal capabilities afforded by combinations of the CSS and CCS, the iodine removal function of the CSS, and the low probabilities of a DBA occurring during this period.

3.2 Probabilistic Risk Assessment Evaluation

The proposed extension of the CSS CT for one inoperable train from 72 hours to seven days affects plant risk by impacting:

1. Accident sequences that can be prevented from leading to core damage.

2. Accident sequences that can be mitigated following core damage.

The CSS therefore affects both core damage frequency (CDF) and large early release frequency (LERF). This is because the CSS performs the critical function of controlling containment temperature and pressure to cool the reactor coolant system (RCS) inventory that is spilled in the sump as a result of a LOCA (core damage prevention role) and preventing the release of radionuclides subsequent to a core damage event (core damage and radionuclide release mitigation role).

[The following paragraph will contain plant-specific information based on the plant's ability to use the shutdown cooling system (SDCS) as a backup to the CSS. The licensee should provide a plant-specific system configuration description based on whether its SDCS can be used a backup to the CSS pump.]

The proposed CT extension also impacts the long-term cooling function

that can be provided by the SDCS following a small-break LOCA, steam generator tube rupture (SGTR), or MSLB. If entry into the 7-day CT is caused by a CSS pump outage, the plants with the ability to use the SDCS as a backup to the CSS pump can still preserve the spray function of the affected train. If, however, a SDCS heat exchanger is removed from service, then both the CSS and SDCS capability of the affected train would be lost unless cross-connect capability with another unaffected system (e.g., service water) is possible. However, this cross-connect capability should not be credited unless it is proceduralized.

The NRC staff used a three-tiered approach to evaluate the plant-specific risk impact associated with the proposed TS changes. The first tier evaluates the plant-specific PRA model and the impact of the proposed CT extension on plant operational risk. The second tier addresses the need to preclude potentially high risk configurations by identifying the need for any additional constraints or compensatory actions that, if implemented, would avoid or reduce the probability of a risk-significant configuration during the time when on CSS train is out of service. The third tier evaluates the licensee's proposed Configuration Risk Management Program (CRMP) to ensure that the applicable plant configuration will be appropriately assessed from a risk perspective before entering into, or during, the proposed CT.

In Reference 2, the NRC staff found that the risk analysis methodology and approach used by the CEOG to estimate the risk impact were reasonable. In its SE, the NRC staff also stated that, for most plants that participated in the joint application report, the risk impact can be shown to be consistent with the acceptance guidelines for change in CDF (ΔCDF), change in LERF (ΔLERF), incremental conditional core damage probability (ICCDP), and incremental large early release frequency (ICLERP) specified in Regulatory Guide (RG) 1.174 (Reference 3) and RG 1.177 (Reference 4) and the associated Standard Review Plan (SRP) Chapters 19.0 and 16.1 of NUREG–0800 (Reference 5). However, not all CE plants participated in the joint application report, and the estimated risk impacts for some plants exceeded the Reference 3 and/or Reference 4 acceptance guidelines, which would require additional justifications and/or compensatory measures to be provided for these plants to be determined to have acceptable risk impacts.

In Reference 2, the NRC staff also found that the Tier 2 and Tier 3 evaluations, as described in Reference 4, could not be approved generically since they were not complete from the perspective of addressing plant-specific Tier 2 and Tier 3 issues which would require that each individual plant-specific license amendment seeking approval through TSTF–409, Rev. 2 would need to include an assessment with respect to the Tier 2 and Tier 3 principles of Reference 4.

Based on the above discussion, the NRC staff identified conditions that must be addressed in the licensee's plant-specific application requesting adoption of TSTF–409, Revision 2. In its application dated [DATE], the licensee provided supporting information for each of the conditions which met the NRC staff's expectations and acceptance criteria [with the following exceptions: list any exceptions to the conditions stated in the model LAR].

[Provide a discussion of any significant plant-specific exceptions to or modifications of the conditions described in the model LAR].

3.2.1 Commitment

The Reference 4 Tier 3 program ensures that, while the plant is following the TS ACTIONS associated with a 7-day CT for restoring an inoperable CSS to operable status, additional activities will not be performed that could further degrade the capabilities of the plant to respond to a condition that the inoperable CSS is designed to mitigate and, as a result, increase plant risk beyond that determined by the Reference 1 analyses. A licensee's implementation of Reference 4 Tier 3 guidelines indicates that it has assessed risk with respect to CDF. However, the proposed CSS 7-day CT impacts accident sequences that can be mitigated following core damage and, consequently, LERF as well as CDF. Therefore, the licensee enhnaced its CRMP [*optional:* as implemented under 10 CFR 50.65(a)(4), the Maintenance Rule,] to include a LERF assessment. [*The licensee should confirm that performance of LERF assessments is included in the plant's Maintenance Rule program.*]

3.3 Summary

On [DATE], ([ ] FR [ ]), the NRC announced the availability of TSTF–409, Rev. 2 for adoption by licensees using the consolidated line item improvement program (CLIIP). In its model license amendment request (LAR), the NRC staff asked each licensee to verify several aspects of its plant-specific PRA program including: 1) verification of PRA quality, 2) plant-specific analyses of the impact of this TS change on overall risk, 3) Maintenance Rule and CRMP considerations associated with the proposed changes, and, 4) system interdependencies. In its [DATE] submittal, the licensee provided satisfactory information related to the eight conditions and one licensee commitments set forth in the model LAR.

Having met the conditions identified in the model LAR, the NRC staff finds that the licensee's plant-specific LAR is consistent with the previous NRC staff approval of Reference 1, as documented in Reference 2 and TSTF–409, Rev. 2, and thus is acceptable. This determination is based on the following:

1. The traditional engineering evaluation reveals that the loss of one CSS train is well within the design-basis analyses.

2. Since the licensee meets the conditions identified in the model LAR, the NRC staff finds that there is minimal impact of the CT extensions for the CSS system on plant operational risk (Tier 1 evaluation).

3. Meeting the conditions identified in the model LAR will ensure that the licensee's implementation will identify potentially high risk configurations and the need for any additional constraints or compensatory actions that, if implemented, would avoid or reduce the probability of a risk-significant configuration (Tier 2 evaluation).

4. Meeting the conditions identified in the model LAR will ensure that the risk-informed CRMP proposed by the licensee will satisfactorily assess the risk associated with the removal of equipment from service during the proposed CSS CT (Tier 3 evaluation) and the CRMP and plant risk will be managed by plant procedures.

4.0 Regulatory Commitment

The licensee's letter dated [DATE], contained the following regulatory commitment: [STATE THE LICENSEE'S COMMITMENT AND ENSURE THAT IT SATISFIES THE COMMITMENT IN SECTION 3.2.1 OF THIS SE].

The NRC staff finds that reasonable controls for the implementation and for subsequent evaluation of proposed changes pertaining to the above regulatory commitment are best provided by the licensee's administrative controls process, including its commitment management program. The above regulatory commitment does not warrant the creation of a license condition (item requiring prior NRC approval of subsequent changes).

5.0 State Consultation

In accordance with the Commission's regulations, the [STATE] State official was notified of the proposed issuance of the amendment[s]. The State official had [CHOOSE ONE: (1) No comments, OR (2) the following comments—with subsequent disposition by the staff].

6.0 Environmental Consideration

The amendment changes a requirement with respect to the installation or use of a facility component located within the restricted area as defined in 10 CFR Part 20. The NRC staff has determined that the amendment involves no significant increase in the amounts, and no significant change in the types, of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has previously issued a proposed finding that the amendment involves no significant hazards consideration, and there has been no public comment on such finding [(XX FR XXXXX, dated Monthly DD, YYYY)]. Accordingly, the amendment meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendment.

7.0 Conclusion

The Commission has concluded, based on the considerations discussed above, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public.

8.0 References

1. *Joint Applications Report:* Modification to the Containment Spray System, and Low Pressure Safety Injection System Technical, CE Owners Group, CE NPSD–1045, March 2000.
2. SE by the Office of Nuclear Reactor Regulation Related to CE Owners Group CE–NPSD–1045, ''Joint Application Report, Modification to the Containment Spray System, and the Low Pressure Safety Injection System Technical Specifications,'' December 21, 1999.
3. U.S. NRC RG 1.174, ''An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis,'' Revision 1, November 2002.
4. U.S. NRC RG 1.177, ''An Approach for Plant-Specific, Risk-Informed *Decisionmaking:* Technical Specifications,'' August 1998.
5. NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants,'' June 1996.

Model No Significant Hazards Consideration

Description of Amendment Request: The proposed amendment would revise the technical specifications to extend the completion time (CT) from 72 hours to seven days to restore an inoperable containment spray system (CSS) train to operable status, and add a Condition describing the required Actions and CT when one CSS and one containment cooling system (CCS) are inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change extends from 72 hours to 7 days the CT for restoring an inoperable CSS train to operable status. Being in an ACTION is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on ACTIONS during the 7-day CT are no different than the consequences of an accident while relying on the ACTION during the existing 72-hour CT. Therefore, the consequences of an accident previously evaluated are not significantly increased by this change. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change extends from 72 hours to 7 days the CT for restoring an inoperable CSS train to operable status. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change extends from 72 hours to 7 days the CT for restoring an inoperable CSS train to operable status. The licensee performed risk-based evaluations using its plant-specific probabilistic risk assessment (PRA) model in order to determine the effect of this change on plant risk. The PRA evaluations were based on the conditions stipulated in NRC staff safety evaluations approving both Joint Applications Report CE NPSD–1045–A, ''Joint Applications Report, Modifications to the Containment Spray System and The Low Pressure Safety Injection System Technical Specifications,'' and Technical Specification Task Force Change Traveler, TSTF–409, Revision 2, ''Containment Spray System Completion Time Extension (CE NPSD–1045–A).'' The results of these plant-specific evaluations determined that the effect of the proposed change on plant risk is very small. Therefore, this change does not involve a significant reduction in a margin of safety.

Based on the above, the proposed change involves no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and accordingly, a finding of no significant hazards consideration is justified.

Dated at Rockville, Maryland, this XX day of XXXXXXXX, 2006.

FOR THE NUCLEAR REGULATORY COMMISSION

Project Manager
Plant Licensing Branch [ ]
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

[FR Doc. 06–9094 Filed 11–6–06; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collections; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extensions:

Rule 14f–1, OMB Control No. 3235–0108, SEC File No. 270–127.
Rule 12g3–2, OMB Control No. 3235–0119, SEC File No. 270–104.
Rule 13e–1, OMB Control No. 3235–0305, SEC File No. 270–255.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995

(44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for approval.

Rule 14f–1 (17 CFR 240.14f–1) requires issuers to disclose a change in a majority of the directors of the issuer. The information filed under Rule 14f–1 must be filed with the Commission and is publicly available. We estimate that it takes approximately 18 burden hours to provide the information required under Rule 14f–1 and that the information is filed by 44 respondents for a total annual reporting burden of 792 hours.

Rule 12g3–2 (17 CFR 240.12g3–2) provides an exemption from Section 12(g) of the Act (15 U.S.C. 781(g)) for foreign private issuers. Rule 12g3–2 is designed to provide investors in foreign securities with information about such securities and the foreign issuer. The information filed under Rule 12g3–2 must be filed with the Commission and is publicly available. We estimate that it takes approximately one hour to provide the information required under Rule 12g3–2 and that the information is filed by 1,800 foreign issuers for a total annual reporting burden of 1,800 hours.

Rule 13e–1 (17 CFR 240.13e–1) makes it unlawful for an issuer who has received notice that it is the subject of a tender offer made under Section 14(d)(1) of the Act (15 U.S.C. 78n(d)(1)) and which has commenced under Rule 14d–2 (17 CFR 240.14d–2) to purchase any of its equity securities during the tender offer unless it first files a statement with the Commission containing information required by the Rule. This rule is in keeping with the Commission's statutory responsibility to prescribe rules and regulations that are necessary for the protection of investors. The information filed under Rule 13e–1 must be filed with the Commission and is publicly available. We estimate that it takes approximately 10 burden hours per response to provide the information required under Rule 13e–1 and that the information is filed by 20 respondents. We estimate that 25% of the 10 hours per response (2.5 hours) is prepared by the company for a total annual reporting burden of 50 hours (2.5 hours per response × 20 responses).

Written comments are invited on: (a) Whether these proposed collections of information are necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comment to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: October 30, 2006.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–18695 Filed 11–6–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

New Information Collection: Study of Marketing and Delivery of Financial Products to Individual Investors, OMB Control No. 3235–xxxx, SEC File No. 270–561.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this collection of information to the Office of Management and Budget for approval.

The Commission has engaged an outside contractor to undertake a study that will involve collecting, categorizing, and analyzing empirical data regarding the marketing, sale and delivery of financial products, accounts, programs and services offered to individual investors by broker-dealers and investment advisers. The contractor's findings will be summarized in a report for the Commission. Participation in the study will be voluntary. Participants in the study are expected to include broker-dealers, investment advisers, individual investors, investor advocates and industry groups. We estimate that there would be approximately 330 participants in the study at an estimated 1.5 hours for a total annual burden of approximately 500 hours.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comment to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson 6432 General Green Way, Alexandria, Va 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: October 30, 2006.

Jill M. Peterson,

Assistant Secretary.

FR Doc. E6–18696 Filed 11–6–06; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 5609]

30-Day Notice of Proposed Information Collection: DSP–122, Supplemental Registration for the Diversity Immigrant Visa Program, OMB No. 1405–0098

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Supplemental Registration for the Diversity Immigrant Visa Program.
- *OMB Control Number:* 1405–0098.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Office of Visa Services.
- *Form Number:* DSP–122.
- *Respondents:* Diversity visa applicants.

- *Estimated Number of Respondents:* 60,000.
- *Estimated Number of Responses:* 60,000.
- *Average Hours Per Response:* 30 minutes.
- *Total Estimated Burden:* 30,000.
- *Frequency:* Once per application.
- *Obligation to Respond:* Required to obtain benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from November 7, 2006.

ADDRESSES: Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–4718. You may submit comments by any of the following methods:

- *E-mail: Katherine_T._Astrich@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Mail (paper, disk, or CD–ROM submissions):* Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
- *Fax:* 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Andrea Lage of the Office of Visa Services, U.S. Department of State, 2401 E. Street, NW. L–603, Washington, DC 20522, who may be reached at (202) 663–1399 or *lageab@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond.

Abstract of Proposed Collection

The Kentucky Consular Center (KCC) will registered selected diversity visa lottery entries and then send the applicant an Instruction Package for Immigrant Visa Applicants, which consists of DS–122 (Supplemental Registration for the Diversity Immigrant Visa Program) and DS–230 (Application for Immigrant Visa and Alien Registration Part I and II). In order for an applicant to be considered documentarily qualified for a visa, the applicant must complete and return both of the above-mentioned forms to KCC. Upon receipt of these forms KCC will transmit the Immigrant Visa Appointment Package and schedule an appointment for the applicant.

Methodology

Applicants must return the completed form to the KCC via mail.

Dated: October 18, 2006.

Stephen A. Edson,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. E6–18740 Filed 11–6–06; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 5608]

30-Day Notice of Proposed Information Collection: DS–1648, Application for A, G, or NATO Visa, OMB No. 1405–0100

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Application for A, G, or NATO Visa.
- *OMB Control Number:* 1405–0100.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Office of Visa Services.
- *Form Number:* DS–1648.
- *Respondents:* All applicants for A, G, or NATO visas reauthorizations.
- *Estimated Number of Respondents:* 20,000.
- *Estimated Number of Responses:* 20,000.
- *Average Hours Per Response:* 30 minutes.
- *Total Estimated Burden:* 10,000 hours.
- *Frequency:* Once per application.
- *Obligation to Respond:* Required to obtain benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from November 7, 2006.

ADDRESSES: Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–4718. You may submit comments by any of the following methods:

- *E-mail: Katherine_T._Astrich@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Mail* (paper, disk, or CD–ROM submissions): Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
- *Fax:* 202–395–6974

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Andrea Lage of the Office of Visa Services, U.S. Department of State, 2401 E Street, NW. L–603, Washington, DC 20522, who may be reached at (202) 663–1399 or *lageab@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond.

Abstract of Proposed Collection

The Department of State uses Form DS–1648 to elicit information necessary to ascertain the applicability of the legal requirements for applicants for a renewal of A, G, or NATO visas. The information requested is limited to that which is necessary to determine the eligibility of applicants who seek renewal of their visas. An estimated 20,000 renewal applications are filed each year.

Methodology

Applicants complete this form using an online application available on the Department's Web site, *http://www.travel.state.gov.* The applicant then prints the application and a bar code is printed at the bottom of the form. The bar code is an electronic capture of the information provided by the applicant. The application is then

submitted by mail to the Department. The Department scans the bar code on the application to retrieve the information electronically. Applicants are not allowed to submit handwritten or typed forms with printed bar codes.

Dated: October 18, 2006.

Stephen A. Edson,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. E6–18742 Filed 11–6–06; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 5605]

30-Day Notice of Proposed Information Collection DS–3032, Choice of Address and Agent for Immigrant Visa Applicants, OMB No. 1405–0126

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Choice of Address and Agent for Immigrant Visa Applicants.
- *OMB Control Number:* 1405–0126.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Office of Visa Services.
- *Form Number:* DS–3032.
- *Respondents:* All immigrant visas applicants.
- *Estimated Number of Respondents:* 330,000.
- *Estimated Number of Responses:* 330,000.
- *Average Hours per Response:* 10 minutes.
- *Total Estimated Burden:* 55,000 hours.
- *Frequency:* Once per application.
- *Obligation to Respond:* Required to obtain benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from November 7, 2006.

ADDRESSES: Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–4718. You may submit comments by any of the following methods:

- *E-mail: Katherine_T._Astrich@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Mail (paper, disk, or CD–ROM submissions):* Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
- *Fax:* 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Andrea Lage of the Office of Visa Services, U.S. Department of State, 2401 E. Street, NW., L–603, Washington, DC 20522, who may be reached at (202) 663–1221 or *lageab@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond,

Abstract of Proposed Collection

When an approved immigrant visa petition is received at the National Visa Center (NVC) and is determined to be current for processing, NVC will send the petition beneficiary Form DS–3032, which allows the applicant to choose an agent to receive mailing from NVC and assist in the paperwork and payment of fees. The applicant is not required to choose an agent and may have all mailing sent to an address abroad. However, the alien's case will be held at NVC until the signed form is returned. If the form is not returned within one year, NVC will begin the case termination process. DS–3032 is not required if a G–28 (Notice of Entry of Appearance as Attorney or Representative) is received from DHS and the attorney is the agent, the alien is self-petitioning, or a child is being adopted. Once the form has been signed and returned to NVC the applicant process will proceed.

Methodology

DS–3032 will be submitted via mail to the National Visa Center.

Additional Information:

Dated: October 18, 2006.

Stephen A. Edson,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. E6–18774 Filed 11–6–06; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 5606]

30-Day Notice of Proposed Information Collection: DS–2029, Application for Consular Report of Birth of a Citizen of the United States of America, OMB Control No. 1405–0011

ACTION: Notice of request for public comments and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Application for Consular Report of Birth Abroad of a Citizen of the United States of America.
- *OMB Control Number:* 1405–0011.
- *Type of Request:* Extension of a currently approved collection.
- *Originating Office:* Consular Affairs, Office of Overseas Citizen Services (CA/OCS).
- *Form Number:* DS–2029.
- *Respondents:* Parents or legal guardians of United States citizen children born overseas.
- *Estimated Number of Respondents:* 52,000 per year.
- *Estimated Number of Responses:* 52,000.
- *Average Hours Per Response:* 20 minutes.
- *Total Estimated Burden:* 17,333.
- *Frequency:* On occasion.
- *Obligation To Respond:* Voluntary.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from November 7, 2006.

ADDRESSES: Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–4718. You may submit comments by any of the following methods:

- *E-mail: kastrich@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Mail (paper, disk, or CD–ROM submissions):* Office of Information and

Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.

• *Fax:* 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Monica Gaw, Department of State, Bureau of Consular Affairs, Office of Overseas Citizens Services, SA–29 4th Floor, 2100 Pennsylvania Avenue NW., Washington, DC 20037, who may be reached on 202–736–9107, and *GawMA@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper performance of our functions.

• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of Proposed Collection

The DS–2029, Application for Consular Report of Birth Abroad of a Citizen of the United States of America, is used by citizens of the United States to report the birth of a child while overseas. The information collected on this form will be used to certify the acquisition of U.S. citizenship at birth of a person born abroad and can be used by that child throughout life.

Methodology

The DS–2029 will be available to download from the Internet. An application for a Consular Report of Birth is normally made in the consular district in which the birth occurred. The parent respondents will fill the form out and take it to a United States Consulate or Embassy, who will examine the documentation and enter the information provided into the Department of State American Citizen Services (ACS) electronic database.

Dated: October 24, 2006.

Maura Harty,

Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. E6–18779 Filed 11–6–06; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 5607]

30-Day Notice of Proposed Information Collection: DS–1884, Petition To Classify Special Immigrant Under INA 203(b)(4) as an Employee or Former Employee of the U.S. Government Abroad, OMB Control Number 1405–0082

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

• *Title of Information Collection:* Petition for Classify Special Immigrant Under INA 203(b)(4) as an Employee or Former Employee of the U.S. Government Abroad.

• *OMB Control Number:* 1405–0082.

• *Type of Request:* Extension of a Currently Approved Collection.

• *Originating Office:* Bureau of Consular Affairs, Office of Visa Services (CA/VO).

• *Form Number:* DS–1884.

• *Respondents:* Aliens petitioning for immigrant visas under INA 203(b)(4).

• *Estimated Number of Respondents:* 300 per year.

• *Estimated Number of Responses:* 300 per year.

• *Average Hours Per Response:* 10 minutes.

• *Total Estimated Burden:* 50 hours per year.

• *Frequency:* Once per petition.

• *Obligation to Respond:* Required to Obtain Benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) by December 7, 2006.

ADDRESSES: Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–4718. You may submit comments by any of the following methods:

• *E-mail: Katherine_T._Astrich@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.

• *Mail (paper, disk, or CD–ROM submissions):* Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.

• *Fax:* 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Andrea Lage of the Office of Visa Services, U.S. Department of State, 2401 E. Street, NW. L–603, Washington, DC 20522, who may be reached at (202) 663–1221 or *lageab@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary to properly perform our functions.

• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond.

Abstract of Proposed Collection

DS–1884 solicits information from petitioners for special immigrant classification under Section 203(b)(4) of the Immigration and Nationality Act. An alien is classifiable as a special immigrant under Section 203(b)(4) if they meet the statutory qualifications in INA Section 101(a)(27)(D). A petitioner may apply within one year of notification by the Department of State that the Secretary has approved a recommendation that special immigrant status be accorded to the alien. DS–1884 solicits information that will assist the consular officer in ensuring that the petitioner is statutorily qualified to receive such status, including meeting the years of service and exceptional service requirements.

Methodology

Petitioners will submit this form to consular officers at post.

Dated: October 18, 2006.

Stephen A. Edson,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. E6–18781 Filed 11–6–06; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 5560]

Overseas Security Advisory Council (OSAC): Renewal

The Department of State has renewed the Charter of the Overseas Security

Advisory Council. This advisory council will continue to interact on overseas security matters of mutual interest between the U.S. Government and the American private sector. The Council's initiatives and security publications provide a unique contribution to protecting American private sector interests abroad. The Under Secretary for Management has determined that the Council is necessary and in the public interest.

The Council consists of representatives from four (4) U.S. Government agencies and thirty (30) American private sector companies and organizations. The Council will follow the procedures prescribed by the Federal Advisory Committee Act (FACA) (Pub. L. 92–463). Meetings will be open to the public unless a determination is made in accordance with Section 10(d) of the FACA, 5 U.S.C. 552b(c)(1) and (4), that a meeting or a portion of the meeting should be closed to the public. Notice of each meeting will be provided in the **Federal Register** at least 15 days prior to the meeting.

For more information contact Marsha Thurman, Overseas Security Advisory Council, Bureau of Diplomatic Security, U.S. Department of State, Washington, DC 20522–2008, phone: 571–345–2214.

Dated: October 12, 2006.

Joe D. Morton,

Director of the Diplomatic Security Service, Department of State.

[FR Doc. E6–18771 Filed 11–6–06; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF STATE

[Public Notice 5603]

Culturally Significant Object Imported for Exhibition Determinations: ''Terracotta kylix''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the object ''Terracotta kylix,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit object at the The Metropolitan Museum of Art, from on or about December 1, 2006 until on or about December 1, 2010, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit object, contact Wolodymyr Sulzynsky, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW. Room 700, Washington, DC 20547–0001.

Dated: October 26, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–18739 Filed 11–6–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5562]

FY 2006 Funding Under the Research and Training for Eastern Europe and the Independent States of the Former Soviet Union Act of 1983 (Title VIII)

The Under Secretary of State for Political Affairs, acting in the capacity of the Deputy Secretary of State, approved on July 19, 2006, the FY 2006 funding recommendations of the Advisory Committee for the Study of Eastern Europe and the Independent States of the Former Soviet Union. The FY 2006 Title VIII Program grants were awarded in late September 2006. The Title VIII Program, administered by the U.S. Department of State, seeks to build expertise on the countries of Eurasia and Central and East Europe through support to national organizations in the U.S. for advanced research, language and graduate training, and other activities conducted domestically and overseas. The FY 2006 grant recipients are listed below.

1. American Council of Learned Societies

Grant: $498,000 ($498,000 Southeast Europe).

Purpose: To support *Language Training Grants,* including Summer Language Institutes, Advanced Mastery Courses, Individual Summer Language Training, and the Research Grant on Heritage Speakers; *Research Fellowships,* including Pre-dissertation Developmental Fellowships, Dissertation Fellowships for Research in Southeast Europe, Dissertation Fellowships for Writing in the U.S., Post-doctoral Fellowships for scholars from other fields to acquire Southeast Europe area expertise, Post-doctoral Research Fellowships for Southeast Europe specialists for research and/or writing; and *Field-Building,* including the Junior Scholars Training Seminar in collaboration with the Woodrow Wilson Center, Travel Grants for individuals to present papers at conferences, and conferences for formal presentation of significant new research.

Contact: Andrzej W. Tymowski, Director of International Programs, American Council of Learned Societies, 633 Third Avenue, New York, NY 10017–6795, *Tel:* (646) 485–5945, *Fax:* (212) 949–8058, *E-mail: ANDRZEJ@acls.org.*

2. American Councils for International Education

Grant: $508,000 ($408,000—Eurasia, $100,000—Southeast Europe).

Purpose: To support fellowships for research and language training programs in Eurasia and Southeast Europe, including Advanced Russian Language and Area Studies Fellowships, Eurasia Regional Language Fellowships, Combined Research and Language Training Fellowships, Research Scholar Fellowships, Special Initiatives Research Fellowships, Russian Language Flagship Fellowships, and Southeast Europe Language Fellowships.

Contact: Graham Hettlinger, Senior Program Manager, American Councils for International Education, 1776 Massachusetts Avenue, NW., Suite 700, Washington, DC 20036, *Tel:* (202) 833–7522, ext. 168, *Fax:* (202) 833–7523, *E-mail: hettlinger@americancouncils.org.*

3. International Research and Exchanges Board

Grant: $735,000 ($450,000—Eurasia; $285,000—Southeast Europe).

Purpose: To support the Individual Advanced Research Opportunities Program, the Short-Term Travel Grants Program, the U.S. Embassy Policy Specialist Program, the Regional Policy Symposium on the ''Contemporary Silk Road'' to be jointly conducted with the Kennan Institute, and the Policy Connect Collaborative Research Grants Program.

Contact: Joyce Warner, Director, Academic Exchanges and Research Division, International Research and Exchanges Board, 2121 K Street, NW., Suite 700, Washington, DC 20037, *Tel:*

(202) 628–8188, *Fax:* (202) 628–8189, *E-mail: jwarner@irex.org.*

4. National Council for Eurasian and East European Research

Grant: $930,000 ($615,000—Eurasia; $315,000—Southeast Europe).

Purpose: To support the research contracts and fellowship grants of the National Research Program; the Hewett Fellowships; and the Short-term Research Fellowships.

Contact: Robert Huber, President, National Council for Eurasian and East European Research (NCEEER), University of Washington, Rm. 224 Thompson Hall, Box 353650, Seattle, WA 98195–3650, *Tel:* (206) 543–1666; *Fax:* (206) 685–0668, *E-mail: dc@nceeer.org.*

NCEEER's DC office: 910 17th St., NW., Suite 300, Washington, DC 20006, Tel: (202) 822–6950, Fax: (202) 822–6955.

5. Social Science Research Council

Grant: $633,000 ($633,000—Eurasia).

Purpose: To support the *National Fellowship Program,* including pre-dissertation training, dissertation write-up, post-doctoral research and curriculum development; *Field-Building* activities, including the Dissertation Development Workshop on understudied regions and topics, the training seminar for policy research and roundtables or panels at major annual conferences; and the *National Summer Language Institutes,* including advanced Russian and the non-Russian languages of Eurasia.

Contact: Anthony Koliha, Assistant Director, Eurasia Program, Social Science Research Council, 810 Seventh Avenue, 31st Floor, New York, NY 10019, *Tel:* (212) 377–2700, *Fax:* (212) 377–2727, *E-mail: koliha@ssrc.org.*

6. University of Illinois at Urbana-Champaign

Grant: $160,000 ($106,000—Eurasia; $54,000—Southeast Europe).

Purpose: To support the *Slavic Reference Service,* which provides assistance to scholars in locating hard-to-find resources through electronic library resources, and electronic delivery of reference materials and resources; and the *Summer Research Lab,* including housing grants for Lab associates conducting policy relevant research on Southeast Europe and Eurasia; the Balkan studies workshop for junior scholars; the Caucasus and Central Asian studies workshop ''From Chechnya to Kabul'' for junior scholars; travel grants for advanced graduate students conducting policy relevant research on Southeast Europe and Eurasia.

Contact: Merrily Shaw, Assistant to the Director of the Russian, Eurasian and East European Center, University of Illinois at Urbana-Champaign, 104 International Studies Building, 910 South Fifth Street, Champaign, IL 61820, *Tel:* (217) 244–4721/333–1244, *Fax:* (217) 333–1582, *E-mail: mshaw2@uiuc.edu or reec@uiuc.edu.*

7. The Woodrow Wilson International Center for Scholars

Grant: $690,000 ($410,000—Eurasia; $280,000—Southeast Europe).

Purpose: The funds for Southeast Europe support Research Scholars and Research Assistants, Short-term Scholars, the Junior Scholars Training Seminar (JSTS) to be held jointly with the American Council of Learned Societies, Meetings, and Dissemination and Outreach. The funds for Eurasia support Meetings, Dissemination and Outreach, Research Scholars and Research Assistants, Short-term Scholars, a Workshop on ''International Development in the Post-Soviet Space,'' and the Regional Policy Symposium to be held jointly with IREX on the ''Contemporary Silk Road.''

Contact: Martin Sletzinger, Director, East European Studies, *Tel:* (202) 691–4263, *E-mail: martin.sletzinger@wilsoncenter.org.*

Maggie Paxson, Senior Associate, Kennan Institute, *Tel:* (202) 691–4237, *E-mail: Margaret.Paxson@wilsoncenter.org.*

The Woodrow Wilson Center, 1300 Pennsylvania Avenue, NW., Washington, DC 20004–3027, Fax: (202) 691–4247.

Dated: October 25, 2006.

Susan H. Nelson,

Executive Director, Acting Advisory Committee for Study of Eastern Europe and the Independent States of the Former Soviet Union, Department of State.

[FR Doc. E6–18776 Filed 11–6–06; 8:45 am]

BILLING CODE 4710–32–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending October 6, 2006

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2006–26006.

Date Filed: October 2, 2006.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 513—Resolution 010b, TC3 Japan, Korea-South East Asia, Special Passenger Amending Resolution between Japan, Korea, and South East Asia. Intended effective date: October 9, 2006. (Memo 0998)

Docket Number: OST–2006–26007.

Date Filed: October 6, 2006.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 510—Resolution 010a, TC3 Within South Asian Subcontinent, Special Passenger Amending Resolution from Pakistan to India (Memo 0997). Intended effective date: October 11, 2006.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E6–18753 Filed 11–6–06; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending October 6, 2006

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2005–22228 and OST–2006–26037.

Date Filed: October 3, 2006.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 24, 2006.

Description: Application of Northwest Airlines, Inc. requesting a certificate authorizing Northwest to provide scheduled air transportation of persons, property and mail from a point or points in the United States, via intermediate

points, to a point or points in the Open Skies countries listed in Attachment A, and beyond.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E6–18754 Filed 11–6–06; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Random Drug and Alcohol Testing Percentage Rates of Covered Aviation Employees for the Period of January 1, 2007, Through December 31, 2007

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA has determined that the minimum random drug and alcohol testing percentage rates for the period January 1, 2007, through December 31, 2007, will remain at 25 percent of safety-sensitive employees for random drug testing and 10 percent of safety-sensitive employees for random alcohol testing.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey Stookey, Office of Aerospace Medicine, Drug Abatement Division, Program Analysis Branch (AAM–810), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8442.

Discussion: Pursuant to 14 CFR part 121, appendix I, section V.C, the FAA Administrator's decision on whether to change the minimum annual random drug testing rate is based on the reported random drug test positive rate for the entire aviation industry. If the reported random drug test positive rate is less than 1.00%, the Administrator may continue the minimum random drug testing rate at 25%. In 2005, the random drug test positive rate was 0.58%. Therefore, the minimum random drug testing rate will remain at 25% for calendar year 2007.

Similarly, 14 CFR part 121, appendix J, section III.C, requires the decision on the minimum annual random alcohol testing rate to be based on the random alcohol test violation rate. If the violation rate remains less than 0.50%, the Administrator may continue the minimum random alcohol testing rate at 10%. In 2005, the random alcohol test violation rate was 0.16%. Therefore, the minimum random alcohol testing rate will remain at 10% for calendar year 2007.

SUPPLEMENTARY INFORMATION: If you have questions about how the annual random testing percentage rates are determined please refer to the Code of Federal Regulations Title 14: part 121, appendix I, section V.C (for drug testing), and appendix J, section III.C (for alcohol testing).

Issued in Washington, DC on November 1, 2006.

Frederick E. Tilton,

Federal Air Surgeon.

[FR Doc. E6–18726 Filed 11–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting; correction.

SUMMARY: The Federal Aviation Administration published a document in the **Federal Register** of October 30, 2006, (71 FR 63378) concerning a notice of public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine (TAE) issues. The document omitted some relevant information.

FOR FURTHER INFORMATION CONTACT: Nicanor Davidson, (202) 267–5174.

Correction

In the **Federal Register** of October 30, 2006, in FR Doc. E6–18146, on page 63378, in the third column, under **SUPPLEMENTARY INFORMATION**, amend the sixth bullet in the agenda, Ice Protection Harmonization Working Group (HWG) Report, to add sub-bullets as follows:

- Vote on HWG report for Task 1 TSO.
- Vote on HWG reports for Task 5 and Task 6 mixed phase.

Issued in Washington, DC on November 1, 2006.

Eve Adams.

Acting Director, Office of Rulemaking.

[FR Doc. E6–18728 Filed 11–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA 2006–26090]

Agency Information Collection Activities: Request for Comments; Renewed Approval of Information Collection; State Right-of-Way Operations Manuals, OMB Control Number: 2125–0586

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval to renew an information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. The collection involves State Departments of Transportation (STD) providing their Right-of-Way Operations Manuals to FHWA. The information to be collected will be used to certify that the manuals are representative of the States right-of-way procedures and the information is necessary to comply with 23 Code of Federal Regulations Part 710.201(c). We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by January 8, 2007.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FHWA–2006–26090 to the Docket Clerk, 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, 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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 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: David Walterscheid, (720) 963–3073, Office of Real Estate Services, Federal

Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC, 20590. Office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: State Right-of-Way Operations Manuals.

OMB Control Number: 2125–0586.

Background: Section 23, of the Code of Federal Regulations Part 710, reduces Federal regulatory requirements and places primary responsibility for a number of approval actions at the State level. Part 710.201 requires that States must certify at 5-year intervals that their State Right-of-Way Operations Manuals are representative of their procedures, or submit an updated manual. STDs are required to update their manuals to reflect changes in Federal requirements for programs administered under Title 23 U.S.C. These manuals reflect how the STD plans to perform real estate acquisition and property management, and maintain the integrity of the right-of-way for highway and related transportation systems. The State manuals may be submitted to FHWA electronically or they can be made available by postings on State Web sites.

Respondents: 50 State Departments of Transportation, the District of Columbia and Puerto Rico.

Frequency: The States update their operations manuals for review annually.

Estimated Average Burden per Response: 75 hours per respondent.

Estimated Total Annual Burden Hours: The total is 3,900 burden hours annually.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: November 1, 2006.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. E6–18700 Filed 11–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: St. Clair County, Michigan

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is reissuing this notice to advise the public of changes to the Environmental Impact Statement that will be prepared for proposed improvements to the United States Port of Entry Plaza for the Blue Water Bridge in St. Clair County, Michigan. This Notice revises the published Notice of Intent of January 12, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. James Kirschensteiner, Assistant Division Administrator, Federal Highway Administration, 315 W. Allegan Street, Room 201, Lansing, Michigan 48933, Telephone: (517) 702–1835; or Mr. Paul McAllister, Supervisor, Environmental Section, Bureau of Transportation Planning, Michigan Department of Transportation, P.O. Box 30050, Lansing, MI 48909, Telephone: (517) 335–2622.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Michigan Department of Transportation (MDOT) is preparing an Environmental Impact Statement (EIS) to evaluate alternatives for potential improvements to the United States Border Plaza at the Blue Water Bridge. The Federal cooperating agencies for the project include: U.S. Coast Guard, U.S. General Service Administration (GSA), U.S. Environmental Protection Agency (U.S.EPA), U.S. Army Corps of Engineers, and U.S. Customs and Border Protection (CBP).

The Blue Water Bridge is a major passenger and commercial border crossing between the United States and Canada and is the northern termination point for Interstate Routes I–69 and I–94 in the United States and for Highway 402 in Canada. MDOT owns and operates the Blue Water Bridge Border Plaza. Several agencies operate on the United States Plaza. These agencies are responsible for inspecting vehicles, goods, and people entering the United States and include: CBP, the United States Department of Agriculture (USDA), and the Food and Drug Administration (FDA). The inspection agencies lease facilities on the United States Plaza from MDOT through GSA, which serves as the Federal leasing agent. MDOT collects tolls from vehicles departing the United States for Canada on the plaza.

The study area is located within the City of Port Huron and Port Huron Township. The study area consists of approximately 30 blocks (195 acres) of urban land use surrounding the existing plaza and ramps, and it extends to the west along I–69/I–94 for approximately 2.2 miles. The study area includes the existing plaza, the Black River Bridge, the Water Street interchange, and locations for off-site inspection facilities, located north of I–69/I–94 and west of the Water Street Interchange.

In September 2002, this project started as an Environmental Assessment (EA) and has proceeded through the scoping phase, purpose and need documentation, and alternatives development. Three resource agency meetings and four public information meetings have been held. As a result of identified potentially significant impacts, FHWA and MDOT concluded that an environmental Impact Statement (EIS) should be completed.

The purposes of this Environmental Impact Statement are to:

- Accommodate projected 2030 traffic growth and potential future facility needs,
- Minimize backups on Highway 402 and I–69/I–94 and correct existing traffic weaving issues,
- Accommodate the latest inspection technologies and procedures,
- Provide flexibility to accommodate future unknown inspection technologies and procedures,
- Improve border security,
- Provide facilities that ensure cars and trucks do not leave the plaza without being inspected,
- Improve safety on the bridge, plaza, and I–69/I–94,
- Reduce vehicle and pedestrian conflicts on the plaza,
- Improve access between the plaza and the Port Huron area, and
- Minimize routing of commercial traffic to local roads during maintenance operations.

The need for improvements to the United States Plaza at the Blue Water Bridge is supported by several key issues including:

- Traffic growth and repeated traffic backups,
- Insufficient truck parking for inspection purposes,
- The introduction of new inspection technology,
- Emerging Security issues,
- Insufficient space for the increased number of border inspection agents,
- Traffic conflicts and crash history, and
- Inadequate connections between the plaza and local roads needing improvements.

In the fall of 2005, a preliminary Draft Environment Impact Statement (DEIS) was completed and circulated to the Federal cooperating agencies for review and comment. As a result of this coordination effort, the CBP requested that another alternative be considered for evaluation and inclusion in the DEIS.

In an effort to continue to move independent and critical road and bridge portions of the project forward, MDOT and FHWA have separated the Blue Water Bridge Plaza Study into two projects: (a) An EIS for the Blue Water Bridge Plaza that will focus specifically on plaza expansion and improvements, and (b) An Environmental Assessment that will address transportation improvements along I–69/I–94 and the creation of a new off-site welcome center. The improvements covered in the EA are independent of any of the alternatives under consideration for the plaza improvements. The FHWA has reviewed and concluded that the improvements that will be studied in the EA have independent utility and logical termini

The purposes of the I–69/I–94 EA Corridor improvements are:

- Accommodate projected 2030 traffic growth,
- Improve the safety on the Black River Bridge and reduce weaving movements at the Water Street Interchange,
- Replace the aging Black River Bridge spans,
- Improve vehicle access to the Port Huron Area, and
- Create a more visible and accessible Welcome Center.

The need for improvements to the I–69/I–94 Corridor is supported by several key issues:

- Traffic growth,
- Traffic backups,
- Traffic conflicts and crash history,
- The current condition of existing roadways in the corridor, and
- The current condition of the Black River Bridge.

The study boundaries for the I–69/I–94 Environmental Assessment are located along I–69/I–94 and the M–25 connector. The northern terminus for the EA is the M–25 connector intersection with Hancock Street and the southern terminus is the I–69/I–94 bridge over Lapeer Road. The EA study area includes the I–69/I–94 ramps to and from the existing plaza, the Black River Bridge, the Water Street interchange and the Lapeer connector interchange.

The purpose and need and study boundaries for the plaza Environmental Impact Statement remain the same as described earlier. The study area includes a potential location for a relocated plaza in Port Huron Township.

A range of plaza and transportation improvement alternatives for the plaza EIS, will be analyzed. Reasonable alternatives under consideration include: taking no action, expanding the existing plaza location in the City of Port Huron (two alternatives), and relocating the major plaza functions to an off-site plaza location in Port Huron Township. The EIS study area for the off-site plaza, along with subsequent improvements to I–94/I–69 and the EA improvements to I–94/I–69, overlap for this alternative, but only for this alternative.

Agencies and citizen involvement will continue to be solicited throughout this process. A public meeting and a public hearing will be held on the Draft Environmental Impact Statement (DEIS). Public notice will be given of the time and place of the hearing. The DEIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued on: October 31, 2006.

James A. Kirschensteiner,

Assistant Division Administrator, Lansing, Michigan.

[FR Doc. 06–9099 Filed 11–6–06; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

AGENCY: Federal Motor Carrier Safety Administration, DOT.

TIME AND DATE: November 7, 2006, 1 p.m. to 5 p.m. and November 8, 2006 8 a.m. to 12 p.m.

PLACE: Hilton Chicago O'Hare Airport, O'Hare International Airport, Chicago, IL 60666.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: An overview of the Unified Carrier Registration Plan and Agreement requirements set forth under section 4305 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, and the administrative functioning of the Board. In addition, the Board will continue its work in developing the Unified Carrier Registration Agreement procedures and toward recommending UCRA fees to the Secretary.

FOR FURTHER INFORMATION CONTACT: Mr. William Quade, (202)366–2172, Director, Office of Safety Programs, Federal Motor Carrier Safety Administration, or Mr. Bryan Price, (412) 395–4816, FMCSA Pennsylvania Division Office.

Dated: November 2, 2006.

Rose A. McMurray,

Associate Administrator, Policy and Program Development.

[FR Doc. 06–9124 Filed 11–3–06; 2:23 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Creation of an Electronic Docket for a Pending Environmental Impact Review on the Dakota, Minnesota and Eastern Railroad's Powder River Basin Expansion Project Railroad Rehabilitation and Improvement Financing Program Loan Application

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of the Creation of an Electronic Docket for the Comments Received on the FRA's Adoption of the Environmental Impact Statements Issued by the Surface Transportation Board and FRA's Draft Section 4(f)/303 Statement and Participation as a Concurring Party to a Section 106 Programmatic Agreement.

SUMMARY: FRA is announcing the creation of an electronic docket containing comments submitted to the agency in connection with the agency's environmental and historic preservation review of the Dakota, Minnesota and Eastern Railroad's application for loan to carry out its Powder River Basin Expansion Project.

FOR FURTHER INFORMATION CONTACT: David Valenstein, Environmental Program Manager, 1120 Vermont Avenue, NW., Mail Stop 20, Washington, DC 20590; Phone (202) 493–6368.

SUPPLEMENTARY INFORMATION: In an August 18, 2006 **Federal Register** notice, FRA announced that it had received an application from the Dakota, Minnesota & Eastern Railroad Corporation (DM&E) for a $2.3 billion loan under the Railroad Rehabilitation and Improvement Financing (RRIF) program to fund the railroad's Powder River Basin Expansion Project (Project) to construct approximately 280 miles of new rail line to reach the coal mines of Wyoming's Powder River Basin and to reconstruct another approximately 600 miles of DM&E's existing rail line to allow operation of unit coal trains along the reconstructed route to and from the new line. DM&E had received permission to undertake the Project from the Surface Transportation Board (STB) in a February 15, 2006 decision (see Finance Docket 33407). The STB had prepared a detailed environmental review of the Project pursuant to the National Environmental Policy Act. As authorized by Council on Environmental Quality (CEC) Regulations, FRA decided to adopt the Environmental Impact Statement (EIS) and Supplemental Environmental Impact Statement (SEIS) issued by the STB for Project. Consistent with the CEQ regulations, FRA recirculated the STB's EIS and SEIS. EPA's publication in the **Federal Register** of the notice of availability also occurred on August 18, 2006. FRA also announced the availability of a draft section 4(f)/303 Statement prepared for the Project by the FRA pursuant to section 4(f) of the Department of Transportation Act (49 U.S.C. 303(c)) and that the FRA was seeking to participate as a concurring party in the existing section 106 Programmatic Agreement. FRA further indicated in the **Federal Register** notice that it would accept public comment on its announced actions through October 10, 2006.

FRA is now announcing that in light of the substantial volume of comments received it is creating an electronic docket containing the comments that were submitted. The electronic docket is available through the DOT Docket Management System (DMS) and is found at *http://dms.dot.gov/.* The docket number for this environmental review is FRA 2006–26099. For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays. The electronic docket will facilitate public access to the comments and enhance FRA's ability to evaluate and address the comments. While creation of an electronic docket is not the agency's normal practice for environmental reviews, the special circumstances present in this proceeding made this an attractive option for the agency. The DMS staff will add the submitted comments as expeditiously as possible and comments will be available as they are added to the system.

Note that comments received will be posted without change to *http://dms.dot.gov* including any personal information. All commenters should be aware that anyone is potentially able to search the electronic form of comments received into any agency docket depending on how the comments are entered into the docket system. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; pages 19477–78) or you may visit *http://dms.dot.gov.* If anyone does not want their submitted comment to be included in the Docket because they would not have submitted the comment had they been aware that it would be included in an electronic docket, please contact the DMS office at: *http://dms.dot.gov/Support/* or 1–800–647–5527.

Issued in Washington, DC on October 31, 2006.

Joseph H. Boardman,

Federal Railroad Administrator.

[FR Doc. E6–18730 Filed 11–6–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2006–23701; Notice 2]

Decision That Nonconforming 2005 Toyota RAV4 Multipurpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of decision by the National Highway Traffic Safety Administration that nonconforming 2005 Toyota RAV4 multipurpose passenger vehicles are eligible for importation.

SUMMARY: This document announces a decision by the National Highway Traffic Safety Administration (NHTSA) that certain 2005 Toyota RAV4 multipurpose passenger vehicles (MPVs) that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S. certified version of the 2005 Toyota RAV4 MPV), and they are capable of being readily altered to conform to the standards.

DATES: This decision was effective April 17, 2006. The agency notified the petitioner at that time that the subject vehicles are eligible for importation. This document provides public notice of the eligibility decision.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified as required under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies, LLC (JK) of Baltimore, Maryland (Registered Importer 90–006), petitioned NHTSA to decide whether 2005 Toyota RAV4 MPVs are eligible for importation into the United States. NHTSA published notice of the petition on January 31, 2006 (71 FR 5115) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition.

One comment was received in response to the notice of petition, from Toyota Motor North America, Inc.

(Toyota), the U.S. representative of the vehicle's original manufacturer. Toyota addressed issues it believed JK had overlooked in describing alterations necessary to conform non-U.S. certified 2005 Toyota RAV4 MPVs to FMVSS Nos. 135 *Light Vehicle Brake Systems,* 208 *Occupant Crash Protection,* 225 *Child Restraint Anchorage Systems,* and 301 *Fuel System Integrity.* Toyota also questioned the ability of registered importers (RIs) to conduct safety recall campaigns to notify owners and remedy safety-related defects in imported nonconforming vehicles. The agency afforded JK an opportunity to respond to the issues raised by Toyota. Toyota's comments and JK's responses are summarized below, together with NHTSA's analysis of each matter at issue.

1. Issues Involving Specific Standards

Several of Toyota's comments concerned the capability of the vehicles to be modified to meet the requirements of certain standards. Set forth below is a discussion of these comments.

The petition stated that the vehicles conformed to the requirements of FMVSS No. 135 *Light Vehicle Brake Systems* and FMVSS No. 301 *Fuel System Integrity* as originally manufactured. The petition also stated that the vehicles are capable of being readily altered to comply with FMVSS No. 225 *Child Restraint Anchorage Systems* and with FMVSS No. 208 *Occupant Crash Protection* by the installation of U.S.-model components meeting the requirements of those standards on vehicles not already so equipped.

Toyota stated that certain configurations of the 2005 Toyota RAV4 MPV may have braking system components and body construction in the area of the FMVSS No. 225 anchorage mountings different from what is found on U.S.-certified vehicles. Toyota emphasized that modifications to these systems require special attention to ensure that the vehicles, as modified, conform to all applicable safety standards.

Toyota expressed additional concerns relating to the modification or replacement of occupant protection system components. The company raised issues regarding the installation of components that contribute to meeting the requirements of FMVSS No. 208, including airbag modules, sensors and software, and related systems.

Toyota also commented that the fuel system installed in U.S.-certified 2005 Toyota RAV4 MPVs is unique to the U.S.-certified model because it is designed specifically to comply with United States emission requirements, and, in some vehicles, with additional state of California emission requirements. Toyota described the fuel system components unique to the U.S. model as including specialized fuel and evaporative gas lines, control valves, and the fuel canister. Toyota emphasized that all nonconforming 2005 Toyota RAV4 MPVs must be examined for the existence of all U.S.-model fuel system components and that vehicles not already so equipped must have U.S.-model components installed to meet the requirements of FMVSS No. 301 *Fuel System Integrity.*

In its response, JK stated:

> The required changes to meet the emissions standards for ORVR 2nd OBD II concern the gas tank, fuel lines, vapor lines, filler neck, evaporative canister, rollover valve, check valves, wiring harnesses and all associated hardware and mounting brackets for the aforementioned parts. These parts have all been changed to the U.S. parts and are mounted on the existing body mounts that were installed at the time of manufacture of the vehicle by Toyota. There have been no structural modifications of any kind to install these parts. There has been no welding or cutting of any kind and all hardware has been purchased from the Toyota dealer system. These were all completed as part of the stringent requirements including Certification Testing for [the U.S. Environmental Protection Agency], as J.K. Technologies, Inc., is also a licensed Independent Commercial Importer ''ICI''

JK further noted that all vehicles imported into the United States must be inspected for the presence of a U.S.-model fuel system and braking system, as well as occupant crash protection and child restraint anchorage system components. The company stated that vehicles not already so equipped must have U.S.-model components installed to meet the requirements of FMVSS Nos. 135 *Light Vehicle Brake Systems,* 208 *Occupant Crash Protection,* 225 *Child Restraint Anchorage Systems,* and 301 *Fuel System Integrity.*

JK specifically stated that the front passenger seat belt system did not meet the requirements of FMVSS No. 208 and that U.S.-model seat belts would have to be installed at that seating position to meet the requirements of the standard.

Agency Analysis: NHTSA has concluded that all 2005 Toyota RAV4 vehicles imported into the United States must be inspected for the presence of U.S.-model fuel system, braking system, occupant crash protection, and child restraint anchorage system components. Vehicles not already so equipped must have U.S.-model components installed to meet the requirements of FMVSS Nos. 135 *Light Vehicle Brake Systems,* 208 *Occupant Crash Protection,* 225 *Child Restraint Anchorage Systems,* and 301 *Fuel System Integrity.*

Conformity packages submitted for vehicles imported under the decision must demonstrate that the vehicle is equipped with components that allow it to achieve compliance with all standards at issue. Any modification or replacement of components necessary to meet the requirements of the standard must be shown to bring the vehicle into compliance. Such proof must be submitted by an RI as part of any conformity package submitted for nonconforming vehicles.

2. Safety-Related Defect Recall Campaigns

Toyota also questioned the ability of parties other than Toyota authorized agents to conduct safety recall campaigns to notify owners of safety-related defects and to remedy such defects.

JK responded by noting that all vehicles certified by RIs must be covered by a mandatory service insurance policy to assure that recall notification and remedies are provided.

Agency Analysis: RIs are by definition ''manufacturers'' under the National Traffic and Motor Vehicle Safety Act of 1966, as amended (the Act), 49 U.S.C. 30101 *et seq.* As such, RIs have the same recall responsibilities as motor vehicle and replacement equipment manufacturers under the Act. RIs have the duty to ensure that there are no outstanding safety recalls on the vehicles they import before they sell or release custody of those vehicles. Once a vehicle has been sold or released, an RI has a continuing duty—extending through the life of the vehicle—to provide its owner with notification of any safety-related defects or noncompliances with the FMVSS that are determined to exist in the vehicle. RIs also have a continuing obligation to provide a free remedy for any such defects or noncompliances for a period of up to ten (10) years after the sale of the vehicle to its first purchaser. For any recall campaigns that may be conducted, RIs have the added responsibility of providing NHTSA with periodic reports on the progress of those campaigns. These responsibilities are explained in greater detail below.

In the statement of conformity that it submits to NHTSA for each vehicle that it imports, an RI must certify and substantiate that the vehicle either is not subject to any safety recalls or that all noncompliances and defects that are the subject of those safety recalls have been remedied. The RI must substantiate this certification by furnishing with the statement of conformity documentation

from the vehicle's original manufacturer verifying that the vehicle is not subject to any outstanding safety recalls.

For each vehicle for which it furnishes a statement of conformity to the agency, an RI must also maintain a mandatory service insurance policy in the amount of $2,000, written or underwritten by an independent insurance company, to ensure that the RI is financially capable of remedying any safety-related defect or noncompliance with an FMVSS that is determined to exist in the vehicle. The policy must be furnished with the vehicle at or before the time the RI sells or releases custody of the vehicle.

RIs have notification and remedy responsibilities as well. As specified in 49 CFR 592.6(i)(1), an RI must notify NHTSA under 49 CFR part 573 and notify owners under 49 CFR part 577 if a vehicle that the RI has imported, or for which it furnished the agency with a statement of conformity, is substantially similar to one that has been found to contain a safety-related defect or a noncompliance with an applicable FMVSS. In this circumstance, the RI also has the duty to provide the affected owner with a remedy without charge (assuming it has not been more than ten years since the first sale of the vehicle). However, notification and remedy is not required if the vehicle's manufacturer or the RI demonstrates that the defect or noncompliance is not present in the vehicle, or that the defect or noncompliance was remedied before the statement of conformity was submitted to NHTSA's Office of Vehicle Safety Compliance. An RI also is not required to provide notification and remedy where the vehicle's fabricating manufacturer has undertaken those responsibilities.

For all recall campaigns it conducts, an RI must also submit to NHTSA two progress reports identifying the number of vehicles remedied in response to its notice.

These requirements ensure that the owners of vehicles imported by RIs receive proper notification and remedy in the event that a safety-related defect or noncompliance is found to exist in their vehicle.

In view of these considerations, the agency decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–480 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA has decided that 2005 Toyota RAV4 multipurpose passenger vehicles that were not originally manufactured to comply with all applicable FMVSS are substantially similar to 2005 Toyota RAV4 multipurpose passenger vehicles originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable FMVSS.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 1, 2006.

Harry Thompson,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. E6–18710 Filed 11–6–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–23090]

Revised Highway Safety Program Guidelines Nos. 3, 8, 14, 15, 19, and 20

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Revisions to highway safety program guidelines.

SUMMARY: Section 402 of title 23 of the United States Code requires the Secretary of Transportation to promulgate uniform guidelines for State highway safety programs.

This notice revises six of the existing guidelines to reflect program methodologies and approaches that have proven to be successful and are based on sound science and program administration. The guidelines the agency is revising today are Guideline No. 3—Motorcycle Safety, Guideline No. 8—Impaired Driving, Guideline No. 14—Pedestrian and Bicycle Safety, Guideline No. 15—Traffic Enforcement Services (formerly Police Traffic Services), Guideline No. 19—Speed Management (formerly Speed Control), and Guideline No. 20—Occupant Protection.

DATES: The revised guidelines are effective on November 7, 2006.

FOR FURTHER INFORMATION CONTACT: Susan Kirinich, Research and Program Development, NTI–100, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; Telephone: (202) 366–1755; Facsimile: (202) 366–7149.

SUPPLEMENTARY INFORMATION:

I. Background

Section 402 of title 23 of the United States Code requires the Secretary of Transportation to promulgate uniform guidelines for State highway safety programs. As the highway safety environment changes, it is necessary for NHTSA to update the guidelines to provide current information on effective program content for States to use in developing and assessing their traffic safety programs. Each of the revised guidelines reflects the best available science and the real-world experience of NHTSA and the States in developing and managing traffic safety programs. NHTSA will update the guidelines periodically to address new issues and to emphasize program methodology and approaches that have proven to be effective in these program areas.

The guidelines offer direction to States in formulating their highway safety plans for highway safety efforts that are supported with section 402 grant funds as well as safety activities funded from other sources. The guidelines provide a framework for developing a balanced highway safety program and serve as a tool with which States can assess the effectiveness of their own programs. NHTSA encourages States to use these guidelines and build upon them to optimize the effectiveness of highway safety programs conducted at the State and local levels.

The revised guidelines emphasize areas of nationwide concern and highlight effective countermeasures. The six guidelines NHTSA is revising today are the first in a series of planned revisions. As each guideline is updated, it will bear the date of its revision.

All the highway safety program guidelines, including the six guidelines revised today, will be available soon on the NHTSA Web site in the Highway Safety Grant Management Manual.

In a Notice published in the **Federal Register** on February 9, 2006 (71 FR 6830), the agency proposed to amend six highway safety program guidelines and requested comments on the proposed revisions. These guidelines included Guideline No. 3—Motorcycle Safety, Guideline No. 8—Impaired Driving, Guideline No. 14—Pedestrian and Bicycle Safety, Guideline No. 15—Traffic Enforcement Services (formerly Police Traffic Services), Guideline No. 19—Speed Management (formerly Speed Control), and Guideline No. 20—

Occupant Protection. In response to a request from the Motorcycle Riders Foundation, the agency published a Notice extending the comment period from March 13, 2006 to March 27, 2006 (71 FR 10754).

II. Comments

The agency received approximately 1,034 comments in response to the proposed revisions. Commenters included four State agencies (the Georgia Department of Driver Services, the Louisiana Department of Public Safety and Corrections, the Florida Department of Transportation, and the Department of California Highway Patrol (CHP)); the Metropolitan Nashville Police Department; the International Association of Chiefs of Police Highway Safety Committee (IACP); the Governors Highway Safety Association (GHSA); the Chicagoland Bicycle Federation; Advocates for Highway and Auto Safety (Advocates); the National Automobile Dealers Association (NADA); the Motorcycle Riders Foundation (MRF); the American Motorcyclist Association (AMA); the Motorcycle Safety Foundation (MSF); and chapters of American Bikers Aimed Toward Education (ABATE) from three States (Delaware, Michigan, and Wisconsin). The remaining comments were from individuals, most of whom commented on the proposed Motorcycle Safety Guideline, and many of whom identified themselves as motorcyclists or members of motorcycle rider organizations such as ABATE.

A. In General

CHP expressed overall support for the guidelines, noting that it currently implements most of the principles contained in the six guidelines. The Louisiana Department of Public Safety and Corrections commented favorably regarding the proposed guidelines' consideration of State demographics and centralized program management. Advocates expressed general support for most of the proposed changes to the guidelines, and the AMA supported the guidelines as recommendations to States.

The Louisiana Department of Public Safety and Corrections additionally commented that the guidelines incorporate ''a more comprehensive approach to program/problem management than previous guidelines'' but remarked that this broad-based approach favors larger States that have more resources. The Louisiana Department of Safety and Corrections suggested that NHTSA provide for ''scaled implementation'' based on States' relative availability of resources. Advocates commented that NHTSA should rank the criteria within the guidelines in order of importance and explain the basis for the rankings. As examples, Advocates suggested that NHTSA emphasize the need to ensure motorcycle helmet use and the need to ensure enactment of primary safety belt use laws.

The agency disagrees with the assertion that the revisions favor larger, more resource rich States or that the guidelines should prioritize program components. Consistent with Congressional direction, the guidelines provide broad guidance to the States on best practices in each program area. The guidelines provide a comprehensive framework or outline for improving safety in each area. Given the unique and changing circumstances in each State, certain guidelines may have a greater or lesser impact on the safety plans of different States. The criteria listed within each guideline are not ranked in order of importance, as the guidelines describe what a comprehensive approach to highway safety should include. The guidelines remain unchanged in response to these comments.

Advocates also commented that NHTSA should provide States with customized analyses of their section 402 programs at the beginning of each fiscal year to assist States with their programs. The purpose of the highway safety guidelines is to provide States a comprehensive description of a successful highway safety program addressing a given safety issue, not to offer a State-specific assessment of highway safety programs. Moreover, we do not intend the guidelines to be limited to activities funded under section 402, but rather to serve as a general guide to States in planning and administering all their highway safety activities. Accordingly, the agency made no changes to the guidelines as a result of this comment.

GHSA submitted a number comments responding to the guidelines in general. GHSA commented that as a result of the requirement in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Pub. L. 109–59, that States develop strategic highway safety plans (SHSPs) setting statewide highway safety goals, ''the current NHTSA highway safety program guidelines no longer fit the current 402 program and are not in sync with the SHSP guidance either.'' GHSA asserted that the proposed revised guidelines, ''while generally reflective of current knowledge about priority highway safety issues, recommend state highway safety countermeasures that go far beyond the scope of the current 402 program, far beyond the current role of the State Highway Safety Office (SHSO), and far beyond the resources available to state highway safety offices.'' GHSA asked several questions about the intended use of the guidelines, their purpose (as related to other Federal highway safety programs and safety guidance), and the role of SHSOs in implementing the guidelines. More specifically, GHSA asked whether the guidelines are intended for section 402-funded programs only or are intended as guidance regarding overall highway safety programs.

GHSA also commented that ''the proposed guidelines represent a highly idealized State highway safety program'' that no State currently has or will attain in the near future without additional funding and staffing. According to GHSA, because SHSOs do not have authority over portions of the proposed countermeasures, the guidelines are not ''optimally useful.'' GHSA noted that the guidelines do not build upon existing guidance documents, such as the National Cooperative Highway Safety Research Program (NCHRP) series 500 guidance documents and the NHTSA-funded publication Countermeasures that Work, creating confusion for SHSOs and others who implement the programs. GHSA suggested that NHTSA work with the Federal Motor Carrier Safety Administration and the Federal Highway Administration (FHWA) outside the context of the highway safety program guidelines and in a way that is consistent with existing guidance documents if NHTSA desires to promulgate broad highway safety guidelines.

NHTSA is fully supportive of the SHSP process. While SAFETEA–LU places statutory requirements on the State Departments of Transportation (State DOTs) to develop SHSPs, the agency does not view this as a requirement that the State DOTs take the lead on the entire highway safety process. Just as NHTSA has worked cooperatively with FHWA to develop SHSP guidance, the agency expects the Governors' Representatives for Highway Safety (GRs), whether they are located in the State DOTs or elsewhere, to act as full partners in the development of the SHSP. In fact, the statutory language regarding SHSPs makes it clear that existing programs—including the section 402 highway safety planning process—are not replaced by, or subsumed under, the SHSP process. NHTSA is required under 23 U.S.C. 402(a) to publish program guidelines, and SAFETEA–LU not only maintained

that requirement, but added guidelines to be developed. We regard the guidelines as excellent tools to assist in the development and implementation of SHSPs.

The Highway Safety Act of 1966 contemplated the use of the highway safety program guidelines as broad tools to implement traffic safety programs. With that broad framework in mind, the guidelines are comprehensive and go beyond addressing solely those activities that are funded by section 402 dollars to supporting State efforts to provide broad highway safety leadership across the State. Since the establishment of the section 402 program, GRs and SHSOs have been viewed as leaders in highway safety, with responsibilities that reach beyond behavioral issues and beyond the limits of section 402 or NHTSA funding. In fact, SHSOs are required to perform a broad safety leadership role in each State. NHTSA regulations (23 CFR 1251.4) require a State highway safety agency to be authorized to: ''(a) Develop and implement a process for obtaining information about the highway safety programs administered by other State and local agencies; (b) periodically review and comment to the Governor on the effectiveness of highway safety plans and activities in the State regardless of funding source; (c) provide or facilitate the provision of technical assistance to other State agencies and political subdivisions to develop highway safety programs; and (d) provide financial and technical assistance to other State agencies and political subdivisions in carrying out highway safety programs.''

SHSOs demonstrate such leadership on a regular basis. For example, SHSOs organize high visibility enforcement mobilizations, even though SHSOs may not directly supervise State and local law enforcement. Existing statutory requirements reinforce this approach, as the agency's approval of a State highway safety program is contingent on the program providing that the Governor of a State administer the program through a State highway safety agency that has ''adequate powers'' and is ''suitably equipped and organized'' to carry out the program.

Further, the intended use of the revised guidelines is identical to the intended use of the existing guidelines—to provide broad guidance to the States on best practices in each highway safety program area. Countermeasures are more thoroughly discussed in the NCHRP series 500 guidance documents and in the NHTSA-funded publication Countermeasures that Work; these tools provide detail to fill in the framework. All of these documents, along with additional behavioral research conducted by non-Federal sources, add to the robustness of available highway safety literature.

The guidelines are not idealized; they are comprehensive. NHTSA recognizes that State needs and programs differ and acknowledges that the weight placed on certain guidelines or individual recommendations in the guidelines may vary from State to State. As in the past, the revised guidelines were prepared in cooperation with the FHWA, so that program areas such as Pedestrian/Bicycle Safety and Speed Management reflect a coordinated DOT approach.

GHSA opposed linking the highway safety program guidelines to NHTSA assessments and management reviews, recommending that the guidelines act as ''guidance only,'' allowing States to adapt to their particular circumstances. GHSA suggested that NHTSA use the guidelines to assess its own programs and to make certain a sufficient basis exists for the guideline contents. Finally, GHSA recommended that in the next reauthorization cycle, NHTSA propose amendments to remove guidelines for areas that are no longer priorities or areas for which SHSOs do not have jurisdiction.

The agency disagrees with GHSA's characterization of the guidelines as ''linked'' to management reviews. GHSA has reviewed the guidance for management reviews and special management reviews; there have been no changes to these documents based on the update of the guidelines, and none are currently planned. The program area framework in the guidelines, however, has been used as the basis for NHTSA program assessments for many years. The assessments are voluntary peer reviews often requested by States interested in improving their programs. The agency notes that in several instances, States that were identified as candidates for special management reviews (SMRs) asked if they could have an assessment in lieu of an SMR and implement the recommendations from the assessment. Only in these cases where an assessment is used in lieu on an SMR are States fully accountable for implementing the results of the assessment. Nevertheless, all States should track improvements and progress in implementing the recommendations from their peers. The agency has made no changes to the guidelines in response to GHSA's comments discussed above. GHSA's comments related to particular highway safety program guidelines are discussed below under the appropriate heading.

The agency received a number of comments we consider outside the scope of the proposed revisions to the highway safety program guidelines. These comments related to a variety of topics, including illegal aliens, street signs, public works departments, vehicle headlights, ''big government,'' cell phone use and other distracted driving issues. Because these comments do not fall within the subject area of the revised guidelines, the agency has not addressed them in this action. We note, however, that in SAFETEA–LU, Congress directed the agency to issue an additional guideline for reducing crashes resulting from unsafe driving behavior (aggressive or fatigued driving and distracted driving arising from the use of electronic devices in vehicles). The agency will develop and publish this guideline at a later date.

B. Comments Regarding Guideline No. 3: Motorcycle Safety

Nearly all of the approximately 1,034 comments received concerned, in whole or in part, the Motorcycle Safety guideline. Individual commenters, many of whom identified themselves as motorcyclists or members of motorcycle rider organizations such as ABATE, comprised the bulk of the comments received. Commenting motorcycle-related organizations included AMA, MRF, MSF, and three State ABATE chapters (Delaware, Michigan, and Wisconsin). Other commenters on this guideline included the Georgia Department of Driver Services, the Louisiana Department of Public Safety and Corrections, the Florida Department of Transportation (Florida DOT), IACP, GHSA, and Advocates.

1. In General

MRF and ABATE chapters of Delaware and Wisconsin commented favorably that the guideline presents an expanded approach to motorcycle safety, AMA welcomed the guideline's emphasis on crash reduction, and MSF expressed general support for the guideline.

2. Program Management

The agency received several comments concerning the Program Management section. MRF, AMA, MSF and a number of individuals expressed support for the section as written. MSF supported the provisions encouraging motorcycle crash data collection and analysis and the routine evaluation of motorcycle safety programs and services. MSF recommended the addition of a provision encouraging the collection and analysis of intermediate data (*e.g.*, skill development, attitude

change, knowledge gains). Crash, fatality and injury data are necessary to identify the types and severity of motorcycle safety problems in a State and so require specific reference. The guideline does not preclude States from using other types of data, including intermediate data. Consequently, the agency made no changes to the guideline in response to this comment.

Three individuals expressed disagreement with the Program Management section, generally asserting that the recommendations fall outside NHTSA's authority. Another individual commented that this section should specify the involvement of motorcycle safety organizations in the process. Proper program management is crucial to improving motorcycle safety. The agency agrees that motorcycle safety organizations should be included when planning State motorcycle safety programs and notes that the guideline already addresses the inclusion of motorcycle safety organizations in this section, recommending that State motorcycle safety plans ''encourage collaboration among agencies and organizations responsible for, or impacted by, motorcycle safety issues.'' The guideline remains unchanged in response to these comments.

3. Motorcycle Personal Protective Equipment & Legislation and Regulations

Most of the comments received related to these two sections of the guideline. Within these sections, comments largely concerned the proposed provisions related to motorcycle helmets. Advocates and a few individual commenters voiced support for the inclusion of the helmet-related provisions. Advocates further commented that these sections should rank helmet use as the top priority. As explained earlier, the agency declines to rank elements within each guideline.

The vast majority of commenters opposed the inclusion of references to motorcycle helmets. MRF, AMA, State ABATE chapters of Delaware, Michigan, and Wisconsin, and numerous individuals each voiced similar concerns. These included lobbying restrictions, general opposition to helmet laws, restrictions against tying Federal funds to helmet laws or imposing a national helmet law, State (not Federal) jurisdiction over helmet laws, individual liberty/freedom/constitutional issues, lack of proven safety benefits associated with helmet use, safety disbenefits associated with helmet use (*e.g.*, helmets are uncomfortable and inhibit vision or hearing).

The Motorcycle Safety guideline remains unchanged in response to these comments. The guideline language does not violate lobbying restrictions, condition Federal funds on the enactment of a helmet law, constitute the imposition of a national helmet law, impede State jurisdiction over helmet laws, or violate individual liberties. The agency believes the inclusion of language recommending the use of helmets is consistent with the multitude of research confirming their safety benefits.

A comprehensive motorcycle safety program works not only to prevent crashes but to reduce injuries resulting from a crash, and motorcycle helmet use is an important component for a comprehensive State program to reduce motorcycle-related injuries. Decades of research have proven that motorcycle helmets are effective in preventing head and brain injuries when a motorcyclist is involved in a crash and that State universal motorcycle helmet laws are the most effective mechanism to ensure that motorcyclists wear helmets each time they ride. Compared to a helmeted rider, an unhelmeted rider is more likely to incur a fatal head injury. Helmets also are effective in reducing the risk of non-fatal head injuries, which often require expensive, long-term treatment and rehabilitation. The latest research, using data from 1993 to 2002, shows that helmets reduce motorcycle rider fatalities by 37 percent (Deuterman, 2004) and brain injuries by 65 percent (NHTSA, 2003).

NHTSA estimates that motorcycle helmet use is well above 90 percent in States with a universal helmet law that covers all riders and between 34 percent and 54 percent in States with no universal helmet law or a law covering only young riders (NHTSA, 2003). Motorcycle helmets are a motorcycle rider's primary protection in the event of a crash, regardless of age. Since 1997, six States have repealed their universal motorcycle helmet laws that covered riders of all ages (Texas, Arkansas, Kentucky, Louisiana, Florida, and Pennsylvania). In the first five of these States, for which we have data, observed helmet use dropped from nearly 100 percent compliance to around 50 percent within a few months. In the first year after the repeal of the universal helmet law, motorcycle fatalities for these States increased from 17 to 67 percent. Although an increase in the number of riders contributes to this increase, a large percentage of the increase correlates with decreased helmet use. In States that either reinstated or enacted a motorcycle helmet law in the past decade, helmet use has dramatically increased, and motorcyclist deaths and injuries have decreased.

In view of these dramatic statistics, a motorcycle safety guideline that contained no reference to the safety benefits of helmets would be demonstrably incomplete. Commenters should note that the highway safety program guidelines are recommendations only, and do not require States to enact helmet laws.

Several individuals also opposed the guideline's inclusion of language related to any personal protective equipment (*e.g.*, gloves, boots, eye and face protection) or footrests. NHTSA has not changed its position on the inclusion of references to personal protective equipment or footrests since it revised the Motorcycle Safety guideline in 1995. Like helmets, other personal protective equipment and footrests are part of a comprehensive framework for improving motorcycle safety. The agency did not change the guideline in response to these comments.

4. Motorcycle Operator Licensing

The agency received several comments related to the Motorcycle Operator Licensing section of the guideline. AMA commented favorably on this section. MRF expressed support for motorcycle license endorsements but suggested, as did some individual commenters, that licensing matters are State issues. A number of individuals expressed support for all motorcyclists to obtain a license endorsement to operate a motorcycle. NHTSA agrees that licensing matters are typically State issues and notes that the guidelines are recommendations for a comprehensive State licensing program.

IACP and one individual commented that at the point of purchase, a motorcycle purchaser should be required to show a motorcycle license endorsement, learner's permit or certificate of completion of an approved motorcycle safety course. NHTSA declines to adopt this suggestion because the purchaser may not be the operator of the motorcycle and many States currently are unable to meet demands for rider training.

With respect to the guideline's provision that State licensing systems should require cross-referencing of motorcycle registrations with motorcycle licenses, some individuals commented that NHTSA should administer a grant program to help States offset the costs of implementing this cross-referencing as well as other elements of motorcycle safety programs. A handful of individuals expressed concerns about privacy or law

enforcement abuse in cross-referencing registrations and licenses. Cross-referencing motorcycle registrations and licenses has proven effective in increasing the number of motorcycle operators that obtain licenses required to operate a motorcycle. This information is often used to notify registered motorcycle owners of State laws requiring license endorsements for motorcycle operation. To the agency's knowledge, this information is not shared with law enforcement. Congress has not authorized specific funding for States to conduct cross-referencing of motorcycle registrations with motorcycle licenses. The agency notes, however, that section 2010 of SAFETEA–LU authorized a motorcyclist safety grant program through Fiscal Year 2009 that would allow States to use section 2010 funds for motorcyclist safety training and motorcyclist awareness programs. The agency has made no changes to the guideline in response to these comments.

MSF advocated the inclusion of an additional element in this section-the cross-referencing of training data with operator licensing records, particularly for States in which training is a prerequisite to licensing. MSF commented that collecting this information on training at the time riders obtain licenses will provide valuable information. While the agency believes the idea suggested by MSF would assist States in linking training and crash and citation data, we decline to make a recommendation for the specific information that should be contained on State operator licenses.

Advocates and one individual commented that the agency should consider including in this section of the guideline a component related to graduated drivers licenses (GDLs) for beginning riders, regardless of age. Advocates suggested that requiring a 90-day learner's permit and restricting the number of times a person may obtain a learner's permit is insufficient to ensure a sufficient educational experience. ABATE of Wisconsin and several individuals commented that 90-day permits are not realistic in every State, as riders may have difficulty scheduling and completing testing within 90 days because of weather or inadequate staffing. Many States have GDL systems for drivers, but the agency does not feel it is appropriate for inclusion in this guideline at this time for motorcyclists. Although insufficient evidence currently exists to substantiate the effectiveness of a GDL system for motorcyclists, the agency is reviewing this issue. Experts in motorcycle safety and driver licensing, including the American Association of Motor Vehicle Administrators, recommend limiting motorcycle learner's permits to 90 days. This is necessary to limit the practice by some motorcycle riders of avoiding full licensure by continuously obtaining and operating their motorcycles on learner's permits.

The Louisiana Department of Public Safety and Corrections supported the provision limiting learner's permits to 90 days and recommended an additional provision in the guideline limiting vehicle registration to the same 90-day period. According to the Louisiana Department of Public Safety and Corrections, limiting vehicle registrations to 90 days would provide motorcycle operators an incentive to pursue full licensure and would provide law enforcement probable cause to stop motorcyclists if their license plates are expired. The guideline remains unchanged in this regard, as the agency does not believe vehicle registration should be limited to the same 90-day period as a learner's permit. Motorcyclists operating on a learner's permit do not always own the vehicle they are operating. Learner's permits and operator's licenses provide individuals with the privilege to operate any motorcycle and are not tied to the use of a specific motorcycle.

5. Motorcycle Rider Education and Training

Numerous motorcycle organizations and individuals supported motorcycle rider education and training as a means to improve safety. A few of the comments focused on rider training course curricula. MSF recommended that, rather than providing that a State should have ''a mandate to use the State-approved curriculum,'' the guideline should provide that a State have ''a mandate to use a State-approved curriculum that meets nationally recognized standards for curriculum, materials, student evaluation, quality assurance and training, professional development and approval of instructors.'' One individual commented that the language pertaining to a ''mandated state-approved curriculum'' is too restrictive on course providers and would not facilitate timely incorporation of newly identified problems into curricula, as changes in curricula would require State approval through legislative action. Another individual suggested that NHTSA communicate with Harley Davidson regarding its Riders Edge course.

The guideline remains unchanged in response to these comments. NHTSA declines to adopt MSF's suggestion and notes that the Motorcycle Safety guideline language already includes recommendations that State programs have a documented policy for instructor training and certification, established guidelines for conduct and quality control of the program, and a program evaluation plan. Additionally, the agency believes that the State must set the minimum requirements for each rider training course offered throughout the State. This baseline uniformity in curricula ensures that all riders obtaining training in a State are provided the same information and that training meets State licensing standards if licensing is conditioned upon the completion of training. Not all States require legislative action to make changes to motorcycle training curricula. Some States instead require administrative action to make such changes. To the extent that the requirement for legislative approval of changes in curricula would impede the inclusion of important information in curricula, the agency suggests that States instead allow administrative changes. The agency is familiar with the Riders Edge training course sponsored by Harley-Davidson, Inc. The core of the course is the same as the training course developed by MSF that is currently used in at least 45 State rider training programs.

One individual commented that NHTSA is attempting to privatize rider training and replace State-run programs. Another individual stated that a low-cost rider education course should be available to more people, pointing to the shortage of courses and long waiting lists for training nationwide. The agency does not favor privately developed rider training over publicly funded training. Decisions regarding whether a State or private entity will conduct training rest solely with States. As to the latter comment, the agency recognizes that many State programs currently cannot meet the demand for rider training courses, especially in the spring when demand is at its greatest. This section of the guideline includes a provision that each State motorcycle rider education program should address any backlog of training. The purpose of this guideline is to establish the components of a comprehensive and effective motorcycle safety program, and the agency hopes that by implementing the components of this section, States will be able to run more efficient courses and, in turn, offer more courses. The agency has made no changes to the guideline in response to these comments.

MSF suggested that NHTSA amend this section of the guideline to encourage States to offer continued training for experienced riders as well

as training addressing older riders. NHTSA agrees, and we have modified the guideline to recommend that a State's program provide reasonable availability of rider education courses for all interested residents of any legal riding age and level of riding experience.

6. Motorcycle Operation Under the Influence of Alcohol or Other Drugs

MSF and some individuals expressed support for this section of the guideline. MRF, ABATE of Wisconsin and several individuals expressed concern that law enforcement may unfairly ''target'' motorcyclists when conducting impaired driving enforcement campaigns. The guideline merely states that States should utilize high visibility law enforcement programs to reach impaired motorcyclists. States already have impaired driving enforcement campaigns in place that address impaired drivers of all motor vehicles, and the guideline does not encourage law enforcement to ''target'' motorcyclists in their enforcement efforts. The guideline remains unchanged in response to these comments.

One individual proposed the inclusion of a recommendation that States lower the Blood Alcohol Content (BAC) limit to .04 for motorcyclists when operating a motorcycle. As no research exists to support this recommendation, the agency did not adopt this suggestion.

7. Law Enforcement

The agency received several positive comments regarding the Law Enforcement section of the guideline. MSF, MRF and ABATE of Delaware expressed support for educating law enforcement officers generally or with respect to problem identification. Additionally, MSF, MRF, AMA, ABATE of Wisconsin, ABATE of Delaware and a number of individual commenters supported improvements to crash investigation and data collection. MSF commented favorably on the guideline's emphasis on law enforcement training on the identification of impaired motorcycle operators.

MRF, ABATE of Wisconsin, ABATE of Delaware and several individuals questioned the feasibility and practicality of educating law enforcement officers in the identification of helmets that comply with Federal Motor Vehicle Safety Standard (FMVSS) 218 and requested removal of this provision from the guideline, noting that no list of compliant helmets exists. Although it is true that no list of compliant helmets exists, the agency does not believe a list is necessary for a law enforcement officer to determine whether a motorcycle helmet is properly certified as compliant with FMVSS 218. Certain common indicators exist. For example, a helmet that is sold without a DOT sticker attached to the back of the helmet does not comply with the standard. If additional required labels are not adhered to the inside of a helmet, it does not comply with FMVSS 218. Further, a helmet weighing one pound or less or that has anything extending further than two-tenths of an inch from its surface does not meet the standard. Information on helmet labeling and other ways to detect non-compliant helmets is available to consumers, law enforcement officers and other interested parties, without charge, on NHTSA's Web site at *http://www.nhtsa.gov/people/ outreach/ media/catalog/Index.cfm*.

One individual stated that law enforcement should focus on lack of permits, lack of insurance and neglectful driving. NHTSA agrees that these issues are important, but does not believe they are necessary for inclusion in the guideline. The agency notes that the guideline provides that law enforcement agencies should establish goals to support motorcycle safety, which could include issues related to permits, insurance, or neglectful driving.

8. Highway Engineering

MSF, MRF, AMA, GHSA, ABATE of Wisconsin and several individuals expressed support for the Highway Engineering section of this guideline. Although generally supportive of the elements in this section, MSF suggested that the agency list other highway design and maintenance measures (*e.g.*, grating, rain groove and metal bridge decking placement, edged trap and grade crossing construction, barrier design, work zone warnings, highway joint and crack sealants and painted roadway markings) in addition to pavement skid factors and warning signs already listed. The agency has made no changes to the guideline in response to this comment, and notes that the current language that ''measures may include, but should not be limited to'' pavement skid factors and warning signs indicates that the list is not exhaustive.

GHSA commented that selecting pavement skid factors is the responsibility of State DOTs, not SHSOs. As discussed earlier, SHSOs frequently take the lead on a wide range of highway safety matters, encouraging partners to adopt highway safety practices. Accordingly, even though SHSOs may not directly supervise matters related to pavement skid factors, the agency believes such measures are appropriate for inclusion in this guideline.

The proposed guideline included a statement that ''balancing the needs of motorcyclists must always be considered.'' The Florida DOT recommended the removal of the word ''balancing'' from this sentence, commenting that motorcyclists have few unique engineering needs and the use of the term ''balancing'' implies that competing engineering considerations must be weighed against motorcyclist safety. The agency agrees with this comment and has removed the term from the guideline.

One individual recommended the establishment of an advisory committee with participation by motorcycle organizations and State DOTs or highway departments, and another individual suggested motorcyclist involvement in determining highway safety design for motorcyclists. A third individual stated that NHTSA should focus on poor road conditions. The agency has made no change to the guideline, as these suggestions are accommodated under a separate effort. Section 1914 of SAFETEA–LU establishes a Motorcyclist Advisory Council under the auspices of FHWA. The Council will coordinate with and advise the Administrator of FHWA on infrastructure issues of concern to motorcyclists including barrier design, road design, construction and maintenance practices and intelligent transportation system technologies. FHWA is currently working to establish the Council.

9. Motorcycle Rider Conspicuity and Motorist Awareness Programs

MSF and MRF generally supported this section of the guideline. MRF, ABATE of Wisconsin and several individuals, however, indicated opposition to requirements pertaining to a particular clothing color or reflectivity combinations for all motorcycles. MSF, AMA and some individuals commented on the need for inclusion of a motorcycle awareness component in State drivers' education courses. The Motorcycle Safety guideline does not require any State to enact legislation or implement any specific programs requiring motorcyclists to wear reflective or brightly colored clothing or helmets. Likewise, the guideline does not mandate the inclusion of motorcycle awareness in drivers' education courses; however, the agency will address these awareness issues when we update

Guideline No. 4—Driver Education. The agency has made no changes to the guideline in response to these comments.

Although supportive of awareness generally, Advocates indicated that it does not support any shifting of responsibility for motorcycle safety to other road users. NHTSA believes that all road users share a common responsibility for safety. The guideline does not attempt to place responsibility for motorcycle safety on any specific segment of motor vehicle operators; instead, the agency believes motorist awareness programs are important to ensure that all road users operate together safely. The agency has made no changes to the guideline in response to this comment.

The Georgia Department of Driver Services and several individuals commented on particular mechanisms to increase motorist awareness of the presence of motorcycles. According to these commenters, the guideline should ''strongly encourage or require'' motorcyclists'' daytime use of headlight modulators. In contrast, other commenters asserted that headlight modulators are unsafe. Several individuals suggested forward facing lighting, brake light flashing, amber or red side marker lighting, and headlight strobe lighting. One individual stated that passing on the right should be illegal and that vehicles equipped with global positioning systems should include motorcycle sensors. The agency is currently researching techniques for increased conspicuity, including the effects of daytime running lights on motorcycles and other motor vehicles. The guideline is unchanged in response to these comments. The guideline retains the provision that safety programs related to rider conspicuity and motorist awareness should address daytime use of motorcycle headlights. However, as NHTSA continues to research issues related to lighting, we may consider updating the guideline to reflect research findings.

The agency received a number of comments advocating the need for increased motorist awareness of the presence of motorcycles and a comment urging specific qualifications for those teaching motorist awareness courses. The agency agrees that motorist education and awareness is an important component of a comprehensive motorcycle safety program. This continues to be a component of the Motorcycle Safety Guideline. We believe States should determine the specific criteria for approving instructors. The agency made no changes to the guideline as a result of these comments.

10. Communication Program

MSF supported the Communication Program section of this guideline. The Florida DOT commented that the scope of this section should be similar to that of the Communication Program described in Guideline No.14—Pedestrian and Bicycle Safety. The agency agrees. Consistent with the Pedestrian and Bicycle Safety and the Occupant Protection guidelines, the Motorcycle Safety guideline adds that ''States should enlist the support of a variety of media, including mass media, to improve public awareness of motorcycle crash problems and programs directed at preventing them.''

Several individual commenters articulated concerns regarding a lack of funding to support communication programs. The agency notes that funds for such activities are available through a number of highway safety grant programs. We note again that the motorcyclist safety grant program authorized by section 2010 of SAFETEA–LU through Fiscal Year 2009 would allow qualifying States to use section 2010 funds for motorcyclist safety training and motorcyclist awareness programs.

11. Program Evaluation and Data

MSF, MRF, ABATE of Wisconsin and several individuals commented in support of this section. MSF suggested the identification of intermediary measures and the collection of data to support process and impact, rather than only outcome. NHTSA believes MSF's suggestion is adequately addressed in this section by the statement ''encouraging, supporting and training localities in process, impact and outcome evaluation of local programs.'' Process and impact evaluation include intermediary measures, such as skill development, attitude change and knowledge gains.

AMA commented that the guideline should include an increased focus on State data and record-keeping, especially with respect to motorcycle vehicle miles traveled (VMT). The agency agrees that the guideline should encourage States to collect accurate motorcycle VMT data and has added it to the final guideline.

One individual stated that NHTSA should collect data only on crashes involving interstate and international travel and commerce. The agency disagrees with this comment. First, we note that this guideline pertains to State and local data collection. Moreover, NHTSA's mission is to save lives, prevent injuries and reduce economic costs due to road traffic crashes, through education, research, safety standards and enforcement activity. It is imperative that the agency collect and analyze the broadest possible range of crash, injury and fatality data. It is through this analysis that the agency is able to identify highway safety problems and develop methods to address those problems. Limiting data collection to interstate and international travel and commerce would significantly limit the agency's ability to accomplish its mission. The agency has made no changes to the guideline in response to these comments.

One individual asked that the term ''high risk population'' be removed, claiming it is a biased reference to motorcyclists. As used in this section, high-risk population refers to a specific segment of motorcyclists that is at a higher risk of crash involvement than the general motorcycle population, and, thus, may provide reason for specific programs to reach them, separate from programs addressing the general riding population. Review of State crash data may identify segments of motorcycle operators that are at higher risk of crashes due to characteristics such as alcohol use, speeding, and licensure. It is important that program resources are used in the most effective way to reach both the general public and identified high-risk populations. The reference to high-risk populations remains in the guideline.

As an administrative matter, we are correcting the Program Evaluation and Data section to number it correctly as Section XI, rather than Section XII.

C. Comments Regarding Guideline No. 8: Impaired Driving

CHP, the Louisiana Department of Public Safety and Corrections, the International Association of Chiefs of Police (IACP), GHSA, the Metropolitan Nashville Police Department and four individuals commented on the Impaired Driving guideline.

1. Program Management and Strategic Planning

The agency received one comment from an individual suggesting that the guideline include institutions of higher education and the military among the parties listed as Driving While Intoxicated (DWI) task force or commission members. The agency agrees with this comment and has modified the guideline accordingly.

2. Prevention

The Louisiana Department of Public Safety and Corrections suggested that

the agency add a section to provide for a standardized DWI treatment course, as courses currently vary in content and duration by jurisdiction. Treatment and the criminal justice system are addressed under Section V (Alcohol and Other Drug Misuse: Screening, Assessment, Treatment and Rehabilitation) of the Impaired Driving guideline. The agency believes that offenders must be assigned to the types of treatment most appropriate for them, based on an assessment by a certified substance abuse official. As recently explained in NHTSA's final rule amending its incentive grant program for alcohol-impaired driving prevention programs under 23 U.S.C. 410 (71 FR 20555), the agency does not endorse a specific assessment method. Accordingly, the agency has made no changes to the guideline in response to this comment.

3. Criminal Justice System

The Metropolitan Nashville Police Department commented that if the Tennessee legislature were to enact a law providing for sanctions for a blood alcohol content (BAC) test refusal at least as strict as a high BAC offense, the department ''would have one of the best tools'' it has ever had to deal with Driving Under the Influence (DUI). The Louisiana Department of Public Safety and Corrections expressed support for the guideline's proposal that State laws require law enforcement officers to conduct mandatory BAC testing of drivers involved in crashes producing fatal or serious injuries, stating that receipt of Federal funds should be conditioned upon a State's mandatory BAC testing of such drivers. In contrast, CHP raised objections to the inclusion of mandatory BAC testing of such drivers, citing concerns regarding departmental policies and procedures, constitutional rights of persons tested, and availability of required time and resources.

Under the section 410 grant program, States may qualify for incentive grant funds by complying with certain criteria, one of which includes enacting a law that provides for mandatory BAC testing of drivers involved in all fatal motor vehicle crashes but does not condition the administration of tests on the establishment of probable cause. The agency has revised the Impaired Driving guideline to recommend that States require mandatory BAC testing only for fatal crashes, rather than for fatal and serious injury crashes. In addition to providing consistency with the section 410 grant program, the agency believes this change strikes an appropriate balance between the need for robust BAC testing and CHP's concerns.

The Louisiana Department of Public Safety and Corrections also commented on the recommendation that each State conduct frequent, highly visible, well publicized and fully coordinated impaired driving law enforcement efforts throughout the State. Rather than conduct law enforcement efforts ''statewide,'' the Louisiana Department of Public Safety and Corrections asserted that levels of effort ''should be tailored for the targeted community having the most severe impaired driving problem.'' The agency agrees with this comment and notes that the guideline accommodates this by specifying that law enforcement efforts should be conducted ''especially in locations where alcohol-related fatalities most often occur.'' The agency has made no change to the guideline in response to this comment.

IACP commented that emphasis should be placed more on court system involvement and data collection and less on training and standards. The agency notes that the portion of the guideline related to enforcement recommends officer training on the latest law enforcement techniques, including Standardized Field Sobriety Testing (SFST) and, as appropriate, media relations and Drug Evaluation and Classification (DEC) training. The agency believes that such training can facilitate detection, arrest and prosecution for impaired driving offenses. The agency agrees that court involvement and data collection play important roles in the impaired driving area. However, because court system and data collection issues are addressed in other parts of the guideline (*e.g.*, sections pertaining to Program Management and Strategic Planning, Prosecution, and Adjudication) the agency has made no changes to this section of the guideline in response to this comment.

The agency notes that it has made two conforming changes to this section of the guideline to make it consistent with the section 410 grant program. The agency has changed the high BAC level to .15 BAC or greater rather than .16 BAC or greater. Additionally, the agency has incorporated an option regarding administrative license suspension for first-time offenders for at least 15 days followed immediately by a restricted provisional or conditional license for at least 75 days if such license restricts the offender to operating only vehicles equipped with an ignition interlock.

4. Alcohol and Other Drug Misuse: Screening, Assessment, Treatment and Rehabilitation

The agency received three comments regarding this section. GHSA commented on the statement that States should encourage employers, educators and health care professionals to implement a system to screen and/or assess drivers for alcohol or drug abuse problems, and as appropriate, intervene and refer them for treatment. GHSA indicated that although it supports screening, intervention and alcohol assessments, state health agencies, not SHSOs, are responsible for developing and implementing those programs, and SHSOs could only play a secondary role in those functions. The highway safety program guidelines serve as guidance and do not impose a requirement. To the extent that highway safety offices are urging employers in their jurisdiction to discuss safety issues with their employees, such as encouraging safety belt use and discouraging impaired driving, it should not be a burden to ask employers also to screen employees for potential alcohol problems. The agency has included this element in the guideline due to the promise demonstrated by screening and brief intervention (SBI) to date. The agency believes that this innovative strategy has the potential to reduce alcohol-related and impaired driving crashes and fatalities. The cost to implement SBI is modest, research has clearly demonstrated its effectiveness in medical settings, and efforts are underway to test its viability and impact in other contexts. Employers are not a new audience for highway safety offices and do not require special efforts to reach. The guideline remains unchanged in response to this comment.

The agency received two comments from individuals related to this section of the guideline. One commenter advocated adequate minimum penalties for repeat DWI offenders, particularly those who cause injuries to others. Another commenter questioned the role of NHTSA (and the government, in general) in establishing guidelines in this area. The guideline includes language pertaining to the adoption of a broad range of effective penalties for impaired driving, including enhanced penalties for repeat offenders, vehicular homicide or causing personal injury. The agency's role in issuing this and other guidelines is directed by Congress. The agency has made no changes to the guideline in response to these comments.

D. Comments Regarding Guideline No. 14: Pedestrian and Bicycle Safety

The agency received comments from the Florida DOT, GHSA, the Chicagoland Bicycle Federation, and four individuals in response to the Pedestrian and Bicycle Safety guideline.

1. In General

GHSA generally commented that the State DOTs, not the SHSOs, are responsible for pedestrian and bicycle-related construction improvements, which cannot be funded using section 402 funds, and the Florida DOT similarly questioned the use of funds for training engineers and planners on design standards. The Florida DOT also questioned the guideline's inclusion of functions traditionally accomplished by a State's bicycle and pedestrian program coordinator or by the SHSO. Traffic safety problems require a multi-faceted approach including education, engineering and enforcement strategies, and require coordination and collaboration among many different government entities and local organizations. Since the establishment of the section 402 program, the GRs and SHSOs have identified themselves as leaders in highway safety, with knowledge that extends beyond the boundaries of the section 402 program or other NHTSA funding. The agency notes again that the Highway Safety Act of 1966 contemplated guidelines that extend beyond only those activities eligible for section 402 funding and encouraged SHSOs to provide broad highway safety leadership across the State. However, to alleviate any confusion regarding this issue, the agency has revised the guideline to include a statement in the introductory paragraph concerning the necessity for coordination among State agencies in the implementation of these highway safety programs.

The Florida DOT commented that it would be impossible for the State to accomplish all the recommendations in the proposed guideline and recommended adding language that the guideline includes ''ideal circumstances, which every state should work toward.'' The guideline does not adopt this suggestion. The guidelines are not idealized; they are comprehensive. Given the unique and changing circumstances in each State, certain guidelines and parts of guidelines may have a greater or lesser impact on the safety plans of different States.

2. Program Management

The agency received comments from the Florida DOT, the Chicagoland Bicycle Federation and three individuals regarding this guideline's Program Management section. The Florida DOT suggested that the statement urging the SHSO to promote the proper use of bicycle helmets also should include language regarding the promotion of proper and legal bicycling practices. Two individuals commented that helmets should be considered a secondary safety measure. The agency agrees with the Florida DOT comment and has incorporated the suggestion into the guideline. The agency has made no changes to the guideline in response to the comment that helmets should be a secondary measure and continues to recommend bicycle helmets as a primary measure of reducing death and injury.

The Florida DOT commented that the guideline component concerning support of enforcement of State bicycle and pedestrian laws by SHSOs is too narrow and should include State laws affecting bicyclists and pedestrians. The agency agrees with this comment and has changed the guideline accordingly. The Florida DOT also questioned whether the statement that the SHSO should train program staff to effectively carry out recommended activities meant it should train staff to carry out the recommendations of the guideline or actually conduct the training in the field. The agency intended the former result and has clarified the role of the SHSO in this regard by revising this portion of the guideline to read ''train program staff to effectively coordinate the implementation of recommended activities.''

The Chicagoland Bicycle Federation commented that the guideline's provision urging the SHSO to develop safety initiatives to reduce fatalities and injuries among high-risk groups should include aggressive motorists as well as the language ''as indicated by crash and injury trends.'' The agency believes the importance of implementing a comprehensive program dependent on State demographics is sufficiently addressed in this guideline in the introductory paragraph. Although addressing aggressive motorists is an important issue, the agency believes this issue is best addressed elsewhere in the guideline. Several sections of the guideline have been changed accordingly to include language about addressing aggressive motorists or sharing the road safely.

One individual suggested that the guideline incorporate a provision for the development of State or regional plans to help improve pedestrian and bicycle safety. The agency agrees that such plans are important but has made no changes to the guideline in response to this comment, as planning is already described in the introductory paragraph of the Program Management section of the guideline.

3. Multi-Disciplinary Involvement

The Florida DOT asked whether all the communities listed in the proposed guideline (*e.g.*, bicycle coordinators, law enforcement, education, public health) should receive grant funds and whether it is the duty of the SHSO or the State Bicycle/Pedestrian Coordinator to ensure multidisciplinary involvement. This section provides examples of the types of groups that should be involved in a comprehensive approach to developing pedestrian and bicycle safety programs and is not intended to describe groups to which grants should be distributed. The guideline addresses the role of the SHSO as a leader in the State in highway safety. The agency has made no changes to the guideline in response to this comment.

4. Legislation, Regulation and Policy

The Florida DOT, the Chicagoland Bicycle Federation and one individual submitted comments on this section. The Florida DOT and the Chicagoland Bicycle Federation suggested alternative language for the statement that States ''should enact and enforce pedestrian and bicyclist-related traffic laws and regulations, including laws that require the proper use of bicycle helmets.'' The Florida DOT recommended including laws that contribute to pedestrian and bicycle safety. The Chicagoland Bicycle Federation suggested including ''laws that require education in schools about common causes of bicycling and walking injuries and how to avoid them.'' NHTSA agrees with the former suggestion and has revised the guideline accordingly. With respect to the latter suggestion, the agency believes the Outreach Program section of the guideline is the more appropriate section in which to address the issue of bicycle and pedestrian safety education. The agency has revised that section to indicate that pedestrian and bicycle safety education should include skills training incorporated into school physical education/health curricula.

The Florida DOT also recommended the inclusion of a provision stating that laws and regulations for bicyclists should recognize their duties and rights as drivers, and one individual commented that laws should require bicyclists to follow the same rules as

motorists. The agency agrees with these comments and has added a provision to the guideline that each State should enact and enforce laws that contribute to bicycle and pedestrian safety, including laws that require bicyclists to follow the same rules of the road as motorists.

The Florida DOT questioned why NHTSA can require States to pass bicycle helmet laws when State employees are unable to lobby for passage of laws. The Florida DOT also questioned whether the State Bicycle/Pedestrian Coordinator should develop policies to encourage coordination with public and private agencies in the development of regulations and laws. The highway safety program guidelines are recommendations and do not mandate enactment of laws or lobbying for legislation. This guideline presents a comprehensive approach to pedestrian and bicycle safety, including the enactment and enforcement of safety legislation. The SHSO is expected to take the lead in carrying out State highway safety programs and in coordinating with appropriate State agencies. The agency has made no changes to the guideline in response to these comments.

5. Law Enforcement

The Florida DOT and the Chicagoland Bicycle Federation commented on this section of the guideline. The Florida DOT expressed confusion about this section because it combines law enforcement responsibilities with the role of SHSOs (*i.e.*, providing training to law enforcement personnel in pedestrian and bicycle safety). The Chicagoland Bicycle Federation offered alternative language to provide training to law enforcement personnel ''on how motorists, pedestrians, and bicyclists can avoid car-pedestrian and car-bike crashes'' and to enforce laws that ''cause most car-pedestrian and car-bike crashes.'' In response to the Florida DOT comment, as the agency previously noted, the SHSO is expected to be a leader in highway safety in the State, ensuring the implementation of a comprehensive statewide pedestrian and bicycle safety program. The Law Enforcement section of this guideline lists essential components that each State should ensure are included as part of a comprehensive program. The agency revised one bullet point in this section to indicate that an essential component of law enforcement is to ensure adequate training of law enforcement personnel. NHTSA has made no changes to the guideline in response to the Chicagoland Bicycle Federation's suggested language, as the agency does not believe the suggested changes are necessary.

6. Highway Engineering

The Florida DOT, the Chicagoland Bicycle Federation and one individual commented on Highway Engineering. The Florida DOT recommended that NHTSA use consistent references in the heading and throughout this section to ''Highway Engineering'' or ''Highway and Traffic Engineering'' to avoid confusion regarding terms. The agency agrees and has revised the guideline using the term Highway and Traffic Engineering. The Florida DOT also commented that the inclusion of the statement that ''each State should ensure that State and community pedestrian and bicycle programs include a traffic engineering component that is coordinated with enforcement and educational efforts'' implies that States should fund engineering grant programs. The agency has made no changes to the guideline in response to this comment. As explained above, the reach of the guidelines appropriately extends beyond only those activities that can be funded by section 402 dollars to provide broad highway safety leadership across the State.

The Chicagoland Bicycle Federation recommended adding language to this section to reference 23 U.S.C. 217, which pertains to bicycling and walking facilities. The agency believes the guideline adequately addresses pedestrian and bicycle facilities and does not require the inclusion of a specific reference to this statute. An individual suggested that the term ''pedestrian pathways'' used in this section is too narrow and that, instead, the term ''pedestrian facilities such as sidewalks, crosswalks, curb ramps, and paths'' should be used. The agency agrees with this suggested change and has revised the guideline accordingly.

7. Communication Program

The Florida DOT, the Chicagoland Bicycle Federation and one individual commented on this section. The Florida DOT stated that the communication program should refer specifically to the use of languages other than English when appropriate. The Chicagoland Bicycle Federation recommended that, in addition to visibility or conspicuity, communication programs address issues such as the ''life threatening nature of speeding and aggressive driving.'' The agency agrees that these recommended changes would improve the comprehensiveness of the guideline and has revised the guideline to incorporate these suggestions. Additionally, the agency has made a conforming change with respect to multilingual programs in the other five guidelines revised today.

8. Outreach Program

The agency received comments from the Florida DOT and one individual regarding this section. The Florida DOT recommended using the term ''skills training'' rather than ''safety education.'' The agency agrees that specifically mentioning ''skills training'' would improve the guideline, and has revised the guideline to include this language. One individual commented that the promotion of skills training should also be included in the Program Management section of this guideline. The agency agrees that skills training is an important element of a comprehensive pedestrian and bicycle safety program. However, the agency believes this element should be part of an outreach program, and does not need to be centrally coordinated by the SHSO. The agency has made no changes to the guideline in response to this comment.

9. Evaluation Program

The agency received two comments pertaining to the Evaluation Program section. The Florida DOT commented that the term ''accidents'' should be replaced by ''crashes'' because NHTSA stresses that crashes are not accidents. Although the agency typically refers to ''crashes'' rather than accidents, the reference to ''accidents'' in this section refers to ''police accident reports,'' which are data collection tools used by police to report motor vehicle collisions. Because ''police accident report'' is the accepted term of reference used by law enforcement, no change is made to the guideline.

One individual commented that the frequency of pedestrian and bicycle crashes reported should be ''based on pedestrian and bicycle activity levels or rates.'' Currently, it is not feasible to provide an accurate measurement of pedestrian and bicycle activity levels or rates. The guideline remains unchanged in response to this comment.

E. Comments Regarding Guideline No. 15: Traffic Enforcement Services

The agency received comments on the Traffic Enforcement Services guideline from the IACP, the Louisiana Department of Public Safety and Corrections, and GHSA.

1. In General

IACP commented that the Traffic Enforcement Services Guideline could serve as a blueprint for a strategic highway safety plan under SAFETEA–LU. SAFETEA–LU established a new core Highway Safety Improvement

Program that is structured and funded to make significant progress in reducing highway fatalities. It requires SHSPs that focus on results. This requirement encompasses much more than the guideline suggests. The SHSP must be based on accurate and timely safety data, consultation with safety stakeholders and performance-based goals that address infrastructure and behavioral safety problems on all public roads.

2. Resource Management

Noting that the guideline encourages SHSOs to work with law enforcement on comprehensive resource management plans to identify and deploy resources necessary to support traffic enforcement services, GHSA asserted that SHSOs do not have expertise in this area and that NHTSA does not offer training for resource management plans. GHSA suggested that law enforcement professional organizations should have responsibility for resource management plans, and that NHTSA should provide technical assistance to those organizations. NHTSA disagrees with GHSA and notes that the agency does provide training in program management and data analysis. SHSOs should work with their grantees to develop plans and provide adequate resources to meet traffic safety needs within their States. Although law enforcement expertise would be beneficial to SHSOs, they should use the knowledge and expertise of the State and local law enforcement agencies to develop a comprehensive traffic enforcement plan. The agency has made no changes to the guideline in response to this comment.

3. Communication Program

IACP commented that this section of the guideline should emphasize feedback on communication with citizens. NHTSA agrees that feedback is necessary but believes it is adequately addressed. Specifically, this section of the guideline advocates the dissemination of information to the public about agency activities and accomplishments, the enhancement of relationships with news media and health and medical communities, the increase in the public's understanding of the enforcement agency's role in traffic safety, and the marketing of information about internal activities to sworn and civilian members of the agency. Accordingly, the guideline remains unchanged in response to this comment.

The Louisiana Department of Public Safety and Corrections asserted that States ''should be afforded the opportunity to implement a level of the communications model commensurate with the problem identification and available resources.'' The agency agrees with this point, but does not believe any changes to the guideline are required to accommodate this.

4. Data and Program Evaluation

GHSA commented that no SHSO or law enforcement agency has the resources to implement the evaluation program outlined in this guideline. NHTSA disagrees. Program evaluation has been a requirement for many years, and it would be detrimental to States to implement any program without an evaluation plan for measuring results. The guideline remains unchanged in response to this comment.

F. Comments Regarding Guideline No. 19: Speed Management

The agency received comments on the Speed Management guideline from IACP, CHP, the Chicagoland Bicycle Federation, Advocates, GHSA and one individual.

1. In General

NHTSA received two comments pertaining to a national speed limit. Advocates expressed support for efforts to manage vehicle speed and suggested that the National Academy of Sciences or NHTSA review the effects of the repeal of the national speed limit on safety and oil conservation. An individual expressed opposition to varying speed limits on interstates. Because issues related to a national speed limit are not within the scope of the Speed Management guideline, the agency has made no changes to the guideline in response to these comments.

The Chicagoland Bicycle Federation suggested alternative language for portions of nearly every section of the Speed Management guideline to address aggressive and distracted driving. The Chicagoland Bicycle Federation also proposed two additional sections for this guideline that would focus on aggressive and distracted driving in outreach and driver education/licensing programs. The agency notes that this guideline addresses speeding only—one component of aggressive driving. The agency plans to address aggressive and distracted driving in detail in the guideline required by SAFETEA–LU concerning unsafe driving behaviors. Accordingly, the agency has made no changes to the guideline in response to this comment.

2. Program Management

IACP commented that this guideline should incorporate working group participation by speed-measuring device manufacturers and auto manufacturers. While the Program Management and Communication Program sections of this guideline provide for the establishment of Speed Management Working Groups, the guideline does not specify working group participants. However, nothing in this guideline would prevent States from soliciting the participation of these parties in working groups.

3. Problem Identification

GHSA commented on provisions pertaining to State involvement in monitoring travel speed trends, monitoring the effects of vehicle speeds and the crash risk of setting appropriate speed limits, and evaluating effects of speed limits on safety and mobility. In particular, GHSA stated that these activities are usually conducted by State DOTs, county engineering departments, or local public works departments and that studying the effect of speeds on crash risks is a Federal research responsibility. GHSA also questioned whether any research could appropriately be funded out of the section 402 program. The agency believes that these efforts are appropriate for State and local transportation personnel, in conjunction with law enforcement and judicial and legislative authorities. The agency agrees that research is not an appropriate use of section 402 funds. However, the guideline does not contemplate research, instead referring to monitoring and evaluating—activities that are appropriate for section 402 funding. In any event, the agency notes again that these guidelines extend beyond activities that may be funded under section 402 and encourages SHSOs to work with State transportation officials to determine appropriate expenditure of funds for safety activities. The guideline is unchanged in response to this comment.

4. Engineering Countermeasures

GHSA questioned the meaning of the term ''computer-based expert speed zone advisor,'' whether this system exists, and whether section 402 funds are appropriate for activities related to the system. GHSA further commented that State application of traffic calming techniques to reduce speed in pedestrian and bicyclist activity areas is not a function of a SHSO and cannot be funded using section 402 funds. Finally, GHSA asserted that the development, employment and evaluation of onboard

vehicle and communications technologies that prevent drivers from exceeding safe speeds are appropriate for the Federal government, not for States.

The FHWA developed the computer-based speed zone software, U.S. LIMITS. Purchase of the U.S. LIMITS software is an appropriate use of section 402 funds, provided that it is part of a comprehensive speed management program in an approved highway safety plan. The agency notes that although activities related to traffic calming techniques in bicycle and pedestrian areas cannot be conducted with section 402 funding and are not typically SHSO responsibilities, the guidelines are not exclusively tied to section 402 funding or limited to SHSO functions. The agency agrees with GHSA's assertion that the development, employment and evaluation of speed-related onboard vehicle and communications technologies are Federal government responsibilities. However, the guideline language indicates that States should promote the application of these technologies, not develop, employ or evaluate them. The agency has made no changes to the guideline in response to these comments.

5. Enforcement Countermeasures

CHP expressed opposition to the use of automated speed enforcement technologies for a variety of reasons (*e.g.*, legality, due process, officer discretion, conflicts of interest). GHSA commented that, as with guidelines related to impaired driving, NHTSA should prepare speed sentencing guidelines. In response to the former comment, the agency believes automated speed enforcement is a legitimate component of a comprehensive speed management program and serves to enhance enforcement in areas that are unsafe for officers. As to the latter comment, the agency disagrees and believes that guidelines for non-criminal traffic infractions should be set at the State or local level. The agency did not modify the guideline in response to these comments.

G. Comments Regarding Guideline No. 20: Occupant Protection

Eight commenters responded to the Occupant Protection guideline, including NADA, IACP, Advocates, GHSA, CHP and three individuals.

1. In General

NADA commented favorably on the guideline, noting that it is consistent with NADA's involvement in the National Safety Council's Air Bag & Seat Belt Safety Campaign. NADA affirmed its commitment to working with NHTSA, the States, and other stakeholders to implement the guideline. IACP commented that the automotive industry and aftermarket motor vehicle equipment industry should be included in this guideline, although IACP did not suggest how they should be included. NHTSA does not believe that specific inclusion of these entities is necessary, as States may reach out to a variety of groups of their choice on safety issues. The agency has made no changes to the guideline in response to this comment.

Three individuals commented generally on this guideline. One individual asserted that teens should not have to ride in child restraints. Another individual commented that safety belt laws are a State issue and a third individual commented that wearing a safety belt should be a personal decision. On the basis of substantial research and safety information, NHTSA believes that children should be restrained in a booster seat until a safety belt fits them correctly—when they attain a height of 4 feet, 9 inches. NHTSA agrees that the enactment and enforcement of safety belt laws are State issues. This guideline does not require States to enact legislation or implement any specific programs. The guideline lays out elements that experience and research indicate are necessary for a comprehensive and effective occupant protection program. The guideline remains unchanged as a result of these comments.

2. Legislation, Regulation and Policy

Advocates, GHSA, and CHP commented on this section of the guideline. Advocates reiterated its comment that the guideline should emphasize the importance of primary safety belt use laws and rank all elements under the guideline in order of importance. As previously discussed, the agency believes all the elements in the guidelines are important. The criteria listed are not ranked in order of importance, as the guideline provides a comprehensive approach to occupant protection. The agency has made no changes to the guideline in response to this comment.

GHSA commented that the guideline's provision urging States to encourage motor vehicle insurers to offer economic incentives for policyholders who wear safety belts and secure children in child restraints is more appropriate for State insurance commissioners than SHSOs, as the commissioners are in a better position to reach out to insurance companies. The agency and SHSOs have a long-standing history of working with insurance associations (*e.g.*, Insurance Institute for Highway Safety) and individual companies to promote highway safety initiatives. These efforts have often included encouraging insurance companies to offer premium discounts to encourage certain behavior. Insurance commissioners are a part of the State government structure just as DOTs and State police agencies. This guideline reflects this long-standing practice of collaborative activity with the insurance industry to promote highway safety. For this reason, the agency has made no changes to the guideline in response to this comment.

CHP commented on the guideline's recommendation that legislation permit primary enforcement requiring children under 13 years old to be properly restrained in the rear seat. CHP asserted that the guideline does not take into account varying body types or developmental factors for children under the age of 13, and is too broad, restrictive, and difficult to enforce, generating noncompliance among parents with larger children. The guideline remains unchanged in response to this comment. The agency's position on proper restraints for children under 13 years old is also reflected in the Model Law for Child Passenger Safety and is based on sound research.[1]

3. Occupant Protection for Children Program

Advocates commented that the guideline does not specifically refer to booster seats and recommended that the guideline identify booster seats as a distinct safety mechanism for older children that should be incorporated into the SHSP. The agency agrees with this comment. With 24 percent of children ages 4 to 8 riding unrestrained—according to the 2005 National Occupant Protection Use (NOPUS) survey—the agency is committed to increasing the number of

[1] Analyses of crash data show a higher fatality risk for infant and child passengers up to age 12 in vehicles with dual air bags than in cars without passenger air bags (NHTSA, Chuck Kahane, 1996). Data shows that children are safest in the rear seat. According to an Insurance Institute for Highway Safety (IIHS) study, properly restrained children in the rear seat have the lowest crash death rates and children ages 12 and under ride safer in the rear seat when a passenger air bag is present. In vehicles without air bags, IIHS notes that children are 35 percent safer riding in the rear seat than in the front seat. According to the Partners for Child Passenger Safety, children are 40 percent more likely to be injured in the front seat. According to a 2005 report in the *Journal of Pediatrics*, appropriately restrained children in the rear seat are at the lowest risk of injury for all age groups.

children using booster seats. Accordingly, the agency has incorporated a reference to booster seats in this section of the guideline.

4. Outreach Program

Advocates recommended that this section of the guideline promote efforts to provide child restraint systems to low-income families through subsidies or give-away programs, or in the alternative, that it reference the child safety and child booster seat incentive grant program authorized under section 2011 of SAFETEA–LU. The agency encourages States, as a component of a comprehensive child passenger safety program, to consider carefully crafted and administered child safety seat subsidy and/or give-away programs. The agency has added language to the Occupant Protection for Children Program section of the guideline to reflect this. The agency agrees that advising States of the section 2011 incentive grant program is important; we advise States of all our grant programs through our continuing efforts with SHSOs. However, we do not believe that this guideline is the appropriate vehicle to announce the availability of time-limited Federal grants. The availability of funds under the section 2011 program is subject to continued annual appropriations and to reauthorizing language extending the program beyond Fiscal Year 2009. The agency additionally notes that many State booster seat laws currently do not cover children up to eight years of age, the minimum threshold for eligibility under the section 2011 program.

Other Guidelines Remain Unchanged

The guidelines published by today's action also will be placed on NHTSA's Web site in the Highway Safety Grant Management Manual in the near future. These guidelines are set forth below. Other guidelines are not addressed by today's action and remain in effect and unchanged.

Highway Safety Program Guideline No. 3 Motorcycle Safety (August 2006)

Each State, in cooperation with its political subdivisions and tribal governments and other parties as appropriate, should develop and implement a comprehensive highway safety program, reflective of State demographics, to achieve a significant reduction in traffic crashes, fatalities and injuries on public roads. The highway safety program should include a comprehensive motorcycle safety program that aims to reduce motorcycle crashes and related deaths and injuries. Each comprehensive State motorcycle safety program should address the use of helmets (meeting Federal Motor Vehicle Safety Standard 218) and other protective gear, proper licensing, impaired riding, rider training, conspicuity and motorist awareness. This guideline describes the components that a State motorcycle safety program should include and the criteria that the program components should meet.

I. Program Management

Each State should have centralized program planning, implementation and coordination to identify the nature and extent of its motorcycle safety problems, to establish goals and objectives for the State's motorcycle safety program and to implement projects to reach the goals and objectives. State motorcycle safety plans should:

- Designate a lead agency for motorcycle safety;
- Develop funding sources;
- Collect and analyze data on motorcycle crashes, injuries and fatalities;
- Identify and prioritize the State's motorcycle safety problem areas;
- Encourage collaboration among agencies and organizations responsible for, or impacted by, motorcycle safety issues;
- Develop programs (with specific projects) to address problems;
- Coordinate motorcycle safety projects with those for the general motoring public;
- Integrate motorcycle safety into State strategic highway safety plans, and other related highway safety activities including impaired driving, occupant protection, speed management and driver licensing programs; and
- Routinely evaluate motorcycle safety programs and services.

II. Motorcycle Personal Protective Equipment

Each State is encouraged to have and enforce a mandatory all-rider motorcycle helmet use law. In addition, each State should encourage motorcycle operators and passengers to use the following protective equipment through an aggressive communication campaign:

- Motorcycle helmets that meet the Federal helmet standard;
- Proper clothing, including gloves, boots, long pants and a durable long-sleeved jacket; and
- Eye and face protection.

Additionally, each passenger should have a seat and footrest.

III. Motorcycle Operator Licensing

States should require every person who operates a motorcycle on public roadways to pass an examination designed especially for motorcycle operation and to hold a license endorsement specifically authorizing motorcycle operation. Each State should have a motorcycle licensing system that requires:

- Motorcycle operator's manual that contains essential safe riding information;
- Motorcycle license examination, including knowledge and skill tests, and State licensing medical criteria;
- License examiner training specific to testing of motorcyclists;
- Motorcycle license endorsement;
- Cross-referencing of motorcycle registrations with motorcycle licenses to identify motorcycle owners who may not have the proper endorsement;
- Motorcycle license renewal requirements;
- Learner's permits issued for a period of 90 days and the establishment of limits on the number and frequency of learner's permits issued per applicant to encourage each motorcyclist to get full endorsement; and
- Penalties for violation of motorcycle licensing requirements.

IV. Motorcycle Rider Education and Training

Safe motorcycle operation requires specialized training by qualified instructors. Each State should establish a State Motorcycle Rider Education Program that has:

- A source of program funding;
- A State organization to administer the program;
- A mandate to use the State-approved curriculum;
- Reasonable availability of rider education courses for all interested residents of legal riding age and varying levels of riding experience;
- A documented policy for instructor training and certification;
- Incentives for successful course completion such as licensing test exemption;
- A plan to address the backlog of training, if applicable;
- State guidelines for conduct and quality control of the program; and
- A program evaluation plan.

V. Motorcycle Operation Under the Influence of Alcohol or Other Drugs

Each State should ensure that programs addressing impaired driving include an impaired motorcyclist component. The following programs should be used to reach impaired motorcyclists:

- Community traffic safety and other injury control programs, including outreach to motorcyclist clubs and organizations;

• Youth anti-impaired driving programs and campaigns;
• High visibility law enforcement programs and communications campaigns;
• Judge and prosecutor training programs;
• Anti-impaired driving organizations' programs;
• College and school programs;
• Workplace safety programs;
• Event-based programs such as motorcycle rallies, shows, etc.; and
• Server training programs.

VI. Legislation and Regulations

Each State should enact and enforce motorcycle-related traffic laws and regulations. As part of a comprehensive motorcycle safety program each State is encouraged to have and enforce a law that requires all riders to use motorcycle helmets compliant with the Federal helmet standard. Specific policies should be developed to encourage coordination with appropriate public and private agencies in the development of regulations and laws to promote motorcycle safety.

VII. Law Enforcement

Each State should ensure that State and community motorcycle safety programs include a law enforcement component. Each State should emphasize strongly the role played by law enforcement personnel in motorcycle safety. Essential components of that role include:
• Developing knowledge of motorcycle crash situations, investigating crashes, and maintaining a reporting system that documents crash activity and supports problem identification and evaluation activities;
• Providing communication and education support;
• Providing training to law enforcement personnel in motorcycle safety, including how to identify impaired motorcycle operators and helmets that do not meet FMVSS 218; and
• Establishing agency goals to support motorcycle safety.

VIII. Highway Engineering

Traffic engineering is a critical element of any crash reduction program. This is true not only for the development of programs to reduce an existing crash problem, but also to design transportation facilities that provide for the safe movement of motorcyclists and all other motor vehicles.

The needs of motorcyclists must always be considered. Therefore, each State should ensure that State and community motorcycle safety programs include a traffic-engineering component that is coordinated with enforcement and educational efforts. This engineering component should improve the safety of motorcyclists through the design, construction, operation and maintenance of engineering measures. These measures may include, but should not be limited to:
• Considering motorcycle needs when selecting pavement skid factors; and
• Providing advance warning signs to alert motorcyclists to unusual or irregular roadway surfaces.

IX. Motorcycle Rider Conspicuity and Motorist Awareness Programs

State motorcycle safety programs, communication campaigns and state motor vehicle operator manuals should emphasize the issues of rider conspicuity and motorist awareness of motorcycles. These programs should address:
• Daytime use of motorcycle headlights;
• Brightly colored clothing and reflective materials for motorcycle riders and motorcycle helmets with high daytime and nighttime conspicuity;
• Lane positioning of motorcycles to increase vehicle visibility;
• Reasons why motorists do not see motorcycles; and
• Ways that other motorists can increase their awareness of motorcyclists.

X. Communication Program

States should develop and implement communications strategies directed at specific high-risk populations as identified by data. Communications should highlight and support specific policy and progress underway in the States and communities and communication programs and materials should be culturally relevant, multilingual as necessary and appropriate to the audience. States should enlist the support of a variety of media, including mass media, to improve public awareness of motorcycle crash problems and programs directed at preventing them. States should:
• Focus their communication efforts to support the overall policy and program;
• Review data to identify populations at risk; and
• Use a mix of media strategies to draw attention to the problem.

XI. Program Evaluation and Data

Both problem identification and continual evaluation require effective recordkeeping by State and local government. The State should identify the frequency and types of motorcycle crashes. After problem identification is complete, the State should identify appropriate countermeasures.

The State should promote effective evaluation by:
• Supporting the analysis of police accident reports involving motorcyclists;
• Encouraging, supporting and training localities in process, impact and outcome evaluation of local programs;
• Conducting and publicizing statewide surveys of public knowledge and attitudes about motorcycle safety;
• Maintaining awareness of trends in motorcycle crashes at the national level and how trends might influence activities statewide;
• Evaluating the use of program resources and the effectiveness of existing countermeasures for the general public and high-risk population;
• Collecting and reporting accurate motorcycle vehicle miles traveled data; and
• Ensuring that evaluation results are used to identify problems, plan new programs and improve existing programs.

Highway Safety Program Guideline No. 8 Impaired Driving (August 2006)

Each State, in cooperation with its political subdivisions and tribal governments and other parties as appropriate, should develop and implement a comprehensive highway safety program, reflective of State demographics, to achieve a significant reduction in traffic crashes, fatalities and injuries on public roads. The highway safety program should include an Impaired Driving component that addresses highway safety activities related to impaired driving. (Throughout this guideline, the term *impaired driving* means operating a motor vehicle while affected by alcohol and/or other drugs, including prescription drugs, over-the-counter medicines or illicit substances.) This guideline describes the components that a State impaired driving program should include and the criteria that the program components should meet.

I. Program Management and Strategic Planning

An effective impaired driving program should be based on strong leadership, sound policy development, program management and strategic planning, and an effective communication program. Program efforts should be data-driven, focusing on populations and geographic areas

that are most at risk, and science-based, determined through independent evaluation as likely to succeed. Programs and activities should be guided by problem identification and carefully managed and monitored for effectiveness. Adequate resources should be devoted to the problem and costs should be borne, to the extent possible, by impaired drivers. Each State should include the following as part of their impaired driving program:

• *Task Forces or Commissions:* Convene Driving While Impaired (DWI) task forces or commissions to foster leadership, commitment and coordination among all parties interested in impaired driving issues, including both traditional and non-traditional parties, such as highway safety enforcement, criminal justice, driver licensing, treatment, liquor law enforcement, business, medical, health care, advocacy and multicultural groups, the media, institutions of higher education and the military.

• *Strategic Planning:* Develop and implement an overall plan for short- and long-term impaired driving activities based on careful problem identification.

• *Program Management:* Establish procedures to ensure that program activities are implemented as intended.

• *Resources:* Allocate sufficient funding, staffing and other resources to support impaired driving programs. Programs should aim for self-sufficiency and, to the extent possible, costs should be borne by impaired drivers.

• *Data and Records*: Establish and maintain a records system that uses data from other sources [*e.g.*, U.S. Census, Fatality Analysis Reporting System (FARS), Crash Outcome Data Evaluation System (CODES)] to fully support the impaired driving program, and that is guided by a statewide traffic records coordinating committee (TRCC) that represents the interests of all public and private sector stakeholders and the wide range of disciplines that need the information.

• *Communication Program:* Develop and implement a comprehensive communications program that supports priority policies and program efforts and is directed at impaired driving; underage drinking; and reducing the risk of injury, death and resulting medical, legal, social and other costs.

II. Prevention

Prevention programs should aim to reduce impaired driving through public health approaches, including altering social norms, changing risky or dangerous behaviors and creating safer environments. Prevention programs should promote communication strategies that highlight and support specific policies and program activities and promote activities that educate the public on the effects of alcohol and other drugs, limit the availability of alcohol and other drugs, and discourage those impaired by alcohol and other drugs from driving.

Prevention programs may include responsible alcohol service practices, transportation alternatives and community-based programs carried out in schools, work sites, medical and health care facilities, and by community coalitions. Prevention efforts should be directed toward populations at greatest risk. Programs and activities should be science-based and proven effective and include a communication component. Each State should:

• *Promote Responsible Alcohol Service:* Promote policies and practices that prevent underage drinking by people under age 21 and over-service to people ages 21 and older.

• *Promote Transportation Alternatives:* Promote alternative transportation programs, such as designated driver and safe ride programs, especially during high-risk times, which enable drinkers ages 21 and older to reach their destinations without driving.

• *Conduct Community-Based Programs:* Conduct community-based programs that implement prevention strategies at the local level through a variety of settings, including schools, employers, medical and health care professionals, community coalitions and traffic safety programs.

○ *Schools*: School-based prevention programs, beginning in elementary school and continuing through college and trade school, should play a critical role in preventing underage drinking and impaired driving. These programs should be developmentally appropriate, culturally relevant and coordinated with drug prevention and health promotion programs.

○ *Employers:* States should provide information and technical assistance to employers and encourage employers to offer programs to reduce underage drinking and impaired driving by employees and their families.

○ *Community Coalitions and Traffic Safety Programs:* Community coalitions and traffic safety programs should provide the opportunity to conduct prevention programs collaboratively with other interested parties at the local level and provide communications toolkits for local media relations, advertising and public affairs activities. Coalitions may include representatives of government such as highway safety; enforcement; criminal justice; liquor law enforcement; public health; driver licensing and education; business, including employers and unions; the military; medical, health care and treatment communities; multicultural, faith-based, advocacy and other community groups; and neighboring countries, as appropriate.

III. Criminal Justice System

Each State should use the various components of its criminal justice system-laws, enforcement, prosecution, adjudication, criminal and administrative sanctions and communications-to achieve both specific and general deterrence.

Specific deterrence focuses on individual offenders and seeks to ensure that impaired drivers will be detected, arrested, prosecuted and subject to swift, sure and appropriate sanctions. Using these measures, the criminal justice system seeks to reduce recidivism. General deterrence seeks to increase the public perception that impaired drivers will face severe consequences, discouraging individuals from driving impaired.

A multidisciplinary approach and close coordination among all components of the criminal justice system are needed to make the system work effectively. In addition, coordination is needed among law enforcement agencies at the State, county, municipal and tribal levels to create and sustain both specific and general deterrence.

A. Laws

Each State should enact impaired driving laws that are sound, rigorous and easy to enforce and administer. The laws should clearly define offenses, contain provisions that facilitate effective enforcement and establish effective consequences.

The laws should define offenses to include:

• Driving while impaired by alcohol or other drugs (whether illegal, prescription or over-the-counter) and treating both offenses similarly;

• Driving with a Blood Alcohol Concentration (BAC) limit of 0.08, making it illegal ''*per se*'' to operate a vehicle at or above this level without having to prove impairment;

• Driving with a high BAC (*i.e.*, 0.15 BAC or greater) with enhanced sanctions above the standard impaired driving offense;

• Zero Tolerance for underage drivers, making it illegal ''*per se*'' for people under age 21 to drive with any measurable amount of alcohol in their system (*i.e.*, 0.02 BAC or greater);

• Repeat offender with increasing sanctions for each subsequent offense;

• BAC test refusal with sanctions at least as strict or stricter than a high BAC offense;

• Driving with a license suspended or revoked for impaired driving, with vehicular homicide or causing personal injury while driving impaired as separate offenses with additional sanctions;

• Open container, prohibiting possession or consumption of any open alcoholic beverage in the passenger area of a motor vehicle located on a public highway or right-of-way (limited exceptions are permitted under 23 U.S.C. 154 and its implementing regulations, 23 CFR Part 1270); and

• Primary safety belt provisions that do not require that officers observe or cite a driver for a separate offense other than a safety belt violation.

The laws should include provisions to facilitate effective enforcement that:

• Authorize law enforcement to conduct sobriety checkpoints, (*i.e.*, stop vehicles on a nondiscriminatory basis to determine whether operators are driving while impaired by alcohol or other drugs);

• Authorize law enforcement to use passive alcohol sensors to improve the detection of alcohol in drivers;

• Authorize law enforcement to obtain more than one chemical test from an operator suspected of impaired driving, including preliminary breath tests, evidential breath tests, and screening and confirmatory tests for alcohol or other impairing drugs; and

• Require law enforcement to conduct mandatory BAC testing of drivers involved in fatal crashes.

The laws should establish effective penalties that include:

• Administrative license suspension or revocation (ALR) for failing or refusing to submit to a BAC or other drug test;

• Prompt and certain administrative license suspension of at least 90 days for first-time offenders determined by chemical test(s) to have a BAC at or above the State's ''*per se*'' level or of at least 15 days followed immediately by a restricted, provisional or conditional license for at least 75 days, if such license restricts the offender to operating only vehicles equipped with an ignition interlock;

• Enhanced penalties for BAC test refusals, high BAC, repeat offenders, driving with a suspended or revoked license, driving impaired with a minor in the vehicle, vehicular homicide or causing personal injury while driving impaired, including: longer license suspension or revocation; installation of ignition interlock devices; license plate confiscation; vehicle impoundment, immobilization or forfeiture; intensive supervision and electronic monitoring; and threat of imprisonment;

• Assessment for alcohol or other drug abuse problems for all impaired driving offenders and, as appropriate, treatment, abstention from use of alcohol and other drugs and frequent monitoring; and

• Driver license suspension for people under age 21 for any violation of law involving the use or possession of alcohol or illicit drugs.

B. Enforcement

Each State should conduct frequent, highly visible, well publicized and fully coordinated impaired driving (including zero tolerance) law enforcement efforts throughout the State, especially in locations where alcohol-related fatalities most often occur. To maximize visibility, States should maximize contact between officers and drivers, using sobriety checkpoints and saturation patrols and should widely publicize these efforts-before, during and after they occur. Highly visible, highly publicized efforts should be conducted periodically and also on a sustained basis throughout the year. To maximize resources, the State should coordinate efforts among State, county, municipal and tribal law enforcement agencies. States should utilize law enforcement liaisons, for activities such as promotion of national and local mobilizations and increasing law enforcement participation in such mobilizations and for collaboration with local chapters of police groups and associations that represent diverse groups to gain support for enforcement efforts.

Each State should coordinate efforts with liquor law enforcement officials. To increase the probability of detection, arrest and prosecution, participating officers should receive training in the latest law enforcement techniques, including Standardized Field Sobriety Testing (SFST), and selected officers should receive training in media relations and Drug Evaluation and Classification (DEC).

C. Publicizing High Visibility Enforcement

Each State should communicate its impaired driving law enforcement efforts and other elements of the criminal justice system to increase the public perception of the risks of detection, arrest, prosecution and sentencing for impaired driving. Each State should develop and implement a year-round communications plan that provides emphasis during periods of heightened enforcement, provides sustained coverage throughout the year, includes both paid and earned media and uses messages consistent with National campaigns. Publicity should be culturally relevant, appropriate to the audience and based on market research.

D. Prosecution

States should implement a comprehensive program to visibly, aggressively and effectively prosecute and publicize impaired driving-related efforts, including use of experienced prosecutors (*e.g.*, Traffic Safety Resource Prosecutors), to help coordinate and deliver training and technical assistance to prosecutors handling impaired driving cases throughout the State.

E. Adjudication

States should impose effective, appropriate and research-based sanctions, followed by close supervision, and the threat of harsher consequences for non-compliance when adjudicating cases. Specifically, DWI Courts should be used to reduce recidivism among repeat and high BAC offenders. DWI Courts involve all criminal justice stakeholders (prosecutors, defense attorneys, probation officers and judges) along with alcohol and drug treatment professionals and use a cooperative approach to systematically change participant behavior. The effectiveness of enforcement and prosecution efforts is strengthened by knowledgeable, impartial and effective adjudication. Each State should provide state-of-the-art education to judges, covering SFST, DEC, alternative sanctions and emerging technologies.

Each State should utilize DWI courts to help improve case management and to provide access to specialized personnel, speeding up disposition and adjudication. DWI courts also increase access to testing and assessment to help identify DWI offenders with addiction problems and to help prevent them from re-offending. DWI courts additionally help with sentence monitoring and enforcement. Each State should provide adequate staffing and training for probation programs with the necessary resources, including technological resources, to monitor and guide offender behavior.

F. Administrative Sanctions and Driver Licensing Programs

States should use administrative sanctions, including the suspension or revocation of an offender's driver's license; the impoundment, immobilization or forfeiture of a vehicle;

the impoundment of a license plate; or the use of ignition interlock devices, which are among the most effective actions to prevent repeat impaired driving offenses. In addition, other licensing activities can prove effective in preventing, deterring and monitoring impaired driving, particularly among novice drivers. Publicizing related efforts is part of a comprehensive communications program.

• *Administrative License Revocation and Vehicle Sanctions:* Each State's Motor Vehicle Code should authorize the imposition of administrative penalties by the driver licensing agency upon arrest for violation of the state's impaired driving laws, including administrative driver's license suspension, vehicle sanctions and installation of ignition interlock devices.

• *Programs:* Each State's driver licensing agency should conduct programs that reinforce and complement the State's overall program to deter and prevent impaired driving, including graduated driver licensing (GDL) for novice drivers, education programs that explain alcohol's effects on driving and the State's zero tolerance laws and a program to prevent individuals from using a fraudulently obtained or altered driver's license.

IV. Communication Program

States should develop and implement a comprehensive communication program that supports priority policies and program efforts. Communication programs and materials should be culturally relevant and multilingual as appropriate. States should:

• Develop and implement a year-round communication plan that includes policy and program priorities; comprehensive research; behavioral and communications objectives; core message platforms; campaigns that are audience relevant and linguistically appropriate; key alliances with private and public partners; specific activities for advertising, media relations and public affairs; special emphasis periods during high risk times; and evaluation and survey tools;

• Employ a communications strategy principally focused on increasing knowledge and awareness, changing attitudes and influencing and sustaining appropriate behavior;

• Use traffic-related data and market research to identify specific audiences segments to maximize resources and effectiveness; and

• Adopt a comprehensive marketing approach that coordinates elements like media relations, advertising and public affairs/advocacy.

V. Alcohol and Other Drug Misuse: Screening, Assessment, Treatment and Rehabilitation

Impaired driving frequently is a symptom of a larger alcohol or other drug problem. Many first-time impaired driving offenders and most repeat offenders have alcohol or other drug abuse or dependency problems. Without appropriate assessment and treatment, these offenders are more likely to repeat their crimes.

In addition, alcohol use leads to other injuries and health care problems. Frequent visits to emergency departments present an opportunity for intervention, which might prevent future arrests or motor vehicle crashes, and result in decreased alcohol consumption and improved health.

Each State should encourage its employers, educators and health care professionals to implement a system to identify, intervene and refer individuals for appropriate substance abuse treatment.

• *Screening and Assessment:* Each State should encourage its employers, educators and health care professionals to have a systematic program to screen and/or assess drivers to determine whether they have an alcohol or drug abuse problem and, as appropriate, briefly intervene or refer them for appropriate treatment. A marketing campaign should promote year-round screening and brief intervention to medical, health and business partners and to identified audiences. In particular:

• *Criminal Justice System:* Within the criminal justice system, people convicted of an impaired driving offense should be assessed to determine whether they have an alcohol or drug abuse problem and whether they need treatment. The assessment should be required by law and completed prior to sentencing or reaching a plea agreement.

• *Medical and Health Care Settings:* Within medical or health care settings, any adult or adolescent seen by a medical or health care professional should be screened to determine whether they may have an alcohol or drug abuse problem. A person may have a problem with alcohol abuse or dependence, a brief intervention should be conducted and, if appropriate, the person should be referred for assessment and further treatment.

• *Treatment and Rehabilitation:* Each State should work with health care professionals, public health departments and third party payers to establish and maintain treatment programs for persons referred through the criminal justice system, medical or health care professionals and other entities. This will help ensure that offenders with alcohol or other drug dependencies begin appropriate treatment and complete recommended treatment before their licenses are reinstated.

• *Monitoring Impaired Drivers:* Each State should establish a program to facilitate close monitoring of impaired drivers. Controlled input and access to an impaired driver tracking system, with appropriate security protections, is essential. Monitoring functions should be housed in the driver licensing, judicial, corrections and treatment systems. Monitoring systems should be able to determine the status of all offenders in meeting their sentencing requirements for sanctions and/or rehabilitation and must be able to alert courts to non-compliance. Monitoring requirements should be established by law to assure compliance with sanctions by offenders and responsiveness of the judicial system. Non-compliant offenders should be handled swiftly either judicially or administratively. Many localities are successfully utilizing DWI courts or drug courts to monitor DWI offenders.

VI. Program Evaluation and Data

Each State should have access to and analyze reliable data sources for problem identification and program planning. Each State should conduct several different types of evaluations to effectively measure progress, to determine program effectiveness, to plan and implement new program strategies and to ensure that resources are allocated appropriately.

Each State should establish and maintain a records system that uses data from other sources (*e.g.*, U.S. Census, FARS, CODES) to fully support the impaired driving program. A statewide traffic records coordinating committee that represents the interests of all public and private sector stakeholders and the wide range of disciplines that need the information should guide the records system.

Each State's driver licensing agency should maintain a system of records that enables the State to: (1) Identify impaired drivers; (2) maintain a complete driving history of impaired drivers; (3) receive timely and accurate arrest and conviction data from law enforcement agencies and the courts, including data on operators as prescribed by the commercial driver licensing regulations; and (4) provide timely and accurate driver history records to law enforcement and the courts.

Highway Safety Program Guideline No. 14 Pedestrian and Bicycle Safety (August 2006)

Each State, in cooperation with its political subdivisions and tribal governments and other parties as appropriate, should develop and implement a comprehensive highway safety program, reflective of State demographics, to achieve a significant reduction in traffic crashes, fatalities and injuries on public roads. The highway safety program should include a comprehensive pedestrian and bicycle safety program that promotes safe pedestrian and bicycle practices, educates drivers to share the road safely with other road users and provides safe facilities for pedestrians and bicyclists through a combination of policy, enforcement, communication, education, incentive and engineering strategies. This guideline describes the components that a State pedestrian and bicycle safety program should include and the criteria that the program components should meet. Given the multidisciplinary nature of the highway safety problem, implementation of a comprehensive pedestrian and bicycle safety program requires coordination among several State agencies.

I. Program Management

Each State should have centralized program planning, implementation and coordination to promote pedestrian and bicycle safety program issues as part of a comprehensive highway safety program. Evaluation should be used to revise existing programs, develop new programs and determine progress and success of pedestrian and bicycle safety programs. The State Highway Safety Office (SHSO) should:

- Train program staff to effectively coordinate the implementation of recommended activities;
- Provide leadership, training and technical assistance to other State agencies and local pedestrian and bicycle safety programs and projects;
- Conduct regular problem identification and evaluation activities to determine pedestrian and bicyclist fatality, injury and crash trends and to provide guidance in development and implementation of countermeasures;
- Promote proper and legal riding practices and the proper use of bicycle helmets as a primary measures to reduce death and injury among bicyclists;
- Coordinate with the State Department of Transportation to ensure provision of a safe environment for pedestrians and bicyclists through engineering measures such as sidewalks and bicycle facilities in the planning and design of all highway projects;
- Support the enforcement by local enforcement agencies of State laws affecting pedestrians and bicyclists; and
- Develop safety initiatives to reduce fatalities and injuries among high-risk groups as indicated by crash and injury data trends, including children, older adults and alcohol-impaired pedestrians and bicyclists.

II. Multi-Disciplinary Involvement

Pedestrian and bicyclist safety requires the support and coordinated activity of multidisciplinary agencies, at both the State and local levels. At a minimum, the following communities should be involved:

- State Pedestrian/Bicycle Coordinators;
- Law Enforcement and Public Safety;
- Education;
- Public Health and Medicine;
- Driver Education and Licensing;
- Transportation—Engineering, Planning, Local Transit ;
- Media and Communications;
- Community Safety Organizations; and
- Non-Profit Organizations.

III. Legislation, Regulation and Policy

Each State should enact and enforce traffic laws and regulations, including laws that contribute to the safety of pedestrians and bicyclists. This includes laws that require the proper use of bicycle helmets and laws that require bicyclists to follow the same rules of the road as motorists. States should develop and enforce appropriate sanctions that compel compliance with laws and regulations. Specific policies should be developed to encourage coordination with appropriate public and private agencies in the development of regulations and laws to promote pedestrian and bicyclist safety.

IV. Law Enforcement

Each State should ensure that State and community pedestrian and bicycle programs include a law enforcement component. Each State should strongly emphasize the role played by law enforcement personnel in pedestrian and bicyclist safety. Essential components of that role include:

- Developing knowledge of pedestrian and bicyclist crash situations, investigating crashes and maintaining a reporting system that documents crash activity and supports problem identification and evaluation activities;
- Providing communication and education support;
- Ensuring adequate training to law enforcement personnel on effective measures to reduce crashes among pedestrians and bicyclists;
- Establishing agency policies to support pedestrian and bicycle safety;
- Enforcing pedestrian and bicycle laws, and all laws that affect the safety of pedestrians and bicyclists, including those aimed at aggressive drivers;
- Coordinating with and supporting education and engineering activities; and
- Suggesting creative strategies to promote safe pedestrian, bicyclist and motorist behaviors (*e.g.*, citation diversion classes for violators).

V. Highway and Traffic Engineering

Highway and traffic engineering is a critical element of any motor vehicle crash reduction program, but is especially important for the safe movement of pedestrians and bicyclists. States should utilize national guidelines for constructing safe pedestrian and bicycle facilities in all new transportation projects, and are required to follow all Federal regulations on accessibility.

Each State should ensure that State and community pedestrian and bicycle programs include a highway and traffic engineering component that is coordinated with enforcement and educational efforts. This engineering component should improve the safety of pedestrians and bicyclists through the design, construction, operation and maintenance of engineering measures such as:

- Pedestrian, bicycle and school bus loading zone signals, signs and markings;
- Parking regulations;
- Traffic calming, or other approaches for slowing traffic and improving safety;
- On-road facilities (*e.g.*, signed routes, marked lanes, wide curb lanes, paved shoulders);
- Sidewalk design;
- Pedestrian facilities such as sidewalks, crosswalks, curb ramps and paths;
- Off-road bicycle facilities (trails and paths); and
- Accommodations for people with disabilities.

VI. Communication Program

Each State should ensure that State and community pedestrian and bicycle programs contain a comprehensive communication component to support program and policy efforts. This component should address coordination with traffic engineering and law enforcement efforts, school-based education programs, communication and awareness campaigns, and other focused educational programs such as those for seniors and other identified high-risk populations. The State should

enlist the support of a variety of media, including mass media, to improve public awareness of pedestrian and bicyclist crash problems and programs directed at preventing them. Communication programs and materials should be culturally relevant and multilingual as appropriate, and should address issues such as:

- Visibility, or conspicuity, in the traffic system;
- Correct use of facilities and accommodations;
- Law enforcement initiatives;
- Proper street crossing behavior;
- Safe practices near school buses, including loading and unloading practices;
- The nature and extent of traffic related pedestrian and bicycle fatalities and injuries;
- Driver training regarding pedestrian and bicycle safety;
- Rules of the road;
- Proper selection, use, fit and maintenance of bicycles and bicycle helmets;
- Skills training of bicyclists;
- Sharing the road safely among motorists and bicyclists; and
- The dangers that aggressive driving, including speeding, pose for pedestrians and bicyclists.

VII. Outreach Program

Each State should encourage extensive community involvement in pedestrian and bicycle safety education by involving individuals and organizations outside the traditional highway safety community. Outreach efforts should include a focus on reaching vulnerable road users, such as older pedestrians, young children and new immigrant populations. States should also incorporate pedestrian and bicycle safety education and skills training into school physical education/health curricula. To encourage community and school involvement, States should:

- Establish and convene a pedestrian and bicycle safety advisory task force or coalition to organize and generate broad-based support for pedestrian and bicycle programs;
- Create an effective communications network among coalition members to keep members informed and to coordinate efforts;
- Integrate culturally relevant pedestrian and bicycle safety programs into local traffic safety injury prevention initiatives and local transportation plans;
- Provide culturally relevant materials and resources to promote pedestrian and bicycle safety education programs;
- Ensure that highway safety in general, and pedestrian and bicycle safety in particular, are included in the State-approved K–12 health and safety education curricula and textbooks, and in materials for preschool age children and their caregivers;
- Encourage the promotion of safe pedestrian and bicyclist practices (including practices near school buses) through classroom and extra-curricular activities; and
- Establish and enforce written policies requiring safe pedestrian and bicyclist practices to and from school, including proper use of bicycle helmets on school property.

VIII. Driver Education and Licensing

Each State should address pedestrian and bicycle safety in State driver education training, materials and licensing programs in the classroom and behind the wheel, including strategies for motorists and bicyclists on safely sharing the road.

IX. Evaluation Program

Both problem identification and evaluation of pedestrian and bicycle crashes require effective record keeping by State and local government representatives. The State should identify the frequency and type of pedestrian and bicycle crashes to inform selection, implementation and evaluation of appropriate countermeasures. The State should promote effective program evaluation by:

- Supporting detailed analyses of police accident reports involving pedestrians and bicyclists;
- Encouraging, supporting and training localities in process, impact and outcome evaluation of local programs;
- Conducting and publicizing statewide surveys of public knowledge and attitudes about pedestrian and bicyclist safety;
- Maintaining awareness of trends in pedestrian and bicyclist crashes at the national level and how this might influence activities statewide;
- Evaluating the use of program resources and the effectiveness of existing countermeasures for the general public and high-risk populations; and
- Ensuring that evaluation results are used to identify problems, plan new programs and improve existing programs.

Highway Safety Program Guideline No. 15 Traffic Enforcement Services (August 2006)

Each State, in cooperation with its political subdivisions and tribal governments and other parties as appropriate, should develop and implement a comprehensive highway safety program, reflective of State demographics, to achieve a significant reduction in traffic crashes, fatalities and injuries on public roads. The highway safety program should include a traffic enforcement services program designed to enforce traffic laws and regulations; reduce traffic-crashes and resulting fatalities and injuries; provide aid and comfort to the injured; investigate and report specific details and causes of traffic crashes; supervise traffic crash and highway incident clean-up; and maintain safe and orderly movement of traffic along the highway system. This guideline describes the components that a State traffic enforcement services program should include and the minimum criteria that the program components should meet.

I. Program Management

A. Planning and Coordination

Each State should have centralized program planning, implementation and coordination to achieve and sustain effective traffic enforcement services. The State Highway Safety Office (SHSO) should provide the leadership, training and technical assistance necessary to:

- Develop and implement a comprehensive highway safety plan for all traffic enforcement service programs, in cooperation with law enforcement (*i.e.*, State, county, local or tribal law enforcement agency leaders);
- Generate broad-based support for traffic enforcement programs;
- Coordinate traffic enforcement services with other traffic safety program areas including commercial motor vehicle (CMV) safety activities such as the Motor Carrier Safety Assistance Program; and
- Integrate traffic enforcement services into traffic safety and other injury prevention programs.

B. Program Elements

State, local and tribal law enforcement agencies, in conjunction with the SHSO, should establish traffic safety services as a priority within their comprehensive enforcement programs. A law enforcement program should be built on a foundation of commitment, cooperation, planning, monitoring, and evaluation within the agency's enforcement program. State, local and tribal law enforcement agencies should:

- Provide the public with effective and efficient traffic enforcement services through enabling legislation and regulations;
- Coordinate activities with State Departments of Transportation to ensure

both support and accurate date collection;

• Develop and implement a comprehensive traffic enforcement services program that is focused on general deterrence and inclusive of impaired driving (*i.e.*, alcohol or other drugs), safety belt use and child passenger safety laws, motorcycles, speeding and other programs to reduce hazardous driving behaviors;

• Develop cooperative working relationships with other governmental agencies, community organizations and traffic safety stakeholders on traffic safety and enforcement issues;

• Maintain traffic enforcement strategies and policies for all area of traffic safety including roadside sobriety checkpoints, safety belt use, pursuit driving, crash investigating and reporting, speed enforcement and hazardous moving traffic violations; and

• Establish performance measures for traffic enforcement services that are both qualitative and quantitative.

Traffic enforcement services should look beyond the issuance of traffic citations to include enforcement of criminal laws and that address drivers of all types of vehicles, including trucks and motorcycles.

II. Resource Management

The SHSO should encourage law enforcement agencies to develop and maintain a comprehensive resource management plan that identifies and deploys resources necessary to effectively support traffic enforcement services. The resource management plan should include a specific component on traffic enforcement services and safety, integrating traffic enforcement services and safety initiatives into a comprehensive agency enforcement program. Law enforcement agencies should:

• Periodically conduct assessments of traffic enforcement service demands and resources to meet identified needs;

• Develop a comprehensive resource management plan that includes a specific traffic enforcement services and safety component;

• Define the management plan in terms of budget requirements and services to be provided; and

• Develop and implement operational strategies and policies that identify the deployment of traffic enforcement services resources to address program demands and agency goals.

III. Training

Training is essential to support traffic enforcement services and to prepare law enforcement officers to effectively perform their duties. Training accomplishes a wide variety of necessary goals and can be obtained through a variety of sources. Law enforcement agencies should periodically assess enforcement activities to determine training needs and to ensure training is endorsed by the state Police Officers Standards and Training (POST) agency. Effective training should:

• Provide officers the knowledge and skills to act decisively and correctly;

• Increase compliance with agency enforcement goals;

• Assist in meeting priorities;

• Improve compliance with established policies;

• Result in greater productivity and effectiveness;

• Foster cooperation and unity of purpose;

• Help offset liability actions and prevent inappropriate conduct by law enforcement officers;

• Motivate and enhance officer professionalism; and

• Require traffic enforcement knowledge and skills for all recruits. Law enforcement agencies should:

• Provide traffic enforcement in-service training to experienced officers;

• Provide specialized CMV in-service training to traffic enforcement officers as appropriate;

• Conduct training to implement specialized traffic enforcement skills, techniques, or programs; and

• Train instructors using certified training in order to increase agency capabilities and to ensure continuity of specialized enforcement skills and techniques.

IV. Traffic Law Enforcement

Providing traffic enforcement services and the enforcement of traffic laws and ordinances is a responsibility shared by all law enforcement agencies. Among the primary objectives of this function is encouraging motorists and pedestrians to comply voluntarily with the laws and ordinances. Administrators should apply their enforcement resources in a manner that ensures the greatest impact on traffic safety. Traffic enforcement services should:

• Include accurate problem identification and countermeasure design;

• Apply at appropriate times and locations, coupled with paid media and communication efforts designed to make the motoring public aware of the traffic safety problem and planned enforcement activities; and

• Include a system to document and report results.

V. Communication Program

States should develop and implement communication strategies directed at supporting policy and program elements. Public awareness and knowledge about traffic enforcement services are essential for sustaining increased compliance with traffic laws and regulations. Communications should highlight and support specific program activities underway in the community and communication programs and materials should be culturally relevant, appropriate to the audience and multilingual as necessary. This requires a well-organized, effectively managed social marketing campaign that addresses specific high-risk populations. The SHSO, in cooperation with law enforcement agencies, should develop a statewide communications plan and campaign that:

• Identifies and addresses specific audiences at particular risk;

• Addresses enforcement of safety belt use, child passenger safety, impaired driving, speed and other serious traffic laws;

• Capitalizes on special events and awareness campaigns;

• Identifies and supports the efforts of traffic safety activist groups, community coalitions and the health and medical community to gain increased support of, and attention to, traffic safety and enforcement;

• Uses national themes, events and materials;

• Motivates the public to support increased enforcement of traffic laws;

• Educates and reminds the public about traffic laws and safe driving behaviors;

• Disseminates information to the public about agency activities and accomplishments;

• Enhances relationships with news media and health and medical communities;

• Provides safety education and community services;

• Provides legislative and judicial information and support;

• Increases the public's understanding of the enforcement agency's role in traffic safety;

• Markets information about internal activities to sworn and civilian members of the agency;

• Enhances the agency's safety enforcement role and increases employee understanding and support; and

• Recognizes employee achievements.

VI. Data and Program Evaluation

The SHSO, in conjunction with law enforcement agencies, should develop a comprehensive evaluation program to measure progress toward established project goals and objectives; effectively plan and implement statewide, county, local and tribal traffic enforcement services programs; optimize the allocation of limited resources; measure the impact of traffic enforcement on reducing crime and traffic crashes, injuries and deaths; and compare costs of criminal activity to costs of traffic crashes. Data should be collected from police accident reports, daily officer activity reports that contain workload and citation information, highway department records (*e.g.*, traffic volume), citizen complaints and officer observations. Law enforcement managers should:

- Include evaluation in initial program planning efforts to ensure that data will be available and that sufficient resources will be allocated;
- Report results regularly to project and program managers, law enforcement decision-makers and members of the public and private sectors;
- Use results to guide future activities and to assist in justifying resources to governing bodies;
- Conduct a variety of surveys to assist in determining program effectiveness, such as roadside sobriety surveys, speed surveys, license checks, belt use surveys and surveys measuring public knowledge and attitudes about traffic enforcement programs;
- Evaluate the effectiveness of services provided in support of priority traffic safety areas;
- Maintain and report traffic data to appropriate repositories, such as police accident reports, the FBI Uniform Crime Report, FMCSA's SAFETYNET system and annual statewide reports; and
- Evaluate the impact of traffic enforcement services on criminal activity. An effective records program should:
- Provide information rapidly and accurately;
- Provide routine compilations of data for management use in the decision making process;
- Provide data for operational planning and execution;
- Interface with a variety of data systems, including statewide traffic safety records systems; and
- Be accessible to enforcement, planners and management.

Highway Safety Program Guideline No. 19 Speed Management (August 2006)

Each State, in cooperation with its political subdivisions and tribal governments and other parties as appropriate, should develop and implement a comprehensive highway safety program, reflective of State demographics, to achieve a significant reduction in traffic crashes, fatalities and injuries on public roads. The highway safety program should include a comprehensive speed management program that encourages citizens to voluntarily comply with speed limits. This guideline describes the components that a State speed management program should contain and the criteria that the program components should meet.

Speed management involves a balanced program effort that includes: Defining the relationship between speed, speeding and safety; applying road design and engineering measures to obtain appropriate speeds; setting speed limits that are safe and reasonable; applying enforcement efforts and appropriate technology that effectively address speeders and deter speeding; marketing communication and educational messages that focus on high-risk drivers; and soliciting the cooperation, support and leadership of traffic safety stakeholders.

I. Program Management

While speeding is a national problem, effective solutions must be applied locally. The success of a speed management program is enhanced by coordination and cooperation among the engineering, enforcement and educational disciplines. To reduce speeding-related fatalities, injuries and crashes, State, local or tribal governments should:

- Provide the NHTSA Speed Management Workshop that offers a comprehensive approach to speed management through partnering with a broad range of transportation and safety disciplines. This multi-disciplinary team improves communication and cooperation and facilitates the development of innovative strategies for reducing speeding-related fatalities and injuries.
- Establish a Speed Management Working Group as outlined in the Speed Management Workshop Guidelines to develop and implement a localized action plan that identifies specific speeding and speeding-related crash problems and the actions necessary to address problems and to establish the credibility of posted speed limits. The action plan should:
- Galvanize a localized effort and identify specific actions to be taken to effectively address managing speed and reducing speeding-related crash risks;
- Address how to effectively overcome institutional and jurisdictional barriers to setting appropriate speed limits and enforcement practices;
- Address how to effectively coordinate with stakeholders across organizations and disciplines to improve support needed for establishing an effective speed management program; and
- Address how to effectively communicate and exchange information between the transportation disciplines and the public to reinforce the importance of setting and enforcing appropriate speed limits.

II. Problem Identification

The relationship between speed limits, travel speeds and speed differential are the defining components of speed management as a highway safety issue. Speed increases crash severity, however, crash probability resulting from speed and speed differential is not clearly defined. Data collection and analysis is required to identify and develop countermeasures and awareness initiatives that lead to appropriate modifications in driver behavior. To achieve this goal, States should assist Speed Management Working Groups in making appropriate decisions about resource allocation. Each State should provide leadership, training and technical assistance to:

- Monitor and report travel speed trends across the entire localized road network;
- Identify local road segments where excessive and inappropriate vehicle speeds contribute to speeding-related crashes;
- Monitor the effects on vehicle speeds and crash risk of setting appropriate speed limits; and
- Coordinate, monitor and evaluate the short- and long-term effect of State legislative and local ordinance changes that establish appropriate speed laws and posted speed limits on mobility and safety.

III. Engineering Countermeasures

The establishment of appropriate speed limits facilitates voluntary public compliance and is the cornerstone for effective speed management. Speed management techniques and technology can be engineered into the existing highway system or incorporated into the Intelligent Transportation System to improve voluntary compliance with speed limits and prevent speeding. The State should aid established Speed Management Working Groups by providing the leadership, training and technical assistance necessary to:

- Comply with the Manual on Uniform Traffic Control Devices guidelines to establish appropriate speed limits;
- Provide a computer-based expert software system speed zone advisor to set credible, safe and consistent speed limits;
- Train traffic engineers in the proper techniques to deploy speed-monitoring devices and conduct engineering studies for the purpose of establishing appropriate speed limits;
- Determine and apply the appropriate frequency for speed limit signs;
- Identify sites and applications where variable speed limit signs can reinforce appropriate speed limits for prevailing conditions;
- Identify and apply appropriate traffic calming techniques for reducing speed in pedestrian and bicyclist activity areas;
- Employ speed-activated roadside displays that warn drivers exceeding safe speeds based on roadway curve geometry, pavement friction and/or vehicle characteristics; and
- Promote the application of onboard vehicle and communication technologies that prevent drivers from exceeding safe speeds, including adaptive cruise control, vehicle limit sensing and feedback, driver control speed limitors, wireless roadside beacons, vehicle infrastructure integrated safety systems and stability control systems.

IV. Communication Program

Communication strategies, accompanied by enforcement, can modify driver behavior. Communication programs should be developed to ensure motorist acceptance and to enhance compliance with the introduction of revised speed limits and strict enforcement operations. Communication programs and materials should be cultural relevant and multilingual as appropriate. If the public is not aware of, or does not understand, the potential consequences of speeding to themselves and others, they are unlikely to adjust speeds for traffic and weather conditions, or to comply with posted speed limits. The State should aid established Speed Management Working Groups by providing the leadership, training and technical assistance necessary to:

- Develop and evaluate culturally relevant public awareness campaigns to educate drivers on the importance of obeying speed limits and the potential consequences of speeding;
- Use market research to identify and clearly understand how, when and where to reach high-risk drivers;
- Develop a strategy to educate the public about why and how speed limits are set;
- Capitalize on special enforcement activities or events such as saturation patrols and sobriety checkpoints, impaired driving crackdowns, occupant protection mobilizations, and other highly publicized sustained enforcement activities;
- Identify and collaboratively support efforts of highway safety partners, traffic safety stakeholders and the health and medical communities to include speed management as a priority safety, economic and public health issue; and
- Promote responsible driver behavior and speed compliance in advertising.

V. Enforcement Countermeasures

Enforcement is critical to achieve compliance with speed limits. More than half of all traffic stops result from speeding violations, and public support for speed enforcement activities depends on the confidence of the public that speed enforcement is fair, rational and motivated by safety concerns. The State should provide the leadership, training and technical assistance necessary to:

- Support speed enforcement operations that:
  - Compliment a comprehensive speed management program including traffic engineering, enforcement, judiciary and public support;
  - Strategically address speeders, locations and conditions most common or most hazardous in speeding-related crashes; and
  - Support the national commercial motor vehicle safety enforcement program;
- Integrate speed enforcement into related highway safety and priority enforcement activities such as impaired driving prevention, safety belt use, motorcycle rider training and other injury control activities;
- Provide speed enforcement guidelines that promote driver compliance with appropriately set speed limits;
- Coordinate speed enforcement programs with educational and media communication activities;
- Ensure the accuracy and reliability of speed-measuring devices used during speed enforcement operations through compliance with the appropriate performance specifications and established testing protocols;
- Ensure the knowledge, skills and abilities of law enforcement officers involved in speed enforcement activities through comprehensive speed management training and appropriate speed-measuring device operator training programs; and
- Promote the proper use of automated speed enforcement programs, application of automated speed enforcement technologies and compliance with automated speed enforcement implementation guidelines designed to deter speeding effectively and to prohibit revenue generation beyond reasonable operational cost.

VI. Legislation, Regulation and Policy

A key component of a successful speed management program is consistent, effective public policy to support speed management strategies and countermeasures. Traffic court judges, prosecutors, safety organizations, health professionals, lawmakers and policy makers have a stake in establishing the legitimacy of speed limits and effectively managing speed to reduce injuries and fatalities. The support and leadership of traffic court judges and prosecutors is essential to ensure that speeding violations are treated seriously and consistently. Safety goals can only be achieved through the leadership of local authorities who are responsible for implementing most speed management measures. Each State should aid established Speed Management Working Groups by providing the leadership, training and technical assistance necessary to:

- Promote speed management as a public policy priority;
- Create a network of key partners to carry the speed management message and leverage their resources to extend the reach and frequency of a speed management communication program;
- Target speed management initiatives at sites and on highways that offer the greatest opportunity for making a significant reduction in speeding-related crashes;
- Provide speed management program information and training opportunities for traffic court judges and prosecutors that outline the negative effects of speeding on the quality of life in their communities;
- Provide sentencing guidelines to ensure and promote consistent treatment of violators in order to defuse any public perception that speed limits are arbitrary or capricious; and
- Promote and provide speed management workshops within communities to enhance communications and support for the implementation of a comprehensive,

balanced and effective speed management program.

VII. Data and Evaluation

An evaluation component is a critical element of any speed management program. The evaluation design should measure the impact and effectiveness of a comprehensive speed management program on traffic fatalities, injuries and crashes and provide information for future program revisions, improvement and planning. The State should aid established Speed Management Working Groups by providing the leadership, training and technical assistance necessary to:

- Include an evaluation component in the initial program planning efforts to ensure that data will be available and that sufficient resources will be allocated;
- Provide reports regularly to a Speed Management Working Group, project and program managers; law enforcement commanders and officers; transportation engineers; members of the highway safety, health and medical communities; public and private sectors; and other traffic safety stakeholders;
- Use evaluation results to verify problem identification, guide future speed management activities and assist in justifying resources to legislative bodies;
- Conduct surveys to determine program effectiveness and public knowledge and attitudes about the speed management program;
- Analyze speed compliance and speeding-related crashes in areas with actual hazards to the public;
- Evaluate the effectiveness of speed management activities provided in relation to other priority traffic safety areas; and
- Maintain and report traffic data to the SHSO and other appropriate repositories, including the FBI Uniform Crime Reports, FMCSA's SAFETYNET system and annual statewide reports.

Highway Safety Program Guideline No. 20 Occupant Protection (August 2006)

Each State, in cooperation with its political subdivisions and tribal governments and other parties as appropriate, should develop and implement a comprehensive highway safety program, reflective of State demographics, to achieve a significant reduction in traffic crashes, fatalities and injuries on public roads. The highway safety program should include a comprehensive occupant protection program that educates and motivates the public to properly use available motor vehicle occupant protection systems. A combination of legislation and use requirements, enforcement, communication, education and incentive strategies is necessary to achieve significant, lasting increases in safety belt and child safety seat usage. This guideline describes the components that a State occupant protection program should include and the criteria that the program components should meet.

I. Program Management

Each State should have centralized program planning, implementation and coordination to achieve and sustain high rates of safety belt use. Evaluation should be used to revise existing programs, develop new programs and determine progress and success. The State Highway Safety Office (SHSO) should:

- Provide leadership, training and technical assistance to other State agencies and local occupant protection programs and projects;
- Establish and convene an occupant protection advisory task force or coalition to organize and generate broad-based support for programs. The coalition should include agencies and organizations that are representative of the State's demographic composition and critical to the implementation of occupant protection initiatives;
- Integrate occupant protection programs into community/corridor traffic safety and other injury prevention programs; and
- Evaluate the effectiveness of the State's occupant protection program.

II. Legislation, Regulation and Policy

Each State should enact and enforce occupant protection use laws, regulations and policies to provide clear guidance to the public concerning motor vehicle occupant protection systems. This legal framework should include:

- Legislation permitting primary enforcement that requires all motor vehicle occupants to use systems provided by the vehicle manufacturer;
- Legislation permitting primary enforcement that requires that children birth to 16 years old (or the State's driving age) be properly restrained in an appropriate child restraint system (*i.e.*, certified by the manufacturer to meet all applicable Federal safety standards) or safety belt;
- Legislation permitting primary enforcement that requires children under 13 years old to be properly restrained in the rear seat (unless all available rear seats are occupied by younger children);
- Graduated Driver Licensing (GDL) laws that include three stages of licensure, and that place restrictions and sanctions on high-risk driving situations for novice drivers (*i.e.*, nighttime driving restrictions, passenger restrictions, zero tolerance, required safety belt use);
- Regulations requiring employees and contractors at all levels of government to wear safety belts when traveling on official business;
- Official policies requiring that organizations receiving Federal highway safety program grant funds develop and enforce an employee safety belt use policy; and
- Encouragement to motor vehicle insurers to offer economic incentives for policyholders who wear safety belts and secure children in child safety seats or other appropriate restraints.

III. Enforcement Program

Each State should conduct frequent, high-visibility law enforcement efforts, coupled with communication strategies, to increase safety belt and child safety seat use. Essential components of a law enforcement program include:

- Written, enforced safety belt use policies for law enforcement agencies with sanctions for noncompliance to protect law enforcement officers from harm and for officers to serve as role models for the motoring public;
- Vigorous enforcement of safety belt and child safety seat laws, including citations and warnings;
- Accurate reporting of occupant protection system information on police accident report forms, including safety belt and child safety seat use or non-use, restraint type, and airbag presence and deployment;
- Communication campaigns to inform the public about occupant protection laws and related enforcement activities;
- Routine monitoring of citation rates for non-use of safety belts and child safety seats;
- Use of National Child Passenger Safety Certification (basic and in-service) for law enforcement officers; and
- Utilization of law enforcement liaisons, for activities such as promotion of national and local mobilizations and increasing law enforcement participation in such mobilizations and collaboration with local chapters of police groups and associations that represent diverse groups to gain support for enforcement efforts.

IV. Communication Program

As part of each State's communication program, the State should enlist the support of a variety of media, including mass media, to improve public awareness and knowledge and to

support enforcement efforts to about safety belts, air bags, and child safety seats. Communication programs and materials should be culturally relevant and multilingual as appropriate. To sustain or increase rates of safety belt and child safety seat use, a well organized, effectively managed communication program should:

- Identify specific audiences (*e.g.*, low belt use, high-risk motorists) and develop messages appropriate for these audiences;
- Address the enforcement of the State's safety belt and child passenger safety laws; the safety benefits of regular, correct safety belt (both manual and automatic) and child safety seat use; and the additional protection provided by air bags;
- Capitalize on special events, such as nationally recognized safety and injury prevention weeks and local enforcement campaigns;
- Provide materials and media campaigns in more than one language as necessary;
- Use national themes and materials;
- Participate in national programs to increase safety belt and child safety seat use and use law enforcement as the State's contribution to obtaining national public awareness through concentrated, simultaneous activity;
- Utilize paid media, as appropriate;
- Publicize safety belt use surveys and other relevant statistics;
- Encourage news media to report safety belt use and non-use in motor vehicle crashes;
- Involve media representatives in planning and disseminating communication campaigns;
- Encourage private sector groups to incorporate safety belt use messages into their media campaigns;
- Utilize and involve all media outlets: television, radio, print, signs, billboards, theaters, sports events, health fairs; and
- Evaluate all communication campaign efforts.

V. Occupant Protection for Children Program

Each State should enact occupant protection laws that require the correct restraint of all children, in all seating positions and in every vehicle. Regulations and policies should exist that provide clear guidance to the motoring public concerning occupant protection for children. Each State should require that children birth to 16 years old (or the State's driving age) be properly restrained in the appropriate child restraint system or safety belt. Gaps in State child passenger safety and safety belt laws should be closed to ensure that all children are covered in all seating positions, with requirements for age-appropriate child restraint use. Key provisions of the law should include: driver responsibility for ensuring that children are properly restrained; proper restraint of children under 13 years of age in the rear seat (unless all available rear seats are occupied by younger children); a requirement that passengers be in designated seating positions and a ban on passengers in the cargo areas of light trucks; and a limit on the number of passengers based on the number of available safety belts in the vehicle. To achieve these objectives, State occupant protection programs for children should:

- Collect and analyze key data elements in order to evaluate the program progress;
- Assure that adequate and accurate training is provided to the professionals who deliver and enforce the occupant protection programs for parents and caregivers;
- Assure that the capability exists to train and retain nationally certified child passenger safety technicians to address attrition of trainers or changing public demographics;
- Promote the use of child restraints and assure that a plan has been developed to provide an adequate number of inspection stations and clinics, which meet minimum quality criteria;
- Continue programs and activities to increase the use of booster seats by children who outgrow infant or convertible child safety seats but are still too small to safely use safety belts.
- Maintain a strong law enforcement program that includes vigorous enforcement of the child occupant protection laws;
- Enlist the support of the media to increase public awareness about child occupant protection laws and the use of child restraints. Strong efforts should be made to reach underserved populations;
- Assure that the child occupant protection programs at the local level are periodically assessed and that programs are designed to meet the unique demographic needs of the community;
- Establish the infrastructure to systematically coordinate the array of child occupant protection program components;
- Encourage law enforcement participation in the National Child Passenger Safety Certification (basic and in-service) training for law enforcement officers; and
- Consider carefully crafted and administered child safety seat subsidy and/or give-away programs.

VI. Outreach Program

Each State should encourage extensive statewide and community involvement in occupant protection education by involving individuals and organizations outside the traditional highway safety community. Representation from the health, business and education sectors, and from diverse populations, within the community should be encouraged. Community involvement should broaden public support for the State's programs and increase a State's ability to deliver highway safety education programs. To encourage statewide and community involvement, States should:

- Establish a coalition or task force of individuals and organizations to actively promote use of occupant protection systems;
- Create an effective communications network among coalition members to keep members informed about issues;
- Provide culturally relevant materials and resources necessary to conduct occupant protection education programs, especially directed toward young people, in local settings; and
- Provide materials and resources necessary to conduct occupant protection education programs, especially directed toward specific cultural or otherwise diverse populations represented in the State and in its political subdivisions.

States should undertake a variety of outreach programs to achieve statewide and community involvement in occupant protection education, as described below. Programs should include outreach to diverse populations, health and medical communities, schools and employers.

A. Diverse Populations

Each State should work closely with individuals and organizations that represent the various ethnic and cultural populations reflected in State demographics. Individuals from these groups might not be reached through traditional communication markets. Community leaders and representatives from the various ethnic and cultural groups and organizations will help States to increase the use of child safety seats and safety belts. The State should:

- Evaluate the need for, and provide, if necessary, materials and resources in multiple languages;
- Collect and analyze data on fatalities and injuries in diverse communities;

• Ensure representation of diverse groups on State occupant protection coalitions and other work groups;
• Provide guidance to grantees on conducting outreach in diverse communities;
• Utilize leaders from diverse communities as spokespeople to promote safety belt use and child safety seat; and
• Conduct outreach efforts to diverse organizations and populations during law enforcement mobilization periods.

B. Health and Medical Communities

Each State should integrate occupant protection into health programs. The failure of drivers and passengers to use occupant protection systems is a major public health problem that must be recognized by the medical and health care communities. The SHSO, the State Health Department and other State or local medical organizations should collaborate in developing programs that:
• Integrate occupant protection into professional health training curricula and comprehensive public health planning;
• Promote occupant protection systems as a health promotion/injury prevention measure;
• Require public health and medical personnel to use available motor vehicle occupant protection systems during work hours;
• Provide technical assistance and education about the importance of motor vehicle occupant protection to primary caregivers (*e.g.*, doctors, nurses, clinic staff);
• Include questions about safety belt use in health risk appraisals;
• Utilize health care providers as visible public spokespeople for safety belt use and child safety seat use;
• Provide information about the availability of child safety seats at, and integrate child safety seat inspections into, maternity hospitals and other prenatal and natal care centers; and
• Collect, analyze and publicize data on additional injuries and medical expenses resulting from non-use of occupant protection devices.

C. Schools

Each State should encourage local school boards and educators to incorporate occupant protection education into school curricula. The SHSO in cooperation with the State Department of Education should:
• Ensure that highway safety and traffic-related injury control, in general, and occupant protection, in particular, are included in the State-approved K–12 health and safety education curricula and textbooks;
• Establish and enforce written policies requiring that school employees use safety belts when operating a motor vehicle on the job;
• Encourage active promotion of regular safety belt use through classroom and extracurricular activities as well as in school-based health clinics;
• Work with School Resource Officers (SROs) to promote safety belt use among high school students; and
• Establish and enforce written school policies that require students driving to and from school to wear safety belts. Violation of these policies should result in revocation of parking or other campus privileges for a stated period of time.

D. Employers

Each State and local subdivision should encourage all employers to require safety belt use on the job as a condition of employment. Private sector employers should follow the lead of Federal and State government employers and comply with Executive Order 13043, ''Increasing Seat Belt Use in the United States'' as well as all applicable Federal Motor Carrier Safety Administration (FMCSA) Regulations or Occupational Safety and Health Administration (OSHA) regulations requiring private business employees to use safety belts on the job. All employers should:
• Establish and enforce a safety belt use policy with sanctions for non-use; and
• Conduct occupant protection education programs for employees on their safety belt use policies and the safety benefits of motor vehicle occupant protection devices.

VII. Data and Program Evaluation

Each State should access and analyze reliable data sources for problem identification and program planning. Each State should conduct several different types of evaluation to effectively measure progress and to plan and implement new program strategies. Program management should:
• Conduct and publicize at least one statewide observational survey of safety belt and child safety seat use annually, ensuring that it meets current, applicable Federal guidelines;
• Maintain trend data on child safety seat use, safety belt use and air bag deployment in fatal crashes;
• Identify high-risk populations through observational usage surveys and crash statistics;
• Conduct and publicize statewide surveys of public knowledge and attitudes about occupant protection laws and systems;
• Obtain monthly or quarterly data from law enforcement agencies on the number of safety belt and child passenger safety citations and convictions;
• Evaluate the use of program resources and the effectiveness of existing general communication as well as special/high-risk population education programs;
• Obtain data on morbidity, as well as the estimated cost of crashes, and determine the relation of injury to safety belt use and non-use; and
• Ensure that evaluation results are an integral part of new program planning and problem identification.

Issued on: October 31, 2006.

Nicole R. Nason,

Administrator.

[FR Doc. E6–18749 Filed 11–6–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

United States Mint

Meeting Date Amended: Notification of Rescheduled Citizens Coinage Advisory Committee November 2006 Public Meeting

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting has been rescheduled to November 14, 2006, moved from its original date of November 2, 2006.

Date: November 14, 2006.

Time: Public Meeting Time: 10 a.m. to 2 p.m.

Location: United States Mint; 801 Ninth Street, NW.; Washington, DC; 2nd floor.

Subject: Review 2008 Presidential $1 Coin designs, the FY06 CCAC Annual Report, and other business.

Interested persons should call 202–354–7502 for the latest update on meeting time and room location.

Public Law 108–15 established the CCAC to:
• Advise the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
• Advise the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.

• Make recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: Cliff Northup, United States Mint Liaison to the CCAC; 801 Ninth Street, NW.; Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6830.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: October 31, 2006.

Edmund C. Moy,

Director, United States Mint.

[FR Doc. E6–18697 Filed 11–6–06; 8:45 am]

BILLING CODE 4810–37–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–32 (Sub-No. 99X); STB Docket No. AB–355 (Sub-No. 33X)]

Boston and Maine Corporation—Abandonment Exemption—In Middlesex County, MA; Springfield Terminal Railway Company—Discontinuance of Service Exemption—In Middlesex County, MA

Boston and Maine Corporation (B&M) and Springfield Terminal Railway Company (ST) (collectively, applicants) have filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service* for B&M to abandon, and ST to discontinue service over, a line of railroad, known as the Fitchburg Freight Cut-Off, extending from milepost 0.00 to milepost 0.86 in Somerville, in Middlesex County, MA.[1] The line traverses United States Postal Service Zip Code 02144.

Applicants have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment-Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 7, 2006, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 17, 2006. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 27, 2006, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicants' representative: John P. Curtin, Esq., Iron Horse Park, North Billerica, MA 01862.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Applicants have filed an environmental and historic report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. SEA will issue an environmental assessment (EA) by November 9, 2006. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), B&M shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by B&M's filing of a notice of consummation by November 7, 2007, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: October 31, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–18648 Filed 11–6–06; 8:45 am]

BILLING CODE 4915–01–P

[1] By letter filed on October 20, 2006, applicants corrected the consummation date in their notice of exemption from December 6, 2006, to the correct consummation date of December 7, 2006.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,300. *See* 49 CFR 1002.2(f)(25).

Federal Register

Tuesday,
November 7, 2006

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Parts 366, 367, et al.

Financial Accounting, Reporting and Records Retention Requirements Under the Public Utility Holding Company Act of 2005; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 366, 367, 368, 369, and 375

[Docket No. RM06–11–000; Order No. 684]

Financial Accounting, Reporting and Records Retention Requirements Under the Public Utility Holding Company Act of 2005

Issued October 19, 2006.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: In this Final Rule, the Federal Energy Regulatory Commission (Commission) is amending its regulations to further implement the Public Utility Holding Company Act of 2005 (PUHCA 2005). Specifically, the Commission is adding a Uniform System of Accounts (USofA) for Centralized Service Companies, adding preservation of records requirements for holding companies and service companies, revising FERC Form No. 60, Annual Report of Centralized Service Companies, to provide for financial reporting consistent with the new USofA and providing for electronic filing of the revised FERC Form No. 60. The Final Rule will provide for greater accounting transparency for centralized service company operations, and uniform records retention by holding companies and service companies subject to PUHCA 2005. This transparency will protect ratepayers from pass-through of improper service company costs.

EFFECTIVE DATE: The rule will become effective January 8, 2007.

FOR FURTHER INFORMATION CONTACT: James K. Guest (Technical Information), Division of Financial Regulation, Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, telephone (202) 502–6614, e-mail: *james.guest@ferc.gov.*

Lawrence Greenfield (Legal Information), Office of the General Counsel—Energy Markets, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, telephone (202) 502–6415, e-mail: *lawrence.greenfield@ferc.gov.*

Julia A. Lake (Legal Information), Office of the General Counsel—Energy Markets, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, telephone (202) 502–8370, e-mail: *julia.lake@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Background
III. Overview of Final Rule
IV. Discussion
1. Adoption of the Proposed Uniform System of Accounts
2. Implementation Date
3. FERC Form No. 60 Filing Deadline
4. Definitions
(a) ''Direct cost'' and ''Indirect cost''
(b) ''Work order system''
5. Instructions
(a) Section 367.2—Companies for which this system of accounts is prescribed
(b) Section 367.8—Extraordinary items
(c) Section 367.10—Unaudited Items
(d) Section 367.20(b)—Depreciation accounting
(e) Section 367.23—Transactions with non-associate companies
(f) Section 367.24—Construction and service contracts for other companies
(g) Section 367.25—Determination of service cost
(h) Section 367.27—Billing procedures
(i) Section 367.51(a)(17)—Allowance for funds used during construction
(j) Section 367.53—Service company property purchased or sold
(k) Section 367.54—Expenditures on leased property
(l) Section 367.59— Additions and retirements of property
(m) Sections 367.103–.104—Current & Deferred Income Taxes
(n) Section 367.23—Transactions with non-associate companies; § 367.25—Determination of service cost; § 367.27—Billing procedures; § 367.28—Methods of allocation; § 367.29—Compensation for use of capital
6. Balance Sheet Accounts
7. Income Statement Accounts
(a) Sections 367.4570–.4594—Revenue accounts for services rendered
(b) Sections 367.5000 and 367.8000—Operation and maintenance expense accounts
(c) Sections 367.9220 and 367.4171—Account 922, Administrative expenses transferred—Credit, and Account 417.1, Expenses of non-utility company
(d) Section 367.4160—Costs and expenses of merchandising, jobbing and contract work; § 367.9120—Demonstrating and selling expenses; § 367.9130—Advertising expenses; § 367.9301—General advertising expenses
(e) Sections 367.4263, 367.4117, 367.4180—Miscellaneous Income Statement Issues
8. Records Retention Requirements
9. FERC Form No. 60
(a) Use of GAAP Financial Statement instead of Structured FERC Form No. 60
(b) FERC Form No. 60 Schedules
(1) Schedule II, Service Company Property
(2) Schedule III–A, Summary of Service Company Property and Accumulated Provisions for Depreciation and Amortization
(3) Schedule IV, Investments and Schedule XII, Long-Term Debt
(4) Schedule V, Accounts Receivable from Associate Companies
(5) Schedule VI, Fuel Stock Expenses Undistributed
(6) Schedule X, Research, Development or Demonstration Expenses
(7) Schedule XI, Proprietary Capital
(8) Schedule XIV, Notes to Financial Statements
(9) Schedule XV, Comparative Income Statement
(10) Schedule XV–A, Schedule of Utility Operating Expenses; Schedule XVI, Analysis of Charges for Service; Schedule XVII, Schedule of Expense Distribution by Department or Service Function
(11) Analysis of Billing Schedules
(12) Departmental Analysis of Salaries Schedule; Methods of Allocation Schedule; and Organizational Chart Schedule
(13) Annual Statement of Compensation for Use of Capital Billed
(14) Miscellaneous General Expenses Schedule (Account 930.2)
(c) General Instruction IX
(d) Raising the Threshold for Individually Itemized Items
(e) Reporting in Whole Dollars or Alternatively in Thousands
(f) Comparative Information
(g) Request to Expand Data Collection in FERC Form No. 60
(h) Schedule Numbering
(i) Chief Accountant's delegated authority
V. Information Collection Statement
VI. Environmental Analysis
VII. Regulatory Flexibility Act
VIII. Document Availability
IX. Effective Date and Congressional Notification

Before Commissioners: Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff.

I. Introduction

1. On April 24, 2006, the Commission issued a notice of proposed rulemaking (NOPR) that proposed to add a new Uniform System of Accounts (USofA) for centralized service companies, *i.e.*, service companies that are not special purpose companies, and new preservation of records requirements for holding companies and service companies as new parts 367 and 368 of Title 18 of the Code of Federal Regulations.[1] The NOPR also proposed to revise FERC Form No. 60, Annual Report of Centralized Service Companies, to be codified in new part 369, to provide for financial reporting by centralized service companies consistent with the new USofA; to provide for electronic filing of Form No. 60; and to make conforming changes to the Commission's regulations in part 366 and corresponding changes to the Commission's Chief Accountant's delegation of authority in part 375. The

[1] 71 FR 28464 (May 16, 2006), FERC Stats. & Regs. ¶ 32,600 (2006).

NOPR proposed to make the changes effective January 1, 2007.

2. As directed by the Commission in the NOPR, the Commission staff held a technical conference on July 18, 2006, to provide interested persons an opportunity to discuss the regulations proposed in the NOPR. At the conclusion of the technical conference, staff announced that the record in this docket would remain open until August 8, 2006, to provide interested persons additional time to submit specific recommendations on how the Commission's proposed regulations could be modified to accommodate their concerns.

3. This Final Rule adopts, in many respects, the proposals contained in the NOPR, but with certain noted changes to minimize any unnecessary burden. Chief among them, the Commission defers the implementation date by an additional year, to January 1, 2008.

II. Background

4. On August 8, 2005, the Energy Policy Act of 2005 (EPAct 2005) [2] was signed into law. In relevant part, it repealed the Public Utility Holding Company Act of 1935 (PUHCA 1935) [3] and enacted the Public Utility Holding Company Act of 2005 (PUHCA 2005),[4] which, with one exception not relevant here, became effective on February 8, 2006 (six months from the date of enactment). On December 8, 2005, the Commission issued Order No. 667, adding a new Subchapter U and part 366 to Title 18 of the *Code of Federal Regulations* to implement PUHCA 2005.[5]

5. Order No. 667 required that, unless otherwise exempted by Commission rule or order, holding companies [6] and service companies [7] must maintain and make available to the Commission their books and records.[8] In addition, Order No. 667 allowed holding companies and service companies that did not currently follow the Commission's records retention requirements to transition to the Commission's requirements by January 1, 2007. Order No. 667 further provided that holding companies would not be required to comply with a Uniform System of Accounts, but that centralized service companies would be required to do so as of January 1, 2007. The Commission also indicated in Order No. 667 that it would initiate a separate rulemaking proceeding to address how the Commission's Uniform Systems of Accounts and records retention requirements in Parts 101, 125, 201 and 225 of its regulations [9] should be modified to adopt or otherwise integrate the relevant parts of the Securities and Exchange Commission's (SEC) Uniform System of Accounts and records retention rules.

6. In the April 24, 2006 NOPR,[10] the Commission recognized that the range of changes that would be needed to Parts 101, 125, 201 and 225 of its regulations to allow for application of those requirements to holding companies and service companies would make understanding and applying them difficult for all entities. Therefore, the Commission proposed to adopt separate accounting, records retention, and reporting requirements for holding companies and service companies in new Parts 367, 368 and 369.

7. After consideration of the discussion during the technical conference and the comments received, the Commission is adopting this Final Rule which is generally consistent with the NOPR, but with several significant changes to reduce the compliance burden on affected entities. The Commission received nine comments on the proposed NOPR and ten supplemental comments submitted following the July 18, 2006 staff technical conference. A list of the commenters is attached as Appendix B. Comments received on specific aspects of the Commission's proposal are discussed in greater detail below.

III. Overview of Final Rule

8. As an initial matter, the Commission in this Final Rule has been guided by the clear intent of Congress to repeal the regulatory regime established by PUHCA 1935 and to rely on this Commission and state regulatory authorities to protect energy customers. Throughout, we have attempted to strike a balance between the Commission's need for information to carry out its regulatory responsibilities and the burden that gathering and reporting information imposes on industry. Therefore, as described below, we have modified our proposal in several key respects to reduce any unnecessary burden. The modifications include deleting and modifying certain accounts and instructions in the originally proposed USofA, providing flexibility in the work order system requirements, streamlining and eliminating certain schedules in the FERC Form No. 60, retaining the May 1 filing date for the FERC Form No. 60, and postponing the implementation date of the Final Rule until January 1, 2008. These modifications balance the Commission's need for information to fulfill its regulatory responsibilities with minimizing any unnecessary burden.

9. Specifically, in the NOPR, the Commission proposed to add, as Part 367 of its regulations, a new USofA for centralized service companies that conforms, to the maximum extent practicable, to the existing USofA for public utilities and licensees and for natural gas companies as set forth in Parts 101 and 201, respectively, of the Commission's regulations. The Final Rule adopts the new USofA for centralized service companies, but with the following modifications to reduce the burden on respondents:

- Centralized service companies will not be required to adopt a formal work order system. Instead, the Commission will permit centralized service companies to use a variety of cost accumulation systems, provided such systems support the allocation of expenses to the services performed and readily identify the source of the expenses and the basis for their allocation.

[2] Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 594 (2005).

[3] 15 U.S.C. 79a *et seq.*

[4] EPAct 2005 at 1261 *et seq.*

[5] Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005, Order No. 667, 70 FR 75592 (Dec. 20, 2005), FERC Stats. & Regs. ¶ 31,197 (2005), order on reh'g, Order No. 667–A, 71 FR 28446 (May 16, 2006), FERC Stats. & Regs. ¶ 31,213 (2006), order on reh'g, Order No. 667–B, 71 FR 42750 (July 28, 2006), FERC Stats. & Regs. ¶ 31,224 (2006).

[6] As defined in 18 CFR 366.1, a holding company is (i) any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public-utility company or of a holding company of any public-utility company; and (ii) any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public-utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon holding companies.

[7] As defined in 18 CFR 366.1, a service company is any associate company within a holding company system organized specifically for the purpose of providing non-power goods or services or the sale of goods or construction work to any public utility in the same holding company system. ''Centralized service companies'' are defined in 18 CFR 367.1(a)(7) as a service company that provides services such as administrative, managerial, financial, accounting, recordkeeping, legal or engineering services, which are sold, furnished, or otherwise provided (typically for a charge) to other companies in the same holding company system. Centralized service companies are different from other service companies that only provide a discrete good or service.

[8] Order No. 667 also required centralized service companies to file the newly created FERC Form No. 60, Annual Report of Centralized Service Companies.

[9] 18 CFR parts 101, 125, 201 and 225 (2006).

[10] *Supra* note 1.

• Centralized service companies will not be required to obtain Commission approval to account for an item as extraordinary. Instead, the Commission will only require extraordinary items to be disclosed in footnotes to the financial statements.

• Centralized service companies will not be required to conduct extensive mortality studies to support the useful lives of all depreciable assets, but can exercise judgment in determining the evidence needed to support the lives of depreciable assets.

• Centralized service companies will not be required to prepare paper invoices each month for services rendered to associate utility companies. Instead, the Commission will permit centralized service companies to use a variety of accounting mechanisms, provided that associate utilities are receiving accurate information about the work being done for them and the related costs on a monthly basis.

• Centralized service companies will not be required to capitalize an allowance for funds used during construction (AFUDC) as a component of construction cost but will instead be allowed to capitalize interest.

• Centralized services companies will not be required to calculate income taxes for individual departments.

• Centralized service companies will not be required to recognize revenues received for, or expenses incurred in, providing services to non-utility companies in separate accounts.

• Centralized service companies will not be required to record revenues received for services provided in support of merchandising, jobbing and contract work in a separate account. Instead, revenues from such services will be included in the accounts provided for other service company revenues. Proposed Account 415, Revenues from merchandising, jobbing and contract work, will be eliminated.

10. In the NOPR, the Commission also proposed to add, as new part 368 of its regulations, preservation of records requirements for holding companies and service companies, that conform to the preservation of records requirements for public utilities and natural gas companies contained in §§ 125.3 and 225.3 of the Commission's regulations, with certain modifications appropriate for holding companies and service companies. The Final Rule adopts the new requirements, with certain modifications to the Schedule of Records and Periods of Retention in § 368.3. In order to reduce any unnecessary burden, the Commission will revise the retention period for certain depreciation records from 25 years to 3 years after retirement or disposition of the property.

11. Additionally, the NOPR proposed to revise FERC Form No. 60 to permit reporting consistent with the proposed USofA for centralized service companies, and to codify it in new part 369. The Final Rule adopts the revised FERC Form No. 60 in part 369, but deletes or modifies the following schedules in the Form itself to reduce the compliance burden:

• Schedule XV–A, Schedule of Utility Operating Expenses, will be deleted because similar information is available on Schedule XVI, Analysis of Charges for Service.

• Schedule XVI will be modified to reflect the Commission's decision not to require a separate account for recording expenses attributable to services provided to non-utility companies.

• The Analysis of Billing Non-utility Companies—Account 459 Schedule, will be deleted to reflect the Commission's decision to eliminate Account 459.

• The schedules for analysis of service company billings will eliminate the need to separately report billings to utility customers and non-utility customers.

• The departmental analysis of salaries schedule will be eliminated because the reported data is not comparable across companies.

12. In addition, the Final Rule delays the implementation date of the new requirements until January 1, 2008, and makes conforming changes to the transition provisions contained in §§ 366.21, 366.22 and 366.23 of the Commission's regulations. The delay in the implementation date and the transition periods will allow for a more orderly implementation of the new requirements and further reduce the compliance burden on affected entities.

13. The Final Rule, therefore, adopts new parts 367, 368 and 369 and corresponding changes to parts 366 and 375 of the Commission's regulations.

IV. Discussion

14. In general, the National Association of Regulatory Utility Commissioners (NARUC), the American Public Power Association (APPA), the Florida Municipal Power Authority (FMPA), and National Rural Electric Cooperative Association (NRECA) supported the NOPR while Edison Electric Institute (EEI) and individual service companies opposed the NOPR.

1. Adoption of the Proposed Uniform System of Accounts

15. The Commission proposed to adopt a new USofA for Centralized Service Companies that generally mirrors the Commission's existing USofA for public utilities and licensees and for natural gas companies, with certain modifications to reflect the unique business characteristics of centralized service companies.

Comments

16. Several industry commenters urge the Commission to allow centralized service companies to continue to use their existing systems of accounts.[11] These commenters contend that centralized service companies should not be required to adopt the USofA as proposed in the NOPR. EEI, First Energy, and XES also argue that centralized service companies should be permitted to continue to maintain their financial records in conformance with Generally Accepted Accounting Principles (GAAP) and Sarbanes-Oxley requirements.[12]

17. EEI argues that, to the extent there is some detail the Commission does not currently have, but wants to obtain, rather than requiring centralized service companies to restructure their accounting systems, the Commission could simply add items to FERC Form No. 60 to obtain that information.[13]

18. Progress Energy contends that instituting reporting requirements that are more complicated and time-consuming runs counter to the spirit that prompted the repeal of PUHCA 1935.[14]

19. PSEG Companies maintain that the Commission has substantially underestimated the costs of complying with the NOPR and that it failed to balance the costs associated with implementing the NOPR against the benefits expected to result from implementation.[15] PSEG Companies state that the proposals in the NOPR, if adopted, would impose more regulatory burdens than was required under PUHCA 1935. They state this would be inconsistent with the intent of Congress. PSEG Companies express their concern that the increased cost of compliance will be much higher than the Commission has estimated and that the benefits of the rule are non-existent and

[11] EEI at 19–20; FirstEnergy Service Company (FirstEnergy) Supplemental Comments at 2; Pepco Holdings, Inc. and PHI Service Company (PHI Companies) jointly-filed Supplemental Comments at 4–5; Progress Energy, Inc. (Progress Energy) at 2; Public Service Enterprise Group Incorporated (PSEG Companies) at 9–10; Xcel Energy Services, Inc. (XES) at 2–3.

[12] EEI at 20–21; FirstEnergy Supplemental Comments at 2; XES at 2–3.

[13] EEI at 18.

[14] Progress Energy at 3.

[15] PSEG Companies at 3.

may be counter-productive.[16] PSEG Companies request the Commission to withdraw the requirement that the centralized service companies must adopt the USofA, or, at a minimum, modify the NOPR in such a manner that provides net public benefits.[17]

20. XES claims that conversion to the new USofA proposed by the Commission would be expensive and time consuming, and is unnecessary because the current accounts and accounting systems comply with SEC's requirements and state regulations. Additionally, XES asserts that it does not foresee any additional benefit to federal and state regulatory agencies by conversion to the USofA proposed by the Commission.[18]

21. Southern Company Services and Southern Nuclear Operating Company (Southern) state that the accounting and work order systems now in place allow the public utility company receiving service company billings to report these expenses using the USofA. They state, further, that the Commission's proposal for the centralized service companies to use a modified USofA does nothing to enhance that process. They suggest that, if the Commission concludes there must be a conversion to its USofA, there be flexibility.[19] In their supplemental comments, Southern notes that the Commission receives detailed FERC Form No. 1 information from all public utility companies, which is where the service company charges are ultimately placed in the appropriate USofA classification.[20]

22. Some commenters express their belief that compliance with existing reporting requirements, including GAAP and SEC requirements, along with the Sarbanes-Oxley and state regulatory requirements, will provide adequate information in sufficient detail to ensure transparency and facilitate review of centralized service company charges.[21] XES adds, further, that existing federal and state requirements ensure the accuracy of records and the adequacy of internal accounting controls.[22] As such, these commenters believe the Commission's proposal to adopt the proposed conversion to a USofA is unnecessary.[23]

23. Conversely, APPA supports the Commission's effort to develop a comprehensive chart of accounts for centralized service companies. APPA believes that the Commission generally has done an admirable and workmanlike job of developing a comprehensive chart of accounts for centralized service companies. APPA states that such companies are likely to perform many operations and maintenance services for their public utility affiliates. The costs of these functions should be recorded and accounted for in the same way, regardless of exactly what entity performs them. APPA reports that some of its members that have had to deal with allocations of costs from centralized service companies to their public utility affiliates in the past have reported that accounting for such service company costs was often vague and opaque, recorded in accounts such as ''Administrative and General.'' According to APPA, these accounts could lead to improper allocation of such costs to utility customers. The new chart of accounts should be of material assistance in this regard. Indeed, APPA states that the Commission should make clear its intent to use the greater transparency achieved by the proposed service company accounting requirements to protect ratepayers from the pass-through of improper service company costs—*i.e.*, costs that would not be chargeable to ratepayers consistent with Commission policy if incurred at the operating company level.[24]

24. NRECA shares APPA's comments and concerns, and urges the Commission to adopt regulations ensuring just and reasonable rates by prohibiting the pass-through of improper service company costs to jurisdictional public utilities.[25]

25. FMPA supports the NOPR and compliments the Commission on the proposed standards, accounting requirements, and new accounts for centralized service companies. FMPA states that the rule provides long-needed transparency and consistency for centralized service companies' accounting. FMPA is of the view that the current method is broken, and there would not have been a need for a staff technical conference on this topic if it were otherwise. FMPA states that the current accounting method undermines the Commission's ability to insure just and reasonable rates and, that without the proposed reforms, the problem will only get worse. FMPA points out that with consolidation and mergers likely to follow the PUHCA repeal, inadequacies in the current accounting systems will face increasing stress leading to consumer harm. FMPA adds that there is growing reliance on formula rates at the Commission that heightens the need for greater transparency and consistency which also aids in their ability to audit and intervene in rate cases. FMPA states that the new USofA should facilitate scrutiny of costs passed through to customers, particularly as they need proper functionalization of costs under formula rates. FMPA indicates that there are centralized service companies that they deal with and have extreme difficulty getting the information needed to see the transparency. FMPA indicates also that, when they do get access to the information, it is very time consuming to ferret out, purge and find the information needed because there is not consistency of accounting between utilities. FMPA cautions that the Commission should not be swayed by the GAAP argument. FMPA states that financial reporting under GAAP is oriented toward investors, and that it does not provide sufficient regulatory scrutiny to protect the wholesale and retail ratepayers or to prevent cross-subsidization. FMPA asks that the Commission not water down the NOPR because it would only undermine the transparency and consistency that is needed.[26]

26. NARUC and the Wisconsin Commission state that service company costs are an important piece to the ratemaking responsibilities at the state regulatory level. They state that, typically, costs originating at the service company make up a large and increasing percentage of the operating expenses of the regulated utilities. They point out that, as affiliated companies, these transactions are not made on an arms-length basis and, therefore, require additional controls. Therefore, NARUC supports the Commission's effort in attempting to increase transparency in bringing uniformity of these costs.[27]

Commission Determination

27. The Commission concludes that a structured USofA as proposed under new part 367 of the Commission's regulations is necessary to ensure consistency across the centralized service companies and, equally important, to ensure the Commission has the information necessary to carry out its obligations under PUHCA 2005, the Federal Power Act (FPA), and the

[16] *Id.* at 6–7.

[17] *Id.* at 12.

[18] XES at 3–4.

[19] Southern at 1.

[20] Southern Supplemental Comments at 1.

[21] EEI at 17–19; Progress Energy at 2; PSEG Companies at 9–10; XES at 3–4.

[22] XES at 3.

[23] EEI at 23; XES at 3.

[24] APPA at 5.

[25] NRECA Supplemental Comments at 2.

[26] *See* Technical Conference Tr. 111–115 (Mr. Steven Ruppel).

[27] *See* Technical Conference Tr. 90 (Mr. Thomas Ferris).

Natural Gas Act (NGA).[28] In reaching this conclusion, the Commission is mindful that one of Congress' goals in repealing PUHCA 1935 was to reduce the regulatory burden on holding companies. The Commission, nevertheless, finds that the absence of a structured USofA would impede the Commission's ability to carry out the new regulatory responsibilities imposed by Congress when it adopted PUHCA 2005. Without a structured USofA, the Commission would not have adequate information to be able to ensure just and reasonable jurisdictional rates, discern potential or actual cross-subsidization, or be able to approve cost allocations between holding company affiliates.

28. Although GAAP and the SEC's accounting rules may be sufficient for some purposes, they alone are not sufficient for fulfilling the Commission's new regulatory responsibilities under PUHCA 2005. In order to carry out its regulatory responsibilities, the Commission needs accounting information that is more ''granular,'' *i.e.*, more detailed, than what is required under GAAP. For example, reporting a single figure for total operation and maintenance expense on an income statement would satisfy GAAP requirements. However, the Commission needs information, among other things, about how much was spent on operations compared to maintenance, how much was spent on transmission compared to distribution, and what one company spent on an activity compared to another for that same activity in order to ensure, for example, just and reasonable jurisdictional rates.

29. Although flexibility in accounting rules may have enabled the SEC to meet its regulatory responsibilities, such flexibility will not allow the Commission to accomplish its regulatory mandate to ensure just and reasonable rates. There are hundreds of entities subject to the Commission's jurisdiction. The only way the Commission can efficiently carry out this mandate is by requiring these entities to account for transactions in a structured and uniform manner. That is why the Commission adopted and still maintains USofAs for public utilities and licensees and for natural gas companies. A structured USofA for centralized service companies is an equally essential tool that the Commission needs to carry out its regulatory responsibilities.

30. Upon further consideration, however, the Commission finds that the USofA proposed in the NOPR for centralized service companies may include some requirements that, in retrospect, may not be needed. Therefore, consistent with the overall objective of not imposing unnecessarily burdensome regulatory requirements under PUHCA 2005, we are adopting the following modifications suggested by the commenters to the proposed USofA to reduce that burden, as discussed below.

2. Implementation Date

31. The NOPR proposed to require holding companies and service companies to implement the new accounting, records retention, and reporting requirements on January 1, 2007.

Comments

32. Several commenters argue that the January 1, 2007 implementation date does not allow sufficient time to implement the Final Rule.[29] They argue that compliance with the Final Rule, if adopted as proposed, would require time, man hours and company resources to implement software changes, train personnel, to update Sarbanes-Oxley controls, and to receive sign off from internal and external auditors. In addition, Progress Energy argues that reengineering of company processes, procedures and software, remapping of thousands of projects to new Commission accounts, and testing and auditing (internal and external) of revised systems would take many months to ensure error-free implementation.[30] The commenters suggest, therefore, that the Commission defer compliance with the Final Rule until January 1, 2008. According to commenters, this deferral also would provide time to issue a Final Rule and an order on rehearing. NARUC and other state commissions had no objections to extension of the implementation date as long as there was no gap between the SEC's regulations and implementation of the Commission's regulations.[31]

Commission Determination

33. The Commission agrees with the commenters, and will move the implementation date of this Final Rule from January 1, 2007 to January 1, 2008. As a result, the revised FERC Form No. 60 prescribed in this Final Rule will first be due on May 1, 2009 (reporting data for the 2008 reporting year).[32] This change will provide companies sufficient time to implement software changes, train personnel, update Sarbanes-Oxley controls, and receive sign off from internal and external auditors. The change in implementation date will reduce the burden and cost to service companies impacted by the Final Rule. Additionally, the Commission will extend the transition periods for holding companies and service companies to comply with the Commission's accounting and recordkeeping requirements.[33]

3. FERC Form No. 60 Filing Deadline

34. In the NOPR, the Commission proposed to change the filing deadline for the FERC Form No. 60 from May 1 to April 18. The proposed April 18 filing date is consistent with the filing date for most of the Commission's other annual report forms that contain financial information.

Comments

35. EEI proposes that the Commission retain the current FERC Form No. 60 filing deadline of May 1 because companies have a number of financial reporting requirements with spring due dates affecting the same staff. EEI claims accelerating the filing date to April 18 would increase the cost of compliance, and increase company staffing needs.

Commission Determination

36. We will retain the current FERC Form No. 60 filing date of May 1. Retention of the May 1 date will minimize the burden on service companies that may also be responsible for filing FERC Form Nos. 1, 2 or 6 on behalf of regulated public utility companies and licensees, natural gas pipelines, or oil pipelines. The

[28] 42 U.S.C. 16451 *et seq.*; 16 U.S.C. 824 *et seq.*; 15 U.S.C. 717 *et seq.*

[29] EEI at 45–48; XES at 5; Southern at 2; Progress Energy at 12; National Grid USA (National Grid) at 14–15; NiSource Inc. (NiSource) Supplemental Comments at 3; FirstEnergy Supplemental Comments at 4; PHI Companies Supplemental Comments at 5–6.

[30] Progress Energy at 12.

[31] *See* Technical Conference Tr. 97–98 (Mr. Thomas Ferris); Technical Conference Tr. 101 (Mr. Joseph Buckley); Technical Conference Tr. 109 (Mr. James Mitchell).

[32] The currently effective FERC Form No. 60 due on May 1, 2007 and May 1, 2008 will be the FERC Form No. 60 adopted in Order Nos. 667, 667–A and 667–B. *See Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Order No. 667, 70 FR 75592 (December 20, 2005), FERC Stats. & Regs. ¶ 31,197 (2005), *order on reh'g*, Order No. 667–A, 71 FR 28446 (May 16, 2006), FERC Stats. & Regs. ¶ 31,213 (2006), *order on reh'g*, Order No. 667–B, 71 FR 42750 (July 28, 2006), FERC Stats. & Regs. ¶ 31,224 (2006).

[33] In Order No. 667, the Commission established transition periods for holding companies formerly ''registered'' under PUHCA 1935 to comply with the Commission's record retention requirements, and for service companies in such holding company systems to comply with the Commission's accounting, records retention, and reporting requirements. *See* 18 CFR 366.21(b), 366.22(a)(2), 366.22(b)(2) and 366.23(b).

Commission will also make submission software available to companies, allowing for electronic filing of the revised FERC Form No. 60 for the 2008 reporting year and subsequent reporting years, similar to the submission software used for electronic filing of Form Nos. 1, 2, 2–A, 3–Q, 6, and 6–Q.[34]

4. Definitions

(a) ''Direct cost'' and ''Indirect cost''

37. In the NOPR, the Commission proposed to define ''direct cost'' to include ''the labor costs and expenses which can be identified through a work order system as being applicable to services performed for a single or group of associate and non-associate companies. Costs incidental to or related to a directly charged item must be classified as a direct cost.'' ''Indirect cost'' was defined to include ''the costs of a general overhead nature such as general services, housekeeping costs, and other support costs which cannot be separately identified to a single or group of associate and non-associate companies and, therefore, must be allocated. Indirect costs must be accumulated on a departmental basis.'' These are the same definitions that were contained in the SEC's former USofA for service companies.[35]

Comments

38. Southern recommends redefining the terms ''direct cost'' and ''indirect cost'' because it believes the definitions of these terms in the NOPR require costs it views as direct costs to be recharacterized as indirect costs. Southern explains that billings for direct costs should include overhead costs, such as employee benefits, as an adder to those direct costs, which otherwise would be characterized as indirect costs based on the definition in the NOPR. Southern suggests the Commission define ''direct cost'' as ''those costs which are applicable to services performed for a single client company. Costs incidental to, or related to, a directly charged item also should be classified as a direct cost.'' Likewise, Southern suggests ''indirect cost'' be defined as ''those costs which are not applicable to services performed for a single client company and which must be allocated.'' Costs incidental to, or related to, indirect items should also be classified as an indirect cost.[36]

Commission Determination

39. We do not agree with Southern's assertion that costs such as employee benefit costs must be recharacterized as indirect costs. The definition for ''direct cost'' includes labor costs and expenses applicable to services performed for a single or group of associate and non-associate companies and any cost incremental to or related to a directly charged item. Based on that definition, employee labor costs that are applicable to a service performed for a single or group of companies are a ''direct cost'' together with the related employee benefit costs.

40. We also will not adopt Southern's proposal to define ''direct cost'' as those applicable to services performed for a single client company, and ''indirect cost'' as those not applicable to services performed for a single client company. We do not believe Southern's proposed definition would be workable in all situations. For example, a centralized service company could provide engineering services for a construction project that is jointly owned by two associated public utilities. In that instance, the labor costs of providing the engineering services are a direct cost of the project but the services are provided for more than a single client company. Therefore, we will adopt the definitions set forth in the NOPR.

(b) ''Work Order System''

41. In the NOPR, the Commission proposed to adopt the definition and requirements of ''work order system'' from the SEC's former USofA for service companies. The NOPR, therefore, defined ''work order system'' as a system for the accumulation of service company costs on a job, project, or functional basis. It includes schedules and worksheets used to account for charges billed to single and groups of associate and non-associate companies. The requirements of a ''work order system,'' in turn, were provided as a General Instruction in § 367.30. This instruction provides that a service company must maintain a detailed classification of service costs that permits costs to be identified with the functional processes of the associate companies served and also various other accounting and cost allocation records needed to support work order charges.

Comments

42. Commenters suggest that the Commission clarify and redefine the term ''work order system'' to incorporate a broader use of the term.[37] XES believes the focus of the Commission, as it relates to a work order system, should be on complete and accurate reporting to enable it, state commissions, and other interested persons to monitor service company activities. XES states that variation in work order procedures should not affect the accuracy of reporting, and holding company systems should have the flexibility to rely on the systems that they have previously developed and implemented.

43. EEI notes that, at the technical conference, industry panelists suggested that work order systems could include the use of a variety of systems.[38] EEI recommends that the Commission replace the current definition of ''work order system'' with the following broader definition: ''Work order system means a system for the accumulation of service company costs on a job, project, or functional basis. It includes any method used to account clearly for charges billed to single and groups of associate and non-associate companies, including, but not limited to, use of actual work orders, electronic notifications, bills, ledger entries, or activity-based accounting software systems.'' [39] EEI encourages the Commission to reflect this broad meaning of the term ''work order system'' throughout this Final Rule, by conforming the regulatory text and preamble to this broadly defined concept. To do this, EEI states the following sections should be revised to avoid implying that work orders are required: §§ 367.24(a), 367.27, 367.28, 367.58(a), 367.4571, 367.4581, 367.4591, 367.50(d), 367.52(c), 367.1070(b), 367.1080(c), 367.1520, 367.1850, and 367.9240(d); and Records Retention Requirements Nos. 13, 15, 16, 17, and 19.

44. Commenters also argue that, while the SEC previously had regulations on work order systems, the SEC never formally required formal work order systems and allowed significant flexibility in how to account for inter-affiliate transactions.[40] They state that, for the Commission to impose a formal work order system, centralized service companies would incur substantial

[34] We note that, contemporaneously with this Final Rule, we are issuing, in Docket No. RM06–25–000, a Final Rule providing for the electronic filing of the currently-effective FERC Form No. 60 for 2006 and 2007 reporting years, to be filed on May 1, 2007 and May 1, 2008, respectively. *See Electronic Filing of FERC Form No. 60*, Order No. 685, published elsewhere in this issue of the **Federal Register**, FERC Stats. & Regs. ¶ (2006).

[35] *See* 17 CFR part 256 (Uniform System of Accounts for Mutual Service Companies; Subsidiary Companies, Public Utility Holding Company Act of 1935).

[36] Southern at 4; Southern Supplemental Comments at 2.

[37] EEI Supplemental Comments at 15; FirstEnergy Supplemental Comments at 4; XES Supplemental Comments at 2.

[38] EEI Supplemental Comments at 15.

[39] *Id.* at 16.

[40] EEI at 40; National Grid at 4; XES at 4.

costs to update accounting systems and train workers and their companies would decrease operating efficiency would suffer because routine and recurring work would now need to be reorganized around specific work orders.[41] National Grid also explains that its current practice accomplishes all of the goals sought by the Commission's proposed work order system.[42] Accordingly, the commenters believe the Commission should not require the use of a formal work order system, but should allow centralized service companies to continue to use their prior SEC-approved practices for tracking and assigning service costs.

45. NARUC states that if the Commission determines that a formal work order system would be too burdensome, an alternative would be for the Commission to use the proposed definition and describe the minimum requirements of a work order system. NARUC adds that each centralized service company would then be required to file information describing its system and how it complies with the Commission's definition and minimum requirements. NARUC suggests minimum requirements could include a written agreement on the types of work that will be performed by the service company for the utility, identification of the work to be completed by functional area, and the ability to track the costs to the services provided. NARUC states the work order system should separately break down costs related to one-time/nonrecurring expenditures. Further, if the service company incurs direct costs relating to construction work for a utility, NARUC believes the service company should have a work order system identical to the one that is required under parts 101 and 201 of the Commission's regulations.[43]

Commission Determination

46. While the Commission would prefer centralized service companies to utilize formal work order systems, the Commission also recognizes that the goals and purposes of a formal work order system can be met through other means, as several commenters suggest. The Commission also recognizes that there are increased costs associated with implementing a formal work order system. Accordingly, the Commission will replace the term ''work order system'' with ''cost accumulation system,'' and will modify the instructions in § 367.30 so that the instructions do not mandate centralized service companies to implement a formal work order system. The Commission, further, will allow centralized service companies to use a variety of cost accumulation systems, provided any cost accumulation system adopted meets the requirements provided in the definition for ''cost accumulation system'' and the requirements contained in § 367.30. Also, we will modify the regulations to remove language that suggests a formal or uniform work order system is required.

47. The definition for ''cost accumulation system'' in § 367.1(a)(12) will be

> ''a system for the accumulation of service company costs on a job, project, or functional basis. It includes schedules and worksheets used to account for charges billed to single and groups of associate and non-associate companies. It can be a variety of systems, including but not limited to, a work order system or an activity-based accounting software system.''

While the instructions in § 367.30 will remain the same, we will revise all references to a work order system in the regulations.

48. In making the changes discussed above, the Commission affords centralized service companies flexibility in the type of cost accumulation system they use to reflect their costs, and reduces any unnecessary burden that may be associated with changing their current system for accounting for these costs to a formal ''work order system.''

5. Instructions

49. In the NOPR, the Commission proposed to adopt four categories of instructions: General Instructions, Service Company Property Instructions, Operating Expense Instructions, and Special Instructions. The proposed instructions included most of the instructions contained in parts 101 and 201 of the Commission's regulations modified to meet the needs of centralized service companies and certain additional instructions contained in the SEC's USofA relevant to centralized service companies. The specific comments received on these instructions are discussed below.

(a) Section 367.2—Companies for Which This System of Accounts Is Prescribed

50. The Commission proposed that the USofA apply to any centralized service company operating, or organized specifically to operate, within a holding company system for the purpose of providing non-power services to any public utility in the same holding company system. However, we also proposed to continue the existing SEC exemptions from the USofA, including: Special-purpose service companies, electric or gas utility companies, companies primarily engaged in the production of goods, and service companies that provide services exclusively to a local gas distribution company.

Comments

51. NARUC states that § 367.2 does not adequately ensure the existence of proper controls in the event of certain possible organization changes. For example, NARUC explains that, in the event that a service company is eliminated, the utility may transfer relevant service company functions to the holding company, a utility within the holding company, or another company within the holding company system. NARUC claims there is a risk that such transfers will result in the elimination of needed accounting controls relating to these functions, because under the proposed rules holding companies and special purpose companies would not be required to comply with the new USofA. NARUC argues that, in order to assure all service companies that provide goods and services to utilities are subject to proper controls, § 367.2 should be revised to (1) eliminate the special purpose service company exemption; (2) clarify that the new USofA applies to the entity that performs service company functions, even if it is a holding company or a company providing electric or gas utility services; and (3) prohibit service company functions from being transferred to a utility in the holding company system. NARUC states that, in the absence of such modifications the purpose of the Commission's proposed regulations may be thwarted.[44]

52. Certain commenters, on the other hand, argue that the Commission should maintain its requirement that the new recordkeeping and reporting requirements apply to centralized service companies only.[45] EEI states that parent holding companies and their subsidiaries may own a variety of assets and undertake a variety of activities. Thus, EEI argues, if the Commission were to extend the requirements beyond centralized service companies, the Commission would need to address a variety of potential scenarios in order to define the circumstances in which the requirements would apply to other companies—which would complicate

[41] EEI at 41; National Grid at 5–6; XES at 4.

[42] National Grid at 5.

[43] NARUC Supplemental Comments at 6; *codified at* 18 CFR parts 101 and 201.

[44] NARUC at 3–5.

[45] EEI at 38; EEI Supplemental Comments at 19; CMS Energy Corporation and Consumers Energy Company (CMS Energy) Supplemental Comments at 3.

and increase the accounting and recordkeeping burden.[46] EEI also argues that the Commission should not adopt requests to impose constraints on whether and how holding companies establish service companies to provide services to their subsidiaries. EEI states that neither the FPA nor PUHCA 2005 gives the Commission authority to regulate holding company structure and operations in such a manner. Additionally, EEI urges the Commission to adopt a new definition for centralized service companies that would limit application of the Final Rule's accounting and reporting requirements to service companies, and to preclude holding companies from being classified as service companies. EEI also suggests the Commission specify that only parts 367 and 368 apply to service companies.[47]

53. For its part, CMS Energy argues that the Commission already has put into place the ability to monitor and respond to any concentration of utility functions within special purpose companies through the FERC–65 [48] and FERC–61 [49] reporting requirements established in Order No. 667.[50] CMS Energy states these reporting requirements require identification of special purpose service companies and annual reporting on the functions of each special purpose company. CMS Energy adds that special purpose service companies have a simpler, smaller, more focused nature and the FERC–65 and FERC–61 reporting requirements are well suited to monitor them, without imposing the USofA and FERC Form No. 60 requirements.[51]

Commission Determination

54. We have decided that the USofA we are adopting herein will apply to centralized service companies only, consistent with Order No. 667.[52] We agree with EEI that extending the requirements beyond centralized service companies would be a difficult definitional exercise that could lead to unnecessary regulatory uncertainty. While the Commission shares NARUC's concerns that holding company systems could potentially circumvent the Commission's accounting and reporting requirements for centralized service companies, the Commission does not believe NARUC's recommendations are the best way to address the potential issue. At this time it is preferable to monitor developments in the industry and assess whether the instructions we are adopting lead to circumvention of our rules. If centralized service companies begin to decentralize their service functions in an effort to circumvent the Commission's accounting and reporting regulations, the Commission will take the necessary actions to ensure the Commission has the information necessary to carryout its obligations under PUCHA 2005, the FPA, and the NGA. The Commission also will not impose restrictions on holding company systems which prevent centralized service company functions from being transferred to other companies in the same holding company system. Such restrictions are outside the Commission's statutory authority under the PUCHA 2005, the FPA, and the NGA.

55. We also clarify that holding companies are not subject to the rules of this USofA, and we will amend the instructions to § 367.2 to provide for this exemption. Further, we will adopt in § 367.1(a) of the regulations a definition for the term ''centralized service company'' based on our discussions in Order No. 667.[53]

(b) Section 367.8—Extraordinary Items

56. In the NOPR, we proposed that centralized service companies must obtain Commission approval to record all extraordinary items. Extraordinary items are items related to the effects of events and transactions that have occurred during the current period and that are of an unusual nature and infrequent occurrence.

Comments

57. EEI and Progress Energy disagree with the Commission's proposed requirement that Commission approval is required for an item to be accounted for as extraordinary.[54] They state that this requirement is unnecessary and burdensome. Further, they contend, it should be sufficient for centralized service companies to follow the GAAP requirement for reporting extraordinary items. Progress Energy also argues that, to the extent the Commission does not approve an item that is a required disclosure for SEC reporting, the Commission runs the risk of promoting inconsistent treatment of extraordinary items across holding company systems.[55] Progress Energy adds that such a requirement would be an unnecessary burden on Commission staff to perform the reviews.[56] EEI suggests that the Commission should require centralized service companies to provide a footnote describing any amounts included in Accounts 434, Extraordinary income and Account 435, Extraordinary deductions.[57]

Commission Determination

58. Upon further consideration, we agree that requiring Commission approval for any item to be recognized as extraordinary may impose an unnecessary burden on centralized service companies. EEI's suggested alternative strikes a balance between the need for disclosure of such items and the desire to reduce unnecessary regulatory burden. Accordingly, the Commission will not require centralized service companies to seek Commission approval for all extraordinary items. Rather, as suggested by EEI, the Commission will require centralized service companies to include disclosure in the Notes to the Financial Statements of the FERC Form No. 60 identifying and describing any amounts included in Account 434, Extraordinary income, and Account 435, Extraordinary deductions. Accordingly, we will add an instruction to Schedule XIV, Notes to Financial Statements, to require disclosure of extraordinary items.

(c) Section 367.10—Unaudited Items

59. Proposed § 367.10 states that, when preparing a financial statement required by the Commission, if it is known that a transaction has occurred that affects the accounts but the amount involved in the transaction and the effect upon the accounts cannot be determined with absolute accuracy, the amount must be estimated and the estimated amount included in the proper accounts.

Comments

60. Southern questions the purpose of § 367.10 because its financial statements are audited and include all estimable liabilities in accordance with GAAP.[58]

Commission Determination

61. Southern's comments are misplaced. The Commission does not at this time require the centralized service company financial statements,

[46] EEI Supplemental Comments at 21–22.

[47] EEI Supplemental Comments at 20.

[48] Holding companies that meet the definition of a holding company as defined by § 366.1 must notify the Commission of this status by submitting FERC–65. *See* 18 CFR366.4(a).

[49] Every service company in a holding company system, including a special-purpose company, which does not file a FERC Form No. 60 must instead file a narrative description of the service company's function during the prior calendar year. *See* 18 CFR 366.23(a)(2).

[50] *Supra* note 5.

[51] CMS Energy Supplemental Comments at 8.

[52] *See* Order No. 667 at P 38.

[53] *See* Order No. 667 at P 37.

[54] EEI at 32; Progress Energy at 10.

[55] Progress Energy at 10.

[56] *Id.*

[57] EEI at 32.

[58] Southern at 5.

contained in the FERC Form No. 60, to be audited by independent public accountants. The purpose of § 367.10 is simply to instruct a centralized service company, in preparing such statements, that it must use estimates if a transaction occurs that affects a company's accounts even if the amount involved in the transaction and its effect upon the accounts cannot be determined with absolute accuracy and the estimates have not been audited.

(d) Section 367.20(b)—Depreciation Accounting

62. The NOPR at § 367.20(b) required service companies to support the estimated useful service lives of depreciable property with engineering, economic, or other depreciation studies.

Comments

63. Southern recommends the Commission eliminate § 367.20(b) or use a more restrictive definition of when a study is needed. Southern states that a service company would not typically need ''engineering, economic, or other depreciation studies'' to support the useful lives of depreciable property, which consists primarily of computer equipment, furniture, and other fixtures.[59]

Commission Determination

64. Service companies own a variety of assets. Some centralized service companies primarily own office furniture and computers while others own more significant assets such as office buildings.[60] Accordingly, some centralized service companies may need to conduct a more sophisticated engineering, economic, or other type of depreciation study than would others based on the complexity and characteristic of the depreciable assets that they own. The intent of the instruction is to require service lives of depreciable assets to be supported by evidence and analysis. It is not intended to require unnecessarily extensive mortality studies to be conducted when the cost of doing so cannot be supported by the improved accuracy in depreciation estimates. The Commission, therefore, will revise the instructions in § 367.20(b) to state that the ''estimated useful service lives of depreciable property must be supported by objective evidence and analysis, including where appropriate engineering, economic, or other depreciation studies.''

(e) Section 367.23—Transactions With Non-Associate Companies

65. Proposed § 367.23 was carried over from the SEC's former USofA and requires profits and losses on transactions with non-associate companies to be recorded in Account 458.4, Excess or deficiency on servicing non-associate utility companies (§ 367.4584), and Account 459.4, Excess or deficiency on servicing non-associate non-utility companies (§ 367.4594), as appropriate. It also requires centralized service companies to use net profits received outside of the holding company system to reduce the cost of providing service to associate companies within the holding company system.

Comments

66. NARUC supports the provisions; however, it explains that, if a service provided outside the corporate umbrella becomes profitable, a utility might form a new affiliate to provide the service so that profits associated with that service will no longer flow back to regulated operations.[61] In that circumstance, it points out, the excess profits that would otherwise be available to reduce the costs of associate companies may decline. Therefore, NARUC suggests that services should not be transferred to a new affiliate if, and when, they become profitable. Additionally, NARUC suggests the Final Rule could require the centralized service company to report yearly which services it provides to outside entities, including an explanation of why any services were dropped from one year to the next.

Commission Determination

67. It is beyond the scope of the Commission's authority under PUHCA 2005 to set regulations which prohibit the transfer of services performed from one associate company in a holding company system to another associate company. Therefore, we will not adopt NARUC's suggestion to prohibit services provided outside the corporate umbrella by a service company from being transferred to another associate company. Nor will we adopt the suggestion that service companies provide a yearly report on changes to services provided. A separate report is unnecessary because the Commission and others will be able to monitor such transfers because they will be reported annually either through FERC Form No. 60 or in FERC–61.[62]

(f) Section 367.24—Construction and Service Contracts for Other Companies

68. Proposed § 367.24 was carried over from the SEC's former USofA for service companies. Section 367.24(b) requires centralized service companies to exclude from their accounting system the cost of materials, construction payrolls, outside services, and other expenses directly attributable to the construction of physical property for other companies, and requires that these costs must be charged directly by the vendor or supplier to the construction project. Additionally, § 367.24(c) requires the cost of goods procured (as opposed to services) to be excluded from the accounting system of the service company and charged directly by the vendor or supplier to the associate company concerned.

Comments

69. Southern states it does not understand the purpose behind § 367.24(b) and (c), and recommends their elimination as it requires the exclusion of certain direct costs and cost of goods procured from the accounting system of the service company.[63] Southern explains that its service companies contract for such expenses on behalf of its affiliate companies, as well as incur costs directly that are related to construction projects, that are then billed to a utility or other affiliate company. EEI requests the Commission clarify to whom § 367.24(b) applies.[64]

70. National Grid believes § 367.24 requires that expenses associated with the construction services performed by service company employees will not be accounted for separately but treated as part of the capital investment in assets being constructed. This will cause, in National Grid's view, an inconsistency with proposals by the Commission to create incentives for transmission construction by allowing expense treatment of pre-commercial costs incurred in relation to new transmission builds.[65]

Commission Determination

71. We agree with Southern that the purpose and intent of § 367.24(b) and (c) are somewhat unclear. We believe the ambiguity is due in part to the fact that § 367.24(a) does not prescribe specific accounts for recording costs incurred in connection with construction or service contracts under which the service company undertakes projects to

[59] Southern at 5.

[60] *See, e.g.*, American Electric Power Service Company's 2005 FERC Form No. 60.

[61] NARUC at 8.

[62] Pursuant to Order No. 667–A, service companies that do not file the FERC Form No. 60 must file annually a narrative description of their functions, as identified in FERC–61. *See* 18 CFR 366.23(a)(2).

[63] Southern at 5.

[64] EEI at 25.

[65] National Grid at 7–9.

construct physical property for others. Therefore, we will amend § 367.24(a) to require that costs incurred for this purpose, as well as any other purpose not provided for elsewhere in the expense accounts, are to be charged to new Account 412, Costs and expenses of construction or other services, adopted in this Final Rule. We also will eliminate the ambiguous language contained in § 367.24(b) and (c).

(g) Section 367.25—Determination of Service Cost

72. In the NOPR, the Commission proposed to adopt § 367.25 to state that the total amounts included in the expense accounts during any period plus the amount that appropriately may be added as compensation for the use of capital, if paid, constitute cost during that period.

Comments

73. NARUC requests that the Commission clarify the meaning of the phrase ''if paid'' in § 367.25 because the language renders the meaning of the section unclear.[66]

Commission Determination

74. The Commission agrees that the phrase ''if paid'' in § 367.25 is unclear. This instruction is intended to state that the cost of services provided equals the total amounts included in the expense accounts plus an appropriate amount for the compensation for the use of capital. Furthermore, the meaning of compensation for the use of capital is explained in § 367.29, Compensation for use of capital. Therefore, the Commission finds that the phrase ''if paid'' is unnecessary and will modify § 367.25 to remove the phrase.

(h) Section 367.27—Billing Procedures

75. Proposed § 367.27 requires service companies to bill monthly for their services and to include sufficient information in such billings to permit any company to properly classify the amount billed according to the accounting system prescribed by the regulatory authority of such company. This section was carried over from the SEC's former USofA for service companies.

Comments

76. Several commenters disagree with the Commission's proposed regulation in § 367.27 on monthly billing procedures.[67] EEI and National Grid argue that generating paper invoices for billings of services rendered to associate utility companies on a monthly basis is largely unnecessary as the specific charges and their accounting are obtainable through the holding company's accounting system.[68] Southern also argues that it does not currently provide the level of detail required in § 367.27 to its affiliate companies but that the information it does provide is sufficient in detail.[69]

77. EEI and FirstEnergy encourage the Commission to clarify in the regulatory text and preamble to the Final Rule that service companies can bill their clients using a variety of mechanisms as long as the service company clients are receiving accurate, timely information about the work being done for them and the cost of the work.[70] FirstEnergy notes that it has a fully integrated accounting system which provides full access to the information contained within the system as it relates to their company. Therefore, FirstEnergy argues that there is no need for a formal bill due to the available technology.[71]

78. With respect to billing of services rendered to non-associated utility companies, these commenters state service companies often provide a *de minimis* amount of services.[72] Thus, according to National Grid, it makes little business sense to undertake the costs of establishing a detailed monthly invoicing for non-associated companies for services rendered.[73] The commenters add that those arrangements are largely negotiated on an arms-length basis without reference to specific costs and would potentially provide sensitive competitive information that is not required by any contract between the service company and the unrelated party.[74] Consequently, they contend, the Commission's mandated monthly invoice scheme would force the service company into a cost of service business, even for non-jurisdictional services.[75]

Commission Determination

79. The commenters misunderstood the purpose of this section. It was not intended to require the use of paper invoices as some commenters concluded. Rather, the intent of this instruction is to require centralized service companies to charge their associate public-utility companies for services provided each month, together with enough information to allow these companies to properly classify the amount in the accounts prescribed by their regulatory authorities. However, in order to eliminate any confusion, we will remove the reference to ''invoices'' in § 367.27, and clarify it is only intended for billings to associate public-utility companies.

(i) Section 367.51(a)(17)—Allowance for Funds Used During Construction

80. Proposed § 367.51 provided instructions on the cost of construction properly included in the service company property accounts. These instructions were taken from the Electric and Gas Plant Instructions in parts 101 and 201 of the Commission's regulations, and include an allowance for funds used during construction (AFUDC).

Comments

81. EEI believes that AFUDC, as described in § 367.51(a)(17), only has relevance to jurisdictional entities that have been granted this provision by regulators.[76] For service companies, EEI contends, a more appropriate approach would be to calculate capitalized interest based on GAAP. EEI recommends that the section on AFUDC be removed from the proposed rule and that service companies be allowed to capitalize interest based on GAAP.[77]

Commission Determination

82. Based on a review of the record in this proceeding, the construction projects for service company property do not appear to be large and the related interest charges will be relatively insignificant. In such circumstances, the Commission agrees the use of the proposed AFUDC formula would be unnecessarily complex. Therefore, the Commission will modify § 367.51(a)(17) to allow centralized service companies to capitalize interest in accordance with GAAP.

(j) Section 367.53—Service Company Property Purchased or Sold

83. In § 367.53, we proposed to modify Electric and Gas Plant Instructions No. 5 in parts 101 and 201 of the Commission's regulations to require centralized service company property to be recorded at the cost of acquisition rather than its original cost. Section § 367.53 also requires centralized service companies to file journal entries with the Commission when they acquire property at a purchase price of $10 million or more

[66] NARUC at 13–14.

[67] EEI at 41–42; National Grid at 9–10; Southern at 5.

[68] EEI at 41, National Grid at 10.

[69] Southern at 5.

[70] EEI Supplemental Comments at 18, FirstEnergy Supplemental Comments at 4.

[71] FirstEnergy Supplemental Comments at 4.

[72] EEI at 42; National Grid at 10; Southern at 5.

[73] National Grid at 10.

[74] EEI at 42; National Grid at 10; Southern at 5.

[75] EEI at 42; National Grid at 10.

[76] EEI at 25.

[77] *Id.*

that has been previously devoted to public service.[78] This filing requirement was intended to provide the Commission and others the opportunity to monitor transactions involving property previously devoted to public service.

Comments

84. NARUC states that the regulations on service company property purchased or sold could be used as a vehicle to inflate rate base.[79] For example, it posits, a service company may have bought an asset at a premium over original cost to the party that previously owned it and recorded the asset on the service company's books at the total acquisition cost, after which a public utility may have purchased the asset from the service company. To avoid such problems, NARUC suggests, the new USofA should require that any asset purchased by a service company not be transferred at an amount higher than the original purchase price or the remaining original cost, whichever is lower. Specifically, NARUC suggests that the following language (italicized below) should be incorporated into § 367.53(e), Service company property purchased or sold:

In connection with the acquisition of property previously devoted to service company operations or acquired from an associate company, the service company must procure, if possible, all existing records relating to the property acquired or related certified copies, and must preserve the records in conformity with regulations or practices governing the preservation of records of its own construction. *If the property was previously devoted to utility service, the service company must preserve the original cost of the property in the records of the service company.*[80]

85. NARUC also states that, in order for state commissions to monitor the acquisition of property from affiliates, a copy of the journal entries also should be filed with the relevant state commissions and suggests the following language changes (stricken language in brackets or new language italicized below) to incorporate this concept.

(c) Unless otherwise authorized by the Commission, all service company property acquired from an affiliate company must be at its book value. Additionally, if property is acquired that is in excess of $10 million and has been previously devoted to public service [at a price above book value], the service company must file with the Commission the proposed journal entries associated with the acquisition within six months from the date of acquisition of the property. *In addition, a copy of the proposed journal entries filed with the Commission must be sent to the state regulatory commissions having jurisdiction in the states in which associated utility companies provide utility service.*[81]

Commission Determination

86. The Commission will not adopt NARUC's proposed language changes to § 367.53. The regulations which are already in place for public utilities and licensees, and natural gas companies adequately prevent rate base from being artificially inflated. The Commission's regulations in parts 101 and 201 require all electric and gas plant purchased by a public utility or a natural gas company to be recorded at its original cost and the related journal entries must be filed with the Commission.[82] Further, proposed § 367.53(c) requires that property acquired from affiliates must be at book value and journal entries must be filed with the Commission for purchases of property previously devoted to public service in excess of $10 million. Therefore, NARUC's proposed language is not necessary, nor do we believe it is necessary for the Commission to require copies of journal entries to be filed with State commissions. All filings of this nature are docketed by the Commission and can be viewed electronically by all interested parties. Accordingly, state commissions will be able to monitor the acquisition of property from affiliates without imposing an additional reporting burden on service companies. We also note that our determination here is consistent with the filing requirements applied to public utilities, licensees, and natural gas companies for similar transactions under the Commission's regulations in parts 101 and 201.

(k) Section 367.54—Expenditures on Leased Property

87. Proposed § 367.54 requires the cost of improvements made to leased property to be used for more than one year to be charged to the appropriate service company property account. It also requires that amounts charged to service company property be amortized to Account 404, Amortization of limited-term service property, over the lease term if the service life of the improvement is terminable by the action of the lease. Otherwise, the improvement is subject to depreciation practices normally followed for amounts recorded in the account to which the improvement was charged. The forgoing requirements are essentially the same requirements for public utilities, licensees and natural gas companies for leasehold improvements in Electric and Gas Plant Instructions No. 6 of parts 101 and 201 of the Commission's regulations.

Comments

88. Southern notes that GAAP requires that the life of a leasehold improvement be co-terminus with the lease; thus, there would not be a leasehold improvement whose ''service life is not terminated by action of the lease but by depreciation proper.'' [83] By this section's definition, according to the company, all leasehold improvement amortization would have to be accounted for as ''amortization of limited term property.'' Southern asks what value this information is to the Commission.

Commission Determination

89. This instruction provides important guidance on how the costs of leasehold improvements are to be recorded and depreciated or amortized under the USofA. We, therefore, will retain this instruction. Further, we do not believe this instruction prohibits a centralized service company from following GAAP as it relates to leasehold improvements.

(l) Section 367.59—Additions and Retirements of Property

90. Proposed § 367.59 requires centralized service companies to adopt and maintain a list of retirement units. The list forms the basis for determining whether the cost of property-related work should be capitalized or charged to expense. In general, if the work involves adding or replacing an item of property appearing on the list, the cost of the work is capitalized. If the work involves adding or replacing an item of property that is not on the list and, therefore, constitutes a minor item of property, the cost of the work is charged to expense.

Comments

91. Southern states it does not believe that retirement units are applicable to service company property. Southern states that each service company purchase is a discrete unit of property and service companies would not be able to maintain a written property units

[78] The $10 million threshold is consistent with the threshold for certain transactions subject to section 203 of the FPA, as amended by section 1289 of EPAct 2005. *See* Order No. 669, 71 FR 1348 (Jan. 6, 2006), FERC Stats. & Regs. ¶ 31,200 (2005).

[79] NARUC at 6.

[80] *Id.* at 6–7.

[81] NARUC at 11–12.

[82] *See, e.g.*, 18 CFR part 101, Account No. 102.

[83] Southern at 5.

listing for use in accounting for additions and retirements of property.[84]

Commission Determination

92. We do not agree with Southern that retirement units are not applicable to service company property. Establishing a retirement unit is necessary to determine whether property-related expenditures should be capitalized or expensed. It is the same requirement that is followed by public utilities and licensees and by natural gas companies under parts 101 and 201 of the Commission's regulations. We see no reason service companies should not follow the same practice because they have the same assets that an electric or gas company would have if the service company did not exist. Therefore, service companies should maintain property unit listings.

(m) Sections 367.103–.104—Current and Deferred Income Taxes

93. Proposed §§ 367.103–.104 contain special accounting instructions for recognizing income tax expense. Among other things, they require the accruals for income taxes to be apportioned among service company departments and other income and deductions. These requirements were carried over from the Special Instructions for the current and deferred tax expense accounts in parts 101 and 201 of the Commission's regulations.

Comments

94. EEI and Progress Energy recommend that there be no requirement to calculate or allocate taxes on a department level because income taxes are generally computed at a legal entity level, not to individual departments.[85] Progress Energy notes that service companies are not income-producing; rather, they are cost centers required to bill all of their expenses at cost and their income statements net to zero. The only income taxes that are computed for service companies are due to timing differences between GAAP and tax accounting, which, according to Progress Energy, cannot, in any meaningful way, be associated with individual departments. Therefore, Progress Energy states it does not have actual income tax accruals for its individual service company departments and could not meaningfully apportion the limited timing-related income tax accruals to the individual departments.[86]

Commission Determination

95. Upon further consideration, the Commission agrees that it is not practical or necessary for centralized service companies to calculate income taxes for individual departments. Therefore, the regulations will be revised to eliminate this requirement.

(n) Section 367.23—Transactions With Non-Associate Companies; § 367.25—Determination of Service Cost; § 367.27—Billing Procedures; § 367.28—Methods of Allocation; § 367.29—Compensation for Use of Capital

96. The proposed sections of the Commission's regulations listed above specify rules or standards that must be applied in accounting for certain transactions or events. The rules are fairly broad in their application and were carried over from the SEC's USofA for service companies.

97. More specifically, § 367.23 requires that the excess or deficiencies in providing services to non-associated companies to be recorded in Account 458.4, and that the net excess be used to reduce charges to associate companies. Section 367.25 states that a service must be deemed at cost and the total amounts included in the expense accounts during any period plus the amount that appropriately may be added as compensation for the use of capital constitutes cost during that period. Section 367.27 provides that charges for services to associate public-utility companies be made monthly with sufficient information and in sufficient detail to permit such company, where applicable, to identify and classify the charge in terms of the system of accounts prescribed by the regulatory authorities to which it is subject. Section 367.28 requires that indirect costs and compensation for use of capital must be allocated to projects in accordance with the service company's applicable and currently effective methods of allocation. Section 367.29 states that interest on borrowed capital and compensation for the use of capital must represent a reasonable return on the amount of capital reasonably necessary for the performance of services or construction work for associate companies. It also requires that the amount of compensation be separately stated on each billing to associate companies and an annual statement to support the amount of compensation for the use of capital billed for the previous 12 months be supplied to each associate company at the end of the calendar year.

Comments

98. EEI argues that the proposed rule goes beyond accounting regulations and adopts cost allocation and billing practice principles in the definition of ''indirect cost'' and in §§ 367.23, 367.25, 367.27, 367.28, and 367.29.[87] EEI states these cost allocation and billing principles should be made applicable only in the context of service company cost allocations the Commission is asked to review under section 1275 of PUHCA 2005.[88]

Commission Determination

99. The Commission disagrees with EEI's assertion that the matters addressed in these sections of the regulations are only applicable in the context of cost allocation reviews under section 1275 of PUHCA 2005. Costs are incurred continually and on an on-going basis by centralized service companies and these costs must be accounted for and eventually reported to the Commission in the FERC Form No. 60. The noted regulations provide important guidance to centralized service companies as to how the items covered by those regulations should be accounted for as the transactions or events occur. For example, § 367.23 requires excesses or deficiencies in providing services to non-associate companies to be recorded in Account 458.4, and § 367.25 provides that ''cost'' includes reasonable compensation for the use of capital. The guidance that these instructions provide promotes uniformity in accounting practices.

100. As it relates to the portions of these sections which relate to cost allocation and billing requirements, we note that such regulations are necessary to carry out the Commission's obligations and duties under PUCHA 2005, the FPA and the NGA. These instructions assist the Commission in ensuring just and reasonable jurisdictional rates, discerning potential or actual cross-subsidization, and approving cost allocations between holding company affiliates. Therefore, these instructions are needed beyond the review required under section 1275 of PUCHA 2005 and are adopted as proposed.

[84] Southern at 5.

[85] EEI at 39; Progress Energy at 8–9.

[86] Progress Energy at 9.

[87] EEI at 39.

[88] Section 1275 of PUHCA 2005 provides that in the case of non-power goods or administrative or management services provided by an associate company organized specifically for the purpose of providing such goods or services to any public utility in the same holding company system, at the election of the system or a State commission having jurisdiction over the public utility, the Commission, must review and authorize the allocation of costs for those goods or services to the extent relevant to that associate company. *See* 42 U.S.C. 16462.

6. Balance Sheet Accounts

101. In the NOPR, the Commission proposed to adopt in the new USofA for centralized service companies many, but not all, of the balance sheet accounts contained in parts 101 and 201 of the Commission's regulations, as well as the primary property Accounts 301 (§ 367.3010), 303 (§ 367.3030) and 389 to 399.1 (§§ 367.3890 to 367.3991).

Comments

102. EEI suggests that the Commission add the following balance sheet accounts to part 367 subpart F:

Account 106—Completed construction not classified
Account 182.3—Other regulatory assets
Account 189—Unamortized loss on reacquired debt
Account 228.2—Accumulated provision for injuries and damages
Account 228.3—Accumulated provision for pensions and benefits
Account 254—Other regulatory liabilities [89]

103. These accounts were not included in the SEC's Uniform System of Accounts.[90] However, a review of 2005 FERC Form No. 60s indicates that some companies are using these accounts.[91]

104. In addition, EEI and Southern suggest that the Commission make improvements to Account 146, Accounts receivable from associate companies, and Account 123, Investment in associate companies.[92] EEI argues that the requirement to classify long-term receivables as investments in associate companies is contrary to GAAP, and recommends elimination of this requirement.[93] Southern asserts that, on occasion, operating companies do not have to submit payment immediately. The company argues that the delay in payment could exceed 12 months, which, according to Southern, would be appropriately classified as long-term receivables and not as investments in associate companies.[94]

105. NARUC asks that the Commission clarify the meaning of ''common expenditures'' in § 367.1070, Construction work in progress, because, in its opinion, the proposed language renders the section unclear.[95] NARUC also believes proposed § 367.1070 includes language that may not be appropriate for a service company doing work for more than an associate public utility company. Accordingly, it requests that the Commission clarify the language (italicized below) in § 367.1070 as follows:

(b) Work orders must be cleared from this account as soon as practicable after completion of the job. Further, if a project is designed to consist of two or more units that may be placed in service at different dates, *any expenditures that are common to and that will be used in the operation of the project as a whole must be included in service company property upon the completion and the readiness for service of the first unit...*[96]

106. NiSource states that the definitions of proposed Accounts 233, Notes payable to associate companies (§ 367.2330) and 234, Accounts payable to associate companies (§ 367.2340) appear to be identical. The language of the definitions, it suggests, should be clarified to indicate that Account 233 applies to notes payable, whereas Account 234 applies to accounts payable.[97]

Commission Determination

107. EEI did not explain in its comments why it suggests that the Commission add the recommended accounts. However, our review of a number of the FERC Form No. 60s filed with the Commission for calendar year 2005 indicates that some of the recommended accounts are already being used by service companies.[98] For other recommended accounts it appears reasonably possible that service companies either already have or could enter into transactions in the future requiring use of those accounts. Therefore, the Commission will add the following balance sheet accounts recommended by EEI to part 367 subpart F:

Account 106, Completed construction not classified
Account 182.3, Other regulatory assets
Account 189, Unamortized loss on reacquired debt
Account 228.2, Accumulated provision for injuries and damages
Account 228.3, Accumulated provision for pensions and benefits
Account 254, Other regulatory liabilities

108. The Commission also will add Account 306, Leasehold improvements, as a transitional accommodation only.[99] Account 306 was included in the SEC's Uniform System of Accounts.[100] Use of this account will be restricted to leasehold improvements placed in service prior to January 1, 2008. Effective January 1, 2008, leasehold improvements must be charged to the appropriate primary plant account consistent with § 367.54. Conforming changes to Schedules II and III of the FERC Form No. 60 will be made to permit reporting of amounts related to Account 306.

109. In response to EEI and Southern's comments concerning Account 123, Investment in associate companies, we note that, in the NOPR, the Commission proposed to adopt Account 146, Accounts receivable from associate companies, (§ 367.1460) as contained in parts 101 and 201 of the Commission's regulations. The text to Account 146 requires that items which do not bear a specified due date, but which have been carried for more than 12 months and items which are not paid within 12 months from the due date be transferred to Account 123, Investment in associate companies. This requirement results in classifying receivables that are long-term in nature to a long-term asset account (Account 123) and facilitates preparation of a classified balance sheet directly from the accounts. Although the Commission could prescribe a new account created specifically for recording long-term accounts receivables held by service companies, as Southern suggests, it would create an inconsistency between the accounts prescribed for service companies and those prescribed for public utilities and licensees and for natural gas companies. To ensure consistency between the service companies and the public utilities and natural gas companies, the Commission will continue to require long-term accounts receivables to be recorded in Account 123, Investment in associate companies.

110. In response to NARUC's comments concerning Account 107, Construction work in progress, we agree that the instructions contained in § 367.1070 that address construction projects consisting of multiple units with different in-service dates are unclear. Therefore, the Commission will modify that section and adopt NARUC's recommended clarifying language.

[89] EEI at 26.

[90] 17 CFR part 256.

[91] *See, e.g.*, Schedule I Comparative Balance Sheet contained in 2005 FERC Form No. 60 of American Electric Power Service Corporation, E. ON U.S. Services INC, PHI Service Company, and Progress Energy Service Company, LLC.

[92] EEI at 26; Southern at 6.

[93] EEI at 26.

[94] Southern at 6.

[95] NARUC at 14.

[96] NARUC at 14.

[97] NiSource at 3.

[98] *See, e.g.*, Schedule I Comparative Balance Sheet contained in 2005 FERC Form No. 60 of American Electric Power Service Corporation, E. ON U.S. Services INC, PHI Service Company, and Progress Energy Service Company, LLC.

[99] Account 306 was contained in the SEC USofA for service companies. We will permit continued use of this account and not require reclassification of amounts recorded therein for leasehold improvements placed in service prior to January 1, 2008.

[100] 17 CFR part 256.

111. Additionally, in response to NiSource's comments we will revise the language in Account 234 (§ 367.2340) to indicate that Account 234 applies to accounts payable. The language is revised to read, ''This account must include all amounts payable to associate companies by the service company within one year, which are not provided for in other accounts.''

7. Income Statement Accounts

112. In the NOPR, the Commission proposed to incorporate some of the income statement accounts contained in parts 101 and 201 of the Commission's regulations and some of the income statement accounts contained in the SEC's USofA for service companies. The specific comments received on these accounts are discussed below.

(a) Sections 367.4570–.4594—Revenue Accounts for Services Rendered

113. In the NOPR, we proposed to adopt new revenue control Accounts 457, Services rendered to associate utility companies; Account 458, Services rendered to non-associate utility companies; and Account 459, Services rendered to non-utility companies. We proposed that each of these new revenue control accounts have corresponding subaccounts for direct labor (Accounts 457.1, 458.1 and 459.1) and indirect labor (Accounts 457.2, 458.2 and 459.2), and compensation for use of capital (Accounts 457.3, 458.3 and 459.3). We also proposed to include revenue Accounts 458.4, Excess or deficiency on servicing non-associate utility companies, and 459.4, Excess or deficiency on servicing non-associate non-utility companies. Our proposal differed slightly from the SEC's USofA for service companies, which provided control accounts for revenues from services provided to associate companies and revenues from services provided to non-associate companies.

Comments

114. National Grid and NiSource believe that the Commission should provide for separate revenue control accounts for services to associate companies and to non-associate companies, and that these accounts should each be further subdivided into separate accounts or subaccounts tracking services to utility and non-utility companies in order to satisfy the Commission's stated goals and to provide a more detailed picture of service company revenues.[101] These commenters believe that this added detail (*i.e.*, separately identifying revenues associated with services to associate, non-utility companies and non-associate, non-utility companies) would not impose a significant burden over the status quo, but would provide a more detailed picture of service company services rendered for non-utility companies than the Commission's proposed regulations would require. As an alternative, NiSource requests that the Commission clarify that all service company revenues received from non-utility companies are to be charged to Account 459.4, whether or not they are derived from companies that are part of the same holding company system.[102] Southern believes that subaccounts should be added for all direct and indirect charges including the non-labor components of billings.[103]

115. In contrast, EEI believes most service companies will not have information needed to distinguish between direct labor, indirect labor, and use of capital costs for services provided to associate utilities, non-associate utilities and non-utilities. Instead, EEI encourages the Commission to retain the current breakdown into services rendered to associate and non-associate companies, at most subdividing the associate company information by utility and non-utility if necessary to address cross subsidization concerns. EEI also recommends that the Commission delete the requirement for tracking revenue related to the use of capital, and states that it is a minor aspect of service company activities already reflected elsewhere in company accounts.[104]

116. Progress Energy expresses concerns that requiring the redesign of allocation processes and systems to capture and disaggregate expense and revenue data to distinguish utility and non-utility services would impose a significant and unjustified burden on company resources without any appreciable benefit. Progress Energy points out that service companies already have procedures in place to prevent inappropriate costs shifts and other cross subsidization, and that the separation of costs as proposed by the Commission is not necessary.[105]

Commission Determination

117. In response to commenters' concerns, the Commission will adopt revenue accounts that will provide a breakdown by services rendered to associate and non-associate companies, but eliminate the requirement to record revenues from services provided to utilities and non-utilities in separate accounts. The Commission believes this modification to the NOPR is appropriate because this information can be obtained in the FERC Form No. 60, Analysis of Billing Schedule, which requires reporting amounts billed by customer for the year. Therefore, this modification will reduce burden without loss of important data. More specifically, we will adopt the following revenue control accounts and corresponding subaccounts: Account 457, Services rendered to associate companies; Account 457.1, Direct costs charged to associate companies; Account 457.2, Indirect costs charged to associate companies; Account 457.3, Compensation for use of capital-associate companies; Account 458, Services rendered to non-associate companies; Account 458.1, Direct costs charged to non-associate companies; Account 458.2, Indirect costs charged to non-associate companies; Account 458.3, Compensation for use of capital-non-associate companies; Account 458.4, Excess or deficiency on servicing non-associate companies. Consistent with the discussion above, we will not adopt proposed Accounts 459, 459.1, 459.2, 459.3, and 459.4. Use of Accounts 457, 457.1, 457.2, 457.3, 458, 458.1, 458.2, 458.3, and 458.4 is consistent with the requirements that existed under the SEC's USofA for service companies. Contrary to EEI's assertion, our review of 2005 FERC Form No. 60s indicates that service companies are capable of breaking down amounts billed between direct costs, indirect costs and compensation for capital.[106]

(b) Sections 367.5000 and 367.8000—Operation and Maintenance Expense Accounts

118. In the NOPR, the Commission proposed to require centralized service companies to use the 500 and 800 series of accounts contained in parts 101 and 201 of the Commission's regulations for recording the expenses related to generation, transmission and distribution operation and maintenance services they provide to associate public-utilities and licensees and, where applicable, associate natural gas companies.

Comments

119. NARUC initially indicated that it was unclear how the 500 and 800 series

[101] National Grid at 11–12; at 2–3.

[102] NiSource at 2–3.

[103] Southern at 4.

[104] EEI at 27–28.

[105] Progress Energy at 6–9.

[106] 2005 FERC Form No. 60, Analysis of Billing—Associate Companies Schedule and Analysis of Billing—Non-associate Companies Schedule.

accounts will be impacted by the types of services that centralized service companies provide.[107] In supplemental comments filed following the staff technical conference, NARUC explains that, at the July 18, 2006 Technical Conference, it became clear that because some service companies currently use the 500 and 800 series accounts, it could be reasonable to include the accounts in the centralized service company's USofA.[108] NARUC believes the question the Commission needs to determine is whether these accounts should be mandatory. NARUC believes that if the Commission determines that use of the 500 and 800 series accounts should not be mandatory for all service companies, then the Commission needs to identify the accounting methods that best reflect the financial position of the service companies and associate companies within a holding company system. NARUC suggests that one approach would be to establish a threshold for when the use of the 500 and 800 series accounts would become mandatory. NARUC suggests that a possible threshold could be a percentage, such as 10 percent or less, of utility costs or of service company expenses. Another option, NARUC suggests, is to require the use of the 500 and 800 series accounts whenever a service company starts performing utility functions that should be recorded in the 500 and 800 series accounts. NARUC also suggests that the Commission prohibit the recording of charges classified in Account 923, Outside services on the utility's records, and, instead, it suggests that the Commission mandate that service company charges be classified in accordance with the utility account or function to which they relate because, in some cases, all costs are classified in Account 923. NARUC explains that adoption of this recommendation is necessary if the Commission adopts a threshold.[109]

120. Mr. Buckley, a participant at the technical conference, indicates that in Ohio they have experienced an explosion of service company costs recently. Mr. Buckley states that service company costs make up a large and increasing percentage of the costs that are ultimately passed on to ratepayers. Mr. Buckley points out that mergers and consolidations are moving the physical records and altering the existing relationships that state regulators have with the companies they regulate. According to Mr. Buckley, this makes it harder to know to whom to go to get information and, therefore, any increase in transparency is a positive step.[110] Mr. Buckley adds that, if the service companies become more centralized, citing American Electric Power as an example and noting that consolidation in the industry could lead to things becoming more centralized, the 500 and 800 accounts will provide for growth.[111]

121. In contrast, several commenters do not believe that the 500 and 800 series accounts accurately portray the majority of service company costs.[112] While National Grid recognizes that some companies already record costs and revenues to match the accounting accorded to such costs and revenues by the ultimate service recipients, it asserts there is no reason to require wholesale reclassification of costs and revenues by all service companies. National Grid also believes this may lead to an inaccurate picture of a service company's financial position, and explains that using the 500 and 800 series accounts implies that the service company owns the assets that it is operating and maintaining.[113]

122. EEI and Progress Energy assert that requiring the use of the 500 and 800 series of accounts would cause service companies to be out-of-compliance with GAAP principles.[114] Progress Energy explains that GAAP principles presume that each company reports its financial information as if it were a stand-alone (non-affiliated) company. It explains that force-fitting a centralized service company's financials into the format reported by a public utility would result in books that do not properly reflect the work conducted by a centralized service company and would over-complicate the accounting, increase the risk of errors inherent in any process or system change and violate GAAP principles.[115] In addition, EEI and NARUC contend that the burden associated with the 500 and 800 series accounts is greater than the benefit.[116]

Commission Determination

123. We will require centralized service companies to use the 500 and 800 series of accounts as proposed. It is evident from the July 18, 2006 Technical Conference and from a review of the 2005 FERC Form No. 60s that a number of service companies use the 500 and 800 series accounts. These centralized service companies perform operation and maintenance services related to generation, distribution, transmission, and customer services for associate electric and gas companies. The expenses incurred from providing these types of services are most accurately reported in the 500 and 800 series accounts.

124. We do not agree with National Grid that use of these accounts by centralized service companies performing the types of services for which costs are properly included in these accounts would result in an inaccurate picture of the service company's financial position. To the contrary, we believe the use of these accounts will add transparency to centralized service company costs and will facilitate comparison across such companies. Centralized service companies that offer operation and maintenance services related to generation, distribution, transmission, and services perform the same type of work and incur the same costs that a public utility would incur if that public utility performed the work itself. Therefore, we will require centralized service companies to record the expenses it incurs for conducting operation and maintenance activities related to generation, transmission, distribution and customer services in the same expense accounts public utilities are required to use to record these costs. Using the 500 and 800 series of accounts also provides better assurance that costs are properly assigned because like items will be identified and measured in the same way regardless of the entity performing the work. Although EEI and Progress Energy suggest that this is somehow in violation of GAAP principles, they offer nothing in the way of concrete evidence or reference to specific accounting standards to support this allegation. Furthermore, even if such evidence did exist, and we do not believe it does, the Commission's need for comparability and transparency of service company expenses provided by use of the 500 and 800 series of accounts would outweigh concerns about conformity with GAAP principles.

125. In responding to NARUC's concern, we will not prohibit the recording of charges in Account 923, Outside services. Prohibiting the use of this account would be overly prescriptive. It is possible that some service company costs would be accurately reported in Account 923. However, we believe that it is appropriate for utilities that receive bills

[107] NARUC at 8–9.

[108] NARUC Supplemental Comments at 3–6.

[109] NARUC Supplemental Comments at 3–5.

[110] See Technical Conference Tr. 101–102 (Joseph Buckley).

[111] See Technical Conference Tr. 120–121 (Joseph Buckley).

[112] NARUC at 8–9; Progress Energy at 3; EEI at 22–24; NiSource Supplemental Comments at 4–6; FirstEnergy Supplemental Comments at 3.

[113] National Grid at 7–8.

[114] Progress Energy at 6; EEI at 22–24.

[115] Progress Energy at 6.

[116] EEI at 5–6; NARUC at 8–9.

from service companies to classify those costs in the appropriate accounts. Utilities would not be in compliance with part 101, General Instruction 14, if they do otherwise. Specifically, General Instruction 14 requires that transactions with associated companies be recorded in the appropriate accounts for transactions of the same nature. We will require that centralized service companies performing services such as operation and maintenance services related to generation, distribution, transmission, and customer service on behalf of service companies to use the appropriate accounts for those services performed.

126. We do not agree with NARUC that the use of thresholds is an option for determining when centralized service companies must use the 500 and 800 accounts. As discussed above, the use of the 500 and 800 accounts provides clarity about the types of services performed by centralized service companies and the costs of providing those services. Proper classification of service company costs facilitates proper classification of the costs at the utility. Therefore, we will require centralized service companies to use the 500 and 800 series of accounts as proposed.

(c) Sections 367.9220 and 367.4171—Account 922, Administrative Expenses Transferred—Credit, and Account 417.1, Expenses of Non-Utility Company

127. In the NOPR, the Commission proposed that the portion of administrative, general, and customer expenses recorded in the 900 series of expense accounts, but attributable to services provided to non-utility companies, be transferred to proposed Account 417.1, Expenses of non-utility company related operations, with a contra-credit to Account 922, Administrative expenses transferred-credit.

Comments

128. EEI and Progress Energy request clarification regarding the adoption of Account 922 since most service company expenses are recorded in Accounts 920, Administrative and general salaries, and 921, Office supplies and expenses.[117] Progress Energy states that service companies are labor intensive, so most of their expenses are currently charged to Accounts 920 and 921. Progress Energy also states that the Commission should not adopt its proposal to credit Account 922 with administrative expenses recorded in Accounts 920 and 921 that are transferred to construction costs or to other accounts or with the amount of operating expenses related to services provided to non-utility companies and Account 417.1, Expenses of non-utility company related operations. In addition, Progress Energy points out that its accounts are mapped to the appropriate associate company accounts in compliance with the Federal (*e.g.*, Commission and SEC) and state regulatory reporting requirements imposed on the affiliated companies. Further, Progress Energy explains that its cost allocation methodology and charging practices have been approved by state regulatory commissions and are currently consistent with inter-company service agreements. If required to comply with this proposal, Progress Energy asserts its processes, systems and legal documents will have to be changed even though the associate companies already accurately report their allocations in compliance with Federal and state requirements.[118]

129. EEI states there is confusion related to the credit posted in Account 922. EEI states that many of these costs are administrative and general costs that are allocated based on service agreement methodologies and that the proposed process would require service companies to keep track of a dollar spent on administrative and general labor so the dollar could be recorded partly in the administrative and general series and partly ''below the line'' in Account 417.1. EEI states this would result in a process to build a ''clump'' of expenses in Account 417.1 that would be essentially useless to the service company. EEI recommends that the Commission not implement, or require companies to use, the proposed accounting treatment for new Account 417.1.[119]

Commission Determination

130. Upon further consideration, the Commission has concluded that it is not necessary at this time for centralized service companies to record expenses attributable to services provided to non-utility companies in a separate account because the information reported in the Analysis of Billing Schedule should be sufficient to identify such amounts. The Analysis of Billing Schedule requires centralized service companies to report all amounts billed for services during the year on a company by company basis. Since services are billed at cost, it will be possible to determine the expenses attributable to services provided to non-utilities from the schedule. Therefore, Accounts 417.1, Expenses of non-utility company, and Account 922, Administrative expenses transferred—credit, will be deleted from §§ 367.9220 and 367.4171.

(d) Section 367.4160—Costs and Expenses of Merchandising, Jobbing and Contract Work; § 367.9120—Demonstrating and Selling Expenses; § 367.9130—Advertising Expenses; § 367.9301—General Advertising Expenses

131. In the NOPR, the Commission proposed to adopt Account 416, Costs and expenses of merchandising, jobbing and contract work; Account 912, Demonstrating and selling expenses; Account 913, Advertising expenses; and Account 930.1, General advertising expenses as they presently appear in parts 101 and 201 of the Commission's regulation into the USofA for centralized service companies.

Comments

132. NARUC states that it is difficult to determine in which accounts different types of advertising costs should be recorded. It also states that the Commission should anticipate service companies providing promotional services to non-utility affiliates. To address these concerns NARUC suggests: Revising § 367.4160 to clarify that only the cost of merchandising and contract work performed for associated utility companies is recorded in Account 416, Costs and expenses of merchandizing, jobbing and contract work for associate companies; revising § 367.9120 and § 367.9130 to clarify that demonstrating, selling and advertising costs incurred to promote/retain either the service companies services/customers or associate companies services/customers are recorded in these accounts; and revising § 367.9301 to clarify that only general advertising costs incurred on behalf of associated utility companies are recorded in this account.[120]

Commission Determination

133. The Commission agrees that §§ 367.416, 367.912 and 367.913 should be clarified. We will adopt the revisions suggested by NARUC for §§ 367.912 and 367.913 and incorporate others that will clarify what amounts are properly included in these accounts. In considering the suggested revisions to § 367.416, the Commission has determined that services related to merchandising, jobbing and contract work could be performed on behalf of associate, non-associate, utility or non-

[117] Progress Energy at 9–10; EEI at 24–26.

[118] Progress Energy at 9–10.

[119] EEI at 24–25.

[120] NARUC at 9–12.

utility companies. Consequently, we do not believe the use of Account 416 should be limited to costs of merchandising, jobbing and contract work performed for associate utility companies. Additionally, we have concluded that it is inappropriate to place Account 416 within the Other Income section of FERC Form No. 60, Schedule XV—Comparative Income Statement, as proposed in the NOPR. Services performed related to merchandising, jobbing and contract work are an operating activity of a service company and the cost of those services should be included in an account that enters into the determination of net operating income of the service company. Therefore, we will revise Schedule XV to reflect Account 416, Costs and expenses of merchandizing, jobbing and contract work, as an operating expense account and require revenues related to merchandising, jobbing and contract work to be recorded in Accounts 457, Services rendered to associate companies and 458, Services rendered to non-associate companies, as appropriate. Account 415, Revenues for merchandising, jobbing and contract work, will be eliminated from the USofA for centralized service companies. Finally, we consider Account 930.1 to be a general ''catch all'' account for recording advertising costs not provided for elsewhere in the accounts. Therefore, we will not adopt NARUC's recommendation to limit its use to advertising related to associate utility companies.

(e) Sections 367.4263, 367.4117, 367.4180—Miscellaneous Income Statement Issues

Comments

134. EEI states that the numbering appears to be incorrect in § 367.4263.[121] EEI also states the following accounts should be added to subpart H: Account 411.7, Losses from disposition of service company plant; and Account 418, Non-operating rental income.[122]

Commission Determination

135. EEI did not explain in its comments why the numbering should be corrected in § 367.4263 or why the Commission should add the recommended accounts. However, our review of a number of the FERC Form No. 60s filed with the Commission for calendar year 2005 indicates that these accounts are used by some service companies.[123] Therefore, we will correct the numbering in § 367.4263, and add Account 411.7, Losses from disposition of service company plant, and Account 418, Non-operating rental income.

8. Records Retention Requirements

136. Order No. 667 required all holding companies and all service companies, which were not granted a waiver or otherwise exempted by the Commission, to follow the Commission's records retention requirements in parts 125 and 225. The NOPR proposed to establish, as new part 368 of the Commission's regulations, records retention requirements for all holding companies and all service companies. The records retention requirements proposed were based on the requirements contained in §§ 125.3 and 225.3 of the Commission's regulations,[124] with certain modifications considered appropriate for holding companies and service companies.

Comments

137. EEI notes that the NOPR is unclear as to whether a holding company that also is a public utility would be subject to both the Commission's holding company and public utility records retention requirements. EEI requests that the Commission specify that only one set of records retention requirements apply and allow the company involved to select the most appropriate set to apply. Furthermore, if the holding company is already following the public utility records retention requirements, it should be able to continue to do so without also having to follow the new holding company records retention requirements.[125]

138. NARUC requests that the records retention general instruction at § 368.2(g) be amended to include the requirement for companies to file a copy of a certified statement of records prematurely lost or destroyed with state commissions to facilitate the state commissions' ability to monitor the activities of service companies.[126]

139. Southern requests that the records retention requirements be better tailored for a service company. Specifically, Southern proposes that the retention period for accumulated depreciation records should be reduced because the majority of service company property has useful lives significantly less than the 25-year retention period proposed in the NOPR.[127]

Commission Determination

140. The records retention requirements originally proposed, and as adopted here, generally are based on the requirements contained in parts 125 and 225 of the Commission's regulations,[128] with certain minor modifications appropriate for holding companies and service companies. As a result, most retention periods proposed for holding companies and service companies are identical to the retention periods required for public utilities and licensees and natural gas pipelines. Additionally, the general instructions for parts 125 and 225 and proposed § 368.2(a)(5) make clear that ''To the extent that any Commission regulations may provide for a different records retention period, the records must be retained for the longer of the retention periods.'' If a holding company that is also a public utility has a conflict between the retention period specified for a public utility and the retention period specified for a holding company, the longer of the retention periods must be observed. Therefore, we do not believe it is appropriate to specify that only one set of records retention requirements apply.

141. We deny NARUC's request to amend the records retention instruction at § 368.2(g) to include a requirement for companies to file a copy of a certified statement of records prematurely lost or destroyed with state commissions. We do not believe it is necessary for the Commission to establish filing requirements for state commissions. All filings of this nature are docketed by the Commission and can be viewed electronically by all interested parties. Accordingly, state commissions will be able to monitor the report of prematurely lost or destroyed records without imposing an additional reporting burden on companies. We note that this is the same treatment applied to public utilities, licensees, and natural gas companies under the Commission's regulations in parts 125 and 225.

142. We agree with Southern's observation related to holding and service company property, and will tailor the schedule of records retention periods. Specifically, we will reduce the retention period for accumulated depreciation records reflecting the service life of property at § 368.3—Item 24, Records of accumulated provisions for depreciation and depletion from 25

[121] EEI at 26.

[122] *Id.* at 27.

[123] *See,* 2005 FERC Form No. 60, Schedule XV, Comparative Income Statement for American Electric Power Service Corporation.

[124] *See* 18 CFR 125.3 and 225.3.

[125] EEI at 39.

[126] NARUC at 12.

[127] Southern at 6.

[128] *See* 18 CFR 125.2(a)(3) and 225.2(a)(3).

years to 3 years after retirement or disposition of property.[129]

9. FERC Form No. 60

(a) Use of GAAP Financial Statement Instead of Structured FERC Form No. 60

143. The Commission proposed a structured reporting format in proposed FERC Form No. 60 in the NOPR. Under the structured format, a centralized service company must report in specified data fields the financial information called for in the report.

Comments

144. In its supplemental comments, in contrast to its initial comments,[130] EEI suggests the FERC Form No. 60 be based on the original FERC Form No. 60 set out in the Commission's December 8, 2005 Order No. 667 Final Rule (December 2005 FERC Form No. 60), with additional changes EEI requests to streamline the form. EEI believes a streamlined version of the December 2005 FERC Form No. 60, together with data the Commission receives directly from public utilities and the Commission's new FPA section 203 regulations,[131] should suffice to enable the Commission to perform its regulatory responsibilities.[132] In its supplemental comments, EEI further encourages the Commission to work with a streamlined version of the December 2005 FERC Form No. 60 with changes EEI has requested to further streamline the form.[133] Southern, PHI Companies, and FirstEnergy support EEI's comments that the FERC Form No. 60 be a streamlined version of the December 2005 FERC Form No. 60. These commenters, together with EEI, believe this streamlined FERC Form No. 60 provides the transparency and uniformity that the Commission desires without imposing undue burden. However, Southern also suggests that the Commission should allow companies the option of submitting their audited GAAP financial statements instead of FERC Form No. 60.[134]

145. Conversely, APPA thinks that the revised FERC Form No. 60 will be very useful in auditing and understanding centralized service company cost allocations to public utility operating companies.[135]

Commission Determination

146. The December 2005 FERC Form No. 60 is essentially the SEC's old Form U13–60 for service companies with certain streamlining changes adopted in Order No. 667. The December 2005 FERC Form No. 60, like the old SEC Form U13–60, is a non-structured reporting format that permits filers wide latitude and flexibility in how they report required financial information. While the Commission understands the centralized service companies'' desire to have flexibility in reporting, the Commission believes that it is necessary to have a structured reporting system. A structured report format results in disclosure and display of predetermined financial information in a uniform manner by all centralized service companies. This promotes comparability of the data not only between entities but also between accounts prescribed. Increasing the comparability of the data makes the information inherently more useful. Moreover, a structured report format allows for the creation of a financial database that can be used for more complex and sophisticated analysis of the information. These items are important to allow the Commission to perform its duties. It also will facilitate electronic submission using Commission-supplied software. This system will help ensure the integrity of the data and make completing the FERC Form No. 60 easier.

147. In response to Southern's suggestion, we do not believe that audited GAAP financial statements would be sufficient for carrying out the Commission's regulatory responsibilities. GAAP financial statements are prepared primarily for investors, and do not provide information in enough detail to ensure that jurisdictional rates charged are just and reasonable or to review cost allocations under section 1275 of PUHCA 2005[136] if called upon to do so. Therefore, the Commission will not modify the proposed requirement for a structured FERC Form No. 60.

(b) FERC Form No. 60 Schedules

(1) Schedule II, Service Company Property

148. Proposed Schedule II requires centralized service companies to report the amounts recorded in the service company primary property accounts and construction work in progress at the beginning of the year, changes to the accounts during the year, and the balance at the end of the year.

Comments

149. Southern does not see the added value of the supplemental information provided in Instructions 2–4[137] and proposes their elimination. Southern comments the break out of the property by account gives sufficient information.[138]

Commission Determination

150. The Commission agrees that the information required by Instructions 2 and 3 is of little value to the Commission and will be deleted. However, we will continue to require centralized service companies to provide information about construction projects similar to the December 2005 current FERC Form No. 60, Instruction 4. Instead of providing the information in a footnote format, we are revising the schedule to provide for additional lines on the schedule for reporting this information.[139]

(2) Schedule III–A, Summary of Service Company Property and Accumulated Provisions for Depreciation and Amortization

151. Schedule III–A would require companies to split out property devoted to utility versus non-utility services.

Comments

152. EEI contends this reporting requirement should be deleted because company records do not differentiate service company property between utility related and non-utility services.[140] FirstEnergy argues that assets devoted exclusively to the utility are on the books of the utility and not on the service company books.[141]

[129] Most holding and service company property typically has a useful life significantly less than 25 years, for example office furniture and equipment and computer software have shorter useful lives than generating facilities or transmission towers. Therefore, establishing a shorter retention period for accumulated depreciation records that closely corresponds to the expected useful life of the related property is more reasonable.

[130] In its initial comments to the NOPR, EEI proposed the Commission rely on information provided in the SEC Forms 10–K and 10–Q supplemented by selected additional information the Commission may need instead of the new FERC Form No. 60.

[131] *See* 18 CFR part 33.

[132] EEI Supplemental Comments at 2.

[133] *Id.*

[134] Southern at 2.

[135] APPA at 3.

[136] *Supra* note 5.

[137] Instruction 2 requires a breakdown of each equipment subaccount for each class of equipment property owned. Instruction 3 requires a description of other company property. Instruction 3 requires a listing of construction work-in-progress projects and the beginning, additions and end-of-year balance for each.

[138] Southern at 2.

[139] The December 2005 FERC Form No. 60 requires this information to be reported in a footnote.

[140] EEI at 29.

[141] FirstEnergy Supplemental Comments at 3.

Commission Determination

153. We agree with EEI and will eliminate this schedule from FERC Form No. 60. All service company property will be reported in Account 101.

(3) Schedule IV, Investments and Schedule XII, Long-Term Debt

154. Proposed Schedule IV provides detailed information on service company investments in associate companies and temporary cash investments. Proposed Schedule XII provides detailed information on long-term debt of the service company. Both schedules require the same information as in the current FERC Form No. 60.

Comments

155. EEI proposes to eliminate schedules that include information already available on the face of the Balance Sheet or within the detailed footnotes. Examples include Schedule IV, Investments and Schedule XII, Long Term Debt.[142]

Commission Determination

156. We disagree with EEI that the information reported on Schedule IV and Schedule XII is available on the Balance Sheet. Long-term debt and investments are reported on the Balance Sheet as aggregate totals. Schedule IV and Schedule XII provide significant additional details that allow for a greater understanding of the aggregate totals reported on the Balance Sheet. For example, short-term investment schedules provide specific details on where centralized service companies have invested excess cash flows from operations and Schedule XII provides specific details on service company long-term capital. We do not agree that footnote disclosure is an adequate substitution for these supporting schedules because the format for footnotes is unstructured and does not allow for database archiving and retrieval. Therefore, the Commission will retain these schedules.

(4) Schedule V, Accounts Receivable From Associate Companies

157. This schedule identifies accounts receivable for each associate company and reports convenience payments.

Comments

158. EEI and Southern recommend the portion of this schedule identifying convenience payments[143] should be eliminated. If retained, EEI recommends the Commission modify the schedule to report the total convenience payments made during the year, consistent with the December 2005 FERC Form No. 60 reporting. EEI states that service companies do not necessarily identify convenience payments separately, and this information would be time consuming to gather. Also, EEI does not understand the usefulness of this information to the Commission; beginning and ending convenience payment balances are not meaningful because convenience payments are Expense accounts, rather than Balance Sheet accounts.[144]

Commission Determination

159. We agree it is not necessary to require beginning and ending convenience payment balances. Consequently, we will not adopt that portion of the proposed Schedule V that would require reporting the beginning and ending balances of convenience payments. Instead, we will retain the December 2005 FERC Form No. 60 requirement of reporting total convenience payments by associate company.

(5) Schedule VI, Fuel Stock Expenses Undistributed

160. Proposed Schedule VI requires centralized service companies to report labor and expenses incurred during the year with respect to fuel stock and the amounts attributable to each associate company. It also requires a summary of the fuel functions performed by the service company.

Comments

161. Southern comments that Schedule VI requires extracting data from work order billings through an annual process to meet the annual report requirement. Southern recommends elimination of this schedule based on its limited value.[145]

Commission Determination

162. For centralized service companies performing fuel services for utilities, this is an important supporting schedule. Some companies report large amounts of labor and other expenses. The reported information includes amounts billed to each associate company including electric and gas utilities, which ultimately could be reflected in cost of service. Consequently we will retain this schedule.

(6) Schedule X, Research, Development or Demonstration Expenses

163. Proposed Schedule X requires a description of all research, development and demonstration projects engaged in by the centralized service company and the related costs incurred during the year.

Comments

164. EEI and Southern state project titles may not provide meaningful information to the Commission. EEI and Southern recommend that service companies have the option instead to list account balance by project partner, citing the U.S. Department of Energy, as an example.[146]

Commission Determination

165. The Commission disagrees with EEI and Southern that Schedule X requires a project title. The schedule requires a description of the project, not the project title. Knowing the project partner alone does not provide useful information. More relevant information is a description of the nature of the project and not just who is the project partner. Therefore, the schedule will be retained the same as in the FERC Form No. 60.

(7) Schedule XI, Proprietary Capital

166. Proposed Schedule XI discloses common and preferred stock shares authorized, outstanding, par or stated value, as well as information on miscellaneous paid-in capital, appropriated retained earnings and other comprehensive income. The second part of the schedule presents information similar to a statement of retained earnings.

Comments

167. EEI and Southern state the first section of this schedule duplicates Schedule I, Comparative Balance Sheet except for shares outstanding.[147] EEI argues the second section of this schedule is new, and generally not applicable to a service company.[148] EEI and Southern recommend including the shares outstanding on Schedule I, Comparative Balance Sheet, and deleting this schedule.[149]

Commission Determination

168. The Commission disagrees with commenters regarding what is reported on this schedule. Commenters indicate only outstanding shares of stock are reported. The schedule asks for class of

[142] EEI at 29.

[143] Convenience payments represent payments such as benefits, outside legal, and consulting paid by service companies to outside vendors and others on behalf of associate companies.

[144] EEI at 33; Southern at 2–3.

[145] Southern at 3.

[146] EEI at 34; Southern at 3.

[147] EEI at 34; Southern at 3.

[148] EEI at 34.

[149] EEI 34; Southern at 3.

stock, number of shares authorized, par or stated value per share, and outstanding shares. Further, the schedule requests explanations about transactions which gave rise to miscellaneous paid-in capital and appropriated retained earnings. Additionally, the schedule requests information on changes in unappropriated retained earnings such as net income and dividends paid. This requirement is not new; it is part of the FERC Form No. 60. The requirements are not overly burdensome. Consequently, we will retain the current requirements. A statement of retained earnings is a basic financial statement. However, we agree with EEI's suggestion that a statement of retained earnings is not applicable to a service company; so, we will delete that portion of the schedule which includes the added statement of retained earnings.

(8) Schedule XIV, Notes to Financial Statements

169. Instruction No. 3 of Schedule XIV states ''Furnish particulars as to any significant increase in services rendered or expenses incurred during the year.''

Comments

170. EEI recommends the Commission not implement this reporting requirement in the notes section.[150] EEI states this introduces an element of Management's Discussion and Analysis (MD&A) that is part of GAAP disclosure requirements, but has never been a requirement of the FERC Form No. 60, Form No. 1, or Form No. 2. EEI indicates that an explanation of service company expense variances is frequently scrutinized by state regulators and would unnecessarily add to the administrative burden of annual reporting. EEI contends this level of detail could be provided on an ad hoc basis as needed, and, when it is needed, companies would like the flexibility of attaching a Microsoft Word file rather than re-keying voluminous footnote data into the Commission's automated reporting application.

Commission Determination

171. Contrary to EEI's assertion, Instruction No. 3 is not a new reporting requirement. Instruction No. 3 is included in the December 2005 FERC Form No. 60 under Schedule XVIII, Notes to the Statement of Income. Any large increase in services and expenses could impact cost allocations which would be useful information to the Commission and others. The disclosure of significant increases in services rendered or expenses incurred is particularly relevant to understanding the business operations of the centralized service company and the efficiency or inefficiency of providing services on a centralized basis to associated utilities. Furthermore, reporting this information should not be administratively burdensome. As EEI notes, this type of information is already part of the MD&A in its GAAP disclosures. The Commission's FERC Form No. 60 submission software will allow copy and paste of this information into the footnote page. Consequently, we will retain the instruction as proposed.[151]

(9) Schedule XV, Comparative Income Statement

172. Proposed Schedule XV requires centralized service companies to report revenues, expenses, gains and losses for the current and prior year by account.

Comments

173. EEI states that the Commission should not require reporting of information broken down into accounts that do not make sense for a given service company. EEI states that there seems to be a presumption in the NOPR that the service company income statement can be presented in a ratemaking format, with an ''above the line'' and ''below the line'' character. EEI points out, that just as with the proposed use of the 500 and 800 series of operational and maintenance expense accounts, this presumption does not fit well with many service company operations, which typically consist primarily of labor services to other companies.[152]

Commission Determination

174. The Schedule XV, Comparative Income Statement, we are adopting for the revised FERC Form No. 60 will require centralized service companies to report the amounts entered in the income statement accounts adopted in this Final Rule. These accounts were developed to be of sufficient scope and breadth to allow for recording the economic effects of all transactions and events that could impact a centralized service company. As noted elsewhere in this Final Rule, not all service companies are engaged in all of the activities for which use of the new accounts would be required. This, however, does not mean that the accounts do not ''fit well'' or do not ''make sense'' for centralized service companies, as EEI seems to suggest. It means only that more accounts exist under the USofA than might be used by any particular centralized service company. If a centralized service company does not incur costs properly included in one of the new accounts adopted in this Final Rule, it simply would not record anything in that account.

(10) Schedule XV–A, Schedule of Utility Operating Expenses; Schedule XVI, Analysis of Charges for Service; Schedule XVII, Schedule of Expense Distribution by Department or Service Function

175. Proposed Schedule XV–A requires centralized service companies to report all amounts entered in the 500 and 800 series of operation and maintenance expense accounts. Proposed Schedule XVI requires centralized service companies to report direct and indirect costs charged to associate utility companies, associate non-utility companies, non-associate utility companies and non-associate non-utility companies. Proposed Schedule XVII requires centralized service companies to report service cost billed by department or service function and overhead costs.

Comments

176. EEI recommends that the Commission consider deleting Schedule XV–A and either Schedule XVI or XVII.[153] EEI states that, whichever of these schedules the Commission retains, the Commission should allow companies to report total amounts for each account or group of accounts listed rather than by direct and indirect or overhead costs. In EEI's opinion, the breakdown by direct, indirect, and use of capital would require companies to parse the information in each account or set of accounts to too fine a degree with no clear benefit. EEI indicates that if Schedule XVI is retained, the Commission should follow the SEC's past practice of having companies distinguish the information for associate and non-associate companies, ideally by group of accounts rather than by utility versus non-utility.[154]

177. In addition, EEI encourages the Commission not to require information to be broken down as shown on Schedule XVII by service company department or service function.[155] As presented, EEI states, the schedule would require companies to break down internal financials across the array of USofA accounts by department or

[150] EEI at 34.

[151] EEI at 34 and 35.

[152] EEI at 30.

[153] EEI at 36.

[154] *Id.*

[155] EEI at 36.

function, requiring far too much detail with no clear benefit.[156] Southern states departmental/functional reporting by account adds difficulty and would not be consistent among companies.[157]

178. NARUC, on the other hand, states Schedule XVI is important since it allows a comparison of direct and indirect costs allocated to utility companies and non-utility companies while showing the allocation of 100 percent of these costs to the various billing groups.[158] NARUC indicates this is needed to ensure utility companies are not treated differently from non-utility companies. NARUC suggests simplifying this schedule, at least for the 500 and 800 series of operation and maintenance expense accounts; NARUC contends it may be possible to allow companies to provide information by group of accounts.

179. NARUC explains that Schedule XVII assists state regulators in classifying charges on the utility's records, helps in judging the reasonableness of service company charges and whether such charges duplicate what the utility incurs internally, and focuses attention on comparisons between what gets charged to the associated utility companies and non-utility companies. NARUC proposes expanding Schedule XVII to provide a breakdown by associate utilities and non-utilities, and by non-associate companies. NARUC states this is important to make a comparison of departmental costs allocated to associate utility and non-utility companies because these comparisons ensure that associate utility companies are not treated differently from associated non-utility companies.[159]

Commission Determination

180. The Commission agrees with EEI that the information required in proposed Schedule XV–A is unnecessary, and will delete Schedule XV–A. The same information is reported in Schedule XVI, Analysis of Charges for Services, except for comparable information for the prior year. Therefore, the Commission will delete Schedule XV–A.

181. The Commission will also delete Schedule XVII. With regard to Schedule XVII, Southern notes that departmental/functional reporting would not be consistent among companies. Departments and functions are not standardized and, therefore, comparison across companies is not possible. While we agree with NARUC that Schedule XVII may provide some useful departmental/functional information, on a company by company basis, requiring the reporting on an annual basis may be an unnecessary burden. NARUC's proposal to expand Schedule XVII to include reporting by individual associate and non-associate utility companies, associate non-utility companies and non-associate companies points to a weakness in the current schedule. In fact, the schedule does not disclose information on charges to utility companies except through the department service or functional category. The additional expense accounts required under the new USofA will provide better functional information and lessen the need for this schedule. The information provided in Schedule XVI will enable the Commission to capture information about charges for services provided to utility companies. If departmental/functional information is needed, the information can be obtained from each centralized service company on a case-by-case basis without the need to be reported annually. Therefore, the Commission will delete Schedule XVII.

182. The Commission will retain Schedule XVI, but modify the schedule to remove the utility versus non-utility expense separation, consistent with our decision concerning the service company revenue accounts discussed elsewhere in this Final Rule. While the utility versus non-utility expense separation is removed, the total amounts assigned to individual utility companies are available in the Analysis of Billing schedules. This will result in returning to the associate company/non-associate company expense separation contained in the December 2005 FERC Form No. 60. We also will revise Schedule XVI to roll up certain expense classifications suggested by EEI and NARUC to reduce the burden associated with completing this schedule.

(11) Analysis of Billing Schedules

183. In the NOPR, the Commission proposed to modify the Analysis of Billing schedules that report billings to each company for services provided by the centralized service companies by breaking out the schedules into associate utility, non-associate utility and non-utility companies.

Comments

184. EEI indicates the Commission should not require reporting of information broken down into utility and non-utility services, in particular for non-associate companies where the service company often will not have this information. Service companies currently report their services provided by individual company in the FERC Form No. 60, on schedules ''Analysis of Billing—Associate Companies'' and ''Analysis of Billing—Non-associate Companies.'' EEI argues these schedules provide ample information of the sort being proposed and that no additional detail is necessary.[160]

185. Southern recommends the schedule, Analysis of Billing—Non-associate Companies, be revised to request the names and amounts for non-associate companies only for those that exceed 10% of the total non-associate billings. Southern argues this would reduce the time spent in preparation of this schedule while still providing the Commission with the names of all non-associate companies of consequence.[161]

Commission Determination

186. We agree with EEI's comments that the Analysis of Billing schedules contained in the December 2005 FERC Form No. 60 provide sufficient information concerning the customers to whom amounts are billed, and a further separation of those customers into utility and non-utility classifications for purposes of this schedule is not needed by the Commission since specific information about utilities is already reported separately in the current Analysis of Billing schedules. Therefore, consistent with our decision above to eliminate Account 459, Services rendered to non-utility companies, we will also eliminate the proposed schedule ''Analysis of Billing Nonutility Companies—Account 459.'' Also, we will revise the ''Analysis of Billing Schedules'' for Accounts 457, Services rendered to associate companies, and 458, Services rendered to non-associate companies to reflect only a separation of billings between associate and non-associate companies, consistent with our decision on the service company revenue accounts discussed elsewhere in this Final Rule. The Commission will not adopt Southern's proposal to reduce the reported number of non-associate companies. The requirement is not overly burdensome and allows the Commission to observe all billings to such companies.

(12) Departmental Analysis of Salaries Schedule; Methods of Allocation Schedule; and Organizational Chart Schedule

187. The proposed Departmental Analysis of Salaries Schedule reports the amount of service company salaries

[156] *Id.*

[157] Southern Supplemental Comments at 3.

[158] NARUC Supplemental Comments at 7.

[159] *Id.*

[160] EEI at 29.

[161] Southern Supplemental Comments at 3.

billed by department or service function to the parent holding company, associate companies, and non-associate companies and the number of employees. The Methods of Allocation Schedule reports the allocation factors used to allocate indirect costs to each associate company. The Organizational Chart schedule reports how the service company is organized.

Comments

188. EEI states these schedules involve what it considers organizational reporting and recommends eliminating the schedules because adequate oversight can be accomplished without this level of detail, and accurate comparisons between companies would be very difficult.[162] If the Methods of Allocation schedule is retained, EEI requests the Commission continue its current practice of allowing companies to list their allocation methods, as they currently do in the FERC Form No. 60, rather than having to elaborate on the methods in the form. EEI indicates companies should not be required to key voluminous formulas, by service rendered, into the automated reporting application.[163]

189. Southern does not see the benefit to the Commission of providing a current Organizational Chart in the FERC Form No. 60 and proposes that this requirement be eliminated. Southern argues it is not required for FERC Form No. 1.[164]

Commission Determination

190. The Commission will eliminate the Departmental Analysis of Salaries Schedule. Consistent with our decision above regarding our decision to eliminate Schedule XVII, departmental or functional categories are difficult to compare because they are not standardized. If needed, the information can be obtained from centralized service companies on a case-by-case basis.

191. The Commission will retain the Methods of Allocation schedule, however, because that is the only means readily available to determine how indirect costs are being allocated to services provided. The current schedule has no instructions and Staff's review of 2005 FERC Form No. 60s indicated poor reporting. The main purpose of the schedule is to disclose what allocation ratios are used and what numerator and denominator were used to create the ratio. We are revising the instruction, accordingly.

192. The Commission will also continue to require submission of an Organization Chart in the FERC Form No. 60 as proposed. An Organization Chart provides basic information about the hierarchical structure of the service company. It provides useful information to the Commission about how the centralized service company deploys its resources and the relationship between organizational departments within the centralized service company and the allocation of costs to services, functions and projects. We recognize the FERC Form No. 1 does not require an Organization Chart. However, our need to know the organizational structure of a centralized service company is greater as opposed to the organizational structure of an electric utility company.

(13) Annual Statement of Compensation for Use of Capital Billed

193. This schedule reports the amount of compensation for use of capital billed to each associate company.

Comments

194. EEI proposes to eliminate the Annual Statement of Compensation for Use of Capital Billed, and the associated revenue Accounts 457.3, Compensation for use of capital-associate companies, 458.3, Compensation for use of capital—Non-associate companies, and 459.3, Compensation for use of capital—Non-associate non-utility companies. EEI argues compensation for use of capital is so minor that it does not warrant special treatment in reporting. Moreover, EEI states details of significant financial arrangements are included in the notes to the balance sheet, and total interest costs are disclosed in the income statement.[165]

195. Conversely, NARUC indicates the Annual Statement of Compensation for Use of Capital Billed should be required in FERC Form No. 60. NARUC argues this statement provides the calculation of the use of capital that will be billed to the centralized service companies' associate companies during the calendar year. In addition, NARUC indicates this statement in the FERC Form No. 60 is a resource for verifying and reconciling the costs that are included in centralized service company billings. NARUC notes the FERC Form No. 60 requires a separate statement for each associate company. However, NARUC claims, a separate statement for each associate company may not be necessary if the calculations are consistent.[166]

Commission Determination

196. We agree with EEI that footnote disclosure would be a suitable substitute for this schedule, and so, we will delete the Annual Statement of Compensation for Use of Capital Billed. However, we will not delete Accounts 457.3 or 458.3. The amounts recorded in these accounts will continue to be reported on the Analysis of Billing Schedules for Accounts 457 and 458. Centralized service companies should disclose the basis of how the amounts are assigned to the associate and non-associate companies in a footnote to the Analysis of Billing Schedules for Accounts 457 and 458. As long as all companies are treated similarly, we believe this should satisfy NARUC's requirements.

(14) Miscellaneous General Expenses Schedule (Account 930.2)

197. This schedule lists the items included in Account 930.2, Miscellaneous general expenses.

Comments

198. EEI and Southern recommend deleting the schedule or only requiring disclosure of items that exceed $1 million. EEI and Southern contend this schedule requires considerable detailed analysis to complete.[167]

Commission Determination

199. The Commission will retain this schedule. Many service companies report significant amounts in Account 930.2. This schedule provides the nature of the amounts included in a miscellaneous catchall account where the account title does not provide descriptive information of the amounts included in the account. This schedule currently has no threshold level. However, in response to EEI's and Southern's proposal, we will adopt a threshold requiring the separate reporting of items over $50,000.[168] We believe a $1,000,000 threshold alternative suggested by commenters is unreasonably high and would not provide for adequate disclosure of the nature of the items included in this account.[169]

(c) General Instruction IX

200. General Instruction IX states that prior period comparison figures must be the same as reported in the previous

[162] EEI at 30.

[163] EEI at 31.

[164] Southern at 3.

[165] EEI at 31.

[166] NARUC Supplemental Comments at 8 and 9.

[167] EEI at 37; Southern at 3.

[168] Our staff review of FERC Form No. 60 submissions for calendar year 2005 indicates that $50,000 is a reasonable threshold that will provide sufficient information without eliminating necessary detail.

[169] The FERC Form No. 1 threshold for this account schedule is $5,000.

report, or ''an appropriate explanation given as to why the different figures were used.''

Comments

201. EEI states that in general, companies would like to follow the GAAP practice of reclassifying prior period amounts when necessary, with a footnote to the effect that ''certain prior amounts have been reclassified to conform to the current year presentation.'' [170] EEI indicates any material reclassifications would include a footnote disclosure. Therefore, EEI recommends the Commission insert the word ''materially'' before ''different figures were used.''

Commission Determination

202. As an initial matter, we note that instances in which prior year data in current reports is different than previously reported should be rare. The instances should be limited to such things as corrections of accounting errors and changes in accounting principles. The Commission and other users of the FERC Form No. 60 are particularly interested in understanding the economic effects of these types of occurrences, including the particular accounts affected and the related amounts. An explanation that ''certain prior amounts have been reclassified to conform to the current year presentation'' does not provide an adequate explanation. Footnote disclosure of only material amounts as EEI suggests also is insufficient because amounts below the material threshold could affect cost allocations or have rate implications. Consequently, we will adopt the proposed instruction unmodified.

(d) Raising the Threshold for Individually Itemized Items

203. Some of the supporting schedules contained in the FERC Form No. 60 require reporting individual items when the amount for such items exceeds a specified threshold amount. For instance, some schedules list individual items and amounts less than a $5,000 threshold can be grouped together rather than reported separately.

Comments

204. EEI proposes the establishment of a higher threshold to apply to itemizations on schedules. Currently, when stated, the minimum for itemization is $5,000 or $10,000. EEI states that, due to the difference in company sizes, the establishment of a relative threshold (for example, five percent of total) would minimize unnecessary itemization and still provide meaningful data.[171] EEI further recommends the Commission allow companies to set a materiality threshold, so that items less than some *de minimis* amount do not need to be broken out in the FERC Form No. 60.[172] EEI suggests using as the *de minimis* amount $100,000, one to five percent of company billings, or 10 percent of the total amount on a particular schedule, whichever is higher. Further, EEI points out that the SEC's ''PUHCA Staff Examination Instructional Manual,'' section IV.A.3(c), which advised their staff to use a $50,000 or five percent threshold to determine if allocation methods should come to the attention of the SEC for approval.

Commission Determination

205. We agree with EEI that the thresholds can be raised without losing appropriate detail. However, the thresholds suggested by EEI are extremely high and would eliminate needed disclosure.[173] The SEC Staff manual threshold suggested by EEI addressed allocations, and did not apply to thresholds in individual schedules. The Commission will raise or add thresholds over the current FERC Form No. 60 schedules. We believe a threshold of $50,000 would reduce the reporting burden without the loss of appropriate detail. Therefore, we will establish a threshold of $50,000 for the following schedules: Schedules IV, VIII, IX, X, XIII, and XIX.

(e) Reporting in Whole Dollars or Alternatively in Thousands

206. In the NOPR, the Commission proposed to require reporting companies to use whole dollars as the reported dollar amounts.

Comments

207. EEI proposes that centralized service companies should have the option to report all dollars consistently in thousands, as opposed to whole dollars as proposed in the NOPR, as long as the companies indicate what they are doing. EEI indicates the added digits do not add significant information, but rather, make the schedules substantially harder to produce and read. EEI notes this is consistent with the way amounts were reported in the SEC Form U–13–60.[174]

Commission Determination

208. When centralized service companies filed with the SEC their filings were text based and did not allow for data retrieval and analysis. The Commission supports the use of submission software to ensure data integrity and permit ready analysis of forms data. The Commission plans to issue submission software for the FERC Form No. 60 in the early part of 2007. The software would allow companies to reduce costs of completing FERC Form No. 60 and allow for data retrieval and analysis not currently possible in the hard copy FERC Form No. 60. However, electronic reporting requires selecting one common reporting basis. Comparability is important, and can not be achieved without one common reporting basis. Consequently, we will adopt reporting in whole dollars. However, during a transition period covering the 2006 and 2007 reporting years, for the FERC Form No. 60s due May 1, 2007 and May 1, 2008, respectively, we will allow centralized service companies that report in thousands to round to the nearest $1000 (reporting $123,000 instead of $123,456).[175]

(f) Comparative Information

209. Some FERC Form No. 60 schedules present data from the current year along with the same data from the prior year.

Comments

210. EEI states that comparative information provided in the revised FERC Form No. 60 should not be required until the following year, at least to the extent the information being compared is not already presented in the December 2005 FERC Form No. 60.[176]

Commission Determination

211. In response to EEI's proposal and in order to reduce the possible administrative burden that may be incurred by respondents during the initial reporting year for the FERC Form No. 60 adopted in this Final Rule, *i.e.*, the FERC Form No. 60 for the 2008 reporting year due May 1, 2009, the Commission will only require current year data. Respondents will be required

[170] EEI at 32–33.

[171] EEI at 30–31.

[172] EEI Supplemental Comments at 12.

[173] For example, for one centralized service company, one percent of its billings represents a $9,000,000 threshold, at five percent, it would represent $45,000,000. These thresholds would eliminate reporting in most itemized schedules.

[174] SEC instructions to SEC Form U–13–60, the predecessor to December 2005 FERC Form No. 60, allowed service companies to report in either whole dollars, thousands of dollars, hundreds of thousand of dollars, or millions of dollars.

[175] *Supra* note 34.

[176] EEI at 49.

to report prior year's amounts beginning with the second year the FERC Form No. 60 adopted in this Final Rule is required, *i.e.*, the FERC Form No. 60 for the 2009 reporting year due May 1, 2010.

(g) Request To Expand Data Collection in FERC Form No. 60 Comments

212. NARUC proposes adding a new schedule showing charges from affiliated companies to the service company. NARUC states the schedule would show the affiliate, the nature of the charges, and the basis of the charges—*i.e.*, cost, market, or other. NARUC states this schedule is important, since an affiliate may charge the service company a marked-up price. Since this would become a cost to the service company, the marked-up item then could be charged to a public utility at a cost higher than if it had been directly charged to the utility. NARUC also proposes adding a new schedule showing goods and services provided by the service company both internally and externally. NARUC's concern is that, once a good or service becomes profitable, it will be moved from the service company and offered by another affiliate.[177]

213. NARUC notes that in Order No. 667, the Commission deleted two supporting schedules concerning outside services employed (Account 923) and employee pensions and benefits (Account 926) from the FERC Form No. 60.[178] NARUC proposes to add these schedules back in the revised FERC Form No. 60. NARUC argues outside services and employee expenses are major components of expense (along with labor) incurred by a service company. According to NARUC, the detail in these schedules would provide an important tool for understanding service company costs and functions. As a result, according to NARUC, these schedules are essential in the evaluation of whether cross-subsidization exists within the holding company organization.

Commission Response

214. We share NARUC's concerns about the possibility of inappropriate cross subsidization or other unfair results obtained through affiliate relationships and transactions. At this time, however, we are not convinced that it is necessary to require centralized service companies to report as extensively about its affiliated transactions as NARUC recommends. With regard to adding back schedules for outside services employed (Account 923) and employee pensions and benefits (Account 926) which we deleted in Order No. 667, we deleted the schedules because they are not required in the FERC Form No. 1. Our need to weigh centralized service company burden versus protecting the public interest is difficult. Our requirement to report services performed for public utilities in the 500 and 800 accounts should reduce the amounts reported in Account 923. Centralized service companies do report information on pensions and benefits in their notes to the financial statements. Therefore, the Commission will not adopt NARUC's recommendations to add Schedules for Account 923 and Account 926 back in the revised FERC Form No. 60 in this Final Rule. However, as we gain additional knowledge about our needs for centralized service company information we may revisit these proposals.

(h) Schedule Numbering

Comments

215. Southern notes that some of the schedules within the revised FERC Form No. 60 have a schedule number while others are referenced by the account number. Southern states that it would be helpful if the schedules were all labeled consistently with schedule numbers.[179]

Commission Determination

216. The Commission agrees that assigning schedule numbers to all schedules in the revised FERC Form No. 60 would be helpful for referencing purposes for both users and preparers. Therefore, we will label all schedules with schedule numbers.

(i) Chief Accountant's Delegated Authority

217. The NOPR proposed to revise § 375.303(c), (d), (e), (f), (g) and (h) to update the delegations to the Chief Accountant or the Chief Accountant's designee. These authorities are similar to those that the Chief Accountant has for public utilities and licensees, natural gas companies and oil pipeline companies.

Comments

218. EEI and National Grid request clarification of proposed § 375.303(f), that authorizes the Chief Accountant or the Chief Accountant's designee to ''accept for filing'' FERC Form Nos. 60, 3–Q, and 6–Q. The commenters believe that the requirement appears to imply that the Commission, its Chief Accountant, or the Chief Accountant's designee would issue a formal order accepting such forms, which is not the current practice. They argue that because such a delegation could raise the expectation (especially on the part of auditors) that orders accepting Form Nos. 60, 3–Q and 6–Q would be issued, the Commission should clarify either that it will, in fact, issue such acceptance orders, or that the regulatory text is not intended to provide for the issuance of formal acceptance orders.[180]

219. EEI and National Grid also request that the Commission clarify proposed § 375.303(g) that permits the Chief Accountant or the Chief Accountant's designee to grant or deny requests for waiver of various regulations including § 366.23, which requires the filing of FERC Form No. 60. The commenters assert that the authority to act on motions for extensions of time is not explicitly provided for in the revisions in § 375.303(g). The commenters ask that the Commission clarify that this delegated authority includes the authority to grant an extension of time.[181]

220. Southern asserts that, in the proposed § 375.303(f), the reference to the Form Nos. 3–Q and 6–Q is erroneous for service companies.[182]

Commission Determination

221. We grant EEI and National Grid's request for clarification of § 375.303(f), that the authorization granted to the Chief Accountant or designee to ''accept for filing'' FERC Form Nos. 60, 3–Q, and 6–Q is not intended to provide for the issuance of formal acceptance orders; the term ''accept for filing'' is merely a designation of the office or Commission officer responsible for the management and oversight of the applicable form.

222. We acknowledge Southern's comment that the proposed § 375.303(f) reference to the Form Nos. 3–Q and 6&Q would be erroneous for centralized service companies. Form Nos. 3–Q and 6–Q are not filing requirements for centralized service companies. However, the delegation of authority to accept the financial forms filed with the Commission, including Form Nos. 3–Q and 6–Q, and, with this Final Rule, the revised FERC Form No. 60, is not directed solely to centralized service companies but to all regulated public utilities and licensees, natural gas pipelines, oil pipelines and with this Final Rule centralized service companies. In this Final Rule, the

[177] NARUC Supplemental Comments at 8.

[178] NARUC Supplemental Comments at 9.

[179] Southern at 3.

[180] EEI at 43–44; National Grid at 13.

[181] National Grid at 13–14; EEI at 44.

[182] Southern at 6.

Commission adopts the delegations to the Chief Accountant in § 375.303(f) as proposed in the NOPR with one modification, to include an additional form, FERC–61. Holding companies are required to file FERC–61, Narrative description of service company functions, annually with the Commission those centralized for service companies that do not file FERC Form No. 60, and, similar to the other reporting Forms, included in this delegation should be handled under delegated authority by the Chief Accountant.[183]

223. We will grant EEI and National Grid's request to clarify § 375.303(g) to include the authority to act on motions for extensions of time to file FERC Form No. 60. While the Commission has previously delegated the authority to grant extensions of time to file FERC Form No. 60 to the Chief Accountant in § 366.23(a)(3), for ease of administration we will include this delegation in § 375.303(g).

V. Information Collection Statement

224. The following collections of information referenced in this Final Rule have been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995.[184] OMB's regulations require OMB to approve certain information collection requirements imposed by agency rule.[185] Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements of this Final Rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number or the Commission had provided a justification as to why the control number should be displayed.

225. In the NOPR, the Commission provided burden estimates for complying with the rule as follows:

FERC Form No. 60: 38 Respondents, 38 Responses @ 10 hours per response = 380 Total Annual Hours; and

FERC–555A (recordkeeping): 300 Respondents @ 1,080 hours per respondent = 324,000 Total Annual Hours.

226. In response to comments the Commission received (see below), the Commission is revising its estimates as follows:

Data collection	Number of respondents	Number of responses	Hours per response	Total
1 FERC Form No. 60	38	38	75	2,850
2 FERC–555A	300		1,080	324,000
Totals				326,850

Information Collection Costs: The Commission also projected (and has revised) the average annualized cost of all respondents to be the following:

FERC Form No. 60 = 380 Hours at $120 an hour (an average of 3 staff @ $40 an hour) = $45,600. As revised, *FERC Form No. 60* = 2,850 hours @ $120 (an average of 3 staff @ $40 an hour) = $342,000.

FERC–555A = The Commission projected an annualized cost of all respondents as 324,000 hours @ $68 an hour ($17 an hour, an average of 4 staff) = $22,032,000 (staffing) + $6,696,000 (storage) = $28,728,000. These costs assume that the average office storage space is $7,440 for retaining records on-site. (Usually after the initial year records are transferred to an off-site location where the storage costs drop to $925 (on average).) As these requirements are being approved for an initial three-year period, the assumption was made that during that period the records would be retained on-site). These cost estimates used as an example: 120 cubic feet (20 four-drawer file cabinets) and include the cubic feet of storage plus the cost of floor space plus the costs for records storage cartons. Greater saving can be accomplished if documents are stored electronically, *i.e.*, one file cabinet (four-drawer) (10,000 pages on average) = 500 MegaBytes (MByte) = one CD ROM.

The Total Costs for reporting and recordkeeping ($342,000 + $28,728,000) = $29,070,000.

227. As noted above, the Commission sought comments on both the burden estimates and corresponding costs: it should be noted that the Commission's initial estimates were based on its review of the SEC's burden estimates and its first year of experience in implementing the FERC Form No. 60 reporting requirement. The Commission received one comment specifically addressing the burden estimate for completing the revised FERC Form No. 60. This commenter, Southern, provided an estimate for completion of the revised FERC Form No. 60 prior to our adoption of the requirements contained in this Final Rule. The Commission notes that Southern has significant operations, and it is to be expected that its estimates would exceed the average projected by the Commission. Otherwise, the majority of the commenters, while not providing specific comments on the estimates, in general opposed the Commission's proposal of establishing new accounting and reporting requirements for centralized service companies. These objections were also repeated in the staff technical conference where some participants stated that the NOPR's proposed requirements would be burdensome and costly to implement as changes would have to be made to their accounting systems. The Commission did not receive any specific comments concerning the estimates for the recordkeeping requirements.

228. The Commission has addressed commenters' substantive concerns elsewhere in this Final Rule and will not repeat its responses here. The actions taken in this Final Rule should ameliorate the concerns of a significant burden increase and any corresponding cost increase.

229. Further, in Order No. 667, the Commission provided its initial estimate for completing the FERC Form No. 60, and did not receive any comments in response to that estimate. In Order No. 667–A, the Commission made offsetting changes to those reporting requirements and, in light of the changes and the absence of comments, let the original projected burden estimates stand. However, we went on to say that, with additional experience, including comments received in response to our initiatives, we would adjust the burden estimates. In view of the comments received specifically concerning the burden estimates and the implementation of the reporting requirements contained in this Final Rule, we are revising the estimates accordingly. On the other hand, as the Commission is adopting electronic submission of this information in a

[183] 18 CFR 366.23(a)(2) (2006).

[184] *See* 44 U.S.C. 3507(d) (2000).

[185] 5 CFR 1320.11 (2006).

separate rulemaking proceeding in Docket No. RM06–25–000, this will save time and resources for all parties since electronic filings require fewer personnel than paper filings by avoiding the need for paper processing and mailing and consequently reduce the burden.[186]

Title: FERC Form No. 60, ''Annual Report of Centralized Service Companies'' and FERC–555A, ''Preservation of Records for Service Companies Subject to PUHCA 2005.''

Action: Proposed collections.

OMB Control Nos.: 1902–0215 (FERC Form No. 60) and 1902–XXXX (to be determined) (FERC–555A).

Respondents: Businesses or other for profit.

Frequency of Responses: Annually and on occasion.

Necessity of the Information: This Final Rule amends the Commission's regulations to implement PUHCA 2005 as enacted by the EPAct 2005. Specifically, the Commission is adopting a USofA for Centralized Service Companies, adding preservation of records requirements for holding companies and service companies, revising the FERC Form No. 60 in order to provide for financial reporting consistent with the new USofA, and providing for the electronic filing of revised FERC Form No. 60. In Order No. 667, the Commission also set forth its objective to prescribe uniform accounting requirements for centralized service companies, *i.e.*, service companies that are not special purpose companies, within holding company systems, and records retention requirements for both service companies and holding companies. The addition of these accounts and related changes in the reporting, as well as uniform records retention requirements, provides uniformity and transparency for costs that are billed to regulated entities, allows for comparability of like costs across centralized service companies, provides for comparisons of year-to-year changes in a centralized service company's costs and billings, and facilitates the uniform compilation of consolidated financial statements. Without specific instructions and accounts for recording and reporting the above transactions and events, and retaining relevant records and information, inconsistent and incomplete accounting and reporting will result.

230. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director, phone (202) 502–8415, fax: (202) 273–0873, e-mail: *michael.miller@ferc.gov*]

231. For submitting comments concerning the collection of information(s) and the associated burden estimates, please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Energy Regulatory Commission; Phone: (202) 395–4650, fax: (202) 395–7285.

VI. Environmental Analysis

232. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[187] No environmental consideration is necessary for the promulgation of a rule that addresses information gathering, analysis, and dissemination,[188] and, also, that addresses accounting.[189] This Final Rule addresses information gathering, analysis, and dissemination. In addition, this Final Rule involves accounting requirements. Therefore, the Final Rule falls within categorical exemptions provided in the Commission's regulations. Consequently, neither an Environmental Impact Statement nor an Environmental Assessment is required.

VII. Regulatory Flexibility Act

233. The Regulatory Flexibility Act of 1980 (RFA)[190] generally requires a description and analysis of the effect that a Final Rule will have on small entities or a certification that a rule will not have a significant economic impact on a substantial number of small entities.

234. The Commission concludes that this Final Rule will not have such an impact on a substantial number of small entities. Most holding companies to which this Final Rule would be applicable do not fall within the RFA's definition of a small entity.[191] Moreover, the Commission also concludes that this Final Rule will not impose a significant burden since the information is already being captured by existing accounting systems and generally being reported at a consolidated business level.

VIII. Document Availability

235. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

236. From the Commission's Home Page on the Internet, this document is available in the Commission's document management system, e-Library. The full text of this document is available on e-Library in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in e-Library, type the docket number excluding the last three digits of this document in the docket number field.

237. User assistance is available for e-Library and the Commission's Web site during normal business hours. For assistance, please contact FERC Online Support at 1–866–208–3676 (toll free) or 202–502–6652 (e-mail at *FERCOnlineSupport@ferc.gov*) or the Public Reference Room at 202–502–8371, TTY 202–502–8659 (e-mail at *public.referenceroom@ferc.gov*).

IX. Effective Date and Congressional Notification

238. This Final Rule will take effect January 8, 2007; however, the revised FERC Form No. 60 adopted herein will be implemented with the reporting year 2008 (due by May 1, 2009) and the accounting and records retention requirements adopted herein will be implemented January 1, 2008.

239. The Commission has determined with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of

[186] *Supra* note 34.

[187] *See Regulations Implementing the National Environmental Policy Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

[188] *See* 18 CFR 380.4(a)(5).

[189] *See* 18 CFR 380.4(c)(16).

[190] *See* 5 U.S.C. 601–612.

[191] *See* 5 U.S.C. 601(3) citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a ''small-business concern'' as a business which is independently owned and operated and which is not dominant in its field of operation. The Small Business Size Standards component of the North American Industry Classification System (NAICS) defines a small electric utility as one that, including its affiliates, is primarily engaged in generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal years did not exceed 4 million MWh. NAICS defines a small natural gas pipeline company as one that transports natural gas and whose annual receipts (total income including cost of goods sold) did not exceed $6.5 million dollars for the preceding years. 13 CFR 121.201.

the Office of Management and Budget that this Final Rule is not a major rule within the meaning of section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.[192] The Commission will submit the Final Rule to both houses of Congress and the General Accounting Office.

List of Subjects

18 CFR Part 366

Electric power, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 367

Electric power, Natural gas, Uniform System of Accounts, Reporting and recordkeeping requirements.

18 CFR Part 368

Electric power, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 369

Electric power, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

By the Commission.

Magalie R. Salas,

Secretary.

In consideration of the foregoing, under the authority of EPAct 2005, the Commission amends parts 366, and 375 and adds parts 367, 368 and 369, to Chapter I, Title 18 of the *Code of Federal Regulations,* as set forth below:

PART 366—PUBLIC UTILITY HOLDING COMPANY ACT OF 2005

■ 1. The authority citation for part 366 is revised to read as follows:

Authority: 42 U.S.C. 16451–16463.

■ 2. In § 366.21, paragraph (b) is revised to read as follows:

§ 366.21 Accounts and records of holding companies.

* * * * *

(b) Unless otherwise exempted or granted a waiver by Commission rule or order pursuant to §§ 366.3 and 366.4, beginning January 1, 2008, all holding companies must comply with the Commission's records retention requirements for holding companies and service companies as prescribed in part 368 of this chapter. Until December 31, 2007, holding companies registered under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a *et seq.*) may follow either the Commission's records retention rules for public utilities and licensees or for natural gas companies, as appropriate (parts 125 and 225 of this chapter), or the Securities and Exchange Commission's record retention rules in 17 CFR part 257.

* * * * *

■ 3. In § 366.22, paragraphs (a)(1), (a)(2) (b)(1) and (b)(2) are revised to read as follows:

§ 366.22 Accounts and records of service companies.

(a) *Records retention requirements*—(1) *General.* Unless otherwise exempted or granted a waiver by Commission rule or order pursuant to §§ 366.3 and 366.4, beginning January 1, 2008, every service company must maintain and make available to the Commission such books, accounts, memoranda, and other records in such manner and preserve them for such periods as the Commission prescribes in part 368 of this chapter, in sufficient detail to permit examination, audit, and verification, as necessary and appropriate for the protection of utility customers with respect to jurisdictional rates.

(2) *Transition period.* Until December 31, 2007, service companies in holding company systems registered under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a *et seq.*) may follow either the Commission's records retention requirements in parts 125 and 225 of this chapter or the Securities and Exchange Commission's records retention rules in 17 CFR part 257.

* * * * *

(b) *Accounting requirements*—(1) *General.* Unless otherwise exempted or granted a waiver by Commission rule or order pursuant to §§ 366.3 and 366.4, beginning January 1, 2008, every centralized service company (*See* § 367.2 of this chapter) must maintain and make available to the Commission such books, accounts, memoranda, and other records as the Commission prescribes in part 367 of this chapter, in sufficient detail to permit examination, audit, and verification, as necessary and appropriate for the protection of utility customers with respect to jurisdictional rates. Every such service company must maintain and make available such books, accounts, memoranda, and other records in such manner as are prescribed in part 367 of this chapter, and must keep no other records with respect to the same subject matter except:

(i) Records other than accounts;

(ii) Records required by Federal or State law;

(iii) Subaccounts or supporting accounts which are not inconsistent with the accounts required either by the Uniform System of Accounts for Centralized Service Companies in part 367 of this chapter; and

(iv) Any other accounts that may be authorized by the Commission.

(2) *Transition period.* Until December 31, 2007, service companies in holding company systems registered under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a *et seq.*), as described in paragraph (b)(1) of this section, may follow either the Commission's Uniform System of Accounts in parts 101 and 201 of this chapter or the Securities and Exchange Commission's Uniform System of Accounts in 17 CFR part 256.

* * * * *

■ 4. In § 366.23, the section heading and paragraphs (a)(1) and (b) are revised to read as follows:

§ 366.23 FERC Form No. 60, Annual report of centralized service companies, and FERC–61, Narrative description of service company functions.

(a) *General.*

(1) *FERC Form No. 60.* Unless otherwise exempted or granted a waiver by Commission rule or order pursuant to §§ 366.3 and 366.4, every centralized service company (*See* § 367.2 of this chapter) in a holding company system must file an annual report, FERC Form No. 60, as provided in § 369.1 of this chapter. Every report must be submitted on the FERC Form No. 60 then in effect and must be prepared in accordance with the instructions incorporated in that form.

* * * * *

(b) *Transition period.* Service companies in holding company systems exempted from the requirements of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a *et seq.*) need not file an annual report, FERC Form No. 60, for calendar years 2005 through 2007, after which they must comply with the provisions of this section.

* * * * *

■ 5. Part 367 is added to subchapter U to read as follows:

PART 367—UNIFORM SYSTEM OF ACCOUNTS FOR CENTRALIZED SERVICE COMPANIES SUBJECT TO THE PROVISIONS OF PUBLIC UTILITY HOLDING COMPANY ACT OF 2005

Subpart A—Definitions

Sec.

367.1 Definitions.

[192] 5 U.S.C. 801.

Subpart B—General Instructions

367.2 Companies for which this system of accounts is prescribed.
367.3 Records.
367.4 Numbering system.
367.5 Accounting period.
367.6 Submittal of questions.
367.7 Item list.
367.8 Extraordinary items.
367.9 Prior period items.
367.10 Unaudited items.
367.11 Distribution of pay and expenses of employees.
367.12 Payroll distribution.
367.13 Accounting to be on accrual basis.
367.14 Transactions with associate companies.
367.15 Contingent assets and liabilities.
367.16 Long-term debt: Premium, discount and expense, and gain or loss on reacquisition.
367.17 Comprehensive inter-period income tax allocation.
367.18 Criteria for classifying leases.
367.19 Accounting for leases.
367.20 Depreciation accounting.
367.22 Accounting for asset retirement obligations
367.23 Transactions with non-associate companies.
367.24 Construction and service contracts for other companies.
367.25 Determination of service cost.
367.26 Departmental classification.
367.27 Billing procedures.
367.28 Methods of allocation.
367.29 Compensation for use of capital.
367.30 Cost allocation system for associate companies.

Subpart C—Service Company Property Instructions

367.50 Service company property to be recorded at cost.
367.51 Components of construction.
367.52 Overhead construction costs.
367.53 Service company property purchased or sold.
367.54 Expenditures on leased property.
367.55 Land and land rights.
367.56 Structures and improvements.
367.57 Equipment.
367.58 Property record system required for service company property.
367.59 Additions and retirements of property.

Subpart D—Operating Expense Instructions

367.80 Supervision and engineering.
367.81 Maintenance.
367.82 Rents.
367.83 Training costs.

Subpart E—Special Instructions

367.100 Accounts 131–174, Current and accrued assets.
367.101 Accounts 231–243, Current and accrued liabilities.
367.102 Accounts 408.1 and 408.2, Taxes other than income taxes.
367.103 Accounts 409.1, 409.2, and 409.3, Income taxes.
367.104 Accounts 410.1, 410.2, 411.1, and 411.2, Provision for deferred income taxes.
367.105 Accounts 411.4, and 411.5, Investment tax credit adjustments.
367.106 Accounts 426.1, 426.2, 426.3, 426.4, and 426.5, Miscellaneous expense accounts.

Subpart F—Balance Sheet Chart of Accounts

Service Company Property

367.1010 Account 101, Service company property.
367.1011 Account 101.1, Property under capital leases.
367.1060 Account 106, Completed construction not classified.
367.1070 Account 107, Construction work in progress.
367.1080 Account 108, Accumulated provision for depreciation of service company property.
367.1110 Account 111, Accumulated provision for amortization of service company property.

Other Property and Investments

367.1230 Account 123, Investment in associate companies.
367.1240 Account 124, Other investments.
367.1280 Account 128, Other special funds.

Current and Accrued Assets

367.1310 Account 131, Cash.
367.1340 Account 134, Other special deposits.
367.1350 Account 135, Working funds.
367.1360 Account 136, Temporary cash investments.
367.1410 Account 141, Notes receivable.
367.1420 Account 142, Customer accounts receivable.
367.1430 Account 143, Other accounts receivable.
367.1440 Account 144, Accumulated provision for uncollectible accounts-Credit.
367.1450 Account 145, Notes receivable from associate companies.
367.1460 Account 146, Accounts receivable from associate companies.
367.1520 Account 152, Fuel stock expenses undistributed.
367.1540 Account 154, Materials and operating supplies.
367.1630 Account 163, Stores expense undistributed.
367.1650 Account 165, Prepayments.
367.1710 Account 171, Interest and dividends receivable.
367.1720 Account 172, Rents receivable.
367.1730 Account 173, Accrued revenues.
367.1740 Account 174, Miscellaneous current and accrued assets.
367.1750 Account 175, Derivative instrument assets.
367.1760 Account 176, Derivative instrument assets—Hedges.

Deferred Debits

367.1810 Account 181, Unamortized debt expense.
367.182.3 Account 182.3, Other regulatory assets.
367.1830 Account 183, Preliminary survey and investigation charges.
367.1840 Account 184, Clearing accounts.
367.1850 Account 185, Temporary facilities.
367.1860 Account 186, Miscellaneous deferred debits.
367.1880 Account 188, Research, development and demonstration expenditures.
367.1890 Account 189, Unamortized loss on reacquired debt.
367.1900 Account 190, Accumulated deferred income taxes.

Proprietary Capital

367.2010 Account 201, Common stock issued.
367.2040 Account 204, Preferred stock issued.
367.2110 Account 211, Miscellaneous paid-in-capital.
367.2150 Account 215, Appropriated retained earnings.
367.2160 Account 216, Unappropriated retained earnings.
367.2161 Account 216.1, Unappropriated undistributed subsidiary earnings.
367.2190 Account 219, Accumulated other comprehensive income.

Long-Term Debt

367.2230 Account 223, Advances from associate companies.
367.2240 Account 224, Other long-term debt.
367.2250 Account 225, Unamortized premium on long-term debt.
367.2260 Account 226, Unamortized discount on long-term debt—Debit.

Other Noncurrent Liabilities

367.2270 Account 227, Obligations under capital lease—Non-current.
367.2282 Account 228.2, Accumulated provision for injuries and damages.
367.2283 Account 228.3, Accumulated provision for pensions and benefits.
367.2300 Account 230, Asset retirement obligations.

Current and Accrued Liabilities

367.2310 Account 231, Notes payable.
367.2320 Account 232, Accounts payable.
367.2330 Account 233, Notes payable to associate companies.
367.2340 Account 234, Accounts payable to associate companies.
367.2360 Account 236, Taxes accrued.
367.2370 Account 237, Interest accrued.
367.2380 Account 238, Dividends declared.
367.2410 Account 241, Tax collections payable.
367.2420 Account 242, Miscellaneous current and accrued liabilities.
367.2430 Account 243, Obligations under capital leases-Current.
367.2440 Account 244, Derivative instrument liabilities.
367.245 Account 245, Derivative instrument liabilities—Hedges.

Deferred Credits

367.2530 Account 253, Other deferred credits.
367.2540 Account 254, Other regulatory liabilities.
367.2550 Account 255, Accumulated deferred investment tax credits.
367.2820 Account 282, Accumulated deferred income taxes—Other property.
367.2830 Account 283, Accumulated deferred income taxes—Other.

Subpart G—Service Company Property Chart of Accounts

367.3010 Account 301, Organization.
367.3030 Account 303, Miscellaneous intangible property.
367.3060 Account 306, Leasehold improvements.
367.3890 Account 389, Land and land rights.
367.3900 Account 390, Structures and improvements.
367.3910 Account 391, Office furniture and equipment.
367.3920 Account 392, Transportation equipment.
367.3930 Account 393, Stores equipment.
367.3940 Account 394, Tools, shop and garage equipment.
367.3950 Account 395, Laboratory equipment.
367.3960 Account 396, Power operated equipment.
367.3970 Account 397, Communication equipment.
367.3980 Account 398, Miscellaneous equipment.
367.3990 Account 399, Other tangible property.
367.3991 Account 399.1, Asset retirement costs for service company property.

Subpart H—Income Statement Chart of Accounts

Service Company Operating Income

367.4000 Account 400, Operating revenues.
367.4010 Account 401, Operation expense.
367.4020 Account 402, Maintenance expense.
367.4030 Account 403, Depreciation expense.
367.4031 Account 403.1, Depreciation expense for asset retirement costs.
367.4040 Account 404, Amortization of limited-term property.
367.4050 Account 405, Amortization of other property.
367.4073 Account 407.3, Regulatory debits.
367.4074 Account 407.4, Regulatory credits.
367.4081 Account 408.1, Taxes other than income taxes, operating income.
367.4082 Account 408.2, Taxes other than income taxes, other income and deductions.
367.4091 Account 409.1, Income taxes, operating income.
367.4092 Account 409.2, Income taxes, other income and deductions.
367.4093 Account 409.3, Income taxes, extraordinary items.
367.4101 Account 410.1, Provision for deferred income taxes, operating income.
367.4102 Account 410.2, Provision for deferred income taxes, other income and deductions.
367.4111 Account 411.1, Provision for deferred income taxes—Credit, operating income.
367.4112 Account 411.2, Provision for deferred income taxes—Credit, other income and deductions.
367.4114 Account 411.4, Investment tax credit adjustments, service company property.
367.4115 Account 411.5, Investment tax credit adjustments, other.
367.4116 Account 411.6, Gains from disposition of service company plant.
367.4117 Account 411.7, Losses from disposition of service company plant.
367.4118 Account 411.10, Accretion expense.
367.4120 Account 412, Costs and expenses of construction or other services.
367.4160 Account 416, Costs and expenses of merchandising, jobbing and contract work.
367.4180 Account 418, Non-operating rental income.
367.4181 Account 418.1, Equity in earnings of subsidiary companies.
367.4190 Account 419, Interest and dividend income.
367.4191 Account 419.1, Allowance for other funds used during construction.
367.4210 Account 421, Miscellaneous income or loss.
367.4211 Account 421.1, Gain on disposition of property.
367.4212 Account 421.2, Loss on disposition of property.
367.4250 Account 425, Miscellaneous amortization.
367.4261 Account 426.1, Donations.
367.4262 Account 426.2, Life insurance.
367.4263 Account 426.3, Penalties.
367.4264 Account 426.4, Expenditures for certain civic, political and related activities.
367.4265 Account 426.5, Other deductions.
367.4270 Account 427, Interest on long-term debt.
367.4280 Account 428, Amortization of debt discount and expense.
367.4290 Account 429, Amortization of premium on debt—Credit.
367.4300 Account 430, Interest on debt to associate companies.
367.4310 Account 431, Other interest expense.
367.4320 Account 432, Allowance for borrowed funds used during construction—Credit.

Subpart I—Retained Earnings Accounts

367.4330 Account 433, Balance transferred from income.
367.4340 Account 434, Extraordinary income.
367.4350 Account 435, Extraordinary deductions.
367.4360 Account 436, Appropriations of retained earnings.
367.4370 Account 437, Dividends declared—Preferred stock.
367.4380 Account 438, Dividends declared—Common stock.
367.4390 Account 439, Adjustments to retained earnings.

Subpart J—Operating Revenue Chart of Accounts

367.4570 Account 457, Services rendered to associate companies.
367.4571 Account 457.1, Direct costs charged to associate companies.
367.4572 Account 457.2, Indirect costs charged to associate companies.
367.4573 Account 457.3, Compensation for use of capital-associate companies.
367.4580 Account 458, Services rendered to non-associate companies.
367.4581 Account 458.1, Direct costs charged to non-associate companies.
367.4582 Account 458.2, Indirect costs charged to non-associate companies.
367.4583 Account 458.3, Compensation for use of capital—Non-associate companies.
367.4584 Account 458.4, Excess or deficiency on servicing non-associate utility companies.

Subpart K—Operation and Maintenance Expense Chart of Accounts

367.5000 Accounts 500–598, Electric operation and maintenance accounts.
367.8000 Accounts 800–894, Gas operation and maintenance accounts.
367.9010 Account 901, Supervision.
367.9020 Account 902, Meter reading expenses.
367.9030 Account 903, Customer records and collection expenses.
367.9040 Account 904, Uncollectible accounts.
367.9050 Account 905, Miscellaneous customer accounts expenses.
367.9070 Account 907, Supervision.
367.9080 Account 908, Customer assistance expenses.
367.9090 Account 909, Informational and instructional advertising expenses.
367.9100 Account 910, Miscellaneous customer service and informational expenses.
367.9110 Account 911, Supervision.
367.9120 Account 912, Demonstrating and selling expenses.
367.9130 Account 913, Advertising expenses.
367.9160 Account 916, Miscellaneous sales expenses.
367.9200 Account 920, Administrative and general salaries.
367.9210 Account 921, Office supplies and expenses.
367.9230 Account 923, Outside services employed.
367.9240 Account 924, Property insurance.
367.9250 Account 925, Injuries and damages.
367.9260 Account 926, Employee pensions and benefits.
367.9280 Account 928, Regulatory commission expenses.
367.9301 Account 930.1, General advertising expenses for associated companies.
367.9302 Account 930.2, Miscellaneous general expenses.
367.9310 Account 931, Rents.
367.9350 Account 935, Maintenance of structures and equipment.

Authority: 42 U.S.C. 16451–16463.

Subpart A—Definitions

§ 367.1 Definitions.

(a) When used in this system of accounts:

(1) *Accounts* mean the accounts prescribed by this Uniform System of Accounts.

(2) *Actually issued,* as applied to securities issued or assumed by the service companies, means those which have been sold to bona fide purchasers

for a valuable consideration, those issued as dividends on stock, and those which have been issued in accordance with contractual requirements direct to trustees of sinking funds.

(3) *Actually outstanding,* as applied to securities issued or assumed by the service company, means those which have been actually issued and are neither retired nor held by or for the service company; provided, however, that securities held by trustees must be considered as actually outstanding.

(4) *Amortization* means the gradual extinguishment of an amount in an account by distributing such amount over a fixed period, over the life of the asset or liability to which it applies, or over the period during which it is anticipated the benefit will be realized.

(5) *Associate company* means any company in the same holding company system with such company.

(6) *Book cost* means the amount at which property is recorded in these accounts without deduction of related provisions for accrued depreciation, amortization, or for other purposes.

(7) *Centralized service company* means a service company that provides services such as administrative, managerial, financial, accounting, recordkeeping, legal or engineering services, which are sold, furnished, or otherwise provided (typically for a charge) to other companies in the same holding company system. Centralized service companies are different from other service companies that only provide a discrete good or service.

(8) *Commission* means the Federal Energy Regulatory Commission.

(9) *Company,* when not otherwise indicated in the context, means a service company.

(10) *Construction,* when used in the context of a service provided to other companies, means any construction, extension, improvement, maintenance, or repair of the facilities or any part thereof of a company, which is performed for a charge.

(11) *Cost* means the amount of money actually paid for property or services. When the consideration given is other than cash in a purchase and sale transaction, as distinguished from a transaction involving the issuance of common stock in a merger, the value of such consideration must be determined on a cash basis.

(12) *Cost accumulation system* means a system for the accumulation of service company costs on a job, project, or functional basis. It includes schedules and worksheets used to account for charges billed to single and groups of associate and non-associate companies. It can be a variety of systems, including but not limited to, a work order system or an activity-based accounting software system.

(13) *Cost of removal* means the cost of demolishing, dismantling, tearing down or otherwise removing service property, including the cost of transportation and handling incidental thereto. It does not include the cost of removal activities associated with asset retirement obligations that are capitalized as part of the tangible long-lived assets that give rise to the obligation (*See* General Instructions in § 367.22).

(14) *Debt expense* means all expenses in connection with the issuance and initial sale of evidences of debt, such as fees for drafting mortgages and trust deeds; fees and taxes for issuing or recording evidences of debt; cost of engraving and printing bonds and certificates of indebtedness; fees paid trustees; specific costs of obtaining governmental authority; fees for legal services; fees and commissions paid underwriters, brokers, and salesmen for marketing such evidences of debt; fees and expenses of listing on exchanges; and other like costs.

(15) *Depreciation,* as applied to depreciable service company property, means the loss in service value not restored by current maintenance. Among the causes to be used as consideration for causes of loss in service value are wear and tear, decay, action of the elements, inadequacy, obsolescence, changes in the art, changes in demand and requirements of public authorities.

(16) *Direct cost* means the labor costs and expenses which can be identified through a cost allocation system as being applicable to services performed for a single or group of associate and non-associate companies. Cost incidental to or related to a directly charged item must be classified as direct costs.

(17) *Discount,* as applied to the securities issued or assumed by the service company, means the excess of the par (stated value of no-par stocks) or face value of the securities plus interest or dividends accrued at the date of the sale over the cash value of the consideration received from their sale.

(18) *Electric utility company* means any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale. For the purposes of this subchapter, ''electric utility company'' shall not include entities that engage only in marketing of electric energy.

(19) *Gas utility company* means any company that owns or operates facilities used for distribution at retail (other than the distribution only in enclosed portable containers or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power. For the purposes of this subchapter, ''gas utility company'' shall not include entities that engage only in marketing of natural and manufactured gas.

(20) *Goods* means any goods, equipment (including machinery), materials, supplies, appliances, or similar property (including coal, oil, or steam, but not including electric energy, natural or manufactured gas, or utility assets) which is sold, leased, or furnished, for a charge.

(21) *Holding company.*

(i) *In general.* The term ''holding company'' means—

(A) Any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public-utility company or of a holding company of any public-utility company; and

(B) Any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public-utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subchapter upon holding companies.

(ii) *Exclusions.* The term ''holding company'' does not include—

(A) A bank, savings association, or trust company, or their operating subsidiaries that own, control, or hold, with the power to vote, public utility or public utility holding company securities so long as the securities are—

(*1*) Held as collateral for a loan;

(*2*) Held in the ordinary course of business as a fiduciary; or

(*3*) Acquired solely for purposes of liquidation and in connection with a loan previously contracted for and owned beneficially for a period of not more than two years; or

(B) A broker or dealer that owns, controls, or holds with the power to vote public utility or public utility holding company securities so long as the securities are—

(*1*) Not beneficially owned by the broker or dealer and are subject to any voting instructions which may be given by customers or their assigns; or

(*2*) Acquired in the ordinary course of business as a broker, dealer, or underwriter with the bona fide intention of effecting distribution within 12 months of the specific securities so acquired.

(22) *Holding company system* means a holding company, together with its subsidiary companies.

(23) *Indirect cost* means the costs of a general overhead nature such as general services, housekeeping costs, and other support cost which cannot be separately identified to a single or group of associate and non-associate companies and, therefore, must be allocated. Costs incidental to or related to indirect items should also be classified as an indirect cost.

(24) *Investment advances* means advances, represented by notes or by book accounts only, with respect to which it is mutually agreed or intended between the creditor and debtor that they must be settled by the issuance of securities or must not be subject to current settlement.

(25) *Lease, capital* means a lease of property used by the service company, which meets one or more of the criteria stated in General Instructions in § 367.18.

(26) *Lease, operating* means a lease of property used by a service company, which does not meet any of the criteria stated in General Instructions in § 367.18.

(27) *Minor items of property* means the associated parts or items of which retirement units are composed.

(28) *Natural gas company* means a person engaged in the transportation of natural gas in interstate commerce or the sale of such gas in interstate commerce for resale.

(29) *Net salvage value* means the salvage value of property retired less the cost of removal.

(30) *Nominally issued*, as applied to securities issued or assumed by the service company, means those which have been signed, certified, or otherwise executed, and placed with the proper officer for sale and delivery, or pledged, or otherwise placed in some special fund of the service company, but which have not been sold, or issued direct to trustees of sinking funds in accordance with contractual requirements.

(31) *Nominally outstanding*, as applied to securities issued or assumed by the service company, means those which, after being actually issued, have been reacquired by or for the service company under circumstances which require them to be considered as held alive and not retired, provided, however, that securities held by trustees must be considered as actually outstanding.

(32) *Non-associate company* means a person, partnership, organization, government body or company which is not a member of the holding company system.

(33) *Non-utility company* means a company that is not a utility company.

(34) *Person* means an individual or company.

(35) *Premium*, as applied to securities issued or assumed by the service company, means the excess of the cash value of the consideration received from their sale over the sum of their par (stated value of no-par stocks) or face value and interest or dividends accrued at the date of sale.

(36) *Public utility* means any person who owns or operates facilities used for transmission of electric energy in interstate commerce or sales of electric energy at wholesale in interstate commerce.

(37) *Public-utility company* means an electric utility company or gas utility company.

(38) *Regulatory assets and liabilities* are the assets and liabilities that result from rate actions for regulatory agencies. Regulatory assets and liabilities arise from specific revenues, expenses, gains, or losses that would have been included in net income determination in one period under the general requirements of the Uniform System of Accounts but for it being probable:

(i) That such items will be included in a different period(s) for purposes of developing rates the service company is authorized to charge for its services; or

(ii) In the case of regulatory liabilities, that refunds to customers, not provided for in other accounts, will be required.

(39) *Replacing or replacement*, when not otherwise indicated in the context, means the construction or installation of service property in place of property retired, together with the removal of the property retired.

(40) *Research, development, and demonstration* (RD&D) means expenditures incurred by a service company, for the service company or on behalf of others, either directly or through another person or organization (such as research institute, industry association, foundation, university, engineering company or similar contractor) in pursuing research, development, and demonstration activities including experiment, design, installation, construction, or operation. This definition includes expenditures for the implementation or development of new and/or existing concepts until technically feasible and commercially feasible operations are verified. When conducted on behalf of an associate or non-associate utility company such research, development, and demonstration costs should be reasonably related to the existing or future business of such company. The term includes, but is not limited to: All the costs incidental to the design, development or implementation of an experimental facility, a plant process, a product, a formula, an invention, a system or similar items, and the improvement of already existing items of a like nature; amounts expended in connection with the proposed development and/or proposed delivery of alternate sources of electricity or substitute or synthetic gas supplies (alternate fuel sources, for example, an experimental coal gasification plant or an experimental plant synthetically producing gas from liquid hydrocarbons); and the costs of obtaining its own patent, such as attorney's fees expended in making and perfecting a patent application. The term includes preliminary investigations and detailed planning of specific projects for securing for customers' non-conventional electric power or pipeline gas supplies that rely on technology that has not been verified previously to be feasible. The term does not include expenditures for efficiency surveys; studies of management, management techniques and organization; consumer surveys, advertising, promotions, or items of a like nature.

(41) *Retained earnings* means the accumulated net income of the service company less distribution to stockholders and transfers to other capital accounts.

(42) *Retirement units* means those items of property which, when retired, with or without replacement, are accounted for by crediting the book cost of the retirement units to the property account in which it is included.

(43) *Salvage value* means the amount received for property retired, less any expenses incurred in connection with the sale or in preparing the property for sale; or, if retained, the amount at which the material recoverable is chargeable to materials and supplies, or other appropriate account.

(44) *Service* means any managerial, financial, legal, engineering, purchasing, marketing, auditing, statistical, advertising, publicity, tax, research, or any other service (including supervision or negotiation of construction or of sales), information or data, which is sold or furnished for a charge.

(45) *Service company* means any associate company within a holding company system organized specifically

for the purpose of providing non-power goods or services or the sale of goods or construction work to any public utility in the same holding company system.

(46) *Service cost* means the total of direct and indirect costs incurred to provide a service to an associate or non-associate company which are properly charged to expense by the service company.

(47) *Service life* means the time between the date property is placed in service, or property is leased to others, and the date of its retirement. If depreciation is accounted for on a production basis rather than on a time basis, then service life should be measured in terms of the appropriate unit of production.

(48) *Service value* means the difference between the cost and net salvage value of service property.

(49) *State commission* means any commission, board, agency, or officer, by whatever name designated, of a State, municipality, or other political subdivision of a State that, under the laws of such State, has jurisdiction to regulate public-utility companies.

(50) *Uniform System of Accounts* (USofA) means the Uniform System of Accounts for Centralized Service Companies prescribed in this part, as amended from time to time.

(51) *Utility company* means a public-utility company or natural gas company whose rates are regulated by the Commission, state commission or other similar regulatory body.

(b) [Reserved]

Subpart B—General Instructions

§ 367.2 Companies for which this system of accounts is prescribed.

(a) Unless otherwise exempted or granted a waiver by Commission rule or order pursuant to §§ 366.3 and 366.4 of this chapter, this Uniform System of Accounts applies to any centralized service company operating, or organized specifically to operate, within a holding company system for the purpose of providing non-power services to any public utility in the same holding company system.

(b) This Uniform System of Accounts is not applicable to:

(1) Service companies that are specifically organized as a special-purpose company such as a fuel supply company or a construction company.

(2) Electric or gas utility companies.

(3) Companies primarily engaged:

(i) In the production of goods, including exploration and development of fuel resources,

(ii) In the provision of water, telephone, or similar services, the sale of which is normally subject to public rate regulation,

(iii) In the provision of transportation, whether or not regulated, or

(iv) In the ownership of property, including leased property and fuel reserves, for the use of associate companies.

(4) A service company that provides services exclusively to a local gas distribution company.

(5) Holding companies.

(c) To the extent that the term service company is used in this Uniform System of Accounts, it applies only to centralized service companies.

§ 367.3 Records.

(a) Each service company must keep its books of account, and all other books, records, and memoranda that support the entries in the books of account, so as to be able to furnish full information on any item included in any account. Each entry must be supported by sufficient detailed information that will permit ready identification, analysis, and verification of all facts relevant and related to the records.

(b) The books and records referred to in this part include not only accounting records in a limited technical sense, but all other records, such as minutes books, stock books, reports, correspondence, and memoranda, that may be useful in developing the history of or facts regarding any transaction.

(c) No service company may destroy any books or records unless the destruction is permitted by the rules and regulations of the Commission.

(d) In addition to prescribed accounts, clearing accounts, temporary or experimental accounts, and subaccounts of any accounts may be kept, provided the integrity of the prescribed accounts is not impaired.

(e) The arrangement or sequence of the accounts prescribed in this part must not be controlling as to the arrangement or sequence in report forms that may be prescribed by the Commission.

§ 367.4 Numbering system.

(a) The account numbering plan used in this part consists of a system of three-digit whole numbers as follows:

(1) 100–199, Assets and other debits.

(2) 200–299, Liabilities and other credits.

(3) 300–399, Property accounts.

(4) 400–432 and 434–435, Income accounts.

(5) 433, 436 and 439, Retained earnings accounts.

(6) 457–458, Revenue accounts.

(7) 500–599, Electric operating expenses.

(8) 800–894, Gas operating expenses.

(9) 900–949, Customer accounts, customer service and informational, sales, and general and administrative expenses.

(b) The numbers prefixed to account titles are to be considered as parts of the titles. Each service company, however, may adopt for its own purposes a different system of account numbers (*See also* General Instructions in § 367.3(d)) provided that the numbers prescribed in this part must appear in the descriptive headings of the ledger accounts and in the various sources of original entry; however, if a service company uses a different system of account numbers and it is not practicable to show the prescribed account numbers in the various sources of original entry, the reference to the prescribed account numbers may be omitted from the various sources of original entry. Each service company using different account numbers for its own purposes must keep readily available a list of the account numbers that it uses and a reconciliation of those account numbers with the account numbers provided in this part. It is intended that the service company's records must be kept so as to permit ready analysis by prescribed accounts (by direct reference to sources of original entry to the extent practicable) and to permit preparation of financial and operating statements directly from the records at the end of each accounting period according to the prescribed accounts.

§ 367.5 Accounting period.

Each service company must keep its books on a monthly basis so that for each month all transactions applicable to the account, as nearly as may be ascertained, must be entered in the books of the service company. Amounts applicable or assignable to a single or group of associate and non-associate companies must be segregated monthly. Each service company must close its books at the end of each calendar year unless otherwise authorized by the Commission.

§ 367.6 Submittal of questions.

To maintain uniformity of accounting, service companies must submit questions of doubtful interpretation to the Commission for consideration and decision.

§ 367.7 Item list.

Lists of items appearing in the texts of the accounts or elsewhere in this part are for the purpose of indicating clearly the application of the prescribed accounting. The lists are intended to be

representative, but not exhaustive. The appearance of an item in a list warrants the inclusion of the item in the account mentioned only when the text of the account also indicates inclusion inasmuch as the same item frequently appears in more than one list. The proper entry in each instance must be determined by the texts of the accounts.

§ 367.8 Extraordinary items.

Extraordinary items are to be recognized according to the rules which are considered generally accepted accounting principles. These items are related to the effects of events and transactions that have occurred during the current period and that are of an unusual nature and infrequent occurrence. Each item recognized as extraordinary must be disclosed in the notes to financial statements (*See* Accounts 434 and 435 in §§ 367.4340 and 367.4350).

§ 367.9 Prior period items.

(a) Items of profit and loss related to the following must be accounted for as prior period adjustments and excluded from the determination of net income for the current year:

(1) Correction of an error in the financial statements of a prior year.

(2) Adjustments that result from realization of income tax benefits of pre-acquisition operating loss carry forwards of purchased subsidiaries.

(b) All other items of profit and loss recognized during the year must be included in the determination of net income for that year.

§ 367.10 Unaudited items.

Whenever a financial statement is required by the Commission, if it is known that a transaction has occurred that affects the accounts but the amount involved in the transaction and its effect upon the accounts cannot be determined with absolute accuracy, the amount must be estimated and the estimated amount included in the proper accounts. The service company is not required to anticipate minor items that would not appreciably affect the accounts.

§ 367.11 Distribution of pay and expenses of employees.

The charges to property, operating expense and other accounts for services and expenses of employees engaged in activities chargeable to various accounts, such as construction, maintenance, and operations, must be based upon the actual time engaged in the respective classes of work, or an appropriate allocation method.

§ 367.12 Payroll distribution.

Underlying accounting data must be maintained so that the distribution of the cost of labor charged direct to the various accounts will be readily available. The underlying data must permit a reasonably accurate distribution to be made of the cost of labor charged initially to clearing accounts so that the total labor cost may be classified among construction, cost of removal, or operating functions.

§ 367.13 Accounting to be on accrual basis.

(a) The service company is required to keep its accounts on the accrual basis. This requires the inclusion in its accounts of all known transactions of appreciable amount that affect the accounts. If bills covering the transactions have not been received or rendered, the amounts must be estimated and appropriate adjustments made when the bills are received. When the amount is ascertained, the necessary adjustments must be made through the accounts in which the estimate was recorded. If it is determined during the interval that a material adjustment will be required, the estimate must be adjusted through the current accounts. The service company is not required to anticipate minor items which would not appreciably affect these accounts.

(b) When payments are made in advance for items such as insurance, rents, taxes or interest, the amount applicable to future periods must be charged to account 165, Prepayments (§ 367.1650), and spread over the periods to which they are applicable by credits to account 165 (§ 367.1650), and charges to the accounts appropriate for the expenditure.

§ 367.14 Transactions with associate companies.

Each service company must keep its accounts and records so as to be able to furnish accurately and expeditiously statements of all transactions with associate companies. The statements may be required to show the general nature of the transactions, the amounts involved in the transactions and the amounts included in each account prescribed in this part with respect to such transactions. Transactions with associate companies must be recorded in the appropriate accounts for transactions of the same nature. Nothing contained in this part, however, must be construed as restraining the service company from subdividing accounts for the purpose of recording separately transactions with associate companies.

§ 367.15 Contingent assets and liabilities.

Contingent assets represent a possible source of value to the service company contingent upon the fulfillment of conditions regarded as uncertain. Contingent liabilities include items that, under certain conditions, may become obligations of the service company but that are neither direct nor assumed liabilities at the date of the balance sheet. The service company must be prepared to give a complete statement of significant contingent assets and liabilities (including cumulative dividends on preference stock) in its annual report and at such other times as may be requested by the Commission.

§ 367.16 Long-term debt: Premium, discount and expense, and gain or loss on reacquisition.

(a) A separate premium, discount and expense account must be maintained for each class and series of long-term debt (including receivers' certificates) issued or assumed by the service company. The premium must be recorded in account 225, Unamortized premium on long-term debt (§ 367.2250), the discount must be recorded in account 226, Unamortized discount on long-term debt—Debit (§ 367.2260), and the expense of issuance must be recorded in account 181, Unamortized debt expense (§ 367.1810). The premium, discount and expense must be amortized over the life of the respective issues under a plan that will distribute the amounts equitably over the life of the securities. The amortization must be on a monthly basis, and the amounts relating to discounts and expenses must be charged to account 428, Amortization of debt discount and expense (§ 367.4280). The amounts relating to premiums must be credited to account 429, Amortization of premium on debt—Credit (§ 367.4290).

(b) When long-term debt is reacquired the difference between the amount paid upon reacquisition of any long-term debt and the face value, adjusted for unamortized discount, expenses or premium, as the case may be, applicable to the debt redeemed must be recognized currently in income and recorded in account 421, Miscellaneous income or loss (§ 367.4210), or account 426.5, Other deductions (§ 367.4265).

§ 367.17 Comprehensive inter-period income tax allocation.

(a) Where there are timing differences between the periods in which transactions affect taxable income and the periods in which they enter into the determination of pretax accounting income, the income tax effects of such transactions are to be recognized in the periods in which the differences

between book accounting income and taxable income arise and in the periods in which the differences reverse using the deferred tax method. In general, comprehensive inter-period tax allocation should be followed whenever transactions enter into the determination of pretax accounting income for the period even though some transactions may affect the determination of taxes payable in a different period, as further qualified in this section.

(b) Once comprehensive inter-period tax allocation has been initiated, either in whole or in part, it must be practiced on a consistent basis and must not be changed or discontinued without prior Commission approval.

(c) Tax effects deferred currently will be recorded as deferred debits or deferred credits in accounts 190, Accumulated deferred income taxes (§ 367.1900), 282, Accumulated deferred income taxes—Other property (§ 367.2820), and 283, Accumulated deferred income taxes—Other (§ 367.2830), as appropriate. The resulting amounts recorded in these accounts must be disposed of as prescribed in this system of accounts or as otherwise authorized by the Commission.

§ 367.18 Criteria for classifying leases.

(a) If, at its inception, a lease meets one or more of the following criteria, the lease must be classified as a capital lease. Otherwise, it must be classified as an operating lease.

(1) The lease transfers ownership of the property to the lessee by the end of the lease term.

(2) The lease contains a bargain purchase option.

(3) The lease term is equal to 75 percent or more of the estimated economic life of the leased property. However, if the beginning of the lease term falls within the last 25 percent of the total estimated economic life of the leased property, including earlier years of use, this criterion must not be used for purposes of classifying the lease.

(4) The present value at the beginning of the lease term of the minimum lease payments, excluding that portion of the payments representing executory costs such as insurance, maintenance, and taxes to be paid by the lessor, including any related profit, equals or exceeds 90 percent of the excess of the fair value of the leased property to the lessor at the inception of the lease over any related investment tax credit retained by the lessor and expected to be realized by the lessor. However, if the beginning of the lease term falls within the last 25 percent of the total estimated economic life of the leased property, including earlier years of use, this criterion must not be used for purposes of classifying the lease. The lessee must compute the present value of the minimum lease payments using its incremental borrowing rate, unless:

(i) It is practicable for the company to learn the implicit rate computed by the lessor, and

(ii) The implicit rate computed by the lessor is less than the lessee's incremental borrowing rate.

(iii) If both of those conditions are met, the lessee must use the implicit rate.

(b) If, at any time, the lessee and lessor agree to change the provisions of the lease, other than by renewing the lease or extending its term, in a manner that would have resulted in a different classification of the lease under the criteria in paragraph (a) of this section had the changed terms been in effect at the inception of the lease, the revised agreement must be considered as a new agreement over its term, and the criteria in paragraph (a) of this section must be applied for purposes of classifying the new lease. Likewise, any action that extends the lease beyond the expiration of the existing lease term, such as the exercise of a lease renewal option other than those already included in the lease term, must be considered as a new agreement and must be classified according to the criteria in paragraph (a) of this section. Changes in estimates (for example, changes in estimates of the economic life or of the residual value of the leased property) or changes in circumstances (for example, default by the lessee) must not give rise to a new classification of a lease for accounting purposes.

§ 367.19 Accounting for leases.

(a) All leases must be classified as either capital or operating leases.

(b) The service company must record a capital lease as an asset in account 101.1, Property under capital leases (§ 367.1011) and an obligation in account 227, Obligations under capital leases—Non-current (§ 367.2270), or account 243, Obligations under capital leases—Current (§ 367.2430), at an amount equal to the present value at the beginning of the lease term of minimum lease payments during the lease term, excluding that portion of the payments representing executory costs such as insurance, maintenance, and taxes to be paid by the lessor, together with any related profit. However, if the determined amount exceeds the fair value of the leased property at the inception of the lease, the amount recorded as the asset and obligation must be the fair value.

(c) The service company, as a lessee, must recognize an asset retirement obligation (*See* General Instructions in § 367.22) arising from the property under a capital lease unless the obligation is recorded as an asset and liability under a capital lease. The service company must record the asset retirement cost by debiting account 101.1, Property under capital leases (§ 367.1011), and crediting the liability for the asset retirement obligation in account 230, Asset retirement obligations (§ 367.2300). Asset retirement costs recorded in account 101.1 (§ 367.1011) must be amortized by charging rent expense (*see* Operating Expense Instructions in § 367.82) or account 421, Miscellaneous income or loss (§ 367.4210), as appropriate, and crediting a separate subaccount of the account in which the asset retirement costs are recorded. Charges for the periodic accretion of the liability in account 230, Asset retirement obligations (§ 367.2300), must be recorded by a charge to account 411.10, Accretion expense (§ 367.4118), for service company property, and account 421, Miscellaneous income or loss (§ 367.4210), for non-service company property and a credit to account 230, Asset retirement obligations (§ 367.2300).

(d) Rental payments on all leases must be charged to rent expense, fuel expense, construction work in progress, or other appropriate accounts as they become payable.

(e) For a capital lease, for each period during the lease term, the amounts recorded for the asset and obligation must be reduced by an amount equal to the portion of each lease payment that would have been allocated to the reduction of the obligation, if the payment had been treated as a payment on an installment obligation (liability) and allocated between interest expense and a reduction of the obligation so as to produce a constant periodic rate of interest on the remaining balance.

§ 367.20 Depreciation accounting.

(a) *Method.* Service companies must use a method of depreciation that allocates in a systematic and rational manner the service value of depreciable property over the service life of the property.

(b) *Service lives.* Estimated useful service lives of depreciable property must be supported by objective evidence and analysis, including where appropriate engineering, economic, or other depreciation studies.

(c) *Rate.* Service companies must use percentage rates of depreciation that are based on a method of depreciation that allocates the service value of depreciable property over the service life of the property. Where composite depreciation rates are used, they must be based on the weighted average estimated useful service lives of the depreciable property comprising the composite group.

§ 367.22 Accounting for asset retirement obligations.

(a) An asset retirement obligation represents a liability for the legal obligation associated with the retirement of a tangible, long-lived asset that a service company is required to settle as a result of an existing or enacted law, statute, ordinance, or written or oral contract, or by legal construction of a contract under the doctrine of promissory estoppel. An asset retirement cost represents the amount capitalized when the liability is recognized for the long-lived asset that gives rise to the legal obligation. The amount recognized for the liability and an associated asset retirement cost must be stated at the fair value of the asset retirement obligation in the period in which the obligation is incurred.

(b) The service company must initially record a liability for an asset retirement obligation in account 230, Asset retirement obligations (§ 367.2300), and charge the associated asset retirement costs to service company property (including account 101.1 in § 367.1011) related to the property that gives rise to the legal obligation. The asset retirement cost must be depreciated over the useful life of the related asset that gives rise to the obligations. For periods subsequent to the initial recording of the asset retirement obligation, a service company must recognize the period to period changes of the asset retirement obligation that result from the passage of time due to the accretion of the liability and any subsequent measurement changes to the initial liability for the legal obligation recorded in account 230, Asset retirement obligations (§ 367.2300), as follows:

(1) The service company must record the accretion of the liability by debiting account 411.10, Accretion expense (§ 367.4118); and

(2) The service company must recognize any subsequent measurement changes of the liability initially recorded in account 230, Asset retirement obligations (§ 367.2300), for each specific asset retirement obligation as an adjustment of that liability in account 230 with the corresponding adjustment to service company property. The service company must on a timely basis monitor any measurement changes of the asset retirement obligations.

(c) Gains or losses resulting from the settlement of asset retirement obligations associated with service company property resulting from the difference between the amount of the liability for the asset retirement obligation included in account 230, Asset retirement obligations (§ 367.2300), and the actual amount paid to settle the obligation shall be accounted for as follows:

(1) Gains shall be credited to account 421, Miscellaneous income or loss (§ 367.4210), and;

(2) Losses shall be charged to account 426.5, Other deductions (§ 367.4265).

(d) Separate subsidiary records must be maintained for each asset retirement obligation showing the initial liability and associated asset retirement cost, any incremental amounts of the liability incurred in subsequent reporting periods for additional layers of the original liability and related asset retirement cost, the accretion of the liability, the subsequent measurement changes to the asset retirement obligation, the depreciation and amortization of the asset retirement costs and related accumulated depreciation, and the settlement date and actual amount paid to settle the obligation. For purposes of analysis, a service company must maintain supporting documentation so as to be able to furnish accurately and expeditiously with respect to each asset retirement obligation the full details of the identity and nature of the legal obligation, the year incurred, the identity of the plant giving rise to the obligation, the full particulars relating to each component and supporting computations related to the measurement of the asset retirement obligation.

§ 367.23 Transactions with non-associate companies.

When a service or construction is performed for non-associate companies at an amount other than cost, the amount of revenues in excess or deficiency of the cost on servicing the non-associate companies must be charged to account 458.4, Excess or deficiency on servicing non-associate utility companies (§ 367.4584). A deficiency incurred in a project deemed beneficial to the associate companies may be charged to associate companies subject to disallowance by a State Commission or Federal Commission having jurisdiction over the rates or services of the associate companies. To the extent not charged, or if disallowed, the deficiency will be charged to account 458.4 (§ 367.4584). In computing charges to associate companies for any calendar year, any net credit in this account must be deducted from amounts reimbursable by associate companies as compensation for use of capital invested in the service company.

§ 367.24 Construction and service contracts for other companies.

(a) Expenditures made in the performance of construction or service contracts, under which the service company undertakes projects to construct physical property for associate or non-associate companies must be recorded in Account 412, Cost and expenses of construction or other services (§ 367.4120). The service company must keep records pursuant to its cost allocation system indicating the cost of each contract or project, the amount of service costs allocated to the contracts, and the additional classification of expenditures relating to projects that will meet the accounting requirements of the company for which the work is performed.

(b) Account 412 (§ 367.4120) will include:

(1) The cost of materials, construction payrolls, outside services, and other expenses which are directly attributable to the performance of service or construction contracts for other companies.

(2) The cost of goods procured directly attributable to the performance of service or construction contracts for other companies.

(3) The related salaries, expense of officers and employees, pay of employees on the service company's regular staff specifically assigned to construction work, and other expenses of maintaining the service company's organization and equipment.

(4) The support services performed by the service company in connection with the procurement of goods for associate companies.

§ 367.25 Determination of service cost.

A service must be deemed at cost and fair allocation of costs requires an accurate accounting for the elements that makes up the aggregate expense of conducting the business of the service company. In the accounts prescribed in this part, the total amounts included in the expense accounts during any period plus the amount that appropriately may be added as compensation for the use of capital constitute cost during that period.

§ 367.26 Departmental classification.

Salaries and wages and all other costs must be classified by departmental or other functional category in accordance with the departmental organization of the service company to provide a readily available basis for analysis.

§ 367.27 Billing procedures.

Charges for services to associate public-utility companies must be made monthly with sufficient information and in sufficient detail to permit such company, where applicable, to identify and classify the charge in terms of the system of accounts prescribed by the regulatory authorities to which it is subject. The information provided to associate public-utility companies must provide a summary of the accounts by service provided and showing the charges, classified as direct cost, indirect cost, and compensation for use of capital.

§ 367.28 Methods of allocation.

Indirect costs and compensation for use of capital must be allocated to projects in accordance with the service company's applicable and currently effective methods of allocation. Both direct and allocated indirect costs on projects must be assigned among those companies in the same manner. The cost accumulation system must identify the methods of allocation and the accounts to be charged. Companies must be notified in writing of any change in the methods of allocation.

§ 367.29 Compensation for use of capital.

A servicing transaction is deemed to be performed at no more than cost if the price of the service does not exceed a fair and equitable allocation of expenses plus reasonable compensation for necessary capital procured through the issuance of capital stock. Interest on borrowed capital and compensation for the use of capital must only represent a reasonable return on the amount of capital reasonably necessary for the performance of services or construction work for, or the sale of goods to, associate companies. The compensation may be estimated and must be computed monthly. The amount of compensation must be stated separately in each billing to the associate companies. An annual statement to support the amount of compensation for use of capital billed for the previous 12 months and how it was calculated must be supplied to each associate company at the end of the calendar year.

§ 367.30 Cost accumulation system for associate companies.

Service companies must maintain a detailed classification of service costs, that permits costs to be identified with the functional processes of the associate companies served. To permit the classification, each service company must maintain a cost accumulation system, as described in Definitions § 367.1(a)(12), for accumulating reimbursable costs and charges to the associate companies served, and maintain time records for all service company employees in order to support the accounting allocation of all expenses assignable to the types of services performed and chargeable to the associate companies served. Service company employee records must permit a ready identification of the hours worked, account numbers charged, and other code designations that facilitate proper classification.

Subpart C—Service Company Property Instructions

§ 367.50 Service company property to be recorded at cost.

(a) All amounts included in the accounts for service company property must be stated at the cost incurred by the service company, except for property acquired by lease which qualifies as capital lease property under General Instructions in § 367.18, Criteria for classifying leases, and is recorded in Account 101.1, Property under capital leases (§ 367.1011).

(b) When the consideration given for property is other than cash, the value of the consideration must be determined on a cash basis (*See, however,* Definitions § 367.1(a)(11)). In the entry recording the transaction, the actual consideration must be described with sufficient particularity to identify it. The service company must be prepared to furnish the Commission the particulars of its determination of the cash value of the consideration, if other than cash.

(c) When property is purchased under a plan involving deferred payments, no charge must be made to the service company property accounts for interest, insurance, or other expenditures occasioned solely by such form of payment.

(d) The service company property accounts must not include the cost or other value of service company property contributed to the company. Contributions in the form of money or its equivalent toward the construction of property must be credited to accounts charged with the cost of such construction. Property constructed from contributions of cash or its equivalent must be shown as a reduction to gross property constructed when assembling cost data for posting to property ledgers of accounts. The accumulated gross costs of property must be recorded as a debit in the plant ledger of accounts along with the related amount of contributions concurrently recorded as a credit.

§ 367.51 Components of construction.

(a) For service companies, the cost of construction properly included in the service company property accounts must include, where applicable, the direct and overhead costs as listed and defined as follows:

(1) Contract work includes amounts paid for work performed under contract by other companies, firms, or individuals, costs incident to the award of such contracts, and the inspection of the work.

(2) Labor includes the pay and expenses of employees of the service company engaged in construction work, and related workmen's compensation insurance, payroll taxes and similar items of expense. It does not include the pay and expenses of employees that are distributed to construction through clearing accounts nor the pay and expenses included in other items in this section.

(3)(i) Materials and supplies includes the purchase price at the point of free delivery plus customs duties, excise taxes, the cost of inspection, loading and transportation, the related stores expenses, and the cost of fabricated materials from the service company's shop. In determining the cost of materials and supplies used for construction, proper allowance must be made for unused materials and supplies, for materials recovered from temporary structures used in performing the work involved, and for discounts allowed and realized in the purchase of materials and supplies.

(ii) The cost of individual items of equipment of small value (for example, $500 or less) or of short life, including small portable tools and implements, must not be charged to service company property accounts unless the correctness of the accounting is verified by current inventories. The cost must be charged to the appropriate operating expense or clearing accounts, according to the use of the items, or, if the items are consumed directly in construction work, the cost must be included as part of the cost of the construction.

(4) Transportation includes the cost of transporting employees, materials and supplies, tools, purchased equipment, and other work equipment (when not under own power) to and from points of construction. It includes amounts paid to others as well as the cost of operating the service company's own

transportation equipment. (*See* paragraph (a)(5) of this section.)

(5) Special machine service includes the cost of labor (optional), materials and supplies, depreciation, and other expenses incurred in the maintenance, operation and use of special machines, such as steam shovels, pile drivers, derricks, ditchers, scrapers, material unloaders, and other labor saving machines; also expenditures for rental, maintenance and operation of machines of others. It does not include the cost of small tools and other individual items of small value or short life which are included in the cost of materials and supplies. (*See* paragraph (a)(3) of this section.) When a particular construction job requires the use for an extended period of time of special machines, transportation or other equipment, the associated net book cost, less the appraised or salvage value at time of release from the job, must be included in the cost of construction.

(6) Shop service includes the proportion of the expense of the service company's shop department assignable to construction work except that the cost of fabricated materials from the service company's shop must be included in materials and supplies.

(7) Protection includes the cost of protecting the service company's property from fire or other casualties and the cost of preventing damages to others, or to the property of others, including payments for discovery or extinguishment of fires, cost of apprehending and prosecuting incendiaries, related witness fees, amounts paid to municipalities and others for fire protection, and other analogous items of expenditures in connection with construction work.

(8) Injuries and damages includes expenditures or losses in connection with construction work on account of injuries to persons and damages to the property of others; also the cost of investigation of, and defense against, actions for the injuries and damages. Insurance recovered or recoverable on account of compensation paid for injuries to persons incident to construction must be credited to the account or accounts to which such compensation is charged. Insurance recovered or recoverable on account of property damages incident to construction must be credited to the account or accounts charged with the cost of the damages.

(9) Privileges and permits includes payments for and expenses incurred in securing temporary privileges, permits or rights in connection with construction work, such as for the use of private or public property, streets, or highways, but it does not include rents.

(10) Rents include amounts paid for the use of construction quarters and office space occupied by construction forces and amounts properly includible in construction costs for the facilities jointly used.

(11) Engineering and supervision includes the portion of the pay and expenses of engineers, surveyors, draftsmen, inspectors, superintendents and their assistants applicable to construction work.

(12) General administration capitalized includes the portion of the pay and expenses of the general officers and administrative and general expenses applicable to construction work.

(13) Engineering services includes amounts paid to other companies, firms, or individuals engaged by the service company to plan, design, prepare estimates, supervise, inspect, or give general advice and assistance in connection with construction work.

(14) Insurance includes premiums paid or amounts provided or reserved as self-insurance for the protection against loss and damages in connection with construction, by fire or other casualty injuries to or death of persons other than employees, damages to property of others, defalcation of employees and agents, and the nonperformance of contractual obligations of others. It does not include workmen's compensation or similar insurance on employees included as labor in paragraph (a)(2) of this section.

(15) Law expenditures includes the general law expenditures incurred in connection with construction and the directly related court and legal costs, other than law expenses included in protection in paragraph (a)(7) of this section, and in injuries and damages in paragraph (a)(8) of this section.

(16) Taxes include taxes on physical property (including land) during the period of construction and other taxes properly includible in construction costs before the facilities become available for service.

(17) Interest cost on funds used during construction which are allowed to be capitalized following generally accepted accounting principles.

(18) *Earnings and expenses during construction.* The earnings and expenses during construction must constitute a component of construction costs.

(19) *Training costs.* When it is necessary that employees be trained to operate or maintain property that is being constructed and the property is not conventional in nature, or is new to the company's operations, these costs may be capitalized as a component of construction cost. Once property is placed in service, the capitalization of training costs must cease and subsequent training costs must be expensed. (*See* Operating Expense Instructions in § 367.83.)

(20) Studies include the costs of studies such as safety or environmental studies mandated by regulatory bodies relative to property under construction. Studies relative to facilities in service must be charged to account 183, Preliminary survey and investigation charges (§ 367.1830).

(21) *Asset retirement costs.* The costs recognized as a result of asset retirement obligations incurred during the construction and testing of service company property must constitute a component of construction costs.

(b) [Reserved]

§ 367.52 Overhead construction costs.

(a) All overhead construction costs, such as engineering, supervision, general office salaries and expenses, construction engineering and supervision by others than the service company, law expenses, insurance, injuries and damages, relief and pensions, taxes and interest, must be charged to particular jobs or units on the basis of the amounts of the reasonably applicable overheads.

(b) As far as practicable, the determination of payroll charges includible in construction overheads must be based on the related time card distributions. Where this procedure is impractical, special studies must be made periodically of the time of supervisory employees devoted to construction activities to the end that only the overhead costs that have a definite relation to construction must be capitalized.

(c) The records supporting the entries for overhead construction costs must be kept so as to show the total amount of each overhead for each year, the nature and amount of each overhead expenditure charged to each construction project and to each property account, and the bases of distribution of such costs.

§ 367.53 Service company property purchased or sold.

(a) When service company property is acquired by purchase, merger, consolidation, liquidation, or otherwise, after the effective date of this system of accounts, the costs of acquisition, including related incidental expenses, must be charged to the appropriate service company property accounts and

account 107, Construction work in progress (§ 367.1070), as appropriate.

(b) If property acquired is in a physical condition so that it is necessary to rehabilitate it substantially in order to bring the property up to the standards of the service company, the cost of the work, except replacements, must be accounted for as a part of the purchase price of the property.

(c) Unless otherwise authorized by the Commission, all service company property acquired from an affiliate company must be recorded at its book value. Additionally, if property is acquired that is in excess of $10 million and has been previously devoted to public service at a price above book value, the service company must file with the Commission the proposed journal entries associated with the acquisition within six months from the date of acquisition of the property.

(d) When service company property is sold, conveyed, or transferred to another by sale, merger, consolidation, or otherwise, the book cost of the property sold or transferred to another must be credited to the appropriate service company property accounts. The amounts (estimated, if not known) carried with respect the accounts for accumulated provision for depreciation and amortization must be charged to those accounts. The difference, if any, between the net amount of debits and credits and the consideration received for the property (less commissions and other expenses of making the sale) must be included in account 421.1, Gain on disposition of property (§ 367.4211), or account 421.2, Loss on disposition of property (§ 367.4212).

(e) In connection with the acquisition of service company property previously devoted to service company operations or acquired from an associate company, the service company must procure, if possible, all existing records relating to the property acquired or related certified copies, and must preserve the records in conformity with regulations or practices governing the preservation of records of its own construction.

§ 367.54 Expenditures on leased property.

(a) The cost of substantial initial improvements (including repairs, rearrangements, additions, and betterments) made to prepare service company property leased to be used for a period of more than one year, and the cost of subsequent substantial additions, replacements, or betterments to the property, must be charged to the service company property account appropriate for the class of property leased. If the service life of the improvements is terminable by action of the lease, the cost, less net salvage, of the improvements must be spread over the life of the lease by charges to account 404, Amortization of limited-term service property (§ 367.4040). However, if the service life is not terminated by action of the lease but by depreciation proper, the cost of the improvements, less net salvage, must be accounted for as depreciable property. The provisions of this paragraph are applicable to property leased under either capital leases or operating leases.

(b) If improvements made to property leased for a period of more than one year are of relatively minor cost, or if the lease is for a period of not more than one year, the cost of the improvements must be charged to the account in which the rent is included, either directly or by amortization.

§ 367.55 Land and land rights.

(a) The accounts for land and land rights must include the cost of land owned in fee by the service company and rights. Interests, and privileges held by the service company in land owned by others, such as leaseholds, easements, water and water power rights, diversion rights, submersion rights, rights-of-way, and other like interests in land. Do not include in the accounts for land and land rights and rights-of-way costs incurred in connection with first clearing and grading of land and rights-of-way and the damage costs associated with the construction and installation of property. The costs must be included in the appropriate property accounts directly benefited.

(b) Where special assessments for public improvements provide for deferred payments, the full amount of the assessments must be charged to the appropriate land account and the unpaid balance must be carried in an appropriate liability account. Interest on unpaid balances must be charged to the appropriate interest account. If any part of the cost of public improvements is included in the general tax levy, the related amount must be charged to the appropriate tax account.

(c) The net profit from the sale of timber, cord wood, sand, gravel, other resources or other property acquired with the rights-of-way or other lands must be credited to the appropriate property account to which it is related. Where land is held for a considerable period of time and timber and other natural resources on the land at the time of purchase increases in value, the net profit (after giving effect to the cost of the natural resources) from the sales of timber or its products or other natural resources must be credited to the appropriate operating income account when the land has been recorded in account 101, Service company property (§ 367.1010), otherwise to account 421, Miscellaneous income or loss (§ 367.4210).

(d) Separate entries must be made for the acquisition, transfer, or retirement of each parcel of land, and each land right (except rights of way for distribution lines), or water right, having a life of more than one year. A record must be maintained showing the nature of ownership, full legal description, area, map reference, purpose for which used, city, county, and tax district on which situated, from whom purchased or to whom sold, payment given or received, other costs, contract date and number, date of recording of deed, and book and page of record. Entries transferring or retiring land or land rights must refer to the original entry recording its acquisition.

(e) Any difference between the amount received from the sale of land or land rights, less agents' commissions and other costs incident to the sale, and the book cost of such land or rights, must be included in account 421.1, Gain on disposition of property (§ 367.4211), or account 421.2, Loss on disposition of property (§ 367.4212), when the property has been recorded in account 101, Service company property (§ 367.1010). Appropriate adjustments of the accounts must be made with respect to any structures or improvements located on the land sold.

(f) The cost of buildings and other improvements (other than public improvements) must not be included in the land accounts. If, at the time of acquisition of an interest in land the interest extends to buildings or other improvements (other than public improvements) that are then devoted to operations, the land and improvements must be separately appraised and the cost allocated to land and buildings or improvements on the basis of the appraisals. If the improvements are removed or wrecked without being used in operations, the cost of removing or wrecking must be charged and the salvage credited to the account in which the cost of the land is recorded.

(g) Provisions must be made for amortizing amounts carried in the accounts for limited-term interests in land so as to apportion equitably the cost of each interest over the life thereof. (*See* account 111, Accumulated provision for amortization of service company property in § 367.1110, and account 404, Amortization of limited-term property in § 367.4040.)

(h) The items of cost to be included in the accounts for land and land rights are as follows:

(1) Bulkheads, buried, not requiring maintenance or replacement.

(2) Cost, first, of acquisition including mortgages and other liens assumed (but not the related subsequent interest).

(3) Condemnation proceedings, including court and counsel costs.

(4) Consents and abutting damages, payment for.

(5) Conveyancers' and notaries' fees.

(6) Fees, commissions, and salaries to brokers, agents and others in connection with the acquisition of the land or land rights.

(7) Leases, cost of voiding upon purchase to secure possession of land.

(8) Removing, relocating, or reconstructing, property of others, such as buildings, highways, railroads, bridges, cemeteries, churches, telephone and power lines, in order to acquire quiet possession.

(9) Retaining walls unless identified with structures.

(10) Special assessments levied by public authorities for public improvements on the basis of benefits for new roads, new bridges, new sewers, new curbing, new pavements, and other public improvements, but not taxes levied to provide for the maintenance of such improvements.

(11) Surveys in connection with the acquisition, but not amounts paid for topographical surveys and maps where the costs are attributable to structures or plant equipment erected or to be erected or installed on the land.

(12) Taxes assumed, accrued to date of transfer of title.

(13) Title, examining, clearing, insuring and registering in connection with the acquisition and defending against claims relating to the period prior to the acquisition.

(14) Appraisals prior to closing title.

(15) Cost of dealing with distributees or legatees residing outside of the state or county, such as recording power of attorney, recording will or exemplification of will, recording satisfaction of state tax.

(16) Filing satisfaction of mortgage.

(17) Documentary stamps.

(18) Photographs of property at acquisition.

(19) Fees and expenses incurred in the acquisition of water rights and grants.

(20) Cost of fill to extend bulkhead line over land under water, where riparian rights are held, which is not occasioned by the erection of a structure.

(21) Sidewalks and curbs constructed by the service company on public property.

(22) Labor and expenses in connection with securing rights of way, where performed by company employees and company agents.

§ 367.56 Structures and improvements.

(a) The accounts for structures and improvements must include the cost of all buildings and facilities to house, support, or safeguard property or persons, including all fixtures permanently attached to and made a part of buildings and that cannot be removed from the buildings and facilities without cutting into the walls, ceilings, or floors, or without in some way impairing the buildings, and improvements of a permanent character on, or to, land. Also include those costs incurred in connection with the first clearing and grading of land and rights-of-way and the damage costs associated with construction and installation of property.

(b) The cost of specially-provided foundations not intended to outlast the machinery or apparatus for which provided, and associated costs, such as angle irons, castings, and other items installed at the base of an item of equipment, must be charged to the same account as the cost of the machinery, apparatus, or equipment.

(c) Where the structure of a dam also forms the foundation of the service company building, the foundation must be considered a part of the dam.

(d) The cost of disposing of materials excavated in connection with construction of structures must be considered as a part of the cost of that work, except as follows:

(1) When the material is used for filling, the cost of loading, hauling, and dumping must be equitably apportioned between the work in connection with which the removal occurs and the work in connection with which the material is used.

(2) When the material is sold, the net amount realized from the sales must be credited to the work in connection with which the removal occurs. If the amount realized from the sale of excavated materials exceeds the removal costs and the costs in connection with the sale, the excess must be credited to the land account in which the site is carried.

(e) Lighting or other fixtures temporarily attached to buildings for purposes of display or demonstration must not be included in the cost of the building but in the appropriate equipment account.

(f) This account must include the following items:

(1) Architects'' plans and specifications including supervision.

(2) Ash pits (when located within the building).

(3) Athletic field structures and improvements.

(4) Boilers, furnaces, piping, wiring, fixtures, and machinery for heating, lighting, signaling, ventilating, and air-conditioning systems, plumbing, vacuum cleaning systems, incinerator and smoke pipe, flues and similar items.

(5) Bulkheads, including dredging, riprap fill, piling, decking, concrete, fenders, and similar items when exposed and subject to maintenance and replacement.

(6) Chimneys.

(7) Coal bins and bunkers.

(8) Commissions and fees to brokers, agents, architects, and others.

(9) Conduit (not to be removed) with its contents.

(10) Damages to abutting property during construction.

(11) Docks.

(12) Door checks and door stops.

(13) Drainage and sewerage systems.

(14) Elevators, cranes, hoists, and the machinery for operating them.

(15) Excavation, including shoring, bracing, bridging, refill and disposal of excess excavated material, cofferdams around foundation, pumping water from cofferdams during construction, and test borings.

(16) Fences and fence curbs (not including protective fences isolating items of equipment, which must be charged to the appropriate equipment account).

(17) Fire protection systems when forming a part of a structure.

(18) Flagpole.

(19) Floor covering (permanently attached).

(20) Foundations and piers for machinery, constructed as a permanent part of a building or other item listed in this paragraph (f).

(21) Grading and clearing when directly occasioned by the building of a structure.

(22) Intrasite communication system, poles, pole fixtures, wires, and cables.

(23) Landscaping, lawns, shrubbery and similar items.

(24) Leases, voiding upon purchase to secure possession of structures.

(25) Leased property, expenditures on.

(26) Lighting fixtures and outside lighting system.

(27) Mail chutes when part of a building.

(28) Marquee, permanently attached to building.

(29) Painting, first cost.

(30) Permanent paving, concrete, brick, flagstone, asphalt, within the property lines.

(31) Partitions, including movable.
(32) Permits and privileges.
(33) Platforms, railings, and gratings when constructed as a part of a structure.
(34) Power boards for services to a building.
(35) Refrigerating systems for general use.
(36) Retaining walls except when identified with land.
(37) Roadways, railroads, bridges, and trestles intrasite except railroads provided for in equipment accounts.
(38) Roofs.
(39) Scales, connected to and forming a part of a structure.
(40) Screens.
(41) Sewer systems, for general use.
(42) Sidewalks, culverts, curbs and streets constructed by the service company on its property.
(43) Sprinkling systems.
(44) Sump pumps and pits.
(45) Stacks—brick, steel, or concrete, when set on foundation forming part of general foundation and steelwork of a building.
(46) Steel inspection during construction.
(47) Storage facilities constituting a part of a building.
(48) Storm doors and windows.
(49) Subways, areaways, and tunnels, directly connected to and forming part of a structure.
(50) Tanks, constructed as part of a building or as a distinct structural unit.
(51) Temporary heating during construction (net cost).
(52) Temporary water connection during construction (net cost).
(53) Temporary shanties and other facilities used during construction (net cost).
(54) Topographical maps.
(55) Tunnels, intake and discharge, when constructed as part of a structure, including sluice gates, and those constructed to house mains.
(56) Vaults constructed as part of a building.
(57) Watchmen's sheds and clock systems (net cost when used during construction only).
(58) Water basins or reservoirs.
(59) Water front improvements.
(60) Water meters and supply system for a building or for general company purposes.
(61) Water supply piping, hydrants and wells.
(62) Wharves.
(63) Window shades and ventilators.
(64) Yard drainage system.
(65) Yard lighting system.
(66) Yard surfacing, gravel, concrete, or oil. (First cost only.)

(g) Structures and Improvements accounts must be credited with the cost of structures created to house, support, or safeguard equipment, the use of which has terminated with the removal of the equipment with which they are associated even though they have not been physically removed.

§ 367.57 Equipment.

(a) The cost of equipment chargeable to the service company property accounts, unless otherwise indicated in the text of an equipment account, includes the related net purchase price, sales taxes, investigation and inspection expenses necessary to such purchase, expenses of transportation when borne by the service company, labor employed, materials and supplies consumed, and expenses incurred by the service company in unloading and placing the equipment in readiness to operate. Also include those costs incurred in connection with the first clearing and grading of land and rights-of-way and the damage costs associated with construction and installation of property.

(b) Exclude from equipment accounts hand and other portable tools, that are likely to be lost or stolen or that have relatively small value (for example, $500 or less) or short life, unless the correctness of the related accounting as service company property is verified by current inventories. Special tools acquired and included in the purchase price of equipment must be included in the appropriate property account. Portable drills and similar tool equipment when used in connection with the operation and maintenance of a particular plant or department, such as production, transmission, distribution, or similar items, or in stores, must be charged to the property account appropriate for their use.

(c) The equipment accounts must include angle irons and similar items that are installed at the base of an item of equipment, but piers and foundations that are designed to be as permanent as the buildings that house the equipment, or that are constructed as a part of the building and that cannot be removed without cutting into the walls, ceilings or floors or without in some way impairing the building, must be included in the building accounts.

(d) The cost of efficiency or other tests made subsequent to the date equipment becomes available for service must be charged to the appropriate expense accounts, except that tests to determine whether equipment meets the specifications and requirements as to efficiency, performance, and similar items, guaranteed by manufacturers, made after operations have commenced and within the period specified in the agreement or contract of purchase may be charged to the appropriate service company property account.

§ 367.58 Property record system required for service company property.

(a) Each service company must keep its cost allocation system so as to show the nature of each addition to or retirement of service company property, the related total cost, the source or sources of costs, and the property account or accounts to which charged or credited. Records covering jobs of short duration may be cleared monthly.

(b) Each service company must maintain records in which, for each property account, the amounts of the annual additions and retirements are classified so as to show the number and cost of the various record units or retirement units.

§ 367.59 Additions and retirements of property.

(a) For the purpose of avoiding undue refinement in accounting for additions to and retirements and replacements of service company property, all property will be considered as consisting of retirement units and minor items of property. Each company must maintain a written property units listing for use in accounting for additions and retirements of property and apply the listing consistently.

(b) The addition and retirement of retirement units must be accounted for as follows:

(1) When a retirement unit is added, the related cost must be added to the appropriate service company property account.

(2) When a retirement unit is retired, with or without replacement, the related book cost must be credited to the property account in which it is included, determined in the manner provided in paragraph (d) of this section. If the retirement unit is of a depreciable class, the book cost of the unit retired and credited to service company property must be charged to the accumulated provision for depreciation applicable to the property. The cost of removal and the salvage must be charged or credited, as appropriate, to the depreciation account.

(c) The addition and retirement of minor items of property must be accounted for as follows:

(1) When a minor item of property that did not previously exist is added to service company property, the related cost must be accounted for in the same manner as for the addition of a retirement unit, as provided in paragraph (b)(1) of this section, if a

substantial addition results, otherwise the charge must be to the appropriate maintenance expense account.

(2) When a minor item of property is retired and not replaced, the related book cost must be credited to the property account in which it is included; and, in the event the minor item is a part of depreciable property, the account for accumulated provision for depreciation must be charged with the book cost and cost of removal and credited with the salvage. If, however, the book cost of the minor item retired and not replaced has been or will be accounted for by its inclusion in the retirement unit of which it is a part when the unit is retired, no separate credit to the property account is required when the minor item is retired.

(3) When a minor item of depreciable property is replaced independently of the retirement unit of which it is a part, the cost of replacement must be charged to the maintenance account appropriate for the item. However, if the replacement effects a substantial betterment (the primary aim of which is to make the property affected more useful, more efficient, of greater durability, or of greater capacity), the excess cost of the replacement over the estimated cost at current prices of replacing without betterment must be charged to the appropriate property account.

(d) The book cost of service company property retired must be the amount at which the property is included in the property accounts, including all components of construction costs. The book cost must be determined from the service company's records and, if this cannot be done, it must be estimated. Service companies must furnish the particulars of the estimates to the Commission, if requested. When it is impracticable to determine the book cost of each unit, due to the relatively large number or related small cost, an appropriate average book cost of the units, with due allowance for any differences in size and character, must be used as the book cost of the units retired.

(e) The book cost of land retired must be credited to the appropriate land account. If the land is sold, the difference between the book cost (less any accumulated provision for related depreciation or amortization that has been authorized and provided) and the sale price of the land (less commissions and other expenses of making the sale) must be recorded in accounts 421.1, Gain on disposition of property (§ 367.4211) or 421.2, Loss on disposition of property (§ 367.4212), as appropriate.

(f) The book cost less net salvage of depreciable service company property retired must be charged in its entirety to account 108, Accumulated provision for depreciation of service company property (§ 367.1080).

(g) The accounting for the retirement of amounts included in account 303, Miscellaneous intangible property (§ 367.3030), and the items of limited-term interest in land included in the accounts for land and land rights, must be as provided for in the text of account 111, Accumulated provision for amortization of service company property (§ 367.1110), account 404, Amortization of limited-term property (§ 367.4040), and account 405, Amortization of other property (§ 367.4050).

Subpart D—Operating Expense Instructions

§ 367.80 Supervision and engineering.

(a) The supervision and engineering includible in the operating expense accounts must consist of the pay and expenses of superintendents, engineers, clerks, other employees and consultants engaged in supervising and directing the operation and maintenance of each service company function. Wherever allocations are necessary in order to arrive at the amount to be included in any account, the method and basis of allocation must be reflected by underlying records.

(b) This account must include the following labor items:

(1) Special tests to determine efficiency of equipment operation.

(2) Preparing or reviewing budgets, estimates, and drawings relating to operation or maintenance for departmental approval.

(3) Preparing instructions for operations and maintenance activities.

(4) Reviewing and analyzing operating results.

(5) Establishing organizational setup of departments and executing related changes.

(6) Formulating and reviewing routines of departments and executing related changes.

(7) General training and instruction of employees by supervisors whose pay is chargeable to the training and instruction. Specific instruction and training in a particular type of work is chargeable to the appropriate functional expense account (*See* Service Company Property in § 367.51(a)(19)).

(8) Secretarial work for supervisory personnel, but not general clerical and stenographic work chargeable to other accounts.

(c) This account must include the following expense items:

(1) Consultants' fees and expenses.

(2) Meals, traveling and incidental expenses.

§ 367.81 Maintenance.

(a) The cost of maintenance chargeable to the various operating expense and clearing accounts includes labor, materials, overheads and other expenses incurred in maintenance work. A list of work operations applicable generally to service company property is included in paragraph (d) of this section. Other work operations applicable to specific classes of property are listed in functional maintenance expense accounts.

(b) Materials recovered in connection with the maintenance of property must be credited to the same account to which the maintenance cost was charged.

(c) Maintenance of property leased from others must be treated as provided in operating expense instruction in § 367.82.

(d) This account must include the following items:

(1) Direct field supervision of maintenance.

(2) Inspecting, testing, and reporting on condition of property specifically to determine the need for repairs, replacements, rearrangements and changes and inspecting and testing the adequacy of repairs which have been made.

(3) Work performed specifically for the purpose of preventing failure, restoring serviceability or maintaining life of property.

(4) Rearranging and changing the location of property.

(5) Repairing for reuse materials recovered from property.

(6) Testing for locating and clearing trouble.

(7) Net cost of installing, maintaining, and removing temporary facilities to prevent interruptions in service.

(8) Replacing or adding minor items of plant which do not constitute a retirement unit. (*See* Service Company Property Instruction in § 367.59.)

§ 367.82 Rents.

(a) The rent expense accounts provided under the several functional groups of expense accounts must include all rents, including taxes paid by the lessee on leased property, for property used in the operations of the service company, except:

(1) Minor amounts paid for occasional or infrequent use of any property or equipment and all amounts paid for use of equipment that, if owned, would be includible in property accounts 391 to 398 (§§ 367.3910 to 367.3980),

inclusive, that must be treated as an expense item and included in the appropriate functional account, and

(2) Rents that are chargeable to clearing accounts, and distributed from the clearing accounts to the appropriate account. If rents cover property used for more than one function, such as production and transmission, or by more than one department, the rents must be apportioned to the appropriate rent expense or clearing accounts of each department on an actual, or, if necessary, an estimated basis.

(b) When a portion of property or equipment rented from others for use in connection with service company operations is subleased, the revenue derived from the subleasing must be credited to the rent revenue account in operating revenues. However, if the rent was charged to a clearing account, amounts received from subleasing the property must be credited to the clearing account.

(c) The cost, when incurred by the lessee, of operating and maintaining leased property, must be charged to the accounts appropriate for the expense if the property were owned.

(d) The cost incurred by the lessee of additions and replacements to property leased from others must be accounted for as provided in Service Company Property Instruction in § 367.54.

§ 367.83 Training costs.

When it is necessary that employees be trained to specifically operate or maintain facilities that are being constructed, the related costs must be accounted for as a current operating and maintenance expense. These expenses must be charged to the appropriate functional accounts currently as they are incurred. However, when the training costs involved relate to facilities that are not conventional in nature, or are new to the service company's operations, these costs may be capitalized until the time that the facilities are ready for functional use.

Subpart E—Special Instructions

§ 367.100 Accounts 131–174, Current and accrued assets.

Current and accrued assets are cash, those assets which are readily convertible into cash or are held for current use in operations or construction, current claims against others, payment of which is reasonably assured, and amounts accruing to the service company that are subject to current settlement, except those items for which accounts other than those designated as current and accrued assets are provided. There must not be included in the group of accounts designated as current and accrued assets any item, the amount or collectibility of which is not reasonably assured, unless an adequate provision for the related possible loss has been made. Items of current character but of doubtful value may be written down and for record purposes carried in these accounts at nominal value.

§ 367.101 Accounts 231–243, Current and accrued liabilities.

Current and accrued liabilities are those obligations which have either matured or which become due within one year from the date of issuance or assumption, except for: bonds, receivers' certificates and similar obligations which must be classified as long-term debt until date of maturity; accrued taxes, such as income taxes, which must be classified as accrued liabilities even though payable more than one year from date; compensation awards, which must be classified as current liabilities regardless of date due; and minor amounts payable in installments which may be classified as current liabilities. If a liability is due more than one year from date of issuance or assumption by the service company, it shall be credited to a long-term debt account appropriate for the transaction, except, however, the current liabilities previously mentioned.

§ 367.102 Accounts 408.1 and 408.2, Taxes other than income taxes.

(a) These accounts must include the amounts of ad valorem, gross revenue or gross receipts taxes, state unemployment insurance, franchise taxes, Federal excise taxes, social security taxes, and all other taxes assessed by Federal, state, county, municipal, or other local governmental authorities, except income taxes.

(b) These accounts shall be charged in each accounting period with the amounts of taxes which are applicable to each account, with concurrent credits to account 236, Taxes accrued (§ 367.2360), or account 165, Prepayments (§ 367.1650), as appropriate. When it is not possible to determine the exact amounts of taxes, the amounts shall be estimated and adjustments made in current accruals as the actual tax levies become known.

(c) Special assessments for street and similar improvements must be included in the appropriate service company property account.

(d) Taxes specifically applicable to construction must be included in the cost of construction.

(e) Gasoline and other sales taxes must be charged as far as practicable to the same account as the materials on which the tax is levied.

(f) Social security and other forms of so-called payroll taxes must be distributed to utility and non-utility functions on a basis related to payroll. Amounts applicable to construction must be charged to the appropriate plant account.

(g) Interest on tax refunds or deficiencies must not be included in these accounts but in accounts 419, Interest and dividend income (§ 367.4190), or 431, Other interest expense (§ 367.4310), as appropriate.

§ 367.103 Accounts 409.1, 409.2, and 409.3, Income taxes.

(a) These accounts must include the amounts of local, state and Federal income taxes on income properly accruable during the period covered by the income statement to meet the actual liability for such taxes. Concurrent credits for the tax accruals must be made to account 236, Taxes accrued (§ 367.2360), and as the exact amounts of taxes become known, the current tax accruals must be adjusted by charges or credits to these accounts, so that these accounts include the actual taxes payable by the service company.

(b) The accruals for income taxes shall be apportioned to Operating Income, Other Income and Deductions, and Extraordinary Items so that, as nearly as practicable, each tax will be included in the appropriate account based on the income which gave rise to the tax.

(c) Taxes assumed by the service company on interest must be charged to account 431, Other interest expense (§ 367.4310).

(d) Interest on tax refunds or deficiencies must not be included in these accounts but in account 419, Interest and dividend income (§ 367.4190), or account 431, Other interest expense (§ 367.4310), as appropriate.

§ 367.104 Accounts 410.1, 410.2, 411.1, and 411.2, Provision for deferred income taxes.

(a) Accounts 410.1 (§ 367.4101) and 410.2 (§ 367.4102) must be debited, and Accumulated Deferred Income Taxes must be credited, with amounts equal to any current deferrals of taxes on income or any allocations of deferred taxes originating in prior periods, as provided by the texts of accounts 190 (§ 367.1900), 282 (§ 367.2820), and 283 (§ 367.2830). There must not be netted against entries required to be made to these accounts any credit amounts appropriately includible in accounts 411.1 (§ 367.4111) or 411.2 (§ 367.4112).

(b) Accounts 411.1 (§ 367.4111) and 411.2 (§ 367.4112) must be credited, and

Accumulated Deferred Income Taxes must be debited, with amounts equal to any allocations of deferred taxes originating in prior periods or any current deferrals of taxes on income, as provided by the texts of accounts 190 (§ 367.1900), 282 (§ 367.2820), and 283 (§ 367.2830). There must not be netted against entries required to be made to these accounts any debit amounts appropriately includible in account 410.1 (§ 367.4101) or 410.2 (§ 367.4102).

§ 367.105 Accounts 411.4, and 411.5, Investment tax credit adjustments.

(a) Account 411.4 (§ 367.4114) must be debited with the amounts of investment tax credits related to service company property that are credited to account 255, Accumulated deferred investment tax credits (§ 367.2550), by companies which do not apply the entire amount of the benefits of the investment credit as a reduction of the overall income tax expense in the year in which such credit is realized (See account 255 in § 367.2550).

(b) Account 411.4 (§ 367.4114) must be credited with the amounts debited to account 255 (§ 367.2550) for proportionate amounts of tax credit deferrals allocated over the average useful life of service company property to which the tax credits relate or such lesser period of time as may be adopted and consistently followed by the company.

(c) Account 411.5 (§ 367.4115) must also be debited and credited as directed in paragraphs (a) and (b), for investment tax credits related to other income and deductions.

§ 367.106 Accounts 426.1, 426.2, 426.3, 426.4, and 426.5, Miscellaneous expense accounts.

These accounts must include miscellaneous expense items which are nonoperating in nature but which are properly deductible before determining total income before interest charges.

Subpart F—Balance Sheet Chart of Accounts

Service Company Property

§ 367.1010 Account 101, Service company property.

(a) This account must include the cost of service company property, included in accounts 301 (§ 367.3010), 303 (§ 367.3030) and 389 to 399.1 (§§ 376.3890 to 367.3991), owned and used by the service company in its operations, and having an expectation of life in service of more than one year from date of installation.

(b) The cost of additions to, and betterments of, property leased from others, that are includible in this account, must be recorded in subaccounts separate and distinct from those relating to owned property. (See Service Company Property Instruction in § 367.54.)

§ 367.1011 Account 101.1, Property under capital leases.

(a) This account must include the amount recorded under capital leases for property leased from others and used by the service company in its operations.

(b) The property included in this account must be classified separately according to detailed accounts 301 (§ 367.3010), 303 (§ 367.3030) and 389 to 399.1 (§§ 367.3890 to 367.3991) prescribed for service company property.

(c) Records must be maintained with respect to each capital lease reflecting:

(1) Name of lessor,

(2) Basic details of lease,

(3) Terminal date,

(4) Original cost or fair market value of property leased,

(5) Future minimum lease payments,

(6) Executory costs,

(7) Present value of minimum lease payments,

(8) The amount representing interest and the interest rate used, and

(9) Expenses paid.

§ 367.1060 Account 106, Completed construction not classified.

At the end of the year or such other date as a balance sheet may be required by the Commission, this account must include the total of the balances of construction projects for service company property which has been completed and placed in service but have not been classified for transfer to the detailed service company property accounts.

§ 367.1070 Account 107, Construction work in progress.

(a) This account must include the total of the balances of construction projects for service company property in process of construction.

(b) Construction projects must be cleared from this account as soon as practicable after completion of the job. Further, if a project is designed to consist of two or more units that may be placed in service at different dates, any expenditures that are common to and that will be used in the operation of the project as a whole must be included in service company property upon the completion and the readiness for service of the first unit. Any expenditures that are identified exclusively with units of property not yet in service must be included in this account.

(c) Expenditures on research, development, and demonstration projects for construction of facilities are to be included in a separate subaccount in this account. Records must be maintained to show separately each project along with complete detail of the nature and purpose of the research, development, and demonstration project together with the related costs.

§ 367.1080 Account 108, Accumulated provision for depreciation of service company property.

(a) This account must be credited with the following:

(1) Amounts charged to account 403, Depreciation expense (§ 367.4030), or to clearing accounts for current depreciation expense for service company property.

(2) Amounts charged to account 416, Costs and expenses of merchandising, jobbing, and contract work (§ 367.4160), or to clearing accounts for current depreciation expense.

(3) Amounts of depreciation applicable to properties acquired. (*See* Service Company Property Instruction in § 367.53.)

(4) Amounts of depreciation applicable to service company property donated to the service company.

(b) The service company must maintain separate subaccounts for depreciation applicable to service company property.

(c) At the time of retirement of depreciable service company property, this account must be charged with the book cost of the property retired and the cost of removal, and must be credited with the salvage value and any other amounts recovered, such as insurance.

(d) The subsidiary records for this account must reflect the current credits and debits to this account in sufficient detail to show the following separately:

(1) The amount of accrual for depreciation,

(2) The book cost of property retired,

(3) Cost of removal,

(4) Salvage, and

(5) Other items, including recoveries from insurance.

(e) The service company is restricted in its use of the accumulated provision for depreciation to the purposes identified in paragraphs (a) through (d) of this section. It must not transfer any portion of this account to retained earnings or make any other use of the depreciation without authorization by the Commission.

§ 367.1110 Account 111, Accumulated provision for amortization of service company property.

(a) This account must be credited with the following:

(1) Amounts charged to account 404, Amortization of limited-term property (§ 367.4040), for the current amortization of limited-term service company property investments.

(2) Amounts charged to account 405, Amortization of other property (§ 367.4050).

(3) Amounts charged to account 425, Miscellaneous amortization (§ 367.4250), for the amortization of intangible or other property, that does not have a definite or terminable life and is not subject to charges for depreciation expense, with Commission approval.

(b) The service company must maintain subaccounts of this account for the amortization applicable to service company property and property leased to others.

(c) When any property to which this account applies is sold, relinquished, or otherwise retired from service, this account must be charged with the amount previously credited in respect to the property. The book cost of the retired property less the amount chargeable to this account and less the net proceeds realized at retirement must be included in account 421.1, Gain on disposition of property (§ 367.4211), or account 421.2, Loss on disposition of property (§ 367.4212), as appropriate.

(d) For general ledger and balance sheet purposes, this account must be regarded and treated as a single composite provision for amortization. The subsidiary records must reflect the current credits and debits to this account in sufficient detail to show the following separately:

(1) The amount of accrual for amortization,

(2) The book cost of property retired,

(3) Cost of removal,

(4) Salvage, and

(5) Other items, including recoveries from insurance.

(e) The service company is restricted in its use of the accumulated provision for amortization to the purposes provided in paragraphs (a) through (d) of this section. It must not transfer any portion of this account to retained earnings or make any other use of the amortization without authorization by the Commission.

Other Property and Investments

§ 367.1230 Account 123, Investment in associate companies.

(a) This account must include the book cost of investments in securities issued or assumed by associate companies and investment advances to the companies, including related accrued interest when the interest is not subject to current settlement, provided that the investment does not relate to a subsidiary company. (If the investment relates to a subsidiary company, it must be included in account 123.1, Investment in subsidiary companies (§ 367.1231).) Include in this account the offsetting entry to the recording of amortization of discount or premium on interest bearing investments. (*See* account 419, Interest and dividend income (§ 367.4190).)

(b) This account must be maintained in a manner so as to show the investment in securities of, and advances to, each associate company together with full particulars regarding any of the investments that are pledged.

(c) Securities and advances of associate companies owned and pledged must be included in this account, but the securities, if held in special deposits or in special funds, must be included in the appropriate deposit or fund account. A complete record of securities pledged must be maintained.

(d) Securities of associate companies held as temporary cash investments are includible in account 136, Temporary cash investments (§ 367.1360).

(e) Balances in open accounts with associate companies that are subject to current settlement are includible in account 146, Accounts receivable from associate companies (§ 367.1460).

(f) The service company must write down the cost of any security in recognition of a decline in the related value. Securities must be written off or written down to a nominal value if there is no reasonable prospect of substantial value. Fluctuations in market value must not be recorded but a permanent impairment in the value of securities must be recognized in the accounts. When securities are written off or written down, the amount of the adjustment must be charged to account 426.5, Other deductions (§ 367.4265), or to an appropriate account for accumulated provisions for loss in value established as a separate subdivision of this account.

§ 367.1240 Account 124, Other investments.

(a) This account must include the book cost of investments in securities issued or assumed by non-associate companies, investment advances to these companies, and any investments not accounted for elsewhere. This account must also include unrealized holding gains and losses on trading and available-for-sale types of security investments. Include also the offsetting entry to the recording of amortization of discount or premium on interest bearing investments. (*See* account 419, Interest and dividend income (§ 367.4190).)

(b) The records must be maintained in a manner so as to show the amount of each investment and the investment advances to each person.

§ 367.1280 Account 128, Other special funds.

(a) This account must include the amount of cash and book cost of investments that have been segregated in special funds for insurance, employee pensions, savings, relief, hospital, and other purposes not provided for elsewhere. This account must also include unrealized holding gains and losses on trading and available-for-sale types of security investments. A separate account with appropriate title, must be kept for each fund.

(b) Amounts deposited with a trustee under the terms of an irrevocable trust agreement for pensions or other employee benefits must not be included in this account.

Current and Accrued Assets

§ 367.1310 Account 131, Cash.

This account must include the amount of current cash funds except working funds.

§ 367.1340 Account 134, Other special deposits.

(a) This account must include deposits with fiscal agents or others for special purposes other than the payment of interest and dividends. The special deposits may include, among other things, cash deposited with federal, state, or municipal authorities as a guaranty for the fulfillment of obligations; cash deposited with trustees to be held until mortgaged property sold, destroyed, or otherwise disposed of is replaced; cash realized from the sale of the accounting service company's securities and deposited with trustees to be held until invested in property of the service company. Entries to this account must specify the purpose for which the deposit is made.

(b) Assets available for general corporate purposes must not be included in this account. Further, deposits for more than one year, that are not offset by current liabilities, must be charged to account 128, Other special funds (§ 367.1280).

§ 367.1350 Account 135, Working funds.

This account must include cash advanced to officers, agents, employees, and others as petty cash or working funds.

§ 367.1360 Account 136, Temporary cash investments.

(a) This account must include the book cost of investments, such as demand and time loans, bankers' acceptances, United States Treasury certificates, marketable securities, and other similar investments, acquired for the purpose of temporarily investing cash.

(b) This account must be maintained so as to show separately temporary cash investments in securities of associate companies and of others. Records must be kept of any pledged investments.

§ 367.1410 Account 141, Notes receivable.

(a) This account must include the book cost, not includible elsewhere, of all collectible obligations in the form of notes receivable and similar evidences (except interest coupons) of money due on demand or within one year from the date of issue, except, however, notes receivable from associate companies. (*See* account 136,Temporary cash investments (§ 367.1360), and account 145, Notes receivable from associate companies (§ 367.1450).)

(b) The face amount of notes receivable discounted, sold, or transferred without releasing the service company from liability as a related endorser, must be credited to a separate subaccount of this account and appropriate disclosure must be made in financial statements of any contingent liability arising from the transactions.

§ 367.1420 Account 142, Customer accounts receivable.

(a) This account must include amounts due from customers for service, and for merchandising, jobbing and contract work. This account must not include amounts due from associate companies.

(b) This account must be maintained so as to permit ready segregation of the amounts due for merchandising, jobbing and contract work.

§ 367.1430 Account 143, Other accounts receivable.

(a) This account must include amounts due the service company upon open accounts, other than amounts due from associate companies and from customers for services and merchandising, jobbing and contract work.

(b) This account must be maintained so as to show separately amounts due on subscriptions to capital stock and from officers and employees, but the account must not include amounts advanced to officers or others as working funds. (*See* account 135, Working funds (§ 367.1350).)

§ 367.1440 Account 144, Accumulated provision for uncollectible accounts—Credit.

(a) This account must be credited with amounts provided for losses on accounts receivable that may become uncollectible, and also with collections on related previously charged accounts. Concurrent charges must be made to account 904, Uncollectible accounts (§ 367.9040), for amounts applicable to service company operations, and to corresponding accounts for other operations. Records must be maintained so as to show the write-offs of account receivable for each service company department.

(b) This account must be subdivided to show the provision applicable to the following classes of accounts receivable:

(1) Service company customers.

(2) Merchandising, jobbing and contract work.

(3) Officers and employees.

(4) Others.

(c) Accretions to this account must not be made in excess of a reasonable provision against losses of the related character.

(d) If provisions for uncollectible notes receivable or for uncollectible receivables from associate companies are necessary, separate related subaccounts must be established under the account in which the receivable is carried.

§ 367.1450 Account 145, Notes receivable from associate companies.

(a) This account must include notes and drafts upon which associate companies are liable, and that mature and are expected to be paid in full not later than one year from the date of issue, together with any related interest, and debit balances subject to current settlement in open accounts with associate companies. Items that do not bear a specified due date but that have been carried for more than twelve months and items that are not paid within twelve months from due date must be transferred to account 123, Investment in associate companies (§ 367.1230).

(b) On the balance sheet, accounts receivable from an associate company may be set off against accounts payable to the same company.

(c) The face amount of notes receivable discounted, sold or transferred without releasing the service company from liability as endorser thereon, must be credited to a separate subaccount of this account and appropriate disclosure must be made in financial statements of any contingent liability arising from such transactions.

§ 367.1460 Account 146, Accounts receivable from associate companies.

(a) This account must include notes and drafts upon which associate companies are liable, and that mature and are expected to be paid in full not later than one year from the date of issue, together with any related interest thereon, and debit balances subject to current settlement in open accounts with associate companies. Items that do not bear a specified due date but that have been carried for more than twelve months and items that are not paid within twelve months from due date must be transferred to account 123, Investment in associate companies (§ 367.1230).

(b) On the balance sheet, accounts receivable from an associate company may be set off against accounts payable to the same company.

(c) The face amount of notes receivable discounted, sold or transferred without releasing the service company from liability as the related endorser, must be credited to a separate subaccount of this account and appropriate disclosure must be made in financial statements of any contingent liability arising from the transactions.

§ 367.1520 Account 152, Fuel stock expenses undistributed.

The service company must utilize this account, where appropriate, to include the cost of service company labor and of office supplies used and operating expenses incurred with respect to the review, analysis and management of fuel supply contracts or agreements, the accumulation of fuel information and its interpretation, the logistics and handling of fuel, and other related support functions, as a service to the company engaged in the procurement and transportation of fuel. This account must be maintained to show the expenses attributable to each company through its cost allocation system. All expenses of a service company's fuel department or functions must be cleared through this account.

§ 367.1540 Account 154, Materials and operating supplies.

(a) This account must include the cost of materials purchased primarily for use in the service company business for construction, operation and maintenance purposes. It must include the book cost of materials recovered in connection with construction, maintenance or the retirement of service company property, the materials being credited to construction, maintenance or accumulated depreciation provision, respectively. This account must include the following items:

(1) Reusable materials consisting of large individual items must be included in this account at original cost, estimated if not known. The cost of repairing the items must be charged to the maintenance account appropriate for the previous use.

(2) Reusable materials consisting of relatively small items, the identity of which (from the date of original installation to the related final abandonment or sale) cannot be ascertained without undue refinement in accounting, must be included in this account at current prices new for the items. The cost of repairing the items must be charged to the appropriate expense account as indicated by previous use.

(3) Scrap and non-usable materials included in this account must be carried at the estimated net amount realizable. The difference between the amounts realized for scrap and non-usable materials sold and the net amount at which the materials were carried in this account, as far as practicable, must be adjusted to the accounts credited when the materials were charged to this account.

(b) Materials and supplies issued must be credited in this account and charged to the appropriate construction, operating expense, or other account on the basis of a unit price determined by the use of cumulative average, first-in-first-out, or any other method of inventory accounting that conforms with accepted accounting standards consistently applied.

(c) This account must include the following items:

(1) Invoice price of materials less cash or other discounts.

(2) Freight, switching or other transportation charges when practicable to include as part of the cost of particular materials to which they relate.

(3) Customs duties and excise taxes.

(4) Costs of inspection and special tests prior to acceptance.

(5) Insurance and other directly assignable charges.

(d) Where expenses applicable to materials purchased cannot be directly assigned to particular purchases, they may be charged to a stores expense clearing account (account 163, Stores expense undistributed (§ 367.1630)), and distributed from there to the appropriate account.

(e) When materials and supplies are purchased for immediate use, they need not be carried through this account, but may be charged directly to the appropriate service company property or expense account.

§ 367.1630 Account 163, Stores expense undistributed.

(a) This account must include the cost of supervision, labor and expenses incurred in the operation of general storerooms, including purchasing, storage, handling and distribution of materials and supplies.

(b) This account must be cleared by adding to the cost of materials and supplies issued a suitable loading charge that will distribute the expense equitably over stores issues. The balance in the account at the close of the calendar year must not exceed the amount of stores expenses reasonably attributable to the inventory of materials and supplies exclusive of fuel, as any amount applicable to fuel costs should be included in account 152, Fuel stock expenses undistributed (§ 367.1520).

(c) This account must include the following labor items:

(1) Inspecting and testing materials and supplies when not assignable to specific items.

(2) Unloading from shipping facility and putting in storage.

(3) Supervision of purchasing and stores department to extent assignable to materials handled through stores.

(4) Getting materials from stock and in readiness to go out.

(5) Inventorying stock received or stock on hand by stores employees but not including inventories by general department employees as part of internal or general audits.

(6) Purchasing department activities in checking material needs, investigating sources of supply, analyzing prices, preparing and placing orders, and related activities to extent applicable to materials handled through stores. (Optional. Purchasing department expenses may be included in administrative and general expenses.)

(7) Maintaining stores equipment.

(8) Cleaning and tidying storerooms and stores offices.

(9) Keeping stock records, including recording and posting of material receipts and issues and maintaining inventory record of stock.

(10) Collecting and handling scrap materials in stores.

(d) This account must include the following supplies and expenses items:

(1) Adjustments of inventories of materials and supplies, but not including large differences that can readily be assigned to important classes of materials and equitably distributed among the accounts to which the classes of materials have been charged since the previous inventory.

(2) Cash and other discounts not practically assignable to specific materials.

(3) Freight, express, and similar items, when not assignable to specific items.

(4) Heat, light and power for storerooms and store offices.

(5) Brooms, brushes, sweeping compounds and other supplies used in cleaning and tidying storerooms and stores offices.

(6) Injuries and damages.

(7) Insurance on materials and supplies and on stores equipment.

(8) Losses due to breakage, leakage, evaporation, fire or other causes, less credits for amounts received from insurance, transportation companies or others in compensation of the losses.

(9) Postage, printing, stationery and office supplies.

(10) Rent of storage space and facilities.

(11) Communication service.

(12) Excise and other similar taxes not assignable to specific materials.

(13) Transportation expense on inward movement of stores and on transfer between storerooms, but not including charges on materials recovered from retirements that must be accounted for as part of cost of removal.

(e) A physical inventory of each class of materials and supplies must be made at least every two years.

§ 367.1650 Account 165, Prepayments.

This account must include amounts representing prepayments of insurance, rents, taxes, interest and miscellaneous items, and must be kept or supported in a manner so as to disclose the amount of each class of prepayment.

§ 367.1710 Account 171, Interest and dividends receivable.

(a) This account must include the amount of interest on bonds, mortgages, notes, commercial paper, loans, open accounts, deposits, and other similar items, the payment of which is reasonably assured, and the amount of dividends declared or guaranteed on stocks owned.

(b) Interest that is not subject to current settlement must not be included in this account, but in the account in which is carried the principal on which the interest is accrued.

(c) Interest and dividends receivable from associate companies must be included in account 146, Accounts receivable from associate companies (§ 367.1460).

§ 367.1720 Account 172, Rents receivable.

(a) This account must include rents receivable or accrued on property rented or leased by the service company to others.

(b) Rents receivable from associate companies must be included in account

146, Accounts receivable from associate companies (§ 367.1460).

§ 367.1730 Account 173, Accrued revenues.

At the option of the service company, the estimated amount accrued for service rendered, but not billed at the end of any accounting period, may be included in this account. In case accruals are made for unbilled revenues, they must be made likewise for unbilled expenses, such as for the purchase of energy.

§ 367.1740 Account 174, Miscellaneous current and accrued assets.

This account must include the book cost of all other current and accrued assets, appropriately designated and supported so as to show the nature of each asset included in the account.

§ 367.1750 Account 175, Derivative instrument assets.

This account must include the amounts paid for derivative instruments, and the change in the fair value of all derivative instrument assets not designated as cash flow or fair value hedges. Account 421, Miscellaneous income or loss (§ 367.4210), must be credited or debited, as appropriate, with the corresponding amount of the change in the fair value of the derivative instrument.

§ 367.1760 Account 176, Derivative instrument assets—Hedges.

(a) This account must include the amounts paid for derivative instruments, and the change in the fair value of derivative instrument assets designated by the service company as cash flow or fair value hedges.

(b) When a service company designates a derivative instrument asset as a cash flow hedge it will record the change in the fair value of the derivative instrument in this account with a concurrent charge to account 219, Accumulated other comprehensive income (§ 367.2190), with the effective portion of the gain or loss. The ineffective portion of the cash flow hedge must be charged to the same income or expense account that will be used when the hedged item enters into the determination of net income.

(c) When a service company designates a derivative instrument as a fair value hedge it must record the change in the fair value of the derivative instrument in this account with a concurrent charge to a subaccount of the asset or liability that carries the item being hedged. The ineffective portion of the fair value hedge must be charged to the same income or expense account that will be used when the hedged item enters into the determination of net income.

Deferred Debits

§ 367.1810 Account 181, Unamortized debt expense.

This account must include expenses related to the issuance or assumption of debt securities. Amounts recorded in this account must be amortized over the life of each respective issue under a plan that will distribute the amount equitably over the life of the security. The amortization must be on a monthly basis, and the related amounts must be charged to account 428, Amortization of debt discount and expense (§ 367.4280). Any unamortized amounts outstanding at the time that the related debt is prematurely reacquired must be accounted for as indicated in General Instructions in § 367.16.

§ 367.1823 Account 182.3, Other regulatory assets.

(a) This account must include the amounts of regulatory-created assets, not includible in other accounts, resulting from the ratemaking actions of regulatory agencies. (*See* Definitions § 367.1(a)(38).)

(b) The amounts included in this account are to be established by those charges which would have been included in net income, or accumulated other comprehensive income, determinations in the current period under the general requirements of the Uniform System of Accounts but for it being probable that such items will be included in a different period(s) for purposes of developing rates that the utility is authorized to charge for its utility services. When specific identification of the particular source of a regulatory asset cannot be made, such as in plant phase-ins, rate moderation plans, or rate levelization plans, account 407.4, Regulatory credits (§ 367.4074), must be credited. The amounts recorded in this account are generally to be charged, concurrently with the recovery of the amounts in rates, to the same account that would have been charged if included in income when incurred, except all regulatory assets established through the use of account 407.4 (§ 367.4074) must be charged to account 407.3, Regulatory debits (§ 367.4073), concurrent with the recovery in rates.

(c) If rate recovery of all or part of an amount included in this account is disallowed, the disallowed amount must be charged to Account 426.5, Other deductions (§ 367.4265), or Account 435, Extraordinary deductions (§ 367.4350), in the year of the disallowance.

(d) The records supporting the entries to this account must be kept so that the service company can furnish full information as to the nature and amount of each regulatory asset included in this account, including justification for inclusion of such amounts in this account.

§ 367.1830 Account 183, Preliminary survey and investigation charges.

(a) This account must be charged with all expenditures for preliminary surveys, plans, investigations, and other similar items, made for the purpose of determining the feasibility of service company projects under contemplation. If construction results, this account must be credited and the appropriate service company property account charged. If the work is abandoned, the charge must be made to account 426.5, Other deductions (§ 367.4265), or to the appropriate operating expense account.

(b) The records supporting the entries to this account must be kept so that the service company can furnish complete information as to the nature and the purpose of the survey, plans, or investigations and the nature and amounts of the several charges.

(c) The amount of preliminary survey and investigation charges transferred to service company property must not exceed the expenditures that may reasonably be determined to contribute directly and immediately and without duplication to service company property.

§ 367.1840 Account 184, Clearing accounts.

This account must include undistributed balances in clearing accounts at the date of the balance sheet. Balances in clearing accounts must be substantially cleared not later than the end of the calendar year unless the items held relate to a future period.

§ 367.1850 Account 185, Temporary facilities.

This account must include amounts shown by project for property installed for temporary use for a period of less than one year. Each project must be charged with the cost of temporary facilities and credited with payments received from customers and net salvage realized on removal of the temporary facilities. Any net credit or debit resulting must be cleared to the construction or service project to which the facilities relate.

§ 367.1860 Account 186, Miscellaneous deferred debits.

(a) This account must include all debits not provided for elsewhere, such as miscellaneous work in progress, and

unusual or extraordinary expenses, not included in other accounts, that are in the process of amortization and items the proper final disposition of which is uncertain.

(b) The records supporting the entries to this account must be kept so that the service company can furnish full information as to each deferred debit included in this account.

§ 367.1880 Account 188, Research, development, or demonstration expenditures.

(a) This account must be charged with the cost of all expenditures coming within the meaning of research, development and demonstration (RD&D) of this Uniform System of Accounts (*See* Definitions § 367.1(a)(40)), except those expenditures properly chargeable to account 107, Construction work in progress (§ 367.1070).

(b) Costs that are minor or of a general or recurring nature must be transferred from this account to the appropriate operating expense function or, if the costs are common to the overall operations or cannot be feasibly allocated to the various operating accounts, then the costs must be recorded in account 930.2, Miscellaneous general expenses (§ 367.9302).

(c) In certain instances, a service company may incur large and significant research, development, and demonstration expenditures that are nonrecurring and that would distort the annual research, development, and demonstration charges for the period. In such a case, the portion of such amounts that causes the distortion may be amortized to the appropriate operating expense account over a period not to exceed five years, unless otherwise authorized by the Commission.

(d) The entries in this account must be maintained so as to show separately each project along with complete detail of the nature and purpose of the research, development, and demonstration project together with the related costs.

§ 367.1890 Account 189, Unamortized loss on reacquired debt.

This account must include the losses on long-term debt reacquired or redeemed. The amounts in this account must be amortized in accordance with General Instruction § 367.16.

§ 367.1900 Account 190, Accumulated deferred income taxes.

(a) This account must be debited and account 411.1, Provision for deferred income taxes—Credit, operating income (§ 367.4111), or account 411.2, Provision for deferred income taxes—Credit, other income and deductions (§ 367.4112), as appropriate, must be credited with an amount equal to that by which income taxes payable for the year are higher because of the inclusion of certain items in income for tax purposes, which items for general accounting purposes will not be fully reflected in the service company's determination of annual net income until subsequent years.

(b) This account must be credited and account 410.1, Provision for deferred income taxes, operating income (§ 367.4101), or account 410.2, Provision for deferred income taxes, other income and deductions (§ 367.4102), as appropriate, must be debited with an amount equal to that by which income taxes payable for the year are lower because of prior payment of taxes as provided by paragraph (a) of this section, because of difference in timing for tax purposes of particular items of income or income deductions from that recognized by the utility for general accounting purposes. The credit to this account and debit to account 410.1 (§ 367.4101), or 410.2 (§ 367.4102) must, in general, represent the effect on taxes payable in the current year of the smaller amount of book income recognized for tax purposes as compared to the amount recognized in the service company's current accounts with respect to the item or class of items for which deferred tax accounting by the service company was authorized by the Commission.

(c) The service company is restricted in its use of this account to the purpose provided in paragraphs (a) and (b) of this section. The service company must not make use of the balance in this account or any related portion except as provided in the text of this account, without prior approval of the Commission. Any remaining deferred tax account balance with respect to an amount for any prior year's tax deferral, the amortization of which or other recognition in the service company's income accounts has been completed, or other disposition made, must be debited to account 410.1, Provision for deferred income taxes, operating income (§ 367.4101), or account 410.2, Provision for deferred income taxes, other income and deductions (§ 367.4102), as appropriate, or otherwise disposed of as the Commission may authorize or direct. (*See* General Instructions in § 367.17.)

Proprietary Capital

§ 367.2010 Account 201, Common stock issued.

This account must include the par or stated value of all common capital stock issued and outstanding.

§ 367.2040 Account 204, Preferred stock issued.

This account must include the par or stated value of all preferred stock issued and outstanding.

§ 367.2110 Account 211, Miscellaneous paid-in capital.

This account must include the balance of all other credits for paid-in capital that is not properly included in proprietary capital accounts. This account may include all commissions and expenses incurred in connection with the issuance of capital stock.

§ 367.2150 Account 215, Appropriated retained earnings.

This account must include the amount of retained earnings that has been appropriated or set aside for special purposes. Separate subaccounts must be maintained under titles that will designate the purpose for which each appropriation was made.

§ 367.2160 Account 216, Unappropriated retained earnings.

This account must include the balances, either debit or credit, of unappropriated retained earnings arising from earnings of the service company. This account must not include any amounts representing the undistributed earnings of subsidiary companies.

§ 367.2161 Account 216.1, Unappropriated undistributed subsidiary earnings.

This account must include the balances, either debit or credit, of undistributed retained earnings of subsidiary companies since their acquisition. When dividends are received from subsidiary companies relating to amounts included in this account, this account must be debited and account 216, Unappropriated retained earnings (§ 367.2160), credited.

§ 367.2190 Account 219, Accumulated other comprehensive income.

(a) This account must include revenues, expenses, gains, and losses that are properly includable in other comprehensive income during the period. Examples of other comprehensive income include, but are not limited to, minimum pension liability adjustments, and unrealized gains and losses on certain investments in debt and equity securities. Records supporting the entries to this account

must be maintained so that the service company can furnish the amount of other comprehensive income for each item included in this account.

(b) This account also must be debited or credited, as appropriate, with amounts of accumulated other comprehensive income that have been included in the determination of net income during the period and in accumulated other comprehensive income in prior periods. Separate records for each category of items must be maintained to identify the amount of the reclassification adjustments from accumulated other comprehensive income to earnings made during the period.

Long-Term Debt

§ 367.2230 Account 223, Advances from associate companies.

(a) This account must include the face value of notes payable to associate companies and the amount of open book accounts representing advances from associate companies. It does not include notes and open accounts representing indebtedness subject to current settlement that are includible in account 233, Notes payable to associate companies (§ 367.2330), or account 234, Accounts payable to associate companies (§ 367.2340).

(b) The records supporting the entries to this account must be kept so that the service company can furnish complete information concerning each note and open account.

§ 367.2240 Account 224, Other long-term debt.

(a) This account must include, until maturity, all long-term debt not otherwise provided for. This covers items such as receivers' certificates, real estate mortgages executed or assumed, assessments for public improvements, notes and unsecured certificates of indebtedness not owned by associate companies, receipts outstanding for long-term debt, and other obligations maturing more than one year from date of issue or assumption.

(b) Separate accounts must be maintained for each class of obligation, and records must be maintained to show for each class all details as to date of obligation, date of maturity, interest dates and rates, security for the obligation, and other similar items.

§ 367.2250 Account 225, Unamortized premium on long-term debt.

(a) This account must include the excess of the cash value of consideration received over the face value upon the issuance or assumption of long-term debt securities.

(b) Amounts recorded in this account must be amortized over the life of each respective issue under a plan that will distribute the amount equitably over the life of the security. The amortization must be on a monthly basis, with the related amounts credited to account 429, Amortization of premium on debt—Credit (§ 367.4290) (*see* General Instructions in § 367.16).

§ 367.2260 Account 226, Unamortized discount on long-term debt—Debit.

(a) This account must include the excess of the face value of long-term debt securities over the related cash value of consideration received, related to the issue or assumption of all types and classes of debt.

(b) Amounts recorded in this account must be amortized over the life of the respective issues under a plan that will distribute the amount equitably over the life of the securities. The amortization must be on a monthly basis, with the related amounts charged to account 428, Amortization of debt discount and expense (§ 367.4280). (*see* General Instructions in § 367.16.)

Other Noncurrent Liabilities

§ 367.2270 Account 227, Obligations under capital lease—Non-current.

This account must include the portion not due within one year, of the obligations recorded for the amounts applicable to leased property recorded as assets in account 101.1, Property under capital leases (§ 367.1011).

§ 367.2282 Account 228.2, Accumulated provision for injuries and damages.

(a) This account must be credited with amounts charged to account 925, Injuries and damages (§ 367.9250), or other appropriate accounts, to meet the probable liability, not covered by insurance, for deaths or injuries to employees and others and for damages to property neither owned nor held under lease by the service company.

(b) When liability for any injury or damage is admitted by the service company, either voluntarily or because of the decision of a court or other lawful authority, such as workmen's compensation board, the admitted liability must be charged to this account and credited to the appropriate current liability account. Details of these charges must be maintained according to the year the casualty occurred which gave rise to the loss.

(c) Recoveries or reimbursements for losses charged to this account must be credited to this account; the cost of repairs to property of others if provided for in this account must be charged to this account.

§ 367.2283 Account 228.3, Accumulated provision for pensions and benefits.

(a) This account must include provisions made by the service company and amounts contributed by employees for pensions, accident and death benefits, savings, relief, hospital and other provident purposes, where the funds are included in the assets of the service company either in general or in segregated fund accounts.

(b) Amounts paid by the service company for the purposes for which this liability is established must be charged to this account.

(c) A separate account must be kept for each kind of provision included in this account.

(d) If employee pension or benefit plan funds are not included among the assets of the service company but are held by outside trustees, payments into such funds, or accruals therefore, must be included in this account.

§ 367.2300 Account 230, Asset retirement obligations.

(a) This account must include the amount of liabilities for the recognition of asset retirement obligations related to service company property. This account must be credited for the amount of the liabilities for asset retirement obligations with amounts charged to the appropriate property account to record the related asset retirement costs.

(b) The service company must charge the accretion expense to account 411.10, Accretion expense (§ 367.4118), and credit account 230, Asset retirement obligations (§ 367.2300).

(c) This account must be debited with amounts paid to settle the asset retirement obligations recorded in this account.

(d) The service company must clear from this account any gains or losses resulting from the settlement of asset retirement obligations in accordance with the instructions prescribed in the General Instructions in § 367.22.

Current and Accrued Liabilities

§ 367.2310 Account 231, Notes payable.

This account must include the face value of all notes, drafts, acceptances, or other similar evidences of indebtedness, payable on demand or within a time not exceeding one year from date of issue, to other than associate companies.

§ 367.2320 Account 232, Accounts payable.

This account must include all amounts payable by the service company within one year that are not provided for in other accounts.

§ 367.2330 Account 233, Notes payable to associate companies.

(a) This account must include amounts owing to associate companies on notes, drafts, acceptances, or other similar evidences of indebtedness, and open accounts payable on demand or not more than one year from date of issue or creation.

(b) Exclude from this account notes and accounts that are includible in account 223, Advances from associate companies (§ 367.2230).

§ 367.2340 Account 234, Accounts payable to associate companies.

This account must include all amounts payable to associate companies by the service company within one year, which are not provided for in other accounts.

§ 367.2360 Account 236, Taxes accrued.

(a) This account must be credited with the amount of taxes accrued during the accounting period, corresponding debits being made to the appropriate accounts for tax charges. The credits may be based upon estimates, but from time to time during the year as the facts become known, the amount of the periodic credits must be adjusted so as to include as nearly as can be determined in each year the related applicable taxes. Any amount representing a prepayment of taxes applicable to the period subsequent to the date of the balance sheet, must be shown under account 165, Prepayments (§ 367.1650).

(b) If accruals for taxes are found to be insufficient or excessive, corrections must be made through current tax accruals.

(c) Accruals for taxes must be based upon the net amounts payable after credit for any discounts, and must not include any amounts for interest on tax deficiencies or refunds. Interest received on refunds must be credited to account 419, Interest and dividend income (§ 367.4190), and interest paid on deficiencies must be charged to account 431, Other interest expense (§ 367.4310).

(d) The records supporting the entries to this account must be kept so as to show for each class of taxes, the amount accrued, the basis for the accrual, the accounts to which charged, and the amount of tax paid.

§ 367.2370 Account 237, Interest accrued.

This account must include the amount of interest accrued but not matured on all liabilities of the service company not including, however, interest that is added to the principal of the debt on which it is incurred. Supporting records must be maintained so as to show the amount of interest accrued on each obligation.

§ 367.2380 Account 238, Dividends declared.

This account must include the amount of dividends that have been declared but not paid. Dividends must be credited to this account when they become a liability.

§ 367.2410 Account 241, Tax collections payable.

(a) This account must include the amount of taxes collected by the service company through payroll deductions or otherwise pending transmittal of the taxes to the proper taxing authority.

(b) Do not include liability for taxes assessed directly against the service company that is accounted for as part of the service company's own tax expense.

§ 367.2420 Account 242, Miscellaneous current and accrued liabilities.

This account must include the amount of all other current and accrued liabilities not provided for elsewhere, appropriately designated and supported so as to show the nature of each liability.

§ 367.2430 Account 243, Obligations under capital leases—Current.

This account must include the portion, due within one year, of the obligations recorded for the amounts applicable to leased property recorded as assets in account 101.1, Property under capital leases (§ 367.1011).

§ 367.2440 Account 244, Derivative instrument liabilities.

This account must include the change in the fair value of all derivative instrument liabilities not designated as cash flow or fair value hedges. Account 426.5, Other deductions (§ 367.4265), must be debited or credited as appropriate with the corresponding amount of the change in the fair value of the derivative instrument.

§ 367.2450 Account 245, Derivative instrument liabilities—Hedges

(a) This account must include the change in the fair value of derivative instrument liabilities designated by the service company as cash flow or fair value hedges.

(b) A service company must record the change in the fair value of a derivative instrument liability related to a cash flow hedge in this account, with a concurrent charge to account 219, Accumulated other comprehensive income (§ 367.2190), with the effective portion of the derivative's gain or loss. The ineffective portion of the cash flow hedge must be charged to the same income or expense account that will be used when the hedged item enters into the determination of net income.

(c) A service company must record the change in the fair value of a derivative instrument liability related to a fair value hedge in this account, with a concurrent charge to a subaccount of the asset or liability that carries the item being hedged. The ineffective portion of the fair value hedge must be charged to the same income or expense account that will be used when the hedged item enters into the determination of net income.

Deferred Credits

§ 367.2530 Account, 253, Other deferred credits.

This account must include advance billings and receipts and other deferred credit items, not provided for elsewhere, including amounts which cannot be entirely cleared or disposed of until additional information has been received.

§ 367.2540 Account 254, Other regulatory liabilities.

(a) This account must include the amounts of regulatory liabilities, not includible in other accounts, imposed on the service company by the ratemaking actions of regulatory agencies. (See Definitions § 367.1(a)(38).)

(b) The amounts included in this account are to be established by those credits which would have been included in net income, or accumulated other comprehensive income, determinations in the current period under the general requirements of the USofA but for it being probable that: Such items will be included in a different period(s) for purposes of developing the rates that the service company is authorized to charge for its services; or refunds to customers, not provided for in other accounts, will be required. When specific identification of the particular source of the regulatory liability cannot be made or when the liability arises from revenues collected pursuant to tariffs on file at a regulatory agency, account 407.3, Regulatory debits (§ 367.4073), must be debited. The amounts recorded in this account generally are to be credited to the same account that would have been credited if included in income when earned except: All regulatory liabilities established through the use of account 407.3 (§ 367.4073) must be credited to account 407.4, Regulatory credits (§ 367.4074); and in the case of refunds, a cash account or other appropriate account should be credited when the obligation is satisfied.

(c) If it is later determined that the amounts recorded in this account will not be returned to customers through rates or refunds, such amounts must be credited to Account 421, Miscellaneous income or loss (§ 367.4210), or Account 434, Extraordinary income (§ 367.4340), as appropriate, in the year such determination is made.

(d) The records supporting the entries to this account must be so kept that the service company can furnish full information as to the nature and amount of each regulatory liability included in this account, including justification for inclusion of such amounts in this account.

§ 367.2550 Account 255, Accumulated deferred investment tax credits.

This account must be credited with all investment tax credits deferred by companies that have elected to follow deferral accounting, partial or full, rather than recognizing in the income statement the total benefits of the tax credit as realized. After this election, a company may not transfer amounts from this account, except as authorized in this account and in accounts 411.4, Investment tax credit adjustments, service company property (§ 367.4114) or 411.5, Investment tax credit adjustments, other income and deductions (§ 367.4115), or with approval of the Commission.

§ 367.2820 Account 282, Accumulated deferred income taxes—Other property.

(a) This account must include the tax deferrals resulting from adoption of the principle of comprehensive inter-period income tax allocation described in the General Instructions in § 367.17 that are related to all property other than accelerated amortization property.

(b) This account must be credited and accounts 410.1, Provision for deferred income taxes, operating income (§ 367.4101), or 410.2, Provision for deferred income taxes, Other income and deductions (§ 367.4102), as appropriate, must be debited with tax effects related to property described in paragraph (a) of this section where taxable income is lower than pretax accounting income due to differences between the periods in which revenue and expense transactions affect taxable income and the periods in which they enter into the determination of pretax accounting income.

(c) This account must be debited, and accounts 411.1, Provision for deferred income taxes—Credit, operating income (§ 367.4111), or 411.2, Provision for deferred income taxes—Credit, other income and deductions (§ 367.4112), as appropriate, must be credited with tax effects related to property described in paragraph (a) of this section where taxable income is higher than pretax accounting income due to differences between the periods in which revenue and expense transactions affect taxable income and the periods in which they enter into the determination of pretax accounting income.

(d) The service company is restricted in its use of this account to the purposes described in paragraphs (a) through (c) of this section. It must not transfer the balance in this account or any related portion to retained earnings or make any other use of the balance except as provided in paragraph (a) through (c) of this section without prior approval of the Commission. Upon the disposition by sale, exchange, transfer, abandonment or premature retirement of property on which there is a related balance, this account must be charged with an amount equal to the related income tax expense, if any, arising from the disposition and accounts 411.1, Income taxes deferred in prior years—Credit, operating income (§ 367.4111), or 411.2, Income taxes deferred in prior years—Credit, other income and deductions (§ 367.4112), must be credited. When property is disposed of by transfer to a wholly-owned subsidiary, the related balance in this account also must be transferred. When the disposition relates to retirement of an item or items under a group method of depreciation where there is no tax effect in the year of retirement, no entries are required in this account if it can be determined that the related balance must be retained to offset future group item tax deficiencies.

§ 367.2830 Account 283, Accumulated deferred income taxes—Other.

(a) This account must include all credit tax deferrals resulting from the adoption of the principles of comprehensive inter-period income tax allocation described in the General Instructions in § 367.17 other than those deferrals that are includible in account 282, Accumulated deferred income taxes—Other property (§ 367.2820).

(b) This account must be credited, and accounts 410.1 Provision for deferred income taxes, operating income (§ 367.4101), or 410.2 Provision for deferred income taxes, other income and deductions (§ 367.4102), as appropriate, must be debited with tax effects related to items described in paragraph (a) of this section where taxable income is lower than pretax accounting income due to differences between the periods in which revenue and expense transactions affect taxable income and the periods in which they enter into the determination of pretax accounting income.

(c) This account must be debited, and accounts 411.1, Provision for deferred income taxes-Credit, operating income (§ 367.4111), or 411.2, Provision for deferred income taxes-Credit, other income and deductions (§ 367.4112), as appropriate, must be credited with tax effects related to items described in paragraph (a) of this account where taxable income is higher than pretax accounting income due to differences between the periods in which revenue and expense transactions affect taxable income and the periods in which they enter into the determination of pretax accounting income.

(d) Records with respect to entries to this account, as described in paragraphs (a) through (c) of this section, and the account balance, must be maintained so as to show the factors of calculation with respect to each annual amount of the item or class of items.

(e) The service company is restricted in its use of this account to the purposes described in paragraphs (a) through (c) of this section. It must not transfer the balance in the account or any portion of the account to retained earnings or to any other account or make any use of the account except as provided in the text of this account, without prior approval of the Commission. Upon the disposition by sale, exchange, transfer, abandonment or premature retirement of items on which there is a related balance herein, this account must be charged with an amount equal to the related income tax effect, if any, arising from the disposition and accounts 411.1, Provision for deferred income taxes-Credit, operating income (§ 367.4111), or 411.2, Provision for deferred income taxes—Credit, other income and deductions (§ 367.4112), as appropriate, must be credited.

(f) When property is disposed of by transfer to a wholly-owned subsidiary, the related balance in this account also must be transferred. When the disposition relates to retirement of an item or items under a group method of depreciation where there is no tax effect in the year of retirement, no entries are required in this account if it can be determined that the related balance must be retained to offset future group item tax deficiencies.

Subpart G—Service Company Property Chart of Accounts

§ 367.3010 Account 301, Organization.

(a) This account must include all fees paid to federal or state governments for the privilege of incorporation and expenditures incident to organizing the

corporation, partnership, or other enterprise and putting it into readiness to do business.

(b) This account must include the following items:

(1) Cost of obtaining certificates authorizing the service company to engage in its business.

(2) Fees and expenses for incorporation.

(3) Fees and expenses for mergers or consolidations.

(4) Office expenses incident to organizing the service company.

(5) Stock and minute books and corporate seal.

(c) This account must not include any discounts upon securities issued or assumed; nor may it include any costs incident to negotiating loans, selling bonds or other evidences of debt or expenses in connection with the authorization, issuance or sale of capital stock.

(d) Exclude from this account and include in the appropriate expense account, the cost of preparing and filing papers in connection with the extension of the term of incorporation unless the first organization costs have been written off. When charges are made to this account for expenses incurred in mergers, consolidations, or reorganizations, amounts previously included in this account or in similar accounts in the books of the companies concerned must be excluded from this account.

§ 367.3030 Account 303, Miscellaneous intangible property.

(a) This account must include the cost of patent rights, licenses, privileges, and other intangible property necessary or valuable in the conduct of service company operations and not specifically chargeable to any other account.

(b) When any item included in this account is retired or expires, the related book cost must be credited to this account and charged to account 426.5, Other deductions (§ 367.4265), or account 111, Accumulated provision for amortization of property (§ 367.1110).

(c) This account must be maintained in a manner so that the service company can furnish full information with respect to the amounts included in this account.

§ 367.3060 Account 306, Leasehold improvements.

This account must include all costs incurred by the service company in improvements of, remodeling of, or installation of additional facilities in rented offices or buildings to suit tenant's needs, placed in service prior to January 1, 2008.

§ 367.3890 Account 389, Land and land rights.

This account must include the cost of land and land rights used for service company purposes, the cost of which is not properly includible in other land and land rights accounts (*See* Service Company Property Instructions in § 367.55).

§ 367.3900 Account 390, Structures and improvements.

This account must include the cost in place of structures and improvements used for service company purposes, the cost of which is not properly includible in other structures and improvements accounts (See Service Company Property Instructions in § 367.56).

§ 367.3910 Account 391, Office furniture and equipment.

(a) This account must include the cost of office furniture and equipment owned by the service company and devoted to service company operations, and not permanently attached to buildings, except the cost of the furniture and equipment that the service company elects to assign to other property accounts on a functional basis.

(b) This account must include the following items:

(1) Bookcases and shelves.

(2) Desks, chairs, and desk equipment.

(3) Drafting-room equipment.

(4) Filing, storage, and other cabinets.

(5) Floor covering.

(6) Library and library equipment.

(7) Mechanical office equipment, such as accounting machines, typewriters, and other similar items.

(8) Safes.

(9) Tables.

§ 367.3920 Account 392, Transportation equipment.

(a) This account must include the cost of transportation vehicles used for service company purposes.

(b) This account must include the following items:

(1) Airplanes.

(2) Automobiles.

(3) Bicycles.

(4) Electrical vehicles.

(5) Motor trucks.

(6) Motorcycles.

(7) Repair cars or trucks.

(8) Tractors and trailers.

(9) Other transportation vehicles.

§ 367.3930 Account 393, Stores equipment.

(a) This account must include the cost of equipment used for the receiving, shipping, handling, and storage of materials and supplies.

(b) This account must include the following items:

(1) Chain falls.

(2) Counters.

(3) Cranes (portable).

(4) Elevating and stacking equipment (portable).

(5) Hoists.

(6) Lockers.

(7) Scales.

(8) Shelving.

(9) Storage bins.

(10) Trucks, hand and power driven.

(11) Wheelbarrows.

§ 367.3940 Account 394, Tools, shop and garage equipment.

(a) This account must include the cost of tools, implements, and equipment used in construction, repair work, general shops and garages and not specifically provided for or includible in other accounts.

(b) This account must include the following items:

(1) Air compressors.

(2) Anvils.

(3) Automobile repair shop equipment.

(4) Battery charging equipment.

(5) Belts, shafts and countershafts.

(6) Boilers.

(7) Cable pulling equipment.

(8) Concrete mixers.

(9) Drill presses.

(10) Derricks.

(11) Electric equipment.

(12) Engines.

(13) Forges.

(14) Furnaces.

(15) Foundations and settings specially constructed for equipment in this account and not expected to outlast the equipment for which provided.

(16) Gas producers.

(17) Gasoline pumps, oil pumps and storage tanks.

(18) Greasing tools and equipment.

(19) Hoists.

(20) Ladders.

(21) Lathes.

(22) Machine tools.

(23) Motor-driven tools.

(24) Motors.

(25) Pipe threading and cutting tools.

(26) Pneumatic tools.

(27) Pumps.

(28) Riveters.

(29) Smithing equipment.

(30) Tool racks.

(31) Vises.

(32) Welding apparatus.

(33) Work benches.

§ 367.3950 Account 395, Laboratory equipment.

(a) This account must include the cost installed of laboratory equipment used for general laboratory purposes.

(b) This account must include the following items:

(1) Ammeters.
(2) Balances and scales.
(3) Barometers.
(4) Calorimeters-bomb, flow, recording types, and other similar items.
(5) Current batteries.
(6) Electric furnaces.
(7) Frequency changers.
(8) Galvanometers.
(9) Gas burning equipment.
(10) Gauges.
(11) Glassware, beakers, burettes, and other similar items.
(12) Humidity testing apparatus.
(13) Inductometers.
(14) Laboratory hoods.
(15) Laboratory standard millivolt meters.
(16) Laboratory standard volt meters.
(17) Laboratory tables and cabinets.
(18) Meter-testing equipment.
(19) Millivolt meters.
(20) Motor generator sets.
(21) Muffles.
(22) Oil analysis apparatus.
(23) Panels.
(24) Phantom loads.
(25) Piping.
(26) Portable graphic ammeters, voltmeters, and wattmeters.
(27) Portable loading devices.
(28) Potential batteries.
(29) Potentiometers.
(30) Rotating standards.
(31) Specific gravity apparatus.
(32) Standard bottles for meter prover testing.
(33) Standard cell, reactance, resistor, and shunt.
(34) Stills.
(35) Sulphur and ammonia apparatus.
(36) Switchboards.
(37) Synchronous timers.
(38) Tar analysis apparatus.
(39) Testing panels.
(40) Testing resistors.
(41) Thermometers—indicating and recording.
(42) Transformers.
(43) Voltmeters.
(44) Other testing, laboratory, or research equipment not provided for elsewhere.
(45) Other items of equipment for testing gas, fuel, flue gas, water, residuals, and other similar items.

§ 367.3960 Account 396, Power operated equipment.

(a) This account must include the cost of power operated equipment used in construction or repair work exclusive of equipment includible in other accounts. Include, also, the tools and accessories acquired for use with the equipment and the vehicle on which the equipment is mounted.

(b) This account must include the following items:
(1) Air compressors, including driving unit and vehicle.
(2) Back filling machines.
(3) Boring machines.
(4) Bulldozers.
(5) Cranes and hoists.
(6) Diggers.
(7) Engines.
(8) Pile drivers.
(9) Pipe cleaning machines.
(10) Pipe coating or wrapping machines.
(11) Tractors—Crawler type.
(12) Trenchers.
(13) Other power operated equipment.

(c) It is intended that this account include only the large units that are generally self-propelled or mounted on movable equipment.

§ 367.3970 Account 397, Communication equipment.

(a) This account must include the cost installed of telephone, telegraph, and wireless equipment for general use in connection with service company operations.

(b) This account must include the following items:
(1) Amplifiers.
(2) Antennae.
(3) Booths.
(4) Cables.
(5) Carrier terminal equipment.
(6) Conductors.
(7) Distributing boards.
(8) Extension cords.
(9) Gongs.
(10) Hand sets, manual and dial.
(11) Insulators.
(12) Intercommunicating sets.
(13) Loading coils.
(14) Microwave equipment.
(15) Operators' desks.
(16) Paraboloids.
(17) Poles and fixtures used wholly for telephone or telegraph wire.
(18) Power supply equipment.
(19) Radio transmitting and receiving sets.
(20) Reflectors.
(21) Repeaters.
(22) Remote control equipment and lines.
(23) Sending keys.
(24) Storage batteries.
(25) Switchboards.
(26) Telautograph circuit connections.
(27) Telegraph receiving sets.
(28) Telephone and telegraph circuits.
(29) Testing instruments.
(30) Towers.
(31) Underground conduit used wholly for telephone or telegraph wires and cable wires.

§ 367.3980 Account 398, Miscellaneous equipment.

(a) This account must include the cost of equipment, apparatus, and other similar items, used in the service company's operations that are not included in any other account of this system of accounts.

(b) This account must include the following items:
(1) Hospital and infirmary equipment.
(2) Kitchen equipment.
(3) Employees' recreation equipment.
(4) Radios.
(5) Restaurant equipment.
(6) Soda fountains.
(7) Operators' cottage furnishings.
(8) Other miscellaneous equipment.

§ 367.3990 Account 399, Other tangible property.

This account must include the cost of tangible service company property not provided for elsewhere.

§ 367.3991 Account 399.1, Asset retirement costs for service company property.

This account must include asset retirement costs on service company property.

Subpart H—Income Statement Chart of Accounts

Service Company Operating Income

§ 367.4000 Account 400, Operating revenues.

There must be shown under this caption the total amount included in the service company operating revenue accounts 457 through 459 (§§ 367.4570 through 367.4590).

§ 367.4010 Account 401, Operation expense.

There must be shown under this caption the total amount included in the service company operation expense accounts 500 through 589 (§§ 367.5000 through 367.5890), 800 through 881 (§§ 367.8000 through 367.8810) and 901 through 931 (§§ 367.9010 through 367.9310).

§ 367.4020 Account 402, Maintenance expense.

There must be shown under this caption the total amount included in the service company maintenance expense accounts 500 through 598 (§§ 367.5000 through 367.5890), 800 through 894 (§§ 367.8000 through 367.8810), and 935 (§ 367.9350).

§ 367.4030 Account 403, Depreciation expense.

(a) This account must include the amount of depreciation for all service company property, the cost of which is included in accounts 390 through 399.1 (§§ 367.3900 through 367.3991). Provide subaccounts by each class of service company property owned or leased

except the depreciation expense that is charged to clearing accounts or to account 416, Costs and expenses of merchandising, jobbing and contract work (§ 367.4160).

(b) The service company must keep the records of property and property retirements that will reflect the service life of property that has been retired and aid in estimating probable service life by mortality, turnover, or other appropriate methods; and also the records that will reflect the percentage of salvage and costs of removal for property retired from each account, or related subaccount, for depreciable property.

(c) Depreciation expenses applicable to transportation equipment, shop equipment, tools, work equipment, power operated equipment and other general equipment may be charged to clearing accounts as necessary in order to obtain a proper distribution of expenses between construction and operation.

§ 367.4031 Account 403.1, Depreciation expense for asset retirement costs.

This account must include the depreciation expense for asset retirement costs included in service company property.

§ 367.4040 Account 404, Amortization of limited-term property.

This account must include amortization charges applicable to amounts included in the service company property accounts for limited-term franchises, licenses, patent rights, limited-term interests in land, and expenditures on leased property where the service life of the improvements is terminable by action of the lease. The charges to this account must be sufficient to distribute the book cost of each investment as evenly as may be over the period of its benefit (*See* account 111, Accumulated provision for amortization of service company property (§ 367.1110)).

§ 367.4050 Account 405, Amortization of other property.

(a) When authorized by the Commission, this account must include charges for amortization of intangible or other property that does not have a definite or terminable life and that is not subject to charges for depreciation expense.

(b) This account must be supported in sufficient detail to show the amortization applicable to each investment being amortized, together with the book cost of the investment and the period over which it is being written off.

§ 367.4073 Account 407.3, Regulatory debits.

This account shall be debited, when appropriate, with amounts credited to Account 254, Other Regulatory Liabilities, to record regulatory liabilities imposed on the service company by the ratemaking actions of regulatory agencies. This account shall also be debited, when appropriate, with the amounts credited to Account 182.3, Other Regulatory Assets, concurrent with the recovery of such amounts in rates.

§ 367.4074 Account 407.4, Regulatory credits.

This account shall be credited, when appropriate, with amounts debited to Account 182.3, Other Regulatory Assets, to establish regulatory assets. This account shall also be credited, when appropriate, with the amounts debited to Account 254, Other Regulatory Liabilities, concurrent with the return of such amounts to customers through rates.

§ 367.4081 Account 408.1, Taxes other than income taxes, operating income.

This account must include those taxes, other than income taxes, that relate to service company operating income. This account must be maintained so as to allow ready identification of the various classes of taxes.

§ 367.4082 Account 408.2, Taxes other than income taxes, other income and deductions.

This account must include those taxes, other than income taxes, that relate to other income and deductions.

§ 367.4091 Account 409.1, Income taxes, operating income.

This account must include the amount of those local, state and Federal income taxes that relate to service company operating income.

§ 367.4092 Account 409.2, Income taxes, other income and deductions.

This account must include the amount of those local, state and Federal income taxes (both positive and negative), that relate to other income and deductions.

§ 367.4093 Account 409.3, Income taxes, extraordinary items.

This account must include the amount of those local, state and Federal income taxes (both positive and negative), that relate to extraordinary items.

§ 367.4101 Account 410.1, Provision for deferred income taxes, operating income.

This account must include the amounts of those deferrals of taxes and allocations of deferred taxes that relate to service company operating income.

§ 367.4102 Account 410.2, Provision for deferred income taxes, other income and deductions.

This account must include the amounts of those deferrals of taxes and allocations of deferred taxes that relate to other income and deductions.

§ 367.4111 Account 411.1, Provision for deferred income taxes—Credit, operating income.

This account must include the amounts of those allocations of deferred taxes and deferrals of taxes, credit, that relate to service company operating income.

§ 367.4112 Account 411.2, Provision for deferred income taxes—Credit, other income and deductions.

This account must include the amounts of those allocations of deferred taxes and deferrals of taxes, credit, that relate to other income and deductions.

§ 367.4114 Account 411.4, Investment tax credit adjustments, service company property.

This account must include the amount of those investment tax credit adjustments that relate to service company property.

§ 367.4115 Account 411.5, Investment tax credit adjustments, other.

This account must include the amount of those investment tax credit adjustments not properly included in other accounts.

§ 367.4116 Account 411.6, Gains from disposition of service company plant.

(a) The service company must record in this account gains resulting from the settlement of asset retirement obligations related to service company plant in accordance with the accounting prescribed in General Instructions in § 367.22.

(b) Income taxes relating to losses, recorded in this account must be recorded in Account 409.1, Income Taxes, operating income (§ 367.4091).

§ 367.4117 Account 411.7, Losses from disposition of service company plant.

(a) The service company must record in this account losses resulting from the settlement of asset retirement obligations related to service company plant in accordance with the accounting prescribed in General Instructions in § 367.22.

(b) Income taxes relating to losses, recorded in this account must be

recorded in Account 409.1, Income Taxes, operating income (§ 367.4091).

§ 367.4118 Account 411.10, Accretion expense.

This account must be charged for accretion expense on the liabilities associated with asset retirement obligations included in account 230, Asset retirement obligations (§ 367.2300), related to service company property.

§ 367.4120 Account 412, Cost and expenses of construction or other services.

This account must include expenditures related to the performance of construction or service contracts, under which the service company undertakes projects to construct physical property for associate or non-associate companies (see General Instructions § 367.24, Construction and service contracts for other companies) and the cost of services performed for others not provided for elsewhere.

§ 367.4160 Account 416, Costs and expenses of merchandising, jobbing and contract work.

(a) This account must include the following labor items for services provided:

(1) Canvassing and demonstrating appliances in homes and other places for the purpose of selling appliances.

(2) Demonstrating and selling activities in sales rooms.

(3) Installing appliances on customer premises where the work is done only for purchasers of appliances from the associated company.

(4) Installing wiring, piping, or other property work, on a jobbing or contract basis.

(5) Preparing advertising materials for appliance sales purposes.

(6) Receiving and handling customer orders for merchandise or for jobbing services.

(7) Cleaning and tidying sales rooms.

(8) Maintaining display counters and other equipment used in merchandising.

(9) Arranging merchandise in sales rooms and decorating display windows.

(10) Reconditioning repossessed appliances.

(11) Bookkeeping and other clerical work in connection with merchandise and jobbing activities.

(12) Supervising merchandise and jobbing operations.

(b) This account must include the following materials and expenses items:

(1) Advertising in newspapers, periodicals, radio, television, and other similar items.

(2) Cost of merchandise sold and of materials used in jobbing work.

(3) Stores expenses on merchandise and jobbing stocks.

(4) Fees and expenses of advertising and commercial artists' agencies.

(5) Printing booklets, dodgers, and other advertising data.

(6) Premiums given as inducement to buy appliances.

(7) Light, heat and power.

(8) Depreciation on equipment used primarily for merchandise and jobbing operations.

(9) Rent of sales rooms or of equipment.

(10) Transportation expense in delivery and pick-up of appliances by the associated company's facilities.

(11) Stationery and office supplies and expenses.

(12) Losses from uncollectible merchandise and jobbing accounts.

(c) Records in support of this account shall be so kept as to permit ready summarization of costs and expenses by such major items as are feasible.

(d) Related taxes must be recorded in account 408.2, Taxes other than income taxes, other income and deductions (§ 367.4082), or account 409.2, Income taxes, other income and deductions (§ 367.4092), as appropriate.

§ 367.4180 Account 418, Non-operating rental income.

(a) The expenses shall include all elements of costs incurred in the ownership and rental of property and the accounts shall be maintained so as to permit ready summarization of operation, maintenance, rents, depreciation, and amortization.

(b) Related taxes shall be recorded in Account 408.2, Taxes other than income taxes, other income and deductions (§ 367.4082) or Account 409.2, Income taxes, other income and deductions (§ 367.4092), as appropriate.

§ 367.4181 Account 418.1, Equity in earnings of subsidiary companies.

This account must include the service company's equity in the earnings or losses of subsidiary companies for the year.

§ 367.4190 Account 419, Interest and dividend income.

(a) This account must include interest revenues on securities, loans, notes, advances, special deposits, tax refunds and all other interest-bearing assets, and dividends on stocks of other companies, whether the securities on which the interest and dividends are received are carried as investments or included in sinking or other special fund accounts.

(b) This account may include the *pro rata* amount necessary to extinguish (during the interval between the date of acquisition and the date of maturity) the difference between the cost to the service company and the face value of interest-bearing securities. The amounts credited or charged must be concurrently included in the accounts in which the securities are carried.

(c) Where significant in amount, expenses, excluding operating taxes and income taxes, applicable to security investments and to interest and dividend revenues on the account must be charged in this account.

(d) Related taxes must be recorded in account 408.2, Taxes other than income taxes, other income and deductions (§ 367.4082), or account 409.2, Income taxes, other income and deductions (§ 367.4092).

(e) Interest accrued, the payment of which is not reasonably assured, dividends receivable that have not been declared or guaranteed, and interest or dividends upon reacquired securities issued or assumed by the service company must not be credited to this account.

§ 367.4191 Account 419.1, Allowance for other funds used during construction.

This account must include concurrent credits for allowance for other funds used during construction.

§ 367.4210 Account 421, Miscellaneous income or loss.

This account must include all revenue and expense items except taxes properly includible in the income account and not provided for elsewhere. Related taxes must be recorded in account 408.2, Taxes other than income taxes, other income and deductions (§ 367.4082), or account 409.2, Income taxes, other income and deductions (§ 367.4092).

§ 367.4211 Account 421.1, Gain on disposition of property.

This account must be credited with the gain on the sale, conveyance, exchange, or transfer of service or other property to another. Income taxes on gains recorded in this account must be recorded in account 409.2, Income taxes, other income and deductions (§ 367.4092).

§ 367.4212 Account 421.2, Loss on disposition of property.

This account must be charged with the loss on the sale, conveyance, exchange or transfer of service or other property to another. The reduction in income taxes relating to losses recorded in this account must be recorded in account 409.2, Income taxes, other income and deductions (§ 367.4092).

§ 367.4250 Account 425, Miscellaneous amortization.

(a) This account must include amortization charges not includible in

other accounts which are properly deductible in determining the income of the service company before interest charges. Charges included in this account, if significant in amount, must be in accordance with an orderly and systematic amortization program.

(b) This account must include the following items:

(1) Amortization of intangibles included in service company property.

(2) Other miscellaneous amortization charges authorized to be included in this account by the Commission.

§ 367.4261 Account 426.1, Donations.

This account must include all payments or donations for charitable, social or community welfare purposes.

§ 367.4262 Account 426.2, Life insurance.

This account must include all payments for life insurance of officers and employees where the service company is beneficiary (net premiums less increase in cash surrender value of policies).

§ 367.4263 Account 426.3, Penalties.

This account must include payments by the service company for penalties or fines for violation of any regulatory statutes by the service company or its officials.

§ 367.4264 Account 426.4, Expenditures for certain civic, political and related activities.

(a) This account must include expenditures for the purpose of influencing public opinion with respect to the election or appointment of public officials, referenda, legislation, or ordinances (either with respect to the possible adoption of new referenda, legislation or ordinances or repeal or modification of existing referenda, legislation or ordinances) or approval, modification, or revocation of franchises; or for the purpose of influencing the decisions of public officials.

(b) This account must not include expenditures that are directly related to appearances before regulatory or other governmental bodies in connection with an associate utility company's existing or proposed operations.

§ 367.4265 Account 426.5, Other deductions.

This account must include other miscellaneous expenses that are not properly included in service company operations.

§ 367.4270 Account 427, Interest on long-term debt.

(a) This account must include the amount of interest on outstanding long-term debt issued or assumed by the service company, the liability for which is included in account 224, Other long-term debt (§ 367.2240).

(b) This account must be kept or supported so as to show the interest accruals on each class and series of long-term debt.

(c) This account must not include interest on nominally issued or nominally outstanding long-term debt, including securities assumed.

§ 367.4280 Account 428, Amortization of debt discount and expense.

(a) This account must include the amortization of unamortized debt discount and expense on outstanding long-term debt. Amounts charged to this account must be credited concurrently to accounts 181, Unamortized debt expense (§ 367.1810), and 226, Unamortized discount on long-term debt—Debit (§ 367.2260).

(b) This account must be kept or supported so as to show the debt discount and expense on each class and series of long-term debt.

§ 367.4290 Account 429, Amortization of premium on debt—Credit.

(a) This account must include the amortization of unamortized net premium on outstanding long-term debt. Amounts credited to this account must be charged concurrently to account 225, Unamortized premium on long-term debt (§ 367.2250).

(b) This account must be kept or supported so as to show the premium on each class and series of long-term debt.

(c) This account must include the following items:

(1) Loss relating to investments in securities written-off or written-down.

(2) Loss on sale of investments.

(3) Loss on reacquisition, resale or retirement of service company's debt securities.

(4) Preliminary survey and investigation expenses related to abandoned projects, when not written-off to the appropriate operating expense account.

§ 367.4300 Account 430, Interest on debt to associate companies.

This account must include interest accrued on amounts included in account 223, Advances from associate companies (§ 367.2230), and account 233, Notes payable to associate companies (§ 367.2330). The records supporting the entries to this account must be kept so as to show to who the interest is to be paid, the period covered by the accrual, the rate of interest and the principal amount of the advances or other obligations on which the interest is accrued. Separate subaccounts must be maintained for each related debt account.

§ 367.4310 Account 431, Other interest expense.

This account must include all interest charges not provided for elsewhere.

§ 367.4320 Account 432, Allowance for borrowed funds used during construction—Credit.

This account must include concurrent credits for allowance for borrowed funds used during construction.

Subpart I—Retained Earnings Accounts

§ 367.4330 Account 433, Balance transferred from income.

This account must include the net credit or debit transferred from income for the year.

§ 367.4340 Account 434, Extraordinary income.

This account must be credited with gains of unusual nature and infrequent occurrence that would significantly distort the current year's income computed before extraordinary items, if reported other than as extraordinary items. Income tax relating to the amounts recorded in this account must be recorded in account 409.3, Income taxes, extraordinary items (§ 367.4093) (See General Instructions in § 367.8).

§ 367.4350 Account 435, Extraordinary deductions.

This account must be debited with losses of unusual nature and infrequent occurrence that would significantly distort the current year's income computed before extraordinary items, if reported other than as extraordinary items. Income tax relating to the amounts recorded in this account must be recorded in account 409.3, Income taxes, extraordinary items (§ 367.4093) (*See* General Instructions in § 367.8).

§ 367.4360 Account 436, Appropriations of retained earnings.

This account must include appropriations of retained earnings as follows:

(a) Appropriations required under terms of mortgages, orders of courts, contracts, or other agreements.

(b) Appropriations required by action of regulatory authorities.

(c) Other appropriations made at option of the service company for specific purposes.

§ 367.4370 Account 437, Dividends declared—preferred stock.

(a) This account must include amounts declared payable out of

retained earnings as dividends on actually outstanding preferred or prior lien capital stock issued by the service company.

(b) Dividends must be segregated for each class and series of preferred stock as to those payable in cash, stock, and other forms. If not payable in cash, the medium of payment must be described with sufficient detail to identify it.

§ 367.4380 Account 438, Dividends declared—common stock.

(a) This account must include amounts declared payable out of retained earnings as dividends on actually outstanding common capital stock issued by the service company.

(b) Dividends must be segregated for each class of common stock as to those payable in cash, stock and other forms. If not payable in cash, the medium of payment must be described with sufficient detail to identify it.

§ 367.4390 Account 439, Adjustments to retained earnings.

(a) This account must, with prior Commission approval, include significant non-recurring transactions accounted for as prior period adjustments, as follows:

(1) Correction of an error in the financial statements of a prior year.

(2) Adjustments that result from realization of income tax benefits of reacquisition operating loss carry forwards of purchased subsidiaries. All other items of profit and loss recognized during a year must be included in the determination of net income for that year.

(b) Adjustments, charges, or credits due to losses on reacquisition, resale or retirement of the company's own capital stock must be included in this account.

Subpart J—Operating Revenue Chart of Accounts

§ 367.4570 Account 457, Services rendered to associate companies.

This account must include amounts billed to associate companies for services rendered at cost (*See* accounts 457.1 through 457.3 in §§ 367.4571 through 367.4573). Overbillings or underbillings arising from adjustments of estimated costs to actual costs must be cleared through this account and concurrent adjustments made to other accounts involved.

§ 367.4571 Account 457.1, Direct costs charged to associate companies.

This account must include those direct costs that can be identified through a cost allocation system as being applicable to services performed for associate companies. This account must not include any compensation for use of equity capital or inter-company interest on indebtedness.

§ 367.4572 Account 457.2, Indirect costs charged to associate companies.

This account must include recovery of those indirect costs that cannot be separately identified to a single or group of associate companies and therefore must be allocated. Only journal or memorandum entries should be prepared monthly, by departments, for all such cost accumulated and billed to customers. Amounts billed to associate companies must be included in this account. This account must not include any compensation for use of equity capital or inter-company interest on indebtedness.

§ 367.4573 Account 457.3, Compensation for use of capital-associate companies.

This account must include only the portion of compensation for use of equity capital and inter-company interest on indebtedness before income taxes that is properly allocable to services rendered to each associate company.

§ 367.4580 Account 458, Services rendered to non-associate companies.

This account must include amounts billed for services rendered to non-associate companies (*See* accounts 458.1 through 458.4 (§§ 367.4581 through 367.4584)).

§ 367.4581 Account 458.1, Direct costs charged to non-associate companies.

This account must include those direct costs that can be identified through a cost allocation system as being applicable to services performed for non-associate companies. This account must not include any compensation for use of equity capital or interest on indebtedness.

§ 367.4582 Account 458.2, Indirect costs charged to non-associate companies.

This account must include recovery of those indirect costs of services performed for non-associate companies that cannot be specifically assigned and therefore must be allocated. This account must not include any compensation for use of equity capital or inter-company interest on indebtedness.

§ 367.4583 Account 458.3, Compensation for use of capital—Non-associate companies.

This account must include only the portion of compensation for use of equity capital and inter-company interest on indebtedness before income taxes that is properly allocable to services rendered to non-associate utility companies. A statement to support the basis for the compensation and how it was calculated must be attached to a separate journal entry, ledger system, or memorandum file.

§ 367.4584 Account 458.4, Excess or deficiency on servicing non-associate utility companies.

This account must include the amount by which the aggregate price received for services rendered to non-associate utility companies differs from the sum of the total direct and indirect costs and compensation for use of capital which are properly allocable to such services (*See* accounts 458.1 through 458.3 (§§ 367.4581 through 367.4583) and General Instructions in § 367.23).

Subpart K—Operation and Maintenance Expense Chart of Accounts

§ 367.5000 Accounts 500–598, Electric operation and maintenance accounts.

Service companies must use accounts 500 through 598 in part 101 of this chapter.

§ 367.8000 Accounts 800–894, Gas operation and maintenance accounts.

Service companies must use accounts 800 through 894 in part 201 of this chapter.

§ 367.9010 Account 901, Supervision.

This account must include the cost of labor and expenses incurred in the general direction and supervision of customer accounting and collecting activities. Direct supervision of a specific activity must be charged to account 902, Meter reading expenses (§ 367.9020), or account 903, Customer records and collection expenses (§ 367.9030), as appropriate (*See* Operating Expense Instructions in § 367.80).

§ 367.9020 Account 902, Meter reading expenses.

(a) This account must include the cost of labor, materials used and expenses incurred in reading customer meters, and determining consumption when performed by employees engaged in reading meters.

(b) This account must include the following labor items:

(1) Addressing forms for obtaining meter readings by mail.

(2) Changing and collecting meter charts used for billing purposes.

(3) Inspecting time clocks, checking seals, and other similar items, when performed by meter readers and the work represents a minor activity incidental to regular meter reading routine.

(4) Reading meters, including demand meters, and obtaining load information for billing purposes. Exclude and charge to account 586, Meter expenses (§ 367.5000), account 878, Meter and house regulator expenses (§ 367.8000), or to account 903, Customer records and collection expenses (§ 367.9030), as applicable, the cost of obtaining meter readings, first and final, if incidental to the operation of removing or resetting, sealing, or locking, and disconnecting or reconnecting meters.

(5) Computing consumption from meter reader's book or from reports by mail when done by employees engaged in reading meters.

(6) Collecting from prepayment meters when incidental to meter reading.

(7) Maintaining record of customers'' keys.

(8) Computing estimated or average consumption when performed by employees engaged in reading meters.

(c) This account must include the following materials and expenses items:

(1) Badges, lamps, and uniforms.

(2) Demand charts, meter books and binders and forms for recording readings, but not the cost of preparation.

(3) Postage and supplies used in obtaining meter readings by mail.

(4) Transportation, meals, and incidental expenses.

§ 367.9030 Account 903, Customer records and collection expenses.

(a) This account must include the cost of labor, materials used and expenses incurred in work on customer applications, contracts, orders, credit investigations, billing and accounting, collections and complaints.

(b) This account must include the following labor items:

(1) Receiving, preparing, recording and handling routine orders for service, disconnections, transfers or meter tests initiated by the customer, excluding the cost of carrying out the orders, that is chargeable to the account appropriate for the work called for by the orders.

(2) Investigations of customers'' credit and keeping of records pertaining to the investigations, including records of uncollectible accounts written off.

(3) Receiving, refunding or applying customer deposits and maintaining customer deposit, line extension, and other miscellaneous records.

(4) Checking consumption shown by meter readers'' reports where incidental to preparation of billing data.

(5) Preparing address plates and addressing bills and delinquent notices.

(6) Preparing billing data.

(7) Operating billing and bookkeeping machines.

(8) Verifying billing records with contracts or rate schedules.

(9) Preparing bills for delivery, and mailing or delivering bills.

(10) Collecting revenues, including collection from prepayment meters unless incidental to meter-reading operations.

(11) Balancing collections, preparing collections for deposit, and preparing cash reports.

(12) Posting collections and other credits or charges to customer accounts and extending unpaid balances.

(13) Balancing customer accounts and controls.

(14) Preparing, mailing, or delivering delinquent notices and preparing reports of delinquent accounts.

(15) Final meter reading of delinquent accounts when done by collectors incidental to regular activities.

(16) Disconnecting and reconnecting service because of nonpayment of bills.

(17) Receiving, recording, and handling of inquiries, complaints, and requests for investigations from customers, including preparation of necessary orders, but excluding the cost of carrying out such orders, which is chargeable to the account appropriate for the work called for by the orders.

(18) Statistical and tabulating work on customer accounts and revenues, but not including special analyses for sales department, rate department, or other general purposes, unless incidental to regular customer accounting routines.

(19) Preparing and periodically rewriting meter reading sheets.

(20) Determining consumption and computing estimated or average consumption when performed by employees other than those engaged in reading meters.

(c) This account must include the following materials and expenses items:

(1) Address plates and supplies.

(2) Cash overages and shortages.

(3) Commissions or fees to others for collecting.

(4) Payments to credit organizations for investigations and reports.

(5) Postage.

(6) Transportation expenses (Major only), including transportation of customer bills and meter books under centralized billing procedure.

(7) Transportation, meals, and incidental expenses.

(8) Bank charges, exchange, and other fees for cashing and depositing customers' checks.

(9) Forms for recording orders for services removals, and other similar forms.

(10) Rent of mechanical equipment.

(d) The cost of work on meter history and meter location records is chargeable to account 586, Meter expenses (§ 367.5000) or account 878, Meter and house regulator expenses (§ 367.8000).

§ 367.9040 Account 904, Uncollectible accounts.

This account must be charged with amounts sufficient to provide for losses from uncollectible service company revenues. Concurrent credits must be made to account 144, Accumulated provision for uncollectible accounts—Credit (§ 367.1440). Losses from uncollectible accounts also must be charged to account 144 (§ 367.1440).

§ 367.9050 Account 905, Miscellaneous customer accounts expenses.

(a) This account must include the cost of labor, materials used and expenses incurred not provided for in other accounts.

(b) This account must include the following labor items:

(1) General clerical and stenographic work.

(2) Miscellaneous labor.

(c) This account must include the following materials and expenses items:

(1) Communication service.

(2) Miscellaneous office supplies and expenses and stationery and printing other than those specifically provided for in accounts 902 and 903 (§§ 367.9020 and 367.9030).

§ 367.9070 Account 907, Supervision.

This account must include the cost of labor and expenses incurred in the general direction and supervision of customer service activities, the object of which is to encourage safe, efficient and economical use of the associate utility company's service. Direct supervision of a specific activity within customer service and informational expense classification must be charged to the account wherein the costs of such activity are included (*See* Operating Expense Instructions in § 367.80).

§ 367.9080 Account 908, Customer assistance expenses.

(a) This account must include the cost of labor, materials used and expenses incurred in providing instructions or assistance to customers, the object of which is to encourage safe, efficient and economical use of the associate utility company's service.

(b) This account must include the following labor items:

(1) Direct supervision of department.

(2) Processing customer inquiries relating to the proper use of electric equipment, the replacement of such equipment and information related to the equipment.

(3) Advice directed to customers as to how they may achieve the most efficient and safest use of electric equipment.

(4) Demonstrations, exhibits, lectures, and other programs designed to instruct customers in the safe, economical or efficient use of electric service, and/or oriented toward conservation of energy.

(5) Engineering and technical advice to customers, the object of which is to promote safe, efficient and economical use of the associate utility company's service.

(c) This account must include the following materials and expenses items:

(1) Supplies and expenses pertaining to demonstrations, exhibits, lectures, and other programs.

(2) Loss in value on equipment and appliances used for customer assistance programs.

(3) Office supplies and expenses.

(4) Transportation, meals, and incidental expenses.

(d) Do not include in this account expenses that are provided for elsewhere, such as accounts 416, Costs and expenses of merchandising, jobbing and contract work (§ 367.4160), 587, Customer installations expenses (§ 367.5870), 879, Customer installations expenses (§ 367.8790), and 912, Demonstrating and selling expenses (§ 367.9120).

§ 367.9090 Account 909, Informational and instructional advertising expenses.

(a) This account must include the cost of labor, materials used and expenses incurred in activities which primarily convey information as to what the associate utility company urges or suggests customers should do in utilizing service to protect health and safety, to encourage environmental protection, to utilize their equipment safely and economically, or to conserve energy.

(b) This account must include the following labor items:

(1) Direct supervision of informational activities.

(2) Preparing informational materials for newspapers, periodicals, billboards, and other similar forms of advertisement, and preparing and conducting informational motion pictures, radio and television programs.

(3) Preparing informational booklets, bulletins, and other similar forms of advertisement, used in direct mailings.

(4) Preparing informational window and other displays.

(5) Employing agencies, selecting media and conducting negotiations in connection with the placement and subject matter of information programs.

(c) This account must include the following materials and expenses items:

(1) Use of newspapers, periodicals, billboards, radio, and other similar forms of advertisement, for informational purposes.

(2) Postage on direct mailings to customers exclusive of postage related to billings.

(3) Printing of informational booklets, dodgers, bulletins, and other similar items.

(4) Supplies and expenses in preparing informational materials for the associate utility company.

(5) Office supplies and expenses.

(d) Exclude from this account and charge to account 930.2, Miscellaneous general expenses, the cost of publication of stockholder reports, dividend notices, bond redemption notices, financial statements, and other notices of a general corporate character. Also exclude all expenses of a promotional, institutional, goodwill or political nature, that are included in accounts 913, Advertising expenses (§ 367.9130), 930.1, General advertising expenses (§ 367.9301), and 426.4, Expenditures for certain civic, political, and related expenses (§ 367.4264).

(e) Entries relating to informational advertising included in this account must contain or refer to supporting documents that identify the specific advertising message. If references are used, copies of the advertising message must be readily available.

§ 367.9100 Account 910, Miscellaneous customer service and informational expenses.

(a) This account must include the cost of labor, materials used and expenses incurred in connection with customer service and informational activities that are not includible in other customer information expense accounts.

(b) This account must include the following labor items:

(1) General clerical and stenographic work not assigned to specific customer service and informational programs.

(2) Miscellaneous labor.

(c) This account must include the following materials and expenses items:

(1) Communication service.

(2) Printing, postage and office supplies expenses.

§ 367.9110 Account 911, Supervision.

This account must include the cost of labor and expenses incurred in the general direction and supervision of sales activities, except merchandising. Direct supervision of a specific activity, such as demonstrating, selling, or advertising, must be charged to the account wherein the costs of such activity are included (*See* Operating Expense Instructions in § 367.80).

§ 367.9120 Account 912, Demonstrating and selling expenses.

(a) This account must include the cost of labor, materials used and expenses incurred in promotional, demonstrating, and selling activities, except by merchandising, the object of which is to promote or retain the business of present and prospective customers of the service company and the companies within the holding company system that is not recorded in Accounts 416, Costs and expenses of merchandising, jobbing and contract work (§ 367.4160), or 930.1, General advertising expenses for associated companies (§ 367.9301).

(b) This account must include the following labor items:

(1) Demonstrating uses of services provided by companies within the holding company system.

(2) Conducting cooking schools, preparing recipes, and related home service activities.

(3) Exhibitions, displays, lectures, and other programs to promote the services provided by the service company or the companies within the holding company system.

(4) Experimental and development work in connection with new and improved appliances and equipment, prior to general public acceptance.

(5) Solicitation of new customers or of additional business from old customers, including commissions paid employees.

(6) Engineering and technical advice to present or prospective customers in connection with promoting or retaining the use of services.

(7) Special customer canvasses when their primary purpose is the retention of business or the promotion of new business.

(c) This account must include the following materials and expenses items:

(1) Supplies and expenses pertaining to demonstration and experimental and development activities.

(2) Booth and temporary space rental.

(3) Loss in value on equipment and appliances used for demonstration purposes.

(4) Transportation, meals, and incidental expenses.

§ 367.9130 Account 913, Advertising expenses.

(a) This account must include the cost of labor, materials used and expenses incurred in advertising designed to promote or retain the use of services provided by the service company or the companies within the holding company system, except advertising the sale of merchandise.

(b) This account must include the following labor items:

(1) Direct supervision of department.

(2) Preparing advertising material for newspapers, periodicals, billboards, and other similar forms of advertisement, and preparing and conducting motion pictures, radio and television programs.

(3) Preparing booklets, bulletins, and other similar forms of advertisement, used in direct mail advertising.

(4) Preparing window and other displays.

(5) Clerical and stenographic work.

(6) Investigating advertising agencies and media and conducting negotiations in connection with the placement and subject matter of sales advertising.

(c) This account must include the following materials and expenses items:

(1) Advertising in newspapers, periodicals, billboards, radio, and other similar forms of advertisement, for sales promotion purposes, but not including institutional or goodwill advertising included in account 930.1, General advertising expenses (§ 367.9301).

(2) Materials and services given as prizes or otherwise in connection with civic lighting contests, canning, or cooking contests, bazaars, and other similar materials and services, in order to publicize and promote the use of utility services.

(3) Fees and expenses of advertising agencies and commercial artists.

(4) Novelties for general distribution.

(5) Postage on direct mail advertising.

(6) Premiums distributed generally, such as recipe books, and other similar items, when not offered as inducement to purchase appliances.

(7) Printing booklets, dodgers, bulletins, and other similar forms of advertisement.

(8) Supplies and expenses in preparing advertising material.

(9) Office supplies and expenses.

(d) The cost of advertisements which set forth the value or advantages of offered services without reference to specific appliances or the promotion of appliances must be considered sales promotion advertising and charged to this account. However, advertisements that are limited to specific makes of appliances sold by any company and prices, terms, and other similar items, without referring to the value or advantages of offered services, must be considered as merchandise advertising and the cost must be charged to account 416, Costs and expenses of merchandising, jobbing and contract work (§ 367.4160).

(e) Advertisements that substantially mention or refer to the value or advantages of offered services, together with specific reference to makes of appliances sold by any company and the price, terms, and other similar items, and designed for the joint purpose of increasing the use of offered services and the sales of appliances, must be considered as a combination advertisement and the costs must be distributed between this account and account 416 (§ 367.4160) on the basis of space, time, or other proportional factors.

(f) Exclude from this account and charge to account 930.2, Miscellaneous general expenses (§ 367.9302), the cost of publication of stockholder reports, dividend notices, bond redemption notices, financial statements, and other notices of a general corporate character. Exclude also all institutional or goodwill advertising (*See* account 930.1, General advertising expenses (§ 367.9301)).

§ 367.9160 Account 916, Miscellaneous sales expenses.

(a) This account must include the cost of labor, materials used and expenses incurred in connection with sales activities, except merchandising, which are not includible in other sales expense accounts.

(b) This account must include the following labor items:

(1) General clerical and stenographic work not assigned to specific functions.

(2) Special analysis of customer accounts and other statistical work for sales purposes not a part of the regular customer accounting and billing routine.

(3) Miscellaneous labor.

(c) This account must include the following materials and expenses items:

(1) Communication service.

(2) Printing, postage, and office supplies and expenses applicable to sales activities, except those chargeable to account 913, Advertising expenses (§ 367.9130).

§ 367.9200 Account 920, Administrative and general salaries.

(a) This account must include salaries, wages, bonuses and other consideration for services, with the exception of director's fees paid directly to officers and employees of the service company.

(b) This account must be supported by time records and appropriately referenced to detailed records subdividing salaries and wages by departments or other functional organization units.

§ 367.9210 Account 921, Office supplies and expenses.

(a) This account must include office supplies and expenses incurred in connection with the general administration of service company operations assignable to specific administrative or general departments and not specifically provided for in other accounts. This includes the expenses of the various administrative and general departments, the salaries and wages of which are included in account 920, Administrative and general salaries (§ 367.9200).

(b) This account may be subdivided in accordance with a classification appropriate to the departmental or other functional organization of the service company. The following items must be included in this account:

(1) Automobile service, including charges through clearing account.

(2) Bank messenger and service charges.

(3) Books, periodicals, bulletins and subscriptions to newspapers, newsletters, tax service, and other similar items.

(4) Building service expenses for customer accounts, sales, and administrative and general purposes.

(5) Communication service expenses to include telephone, telegraph, wire transfer, micro-wave, and other similar items.

(6) Cost of individual items of office equipment used by general departments which are of small value or short life.

(7) Membership fees and dues in trade, technical, and professional associations paid by a utility for employees. (Company memberships must be included in account 930.2 in § 367.9302.)

(8) Office supplies and expenses.

(9) Payment of court costs, witness fees, and other expenses of legal department.

(10) Postage, printing and stationery.

(11) Meals, traveling, entertainment and incidental expenses.

(c) Records must be so maintained to permit ready analysis by item showing the nature of the expense and identity of the person furnishing the service.

§ 367.9230 Account 923, Outside services employed.

(a) This account must include the fees and expenses of professional consultants and others for general services with the exception of fees and expenses for outside services of account 928, Regulatory commission expenses (§ 367.9280), and account 930.1, General advertising expenses (§ 367.9301). Separate subaccounts must be provided for auditing, legal, engineering, management consulting fees and any other fees for professional or outside services.

(b) Records must be maintained so as to permit ready analysis showing the nature of service, identity of the person furnishing the service, affiliation to the service company, and, if allocated to

more than one company, the specific method of allocation.

§ 367.9240 Account 924, Property insurance.

(a) This account must include the cost of insurance or reserve accruals to protect the service company against losses and damages to owned or leased property used in service company operations. It also must include the cost of labor and related supplies and expenses incurred in property insurance activities.

(b) Recoveries from insurance companies or others for property damages must be credited to the account charged with the cost of the damage. If the damaged property has been retired, the credit must be to the appropriate account for accumulated provision for depreciation.

(c) Records must be kept so as to show the amount of coverage for each class of insurance carried, the property covered, and the applicable premiums. Any dividends distributed by mutual insurance companies must be credited to the accounts to which the insurance premiums were charged. The following items must be included in this account:

(1) Premiums payable to insurance companies for fire, storm, burglary, boiler explosion, lightning, fidelity, riot, and similar insurance.

(2) Special costs incurred in procuring insurance.

(3) Insurance inspection service.

(4) Insurance counsel, brokerage fees, and expenses.

(d) The cost of insurance or reserve accruals capitalized must be charged to construction either directly or by transfer to construction projects from this account.

(e) The cost of insurance or reserve accruals for the following classes of property must be charged as indicated.

(1) Materials and supplies and stores equipment, to account 163, Stores expense undistributed (§ 367.1630), or appropriate materials account.

(2) Transportation and other general equipment to appropriate clearing accounts that may be maintained.

(3) Merchandise and jobbing property, to account 416, Costs and expenses of merchandising, jobbing and contract work (§ 367.4160).

(f) The cost of labor and related supplies and expenses of administrative and general employees who are only incidentally engaged in property insurance work may be included in accounts 920 and 921 (§§ 367.9200 and 367.9210), as appropriate.

§ 367.9250 Account 925, Injuries and damages.

(a) This account must include the cost of insurance or reserve accruals to protect the service company against injuries and damages claims of employees or others, losses of such character not covered by insurance, and expenses incurred in settlement of injuries and damages claims. It also must include the cost of labor and related supplies and expenses incurred in injuries and damages activities.

(b) Reimbursements from insurance companies or others for expenses charged to this account because of injuries and damages and insurance dividends or refunds must be credited to this account. The following items must be included in this account:

(1) Premiums payable to insurance companies for protection against claims from injuries and damages by employees or others, such as public liability, property damages, casualty, employee liability, and other similar items.

(2) Losses not covered by insurance or reserve accruals on account of injuries or deaths to employees or others and damages to the property of others.

(3) Fees and expenses of claim investigators.

(4) Payment of awards to claimants for court costs and attorneys' services.

(5) Medical and hospital service and expenses for employees as the result of occupational injuries, or resulting from claims of others.

(6) Compensation payments under workmen's compensation laws.

(7) Compensation paid while incapacitated as the result of occupational injuries (*See* paragraph (c) of this section).

(8) Cost of safety, accident prevention and similar educational activities.

(c) Payments to or on behalf of employees for accident or death benefits, hospital expenses, medical supplies or for salaries while incapacitated for service or on leave of absence beyond periods normally allowed, when not the result of occupational injuries, must be charged to account 926, Employee pensions and benefits (§ 367.9260) (*See also* paragraph (e) of account 926 (§ 367.9260)).

(d) The cost of injuries and damages or reserve accruals capitalized must be charged to construction directly or by transfer to construction projects from this account.

(e) Exclude the time and expenses of employees (except those engaged in injuries and damages activities) spent in attendance at safety and accident prevention educational meetings, if occurring during the regular work period.

(f) The cost of labor and related supplies and expenses of administrative and general employees who are only incidentally engaged in injuries and damages activities may be included in accounts 920 and 921 (§§ 367.9200 and 367.9210), as appropriate.

§ 367.9260 Account 926, Employee pensions and benefits.

(a) This account must include pensions paid to, or on behalf of, retired employees, or accruals to provide for pensions, or payments for the purchase of annuities for this purpose, when the service company has definitely, by contract, committed itself to a pension plan under which the pension funds are irrevocably devoted to pension purposes, and payments for employee accident, sickness, hospital, and death benefits, or insurance related to this account. Include, also, expenses incurred in medical, educational or recreational activities for the benefit of employees, and administrative expenses in connection with employee pensions and benefits.

(b) The service company must maintain a complete record of accruals or payments for pensions and be prepared to furnish full information to the Commission of the plan under which it has created or proposes to create a pension fund and a copy of the declaration of trust or resolution under which the pension plan is established.

(c) Records in support of this account must be kept so that the total pensions expense, the total benefits expense, the administrative expenses included in this account, and the amounts of pensions and benefits expenses transferred to construction or other accounts will be readily available. The following items must be included in this account:

(1) Payment of pensions under a non-accrual or non-funded basis.

(2) Accruals for or payments to pension funds or to insurance companies for pension purposes.

(3) Group and life insurance premiums (credit dividends received).

(4) Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.

(5) Payments for accident, sickness, hospital, and death benefits or insurance.

(6) Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed, when not the result of occupational injuries, or in excess of statutory awards.

(7) Expenses in connection with educational and recreational activities for the benefit of employees.

(d) The cost of labor and related supplies and expenses of administrative and general employees who are only incidentally engaged in employee pension and benefit activities may be included in accounts 920 and 921 (§§ 367.9200 and 367.9210), as appropriate.

(e) Salaries paid to employees during periods of non-occupational sickness may be charged to the appropriate labor account rather than to employee benefits.

§ 367.9280 Account 928, Regulatory commission expenses.

(a) This account must include all expenses, properly included in service company operating expenses, incurred by the service company in connection with formal cases before regulatory commissions, or other regulatory bodies, on its own behalf or on behalf of associate companies, including payments made to a regulatory commission for fees assessed to the service company for pay and expenses of such commission, its officers, agents and employees, and for filings or reports made under regulations of regulatory commissions. The service company must be prepared to show the cost of each formal case. The following items must be included in this account:

(1) Salaries, fees, retainers, and expenses of counsel, solicitors, attorneys, accountants, engineers, clerks, attendants, witnesses, and others engaged in the prosecution of, or defense against petitions or complaints presented to regulatory bodies.

(2) Office supplies and expenses, payments to public service or other regulatory commissions, stationery and printing, traveling expenses, and other expenses incurred directly in connection with formal cases before regulatory commissions.

(b) Exclude from this account and include in other appropriate operating expense accounts, expenses incurred in the improvement of service, additional inspection, or rendering reports, which are made necessary by the rules and regulations, or orders, of regulatory bodies.

§ 367.9301 Account 930.1, General advertising expenses for associated companies.

(a) This account must include the cost of labor, materials used, and expenses incurred in advertising and related activities, the cost of which by their content and purpose are not provided for elsewhere.

(b) This account must include the following labor items:

(1) Supervision.

(2) Preparing advertising material for newspapers, periodicals, billboards, and other similar items, and preparing or conducting motion pictures, radio and television programs.

(3) Preparing booklets, bulletins, and other similar forms of advertisement, used in direct mail advertising.

(4) Preparing window and other displays.

(5) Clerical and stenographic work.

(6) Investigating and employing advertising agencies, selecting media and conducting negotiations in connection with the placement and subject matter of advertising.

(c) This account must include the following materials and expenses items:

(1) Advertising in newspapers, periodicals, billboards, radio, and other similar forms of advertisement.

(2) Advertising matter such as posters, bulletins, booklets, and related items.

(3) Fees and expenses of advertising agencies and commercial artists.

(4) Postage and direct mail advertising.

(5) Printing of booklets, dodgers, bulletins, and other related items.

(6) Supplies and expenses in preparing advertising materials.

(7) Office supplies and expenses.

(d) Properly includible in this account is the cost of advertising activities on a local or national basis of a good will or institutional nature, which is primarily designed to improve the image of the associate utility company or the industry, including advertisements which inform the public concerning matters affecting the associate utility company's operations, such as, the cost of providing service, the associate utility company's efforts to improve the quality of service, the company's efforts to improve and protect the environment, and other similar forms of advertisement. Entries relating to advertising included in this account must contain or refer to supporting documents which identify the specific advertising message. If references are used, copies of the advertising message must be readily available.

(e) Exclude from this account and include in account 426.4, Expenditures for certain civic, political and related activities (§ 367.4264), expenses for advertising activities that are designed to solicit public support or the support of public officials in matters of a political nature.

§ 367.9302 Account 930.2, Miscellaneous general expenses.

(a) This account must include the cost of expenses incurred in connection with the general management of the service company not provided for elsewhere.

(b) This account must include labor items including miscellaneous labor not elsewhere provided for.

(c) This account must include the following expenses items:

(1) Industry association dues for company memberships.

(2) Contributions for conventions and meetings of the industry.

(3) Research, development, and demonstration expenses not charged to other operation and maintenance expense accounts on a functional basis.

(4) Communication service not chargeable to other accounts.

(5) Trustee, registrar, and transfer agent fees and expenses.

(6) Stockholders meeting expenses.

(7) Dividend and other financial notices.

(8) Printing and mailing dividend checks.

(9) Directors' fees and expenses.

(10) Publishing and distributing annual reports to stockholders.

(11) Public notices of financial, operating and other data required by regulatory statutes, not including, however, notices required in connection with security issues or acquisitions of property.

(d) Records must be maintained so as to permit ready analysis by item showing the nature of the expense and identity of the person furnishing the service.

§ 367.9310 Account 931, Rents.

This account must include rents, including taxes, paid for the property of others used, occupied or operated in connection with service company functions. Provide subaccounts for major groupings such as office space, warehouses, other structure, office furniture, fixtures, computers, data processing equipment, microwave and telecommunication equipment, airplanes, automobiles, and other similar groupings of property. The cost, when incurred by the lessee, of operating and maintaining leased property, must be charged to the accounts appropriate for the expense as if the property were owned.

§ 367.9350 Account 935, Maintenance of structures and equipment.

This account must include materials used and expenses incurred in the maintenance of property owned, the cost of which is included in accounts 390 through 399 (§§ 367.3900 through 367.3990), and of property leased from others. Provide subaccounts by major classes of structures and equipment, owned and leased.

■ 6. Part 368 is added to subchapter U to read as follows:

PART 368—PRESERVATION OF RECORDS OF HOLDING COMPANIES AND SERVICE COMPANIES

Sec.
368.1 Promulgation.
368.2 General instructions.
368.3 Schedule of records and periods of retention.

Authority: 42 U.S.C. 16451–16463.

§ 368.1 Promulgation.

This part is prescribed and promulgated as the regulations governing the preservation of records by any holding company and by any service company within a holding company system subject to the jurisdiction of the Commission under the Public Utility Holding Company Act of 2005 (42 U.S.C. §§ 16451 *et seq.*).

§ 368.2 General instructions.

(a) *Scope of this part.* (1) The regulations in this part apply to all books of account and other records prepared, maintained or held by any agent or employee on behalf of the company. The specification in the schedule in § 368.3 of a record related to a type of transaction includes all documents and correspondence, not redundant or duplicative of other records retained, needed to explain or verify the transaction.

(2) Company means a service company or a holding company as defined in § 367.1 of this chapter. Public utilities, licensees, and natural gas companies must continue to use parts 125 and 225 of this chapter.

(3) Any company subject to this regulation, that, as agent, operator, lessor or otherwise, maintains or has possession of any records relating to the operation, property or obligations of a public utility, licensee, or natural gas company, as defined in the Federal Power Act (16 U.S.C. §§ 824 *et seq.*), the Natural Gas Act (15 U.S.C. §§ 717 *et seq.*), or the laws of any state within which the public utility, licensee, or natural gas company operates, must comply with the laws or regulations as to record retention and destruction which would apply to the records if they were records of the public utility, licensee, or natural gas company as codified in parts 125 and 225 of this chapter.

(4) The regulations in this part should not be construed as excusing compliance with other lawful requirements of any other governmental body, Federal or State, prescribing other record keeping requirements or for preservation of records longer than those prescribed in this part.

(5) To the extent that any Commission regulations may provide for a different record retention period, the records must be retained for the longer of the retention periods.

(6) Records, other than those listed in the schedule, may be destroyed at the option of the company. However, records that are used in lieu of those listed must be preserved for the periods prescribed for the records used for substantially similar purposes. Additionally, retention of records pertaining to added services, functions, plant, and other similar service, the establishment of which cannot be presently foreseen, must conform to the principles embodied in this section.

(7) Notwithstanding the provisions of the records retention schedule in this section, the Commission may, upon the request of the company, authorize a shorter period of retention for any record listed in the schedule upon a showing by the company that preservation of the record for a longer period is not necessary or appropriate, in the public interest or for the protection of investors or consumers.

(b) *Designation of supervisory official.* Each company subject to these record retention regulations must designate one or more officials to supervise the preservation or authorized destruction of its records.

(c) *Protection and storage of records.* The company must provide reasonable protection from damage by fire, flood, and other hazards for records required by these record retention regulations to be preserved and, in the selection of storage space, safeguard such records from unnecessary exposure to deterioration from excessive humidity, dryness, or lack of proper ventilation.

(d) *Index of records.* At each site or location where company records are kept or stored, the records must be arranged, filed, and currently indexed so that records may be readily identified and made available for inspection by authorized representatives of any regulatory agency concerned, including the Commission.

(e) *Record storage media.* Each company has the flexibility to select its own storage media subject to the following conditions.

(1) The storage media must have a life expectancy at least equal to the applicable record retention period provided in § 368.3 of this chapter unless there is a quality transfer from one media to another with no loss of data.

(2) Each company is required to implement internal control procedures that assure the reliability of, and ready access to, data stored on machine readable media. Internal control procedures must be documented by a responsible supervisory official.

(3) Each transfer of data from one media to another must be verified for accuracy and documented. Software and hardware required to produce readable records must be retained for the same period the media format is used.

(f) *Destruction of records.* At the expiration of the retention period, the company may use any appropriate method to destroy records. Precautions should be taken, however, to macerate or otherwise destroy the legibility of records, the content of which is forbidden by law to be divulged to unauthorized persons.

(g) *Premature destruction or loss of records.* When records are destroyed or lost before the expiration of the prescribed period of retention, a certified statement listing, as far as may be determined, the records destroyed and describing the circumstances of accidental or other premature destruction or loss must be filed with the Commission within 90 days from the date of discovery of the destruction.

(h) *Schedule of records and periods of retention.* The schedule of records retention periods constitutes a part of these records retention regulations. The schedule prescribes the periods of time that designated records must be preserved. Plant records related to public utilities and licensees and natural gas companies must be retained in accordance with §§ 125.3 and 225.3 of this chapter.

(i) *Retention periods designated ''Destroy at option.''* ''Destroy at option'' constitutes authorization for destruction of records at managements' discretion if the destruction does not conflict with other legal retention requirements or usefulness of the records in satisfying pending regulatory actions or directives. ''Destroy at option after audit'' requires retention until the company has received an opinion from its independent accountants with respect to the financial statements including the transactions to which the records relate.

(j) *Records of services performed by associate companies.* Holding companies and service companies must assure the availability of records of services performed by and for public utilities and licensees and natural gas companies with supporting cost information for the periods indicated in §§ 125.3 and 225.3 of this chapter as necessary to be able to readily furnish detailed information as to the nature of the transaction, the amounts involved,

and the accounts used to record the transactions.

(k) *Rate case.* Notwithstanding the minimum retention periods provided in these regulations, the company must retain the appropriate records to support the costs and adjustments proposed in any rate case.

(l) *Pending complaint litigation or governmental proceedings.* Notwithstanding the minimum requirements, if a company is involved in pending litigation, complaint procedures, proceedings remanded by the court, or governmental proceedings, it must retain all relevant records.

(m) *Life or mortality study data.* Life or mortality study data for depreciation purposes must be retained for 25 years or for 10 years after property is retired, whichever is longer.

§ 368.3 Schedule of records and periods of retention.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION

Item No. and description	Retention period
Corporate and General	
1. Reports to stockholders: Annual reports or statements to stockholders.	5 years.
2. Organizational documents:	
(a) Minute books of stockholders, directors' and directors' committee meetings.	5 years or termination of the corporation's existence, whichever occurs first.
(b) Title, franchises, and licenses: Copies of formal orders of regulatory commissions served upon the company.	6 years after final non-appealable order.
(1) Certificates of incorporation, or equivalent agreements and amendments thereto.	Life of corporation.
(2) Deeds, leases and other title papers (including abstracts of title and supporting data), and contracts and agreements related to the acquisition or disposition of property or investments.	6 years after property or investment is disposed of unless delivered to transferee.
3. Contracts and agreements: Contracts, including amendments and agreements (except contracts provided for elsewhere):	
(a) Service contracts, such as for management, consulting, accounting, legal, financial or engineering services.	All contracts, related memoranda, and revisions should be retained for 4 years after expiration or until the conclusion of any contract disputes pertaining to such contracts, whichever is later.
(b) Memoranda essential to clarify or explain provisions of contracts and agreements.	For same period as contract to which they relate.
(c) Card or book records of contracts, leases, and agreements made, showing dates of expirations and of renewals, memoranda of receipts, and payments under such contracts.	For the same periods as contracts to which they relate.
(d) Contracts and other agreements relating to services performed in connection with construction of property (including contracts for the construction of property by others for the company and for supervision and engineering relating to construction work).	All contracts, related memoranda, and revisions should be retained for 4 years after expiration or until the conclusion of any contract disputes or governmental proceedings pertaining to such contracts, whichever is later.
4. Accountants' and auditors' reports:	
(a) Reports of examinations and audits by accountants and auditors not in the regular employ of the company (such as reports of public accounting firms and commission accountants).	5 years after the date of the report.
(b) Internal audit reports and working papers	5 years after the date of the report.
Information Technology Management	
5. Automatic data processing records (retain original source data used as input for data processing and data processing report printouts for the applicable periods prescribed elsewhere in the schedule): Software program documentation and revisions thereto.	Retain as long as it represents an active viable program or for periods prescribed for related output data, whichever is shorter.
General Accounting Records	
6. General and subsidiary ledgers:	
(a) Ledgers:	
(1) General ledgers	10 years.
(2) Ledgers subsidiary or auxiliary to general ledgers except ledgers provided for elsewhere.	10 years.
(b) Indexes:	
(1) Indexes to general ledgers	10 years.
(2) Indexes to subsidiary ledgers except ledgers provided for elsewhere.	10 years.
(c) Trial balance sheets of general and subsidiary ledgers	2 years
7. Journals: General and subsidiary	10 years.
8. Journal vouchers and journal entries including supporting detail:	
(a) Journal vouchers and journal entries	10 years.
(b) Analyses, summarization, distributions, and other computations which support journal vouchers and journal entries:	
(1) Charging property accounts	25 years. See §§ 125.2(g) and 225.2(g) of this chapter for public utilities and licensees and natural gas companies.
(2) Charging all other accounts	6 years.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION—Continued

Item No. and description	Retention period
9. Cash books: General and subsidiary or auxiliary books	5 years after close of fiscal year.
10. Voucher registers: Voucher registers or similar records when used as a source document.	5 years. See §§ 125.2(g) and 225.2(g) of this chapter for public utilities and licensees and natural gas companies.
11. Vouchers:	
(a) Paid and canceled vouchers (one copy-analysis sheets showing detailed distribution of charges on individual vouchers and other supporting papers.	5 years. See §§ 125.2(g) and 225.2(g) of this chapter for public utilities and licensees and natural gas companies.
(b) Original bills and invoices for materials, services, etc., paid by vouchers.	5 years. See §§ 125.2(g) and 225.2(g) of this chapter for public utilities and licensees and natural gas companies.
(c) Paid checks and receipts for payments of specific vouchers	5 years.
(d) Authorization for the payment of specific vouchers	5 years. See §§ 125.2(g) and 225.2(g) of this chapter for public utilities and licensees and natural gas companies.
(e) Lists of unaudited bills (accounts payable), list of vouchers transmitted, and memoranda regarding changes in audited bills.	Destroy at option.
(f) Voucher indexes	Destroy at option.
(g) Purchases and stores records related to disbursement vouchers.	5 years.
Insurance	
12. Insurance records:	
(a) Records of insurance policies in force, showing coverage, premiums paid, and expiration dates.	Destroy at option after expiration of such policies.
(b) Records of amounts recovered from insurance companies in connection with losses and of claims against insurance companies, including reports of losses, and supporting papers.	6 years. See §§ 125.2(g) and 225.2(g) of this chapter for public utilities and licensees and natural gas companies.
(c) Records of self-insurance against:	
(1) losses from fire and casualty,	6 years after date of last accounting entry with respect thereto.
(2) damage to property of others, and	6 years after date of last accounting entry with respect thereto.
(3) personal injuries	6 years after date of last accounting entry with respect thereto.
(d) Inspectors' reports and reports of condition of property	Destroy when superseded.
Maintenance	
13. Maintenance project and work orders:	
(a) Authorizations for expenditures for maintenance work to be covered by project or work orders, including memoranda showing the estimates of costs to be incurred.	5 years.
(b) Project or work order sheets to which are posted in detail the entries for labor, material, and other charges in connection with maintenance, and other work pertaining to company operations.	5 years.
(c) Summaries of expenditures on maintenance and job orders and clearances to operating other accounts (exclusive of property accounts).	5 years.
Property, Depreciation and Investments	
14. Property records, excluding documents included in Item 2(a)(2):	
(a) Ledgers of property accounts including land and other detailed ledgers showing the cost of property by classes.	25 years. See §§ 125.2(g) and 225.2(g) of this chapter for public utilities and licensees and natural gas companies.
(b) Continuing property inventory ledger, book or card records showing description, location, quantities, cost, etc., of physical units (or items) of property owned.	25 years. See §§ 125.2(g) and 225.2(g) of this chapter for public utilities and licensees and natural gas companies.
(c) Operating equipment records	3 years after disposition, termination of lease, or write-off of property or investment.
(d) Office furniture and equipment records	3 years after disposition, termination of lease or write-off of property or investment.
(e) Automobiles, other vehicles and related garage equipment records.	3 years after disposition, termination of lease or write-off of property or investment.
(f) Aircraft and airport equipment records	3 years after disposition, termination of lease or write-off of property or investment.
(g) Other property records not defined elsewhere	3 years after disposition, termination of lease or write-off of property or investment.
15. Construction work in progress ledgers, project or work orders, and supplemental records:	
(a) Construction work in progress ledgers	5 years after clearance to property account, provided continuing inventory records are maintained; otherwise 5 years after property is retired.
(b) Project or work orders sheets to which are posted in summary form or in detail the entries for labor, materials, and other charges for property additions and the entries closing the project or work orders to property records at completion.	5 years after clearance to property account, provided continuing inventory records are maintained; otherwise 5 years after property is retired.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION—Continued

Item No. and description	Retention period
(c) Authorizations for expenditures for additions to property, including memoranda showing the detailed estimates of cost, and the bases therefore (including original and revised or subsequent authorizations).	5 years after clearance to property account.
(d) Requisitions and registers of authorizations for property expenditures.	5 years after clearance to property account.
(e) Completion or performance reports showing comparison between authorized estimates and actual expenditures for property additions.	5 years after clearance to property account.
(f) Analysis or cost reports showing quantities of materials used, unit costs, number of man-hours etc., in connection with completed construction project.	5 years after clearance to property account.
(g) Records and reports pertaining to progress of construction work, the order in which jobs are to be completed, and similar records which do not form a basis of entries to the accounts.	Destroy at option.
16. Retirement work in progress ledgers, project or work orders, and supplemental records:	
(a) Project or work order sheets to which are posted the entries for removal costs, materials recovered, and credits to property accounts for cost of property retirement.	5 years after the property is retired.
(b) Authorizations for retirement of property, including memoranda showing the basis for determination to be retired and estimates of salvage and removal costs.	5 years after the property is retired.
(c) Registers of retirement work	5 years.
17. Summary sheets, distribution sheets, reports, statements, and papers directly supporting debits and credits to property accounts not covered by construction or retirement project or work orders and their supporting records.	5 years.
18. Appraisals and valuations:	
(a) Appraisals and valuations made by the company of its properties or investments or of the properties or investments of any associated companies. (Includes all records essential thereto.).	3 years after appraisal.
(b) Determinations of amounts by which properties or investments of the company or any of its associated companies will be either written up or written down as a result of:	
(1) Mergers or acquisitions	10 years after completion of transaction or as ordered by the Commission.
(2) Asset impairments	10 years after recognition of asset impairment.
(3) Other bases	10 years after the asset was written up or down.
19. Production maps, geological maps, reproductions, including aerial photographs, showing the location of all facilities the subject matter of which falls within the project or work orders of the company.	6 years after completion of project or work order.
20. Engineering records, drawings, supporting data to include diagrams, profiles, photographs, field-survey notes, plot plans, detail drawings, and records of engineering studies that are part of or performed by the company within the project or work order system.	6 years after completion of project or work order.
21. Records of building space occupied by various departments of the company.	6 years.
22. Contracts relating to property:	
(a) Contracts relating to acquisition or sale of property	6 years after property is retired or sold
(b) Contracts and other agreements relating to services performed in connection with construction of property (including contracts for the construction of property by others for the company and for supervision and engineering relating to construction work).	6 years after property is retired or sold.
23. Records pertaining to reclassification of property accounts to conform to prescribed systems of accounts including supporting papers showing the bases for such reclassifications.	6 years.
24. Records of accumulated provisions for depreciation and depletion of property and amortization of intangible property and supporting computation of expense:	
(a) Detailed records or analysis sheets segregating the accumulated depreciation according to the classification of property.	3 years after retirement or disposition of property
(b) Records reflecting the service life of property and the percentage of salvage and cost of removal for property retired from each account for depreciable company property.	3 years after retirement or disposition of property
25. Investment records:	
(a) Records of investment in associate companies	3 years after disposition of investment.
(b) Records of other investments, including temporary investments of cash.	3 years after disposition of investment.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION—Continued

Item No. and description	Retention period
Purchase and Stores	
26. Procurement:	
(a) Agreements entered into for the acquisition of goods or the performance of services. Includes all forms of agreements such as but not limited to: Letters of intent, exchange of correspondence, master agreements, term contracts, rental agreements, and the various types of purchase orders:	
(1) For goods or services relating to property construction	6 years. See §§ 125.2(g) and 225.2(g) of this chapter for public utilities and licensees and natural gas companies.
(2) For other goods or services	6 years.
(b) Supporting documents including accepted and unaccepted bids or proposals (summaries of unaccepted bids or proposals may be kept in lieu of originals) evidencing all relevant elements of the procurement.	6 years. See §§ 125.2(g) and 225.2(g) of this chapter for public utilities and licensees and natural gas companies.
27. Material ledgers: Ledger sheets of materials and supplies received, issued, and on hand.	6 years after the date the records/ledgers were created.
28. Materials and supplies received and issued: Records showing the detailed distribution of materials and supplies issued during accounting periods.	6 years. See §§ 125.2(g) and 225.2(g) of this chapter for public utilities and licensees and natural gas companies).
Revenue Accounting	
29. Miscellaneous billing data: Billing department's copies of contracts with customers (other than contracts in general files).	5 years.
30. Revenue summaries: Summaries of monthly revenues according to classes of service. Including summaries of forfeited discounts and penalties.	5 years.
Tax	
31. Tax records:	
(a) Copies of tax returns and supporting schedules filed with taxing authorities, supporting working papers, records of appeals of tax bills, and receipts for payment. See Item 11 for vouchers evidencing disbursements:	
(1) Income tax returns	2 years after final tax liability is determined.
(2) Agreements between and schedule of allocation by associate companies of consolidated Federal income taxes.	2 years after final tax liability is determined.
(b) Other taxes, including State or local property or income taxes.	
(1) Property tax returns	2 years after final tax liability is determined.
(2) Sales and other use taxes	2 years.
(3) Other Taxes	2 years after final tax liability is determined.
(c) Filings with taxing authorities to qualify employee benefit plans	5 years after discontinuance of plan.
(d) Information returns and reports to taxing authorities	3 years after final tax liability is determined.
Treasury	
32. Statements of funds and deposits:	
(a) Summaries and periodic statements of cash balances on hand and with depositories for company or associate.	Destroy at option after completion of audit by independent accountants.
(b) Requisitions and receipts for funds furnished associates and others.	Destroy at option after funds have been returned or accounted for.
(c) Statements of periodic deposits with external fund administrators or trustees.	Retain records for the most recent 3 years.
(d) Statements of periodic withdrawals from external fund	Retain records for the most recent 3 years.
33. Records of deposits with banks and others:	
(a) Statements from depositories showing the details of funds received, disbursed, transferred, and balances on deposit, bank reconcilement papers and statements of interest credits.	Destroy at option after completion of audit by independent accountants.
(b) Check stubs, registers, or other records of checks issued	6 years.
Payroll Records	
34. Payroll records:	
(a) Payroll sheets or registers of payments of salaries and wages, pensions and annuities paid by company or by contractors of its account.	6 years.
(b) Records showing the distribution of salaries and wages paid for each payroll period and summaries or recapitulations of such distribution.	6 years.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION—Continued

Item No. and description	Retention period
Miscellaneous	
35. Financial, operating and statistical annual reports regularly prepared in the course of business for internal administrative or operating purposes.	5 years.
36. Budgets and other forecasts (prepared for internal administrative or operating purposes) of estimated future income, receipts and expenditures in connection with financing, construction and operations, including acquisitions and disposals of properties or investments.	3 years.
37. Periodic or special reports filed by the company on its own behalf with the Commission or with any other Federal or State rate-regulatory agency, including exhibits or amendments to such reports:	
(a) Reports to Federal and State regulatory commissions including annual financial, operating and statistical reports.	5 years.
(b) Monthly and quarterly reports of operating revenues, expenses, and statistics.	5 years.
38. Advertising: Copies of advertisements by or for the company on behalf of itself or any associate company in newspapers, magazines, and other publications, including costs and other records relevant thereto (excluding advertising of appliances, employment opportunities, routine notices, and invitations for bids all of which may be destroyed at option).	2 years.

■ 7. Part 369 is added to Subchapter U to read as follows:

PART 369—STATEMENTS AND REPORTS (SCHEDULES)

Authority: 42 U.S.C. 16451–16463.

§ 369.1 FERC Form No. 60, Annual report of centralized service company.

(a) *Prescription.* The form of annual report for centralized service companies, designated as FERC Form No. 60, is prescribed for the reporting year 2008 and each subsequent year.

(b) *Filing requirements.* (1) *Who must file.* Unless the holding company system is exempted or granted a waiver by Commission rule or order pursuant to §§ 366.3 and 366.4, every centralized service company (*See* § 367.2 of this chapter) in a holding company system must prepare and file electronically with the Commission the FERC Form No. 60 then in effect pursuant to the General Instructions set out in the form.

(2) *When to file and what to file.*

(i) The annual report for the year ending December 31, 2008 must be filed by May 1, 2009. The annual report for each year thereafter must be filed by May 1 of the following years.

(ii) The annual report in effect must be filed with the Commission as prescribed in § 385.2011 of this chapter and as indicated in the General Instructions set out in the form, and must be properly completed and verified. Filing on electronic media pursuant to § 385.2011 of this chapter is required.

PART 375—THE COMMISSION

■ 8. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352; 42 U.S.C. 16451–16463.

■ 9. In § 375.303, paragraphs (c), (d), (e), (f), (g) and (h) are revised to read as follows:

§ 375.303 Delegations to the Chief Accountant.

* * * * *

(c) Issue interpretations of the Uniform Systems of Accounts for public utilities and licensees, centralized service companies, natural gas companies and oil pipeline companies.

(d) Pass upon any proposed accounting matters submitted by or on behalf of jurisdictional companies that require Commission approval under the Uniform Systems of Accounts, except that if the proposed accounting matters involve unusually large transactions or unique or controversial features, the Chief Accountant must present the matters to the Commission for consideration.

(e) Pass upon applications to increase the size or combine property units of jurisdictional companies.

(f) Accept for filing FERC Form No. 60, FERC–61, and Quarterly Financial Report Form Nos. 3–Q and 6–Q if such filings are in compliance with Commission orders or decisions, and when appropriate, notify the party of such acceptance. Issue and sign deficiency letters if the filing fails to comply with applicable statutory requirements, and with all applicable Commission rules, regulations, and orders for which a waiver has not been granted.

(g) Deny or grant, in whole or in part, requests for waiver of the reporting requirements for and requests for extensions of time for the filing of the forms under §§ 141.400, 260.300, 357.4, 366.23 and part 369 of this chapter and the filing of these forms on electronic media under § 385.2011 of this chapter.

(h) Deny or grant, in whole or in part, requests for waiver of the requirements of parts 352, 356, 367 and 368 of this chapter, except that, if the matters involve unusually large transactions or unique or controversial features, the Chief Accountant must present the matters to the Commission for consideration.

BILLING CODE 6717–01–P

Note: The following Appendices will not be published in the Code of Federal Regulations

APPENDIX A--FERC FORM No. 60

Form 60 Approved
OMB No. 1902-0215
Expires 02/28/2009

THIS FILING IS
☐ An Initial (Original) Submission OR ☐ Resubmission No. _____

FERC FINANCIAL REPORT
FERC FORM No. 60:
Annual Report of Centralized Service Companies

This report is mandatory under the Public Utility Holding Company Act of 2005, Section 1270, Section 309 of the Federal Power Act and 18 C.F.R. § 366.23. Failure to report may result in criminal fines, civil penalties, and other sanctions as provided by law. The Federal Energy Regulatory Commission does not consider this report to be of a confidential nature.

Exact Legal Name of Respondent (Company)	For the Year Ending December 31, _____

GENERAL INSTRUCTIONS FOR FILING FERC FORM NO. 60

I. Purpose

Form No. 60 is an annual regulatory support requirement under 18 CFR 369.1 for centralized service companies. The report is designed to collect financial information from centralized service companies subject to the jurisdiction of the Federal Energy Regulatory Commission. The report is considered to be a non-confidential public use form.

II. Who Must Submit

Unless the holding company system is exempted or granted a waiver by Commission rule or order pursuant to §§ 18 CFR 366.3 and 366.4 of this chapter, every centralized service company (see § 367.2) in a holding company system must prepare and file electronically with the Commission the FERC Form No. 60 then in effect pursuant to the General Instructions set out in this form.

III. How to Submit

Submit FERC Form No. 60 electronically through the Form No. 60 Submission Software. Retain one copy of each report for your files. For any resubmissions, submit the filing using the Form No. 60 Submission Software including a justification. Respondents must submit the Corporate Officer Certification electronically.

IV. When to Submit

Submit FERC Form No. 60 according to the filing date contained § 18 CFR 369.1 of the Commission's regulations.

V. Preparation

Prepare this report in conformity with the Uniform System of Accounts (18 CFR 367) (USof A). Interpret all accounting words and phrases in accordance with the USof A.

VI. Time Period

This report covers the entire calendar year.

VII. Whole Dollar Usage

Enter in whole numbers (dollars) only, except where otherwise noted. The amounts shown on all supporting pages must agree with the amounts entered on the statements that they support. When applying thresholds to determine significance for reporting purposes, use for balance sheet accounts the balances at the end of the current reporting period, and use for statement of income accounts the current year's amounts.

VIII. Accurateness

Complete each question fully and accurately, even if it has been answered in a previous report. Enter the word "None" where it truly and completely states the fact.

IX. Applicability

For any page(s) that is not applicable to the respondent, omit the page(s) and enter "NONE," or "Not Applicable" in column (c) on the List of Schedules, page 2.

X. Date Format

Enter the month, day, and year for all dates. Use customary abbreviations. The "Resubmission Date" included in the header of each page is to be completed only for resubmissions (see III above).

XI. Number Format

Generally, except for certain schedules, all numbers, whether they are expected to be debits or credits, must be reported as positive. Numbers having a sign that is different from the expected sign must be reported by use of a minus sign.

XII. Required Entries

Do not make references to reports of previous years or to other reports instead of required entries, except as specifically authorized.

XIII. Prior Year References

Wherever (schedule) pages refer to figures from a previous year, the figures reported must be based upon those shown by the report of the previous year, or an appropriate explanation given as to why the different figures were used.

XIV. Where to Send Comments on Public Reporting Burden

The public reporting burden for the Form No. 60 collection of information is estimated to average 75 hours per response, including

- the time for reviewing instructions, searching existing data sources,
- gathering and maintaining the data-needed, and
- completing and reviewing the collection of information.

Send comments regarding these burden estimates or any aspect of this collection of information, including suggestions for reducing burden, to:

Federal Energy Regulatory Commission,
888 First Street NE
Washington, DC 20426
(Attention: Mr. Michael Miller, ED-33);

And to:

Office of Information and Regulatory Affairs,
Office of Management and Budget, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

No person shall be subject to any penalty if any collection of information does not display a valid control number (44 U.S.C. 3512(a)).

DEFINITIONS
I. Respondent -- The person, corporation, or other legal entity in whose behalf the report is made.

FERC FORM NO. 60
ANNUAL REPORT FOR SERVICE COMPANIES

IDENTIFICATION	
01 Exact Legal Name of Respondent	02 Year of Report December 31, ____
03 Previous Name (If name changed during the year)	04 Date of Name Change (Month, Day, Year)
05 Address of Principal Office at End of Year (Street, City, State, Zip Code)	06 Name of Contact Person
07 Title of Contact Person	08 Address of Contact Person (Street, City, State, Zip Code)
09 Telephone Number of Contact Person (Including Area Code)	10 E-mail Address of Contact Person
11 This Report is: (1) An Original □ (2) A Resubmission □	12 Resubmission Date (Month, Day, Year)
13 Date of Incorporation	14 If Not Incorporated, Date of Organization
15 State or Sovereign Power Under Which Incorporated or Organized	
16 Name of Principal Holding Company Under Which Reporting Company is Organized:	

CORPORATE OFFICER CERTIFICATION

The undersigned officer certifies that:

I have examined this report and to the best of my knowledge, information, and belief all statements of fact contained in this report are correct statements of the business affairs of the respondent and the financial statements, and other financial information contained in this report, conform in all material respects to the Uniform System of Accounts.

17 Name of Certifying Official	19 Signature of Certifying Official	20 Date Signed (Month, Day, Year)
18 Title of Certifying Official		

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Resubmission Date *(Month, Day, Year)*	Year of Report Dec 31, _____

LIST OF SCHEDULES

1. Enter in Column (c) the terms "None" or "Not Applicable" as appropriate, where no information or amounts have been reported for certain pages. Omit pages where the responses are "None" or "Not Applicable."

Line No.	Title of Schedule (a)	Reference Page No. (b)	Remarks (c)
1	Schedule I – Comparative Balance Sheet	101-102	
2	Schedule II – Service Company Property	103	
3	Schedule III – Accumulated Provision for Depreciation and Amortization of Service Company Property	104	
4	Schedule IV – Investments	105	
5	Schedule V – Accounts Receivable from Associate Companies	106	
6	Schedule VI – Fuel Stock Expenses Undistributed	107	
7	Schedule VII – Stores Expense Undistributed	108	
8	Schedule VIII - Miscellaneous Current and Accrued Assets	109	
9	Schedule IX - Miscellaneous Deferred Debits	110	
10	Schedule X - Research, Development, or Demonstration Expenditures	111	
11	Schedule XI - Proprietary Capital	201	
12	Schedule XII – Long Term Debt	202	
13	Schedule XIII – Current and Accrued Liabilities	203	
14	Schedule XIV- Notes to Financial Statements	204	
15	Schedule XV- Comparative Income Statement	301-302	
16	Schedule XVI- Analysis of Charges for Service- Associate and Non-Associate Companies	303-306	
17	Schedule XVII – Analysis of Billing – Associate Companies (Account 457)	307	
18	Schedule XVIII – Analysis of Billing – Non-Associate Companies (Account 458)	308	
19	Schedule XIX - Miscellaneous General Expenses (Account 930.2)	309	
20	Schedule XX - Organization Chart	401	
21	Schedule XXI - Methods of Allocation	402	

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Resubmission Date (Month, Day, Year)	Year of Report Dec 31, _____

SCHEDULE I – COMPARATIVE BALANCE SHEET

1. Give balance sheet of the Company as of December 31 of the current and prior year.

Line No.	Account Number (a)	Title of Account (b)	Reference Page No. (c)	As of December 31, Current (d)	Prior (e)
1		**Service Company Property**			
2	101	Service Company Property	103		
3	101.1	Property Under Capital Leases	103		
4	106	Completed Construction Not Classified			
5	107	Construction Work In Progress	103		
6		Total Property (Total Of Lines 2-5)			
7	108	Less: Accumulated Provision for Depreciation of Service Company Property	104		
8	111	Less: Accumulated Provision for Amortization of Service Company Property			
9		Net Service Company Property (Total of Lines 6-8)			
10		**Investments**			
11	123	Investment In Associate Companies	105		
12	124	Other Investments	105		
13	128	Other Special Funds	105		
14		Total Investments (Total of Lines 11-13)			
15		**Current And Accrued Assets**			
16	131	Cash			
17	134	Working Funds			
18	135	Other Special Deposits			
19	136	Temporary Cash Investments	105		
20	141	Notes Receivable			
21	142	Customer Accounts Receivable			
22	143	Accounts Receivable			
23	144	Less: Accumulated Provision for Uncollectible Accounts			
24	146	Accounts Receivable From Associate Companies	106		
25	152	Fuel Stock Expenses Undistributed	107		
26	154	Materials And Supplies			
27	163	Stores Expense Undistributed	108		
29	165	Prepayments			
30	171	Interest And Dividends Receivable			
31	172	Rents Receivable			
32	173	Accrued Revenues			
33	174	Miscellaneous Current and Accrued Assets	109		
34	175	Derivative Instrument Assets			
35	176	Derivative Instrument Assets – Hedges			
36		Total Current and Accrued Assets (Total of Lines 16-35)			
37		**Deferred Debits**			
38	181	Unamortized Debt Expense			
39	182.3	Other Regulatory Assets			
40	183	Preliminary Survey And Investigation Charges			
41	184	Clearing Accounts			
42	185	Temporary Facilities			
43	186	Miscellaneous Deferred Debits	110		
44	188	Research, Development, or Demonstration Expenditures	111		
45	189	Unamortized loss on reacquired debt			
46	190	Accumulated Deferred Income Taxes			
47		Total Deferred Debits (Total of Lines 38-46)			
48		**TOTAL ASSETS AND OTHER DEBITS** (TOTAL OF LINES 9, 14, 36 and 47)			

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Resubmission Date (Month, Day, Year)	Year of Report Dec 31, _____

SCHEDULE I – COMPARATIVE BALANCE SHEET

Line No.	Account Number (a)	Title of Account (b)	Reference Page No. (c)	As of December 31, Current (d)	Prior (e)
49		**Proprietary Capital**			
50	201	Common Stock Issued	201		
51	204	Preferred Stock Issued	201		
52	211	Miscellaneous Paid-In-Capital	201		
53	215	Appropriated Retained Earnings	201		
54	216	Unappropriated Retained Earnings	201		
55	219	Accumulated Other Comprehensive Income	201		
56		Total Proprietary Capital (Total of Lines 50-55)			
57		**Long-Term Debt**			
58	223	Advances From Associate Companies	202		
59	224	Other Long-Term Debt	202		
60	225	Unamortized Premium on Long-Term Debt			
61	226	Less: Unamortized Discount on Long-Term Debt-Debit			
62		Total Long-Term Debt (Total of Lines 58-61)			
63		**Other Non-current Liabilities**			
64	227	Obligations Under Capital Leases-Non-current			
65	228.2	Accumulated Provision for Injuries and Damages			
66	228.3	Accumulated Provision For Pensions and Benefits			
67	230	Asset Retirement Obligations			
68		Total Other Non-current Liabilities (Total of Lines 64-67)			
69		**Current and Accrued Liabilities**			
70	231	Notes Payable			
71	232	Accounts Payable			
72	233	Notes Payable to Associate Companies	203		
73	234	Accounts Payable to Associate Companies	203		
74	236	Taxes Accrued			
75	237	Interest Accrued			
76	241	Tax Collections Payable			
77	242	Miscellaneous Current and Accrued Liabilities	203		
78	243	Obligations Under Capital Leases – Current			
79	244	Derivative Instrument Liabilities			
80	245	Derivative Instrument Liabilities – Hedges			
81		Total Current and Accrued Liabilities (Total of Lines 70-80)			
82		**Deferred Credits**			
83	253	Other Deferred Credits			
84	254	Other Regulatory Liabilities			
85	255	Accumulated Deferred Investment Tax Credits			
86	257	Unamortized Gain on Reacquired Debt			
87	282	Accumulated deferred income taxes-Other property			
88	283	Accumulated deferred income taxes-Other			
89		Total Deferred Credits (Total of Lines 83-88)			
90		**TOTAL LIABILITIES AND PROPRIETARY CAPITAL** (TOTAL OF LINES 56, 62, 68, 81, AND 89)			

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Resubmission Date *(Month, Day, Year)*	Year of Report Dec 31, _____

SCHEDULE II - SERVICE COMPANY PROPERTY

1. Provide an explanation of Other Changes recorded in Column (f) considered material in a footnote.
2. Describe each construction work in progress on lines 18 through 34 in Column (b).

Line No.	Account Number (a)	Title of Account (b)	Balance at Beginning of Year (c)	Additions (d)	Retirements or Sales (e)	Other Changes (f)	Balance At Close of Year (g)
1	301	Organization					
2	303	Miscellaneous Intangible Plant					
3	306	Leasehold Improvements					
4	389	Land and Land Rights					
5	390	Structures and Improvements					
6	391	Office Furniture and Equipment					
7	392	Transportation Equipment					
8	393	Stores equipment					
9	394	Tools, Shop and Garage Equipment					
10	395	Laboratory Equipment					
11	396	Power Operated Equipment					
12	397	Communications Equipment					
13	398	Miscellaneous Equipment					
14	399	Other Tangible Property					
15	399.1	Asset Retirement Costs					
16		Total Service Company Property (Total of Lines 1-15)					
17	107	Construction Work in Progress:					
18							
19							
20							
21							
22							
23							
24							
25							
26							
27							
28							
29							
30							
31							
32							
33							
34							
35		Total Account 107 (Total of Lines 18-34)					
36		Total (Lines 16 and Line 35)					

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Resubmission Date (Month, Day, Year)	Year of Report Dec 31, _____

SCHEDULE III – ACCUMULATED PROVISION FOR DEPRECIATION AND AMORTIZATION OF SERVICE COMPANY PROPERTY

1. Provide an explanation of Other Changes in Column (f) considered material in a footnote.

Line No.	Account Number (a)	Description (b)	Balance at Beginning of Year (c)	Additions Charged to Account 403-403.1 404-405 (d)	Retirements (e)	Other Changes Additions (Deductions) (f)	Balance At Close of Year (g)
1	301	Organization					
2	303	Miscellaneous Intangible Plant					
3	306	Leasehold Improvements					
4	389	Land and Land Rights					
5	390	Structures and Improvements					
6	391	Office Furniture and Equipment					
7	392	Transportation Equipment					
8	393	Stores equipment					
9	394	Tools, Shop and Garage Equipment					
10	395	Laboratory Equipment					
11	396	Power Operated Equipment					
12	397	Communications Equipment					
13	398	Miscellaneous Equipment					
14	399	Other Tangible Property					
15	399.1	Asset Retirement Costs					
		Total					

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Resubmission Date (Month, Day, Year)	Year of Report Dec 31, _____

SCHEDULE IV – INVESTMENTS

1. For other investments (Account 124), in a footnote state each investment separately, with description including the name of issuing company, number of shares held or principal investment amount.
2. For temporary cash investments (Account 136), list each investment separately in a footnote.
3. Investments less than $50,000 may be grouped, showing the number of items in each group.

Line No.	Account Number (a)	Title of Account (b)	Balance at Beginning of Year (c)	Balance At Close of Year (d)
1	123	Investment In Associate Companies		
2	124	Other Investments		
3	128	Other Special Funds		
4	136	Temporary Cash Investments		
5		(Total of Lines 1-4)		

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Resubmission Date *(Month, Day, Year)*	Year of Report Dec 31, _____

SCHEDULE V – ACCOUNTS RECEIVABLE FROM ASSOCIATE COMPANIES

1. List the accounts receivable from each associate company.
2. If the service company has provided accommodation or convenience payments for associate companies, provide in a separate footnote a listing of total payments for each associate company.

Line No.	Account Number (a)	Title of Account (b)	Balance at Beginning of Year (c)	Balance At Close of Year (d)
1	146	Accounts Receivable From Associate Companies		
2		Associate Company:		
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				
26				
27				
28				
29				
30				
31				
32				
33				
34				
35				
36				
37		TOTAL		

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Resubmission Date (Month, Day, Year)	Year of Report Dec 31, _____

SCHEDULE VI – FUEL STOCK EXPENSES UNDISTRIBUTED

1. List the amount of labor in Column (c) and expenses in Column (d) incurred with respect to fuel stock expenses during the year and indicate amount attributable to each associate company.
2. In a separate footnote, describe in a narrative the fuel functions performed by the service company.

Line No.	Account Number (a)	Title of Account (b)	Labor (c)	Expenses (d)	Total (e)
1	152	Fuel Stock Expenses Undistributed			
2		Associate Company:			
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					
26					
27					
28					
29					
30					
31					
32					
33					
34					
35					
36					
37					
38					
39		TOTAL			

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Resubmission Date *(Month, Day, Year)*	Year of Report Dec 31, _____

SCHEDULE VII – STORES EXPENSE UNDISTRIBUTED

1. List the amount of labor in Column (c) and expenses in Column (d) incurred with respect to stores expense during the year and indicate amount attributable to each associate company.

Line No.	Account Number (a)	Title of Account (b)	Labor (c)	Expenses (d)	Total (e)
1	163	Stores Expense Undistributed			
2		Associate Company:			
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					
26					
27					
28					
29					
30					
31					
32					
33					
34					
35					
36					
37		TOTAL			

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Resubmission Date (Month, Day, Year)	Year of Report Dec 31, _____

SCHEDULE VIII – MISCELLANEOUS CURRENT AND ACCRUED ASSETS

1. Provide detail of items in this account. Items less than $50,000 may be grouped, showing the number of items in each group.

Line No.	Account Number (a)	Title of Account (b)	Balance at Beginning of Year (c)	Balance At Close of Year (d)
1	174	Miscellaneous Current and Accrued Assets		
2		Items List:		
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				
26				
27				
28				
29				
30				
31				
32				
33				
34				
35				
36				
37				
38				
39				
40		TOTAL		

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Resubmission Date *(Month, Day, Year)*	Year of Report Dec 31, _____

SCHEDULE IX – MISCELLANEOUS DEFERRED DEBITS

1. Provide detail of items in this account. Items less than $50,000 may be grouped, showing the number of items in each group.

Line No.	Account Number (a)	Title of Account (b)	Balance at Beginning of Year (c)	Balance At Close of Year (d)
1	186	Miscellaneous Deferred Debits		
2		Items List:		
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				
26				
27				
28				
29				
30				
31				
32				
33				
34				
35				
36				
37				
38				
39				
40				
41				
42		TOTAL		

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Resubmission Date (Month, Day, Year)	Year of Report Dec 31, _____

SCHEDULE X – RESEARCH, DEVELOPMENT OR DEMONSTRATION EXPENDITURES

1. Describe each material research, development, or demonstration project that incurred costs by the service corporation during the year. Items less than $50,000 may be grouped, showing the number of items in each group.

Line No.	Account Number (a)	Title of Account (b)	Amount (c)
1	188	Research, Development, or Demonstration Expenditures	
2		Project Description:	
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			
29			
30			
31			
32			
33			
34			
35			
36			
37			
38			
39			
40		TOTAL	

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Resubmission Date (Month, Day, Year)	Year of Report Dec 31, _____

SCHEDULE XI – PROPRIETARY CAPITAL

1. For miscellaneous paid-in capital (Account 211) and appropriate retained earnings (Account 215), classify amounts in each account, with a brief explanation, disclosing the general nature of transactions which give rise to the reported amounts.
2. For the unappropriated retained earnings (Account 216), in a footnote, give particulars concerning net income or (loss) during the year, distinguishing between compensation for the use of capital owed or net loss remaining from servicing non-associates per the General Instructions of the Uniform System of Accounts. For dividends paid during the year in cash or otherwise, provide rate percentages, amount of dividend, date declared and date paid.

Line No.	Account Number (a)	Title of Account (b)	Description (c)	Amount (d)
1	201	Common Stock Issued	Number of Shares Authorized	
2			Par or Stated Value per Share	
3			Outstanding Number of Shares	
4			Close of Period Amount	
5	204	Preferred Stock Issued	Number of Shares Authorized	
6			Par or Stated Value per Share	
7			Outstanding Number of Shares	
8			Close of Period Amount	
9	211	Miscellaneous Paid-In Capital		
10	215	Appropriated Retained Earnings		
11	219	Accumulated Other Comprehensive Income		
12	216	Unappropriated Retained Earnings	Balance at Beginning of Year	
13			Net Income or (Loss)	
14			Dividend Paid	
15			Balance at Close of Year	

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Resubmission Date *(Month, Day, Year)*	Year of Report Dec 31, _____

SCHEDULE XII – LONG-TERM DEBT

1. Advances from associate companies should be reported separately for advances on notes, and advances on open accounts. Names of associate companies from which advances were received shall be shown under the class and series of obligation in Column (c).
2. For the deductions in Column (h), please give an explanation in a footnote.
3. For other long-term debt (Account 224), list the name of the creditor company or organization in Column (b).

Line No.	Account Number (a)	Title of Account (b)	Term of Obligation Class & Series of Obligation (c)	Date of Maturity (d)	Interest Rate (e)	Amount Authorized (f)	Balance at Beginning of Year (g)	Additions Deductions (h)	Balance at Close of Year (i)
1	223	Advances from Associate Companies							
2		Associate Company:							
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13		TOTAL							
14	224	Other Long-Term Debt							
15		List Creditor:							
16									
17									
18									
19									
20									
21									
22									
23									
24									
25									
26									
27									
28		TOTAL							

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Resubmission Date *(Month, Day, Year)*	Year of Report Dec 31, _____

SCHEDULE XIII – CURRENT AND ACCRUED LIABILITIES

1. Provide the balance of notes and accounts payable to each associate company (Accounts 233 and 234).
2. Give description and amount of miscellaneous current and accrued liabilities (Account 242). Items less than $50,000 may be grouped, showing the number of items in each group.

Line No.	Account Number (a)	Title of Account (b)	Balance at Beginning of Year (c)	Balance at Close of Year (d)
1	233	Notes Payable to Associates Companies:		
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24	234	Accounts Payable to Associate Companies:		
25				
26				
27				
28				
29				
30				
31				
32				
33				
34				
35				
36				
37				
38				
39				
40				
41				
42				
43				
44				
45				
46				
47				
48				
49				
50				
51	242	Miscellaneous Current and Accrued Liabilities:		
52				
53				
54				
55				
56				
57				
58				
59				

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Resubmission Date *(Month, Day, Year)*	Year of Report Dec 31, _____

SCHEDULE XIV – NOTES TO FINANCIAL STATEMENTS

1. Use the space below for important notes regarding the financial statements or any account thereof.
2. Furnish particulars as to any significant contingent assets or liabilities existing at the end of the year.
3. Furnish particulars as to any significant increase in services rendered or expenses incurred during the year.
4. Furnish particulars as to any amounts recorded in Account 434, Extraordinary Income, or Account 435, Extraordinary Deductions.
5. Notes relating to financial statements shown elsewhere in this report may be indicated here by reference.

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Resubmission Date *(Month, Day, Year)*	Year of Report Dec 31, _____

SCHEDULE XV – COMPARATIVE INCOME STATEMENT

Line No.	Account Number (a)	Title of Account (b)	Current Year (c)	Prior Year (d)
1		**SERVICE COMPANY OPERATING REVENUES**		
2	400	Service Company Operating Revenues		
3		**SERVICE COMPANY OPERATING EXPENSES**		
4	401	Operation Expenses		
5	402	Maintenance Expenses		
6	403	Depreciation Expenses		
7	403.1	Depreciation Expense for Asset Retirement Costs		
8	404	Amortization of Limited-Term Property		
9	405	Amortization of Other Property		
10	407..3	Regulatory Debits		
11	407.4	Regulatory Credits		
12	408.1	Taxes Other Than Income Taxes, Operating Income		
13	409.1	Income Taxes, Operating Income		
14	410.1	Provision for Deferred Income Taxes, Operating Income		
15	411.1	Provision for Deferred Income Taxes – Credit , Operating Income		
16	411.4	Investment Tax Credit, Service Company Property		
17	411.6	Gains from Disposition of Service Company Plant		
18	411.7	Losses from Disposition of Service Company Plant		
19	411.10	Accretion Expense		
20	412	Costs and Expenses of Construction or Other Services		
21	416	Costs and Expenses of Merchandising, Jobbing, and Contract Work		
22		TOTAL SERVICE COMPANY OPERATING EXPENSES (Total of Lines 4-21)		
23		NET SERVICE COMPANY OPERATING INCOME (Total of Lines 2 less 22)		
24		**OTHER INCOME**		
25	418.1	Equity in Earnings of Subsidiary Companies		
26	419	Interest and Dividend Income		
27	419.1	Allowance for Other Funds Used During Construction		
28	421	Miscellaneous Income or Loss		
29	421.1	Gain on Disposition of Property		
30		TOTAL OTHER INCOME (Total of Lines 25-29)		
31		**OTHER INCOME DEDUCTIONS**		
32	421.2	Loss on Disposition of Property		
33	425	Miscellaneous Amortization		
34	426.1	Donations		
35	426.2	Life Insurance		
36	426.3	Penalties		
37	426.4	Expenditures for Certain Civic, Political and Related Activities		
38	426.5	Other Deductions		
39		TOTAL OTHER INCOME DEDUCTIONS (Total of Lines 32-38)		

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Resubmission Date *(Month, Day, Year)*	Year of Report Dec 31, _____

SCHEDULE XV – COMPARATIVE INCOME STATEMENT

Line No.	Account Number (a)	Title of Account (b)	Current Year (c)	Prior Year (d)
40		**TAXES APPLICABLE TO OTHER INCOME AND DEDUCTIONS**		
41	408.2	Taxes Other Than Income Taxes, Other Income and Deductions		
42	409.2	Income Taxes, Other Income and Deductions		
43	410.2	Provision for Deferred Income Taxes, Other Income and Deductions		
44	411.2	Provision for Deferred Income Taxes – Credit, Other Income and Deductions		
45	411.5	Investment Tax Credit, Other Income Deductions		
46		TOTAL TAXES APPLICABLE TO OTHER INCOME AND DEDUCTIONS (Total of Lines 41-45)		
47		**INTEREST CHARGES**		
48	427	Interest on Long-Term Debt		
49	428	Amortization of Debt Discount and Expense		
50	429	(less) Amortization of Premium on Debt- Credit		
51	430	Interest on Debt to Associate Companies		
52	431	Other Interest Expense		
53	432	(less) Allowance for Borrowed Funds Used During Construction-Credit		
54		TOTAL INTEREST CHARGES (Total of Lines 48-53)		
55		NET INCOME BEFORE EXTRAORDINARY ITEMS (Total of Lines 21, 28, 37, 44, and 52)		
56		**EXTRAORDINARY ITEMS**		
57	434	Extraordinary Income		
58	435	(less) Extraordinary Deductions		
59		Net Extraordinary Items (Line 57 less Line 58)		
60	409.4	(less) Income Taxes, Extraordinary		
61		Extraordinary Items After Taxes (Line 59 less Line 60)		
62		NET INCOME OR LOSS/COST OF SERVICE (Total of Lines 55-61)		

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Resubmission Date *(Month, Day, Year)*	Year of Report Dec 31, _____

SCHEDULE XVI - ANALYSIS OF CHARGES FOR SERVICE – ASSOCIATE AND NON-ASSOCIATE COMPANIES

Line No.	Acct	Description	Associate Company			Non-associate Company			Total Charges For Services		
			Direct Cost	Indirect Cost	Total Cost	Direct Cost	Indirect Cost	Total Cost	Direct Cost	Indirect Cost	Total Cost
1	403-403.1	Depreciation Expense									
2	404-405	Amortization Expense									
3	407.3-407.4	Regulatory Debits/Credits – Net									
4	408.1-408.2	Taxes Other Than Income Taxes									
5	409.1-409.3	Income Taxes									
6	410.1-411.2	Provision for Deferred Taxes									
7	411.1-411.2	Provision for Deferred Taxes – Credit									
8	411.6	Gain from Disposition of Service Company Plant									
9	411.7	Losses from Disposition of Service Company Plant									
10	411.4-411.5	Investment Tax Credit Adjustment									
11	411.10	Accretion Expense									
12	412	Costs and Expenses of Construction or Other Services									
13	416	Costs and Expenses of Merchandising, Jobbing, and Contract Work for Associated Companies									
11	418	Non-operating Rental Income									
12	418.1	Interest and Dividend Income									
13	419.1	Allowance for Other Funds Used During Construction									
14	421	Miscellaneous Income or Loss									
15	421.1	Gain on Disposition of Property									
16	421.2	Loss on Disposition Of Property									
17	425	Miscellaneous Amortization									
18	426.1	Donations									
19	426.2	Life Insurance									
20	426.3	Penalties									
21	426.4	Expenditures for Certain Civic, Political and Related Activities									
22	426.5	Other Deductions									
23	427	Interest On Long-Term Debt									
24	428	Amortization of Debt Discount and Expense									
25	429	Amortization of Premium on Debt – Credit									
26	430	Interest on Debt to Associate Companies									
27	431	Other Interest Expense									
28	500-509	Total Steam Power Generation Operation Expenses									
29	510-515	Total Steam Power Generation Maintenance Expenses									
30	517-525	Total Nuclear Power Generation Operation Expenses									
31	528-532	Total Nuclear Power Generation Maintenance Expenses									
32	535-540.1	Total Hydraulic Power Generation Operation Expenses									
33	541-545.1	Total Hydraulic Power Generation Maintenance Expenses									

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Resubmission Date *(Month, Day, Year)*	Year of Report Dec 31, _____

SCHEDULE XVI - ANALYSIS OF CHARGES FOR SERVICE – ASSOCIATE AND NON-ASSOCIATE COMPANIES

Line No.	Acct	Description	Associate Company			Non-associate Company			Total Charges For Services		
			Direct Cost	Indirect Cost	Total Cost	Direct Cost	Indirect Cost	Total Cost	Direct Cost	Indirect Cost	Total Cost
34	546-550.1	Total Other Power Generation Operation Expenses									
35	551-554.1	Total Other Power Generation Maintenance Expenses									
36	555-557	Total Other Power Supply Operation Expenses									
37	560	Operation Supervision and Engineering									
38	561.1	Load Dispatch-Reliability									
39	561.2	Load Dispatch-Monitor and Operate Transmission System.									
40	561.3	Load Dispatch-Transmission Service and Scheduling									
41	561.4	Scheduling, System Control and Dispatch Services									
42	561.5	Reliability Planning and Standards Development									
43	561.6	Transmission Service Studies									
44	561.7	Generation Interconnection Studies									
45	561.8	Reliability Planning and Standards Development Services									
46	562	Station Expenses (Major Only)									
47	563	Overhead Line Expenses (Major Only)									
48	564	Underground Line Expenses (Major Only)									
49	565	Transmission of Electricity by Others (Major Only)									
50	566	Miscellaneous Transmission Expenses (Major Only)									
51	567	Rents									
52	567.1	Operation Supplies and Expenses (Nonmajor Only)									
53		Total Transmission Operation Expenses									
54	568	Maintenance Supervision and Engineering (Major Only)									
55	569	Maintenance of Structures (Major Only)									
56	569.1	Maintenance of Computer Hardware									
57	569.2	Maintenance of Computer Software									
58	569.3	Maintenance of Communication Equipment									
59	569.4	Maintenance of Miscellaneous Regional Transmission Plant									
60	570	Maintenance of Station Equipment (Major Only)									
61	571	Maintenance of Overhead Lines (Major Only)									
62	572	Maintenance of Underground Lines (Major Only)									
63	573	Maintenance of Miscellaneous Transmission Plant (Major Only)									
64	574	Maintenance of Transmission Plant (Nonmajor Only)									
65		Total Transmission Maintenance Expenses									
66	575.1-575.8	Total Regional Market Operation Expenses									
67	576.1-576.5	Total Regional Market Maintenance Expenses									
68	580-589	Total Distribution Operation Expenses									
69	590-598	Total Distribution Maintenance Expenses									
70		Total Electric Operation and Maintenance Expenses									

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Resubmission Date *(Month, Day, Year)*	Year of Report Dec 31, _____

SCHEDULE XVI - ANALYSIS OF CHARGES FOR SERVICE – ASSOCIATE AND NON-ASSOCIATE COMPANIES

Line No.	Acct	Description	Associate Company			Non-associate Company			Total Charges For Services		
			Direct Cost	Indirect Cost	Total Cost	Direct Cost	Indirect Cost	Total Cost	Direct Cost	Indirect Cost	Total Cost
71	800-812	Total Other Gas Supply Operation Expenses									
72	814-826	Total Underground Storage Operation Expenses									
73	830-837	Total Underground Storage Maintenance Expenses									
74	840-842.3	Total Other Storage Operation Expenses									
75	843.1-843.9	Total Other Storage Maintenance Expenses									
76	844.1-846.2	Total Liquefied Natural Gas Terminaling and Processing Operation Expenses									
77	847.1-847.8	Total Liquefied Natural Gas Terminaling and Processing Maintenance Expenses									
78	850	Operation Supervision and Engineering									
79	851	System Control and Load Dispatching.									
80	852	Communication System Expenses									
81	853	Compressor Station Labor and Expenses									
82	854	Gas for Compressor Station Fuel									
83	855	Other Fuel and Power for Compressor Stations									
84	856	Mains Expenses									
85	857	Measuring and Regulating Station Expenses									
86	858	Transmission and Compression of Gas By Others									
87	859	Other Expenses									
88	860	Rents									
89		Total Gas Transmission Operation Expenses									
90	861	Maintenance Supervision and Engineering									
91	862	Maintenance of Structures and Improvements									
92	863	Maintenance of Mains									
93	864	Maintenance of Compressor Station Equipment									
94	865	Maintenance of Measuring And Regulating Station Equipment									
95	866	Maintenance of Communication Equipment									
96	867	Maintenance of Other Equipment									
97		Total Gas Transmission Maintenance Expenses									
98	871-881	Total Distribution Operation Expenses									
99	885-894	Total Distribution Maintenance Expenses									
100		Total Natural Gas Operation and Maintenance Expenses									
101	901	Supervision									
102	902	Meter reading expenses									
103	903	Customer records and collection expenses									
104	904	Uncollectible accounts									
105	905	Miscellaneous customer accounts expenses									
106	906	Total Customer Accounts Operation Expenses									
107	907	Supervision									

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Resubmission Date *(Month, Day, Year)*	Year of Report Dec 31, _____

SCHEDULE XVI - ANALYSIS OF CHARGES FOR SERVICE – ASSOCIATE AND NON-ASSOCIATE COMPANIES

Line No.	Acct	Description	Associate Company			Non-associate Company			Total Charges For Services		
			Direct Cost	Indirect Cost	Total Cost	Direct Cost	Indirect Cost	Total Cost	Direct Cost	Indirect Cost	Total Cost
108	908	Customer assistance expenses									
109	909	Informational And Instructional Advertising Expenses									
110	910	Miscellaneous Customer Service And Informational Expenses									
111		Total Service and Informational Operation Accounts									
112	911	Supervision									
113	912	Demonstrating and Selling Expenses									
114	913	Advertising Expenses									
115	916	Miscellaneous Sales Expenses									
116		Total Sales Operation Expenses									
117	920	Administrative and General Salaries									
118	921	Office Supplies and Expenses									
119	923	Outside Services Employed									
120	924	Property Insurance									
121	925	Injuries and Damages									
122	926	Employee Pensions and Benefits									
123	928	Regulatory Commission Expenses									
124	930.1	General Advertising Expenses									
125	930.2	Miscellaneous General Expenses									
126	931	Rents									
127		Total Administrative and General Operation Expenses									
128	935	Maintenance of Structures and Equipment									
129		Total Administrative and General Maintenance Expenses									
130		Total Cost of Service									

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Resubmission Date *(Month, Day, Year)*	Year of Report Dec 31, _____

SCHEDULE XVII - ANALYSIS OF BILLING - ASSOCIATE COMPANIES (ACCOUNT 457)

Report in a footnote the basis of how the amounts of compensation for use capital are assigned to the associate and non-associate companies. If amounts are allocated differently for certain companies, please provide all details regarding the difference.

Line No.	Name of Associate Company	Direct Costs Charged	Indirect Costs Charged	Compensation For Use Of Capital	Total Amount Billed
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					
26					
27					
28					
29					
30					
31					
32					
33					
34					
35					
36					
37					
38					
39					
40					
41					
42					
43					
44					

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Resubmission Date *(Month, Day, Year)*	Year of Report Dec 31, _____

SCHEDULE XVIII - ANALYSIS OF BILLING - NON-ASSOCIATE COMPANIES (ACCOUNT 458)

1. Provide a brief description of the services rendered to each non-associate company in a footnote.
2. Report in a footnote the basis of how the amounts of compensation for use capital are assigned to the associate and non-associate companies. If amounts are allocated differently for certain companies, please provide all details regarding the difference.

Line No.	Name of Non-associate Company	Direct Costs Charged	Indirect Costs Charged	Compensation For Use Of Capital	Excess or Deficiency on Servicing Non-associate Utility Companies	Total Amount Billed
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						
19						
20						
21						
22						
23						
24						
25						
26						
27						
28						
29						
30						
31						
32						
33						
34						
35						
36						
37						
38						
39						
40						
41						
42						
43						
44						

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Resubmission Date *(Month, Day, Year)*	Year of Report Dec 31, _____

SCHEDULE XIX - MISCELLANEOUS GENERAL EXPENSES - ACCOUNT 930.2

1. Provide a listing of the amount included in Account 930.2, "Miscellaneous General Expenses" classifying such expenses according to their nature. Amounts less than $50,000 may be grouped showing the number of items and the total for the group.
2. Payments and expenses permitted by Section 321 (b)(2) of the Federal Election Campaign Act, as amended by Public Law 94-283 in 1976 (2 U.S.C. 441(b)(2)) shall be separately classified.

Line No.	Description (a)	Amount (b)
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		
29		
30		
31		
32		
33		
34		
35		

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Resubmission Date *(Month, Day, Year)*	Year of Report Dec 31, _____

SCHEDULE XX - ORGANIZATION CHART

1. Provide a graphical presentation of the relationships and inter relationships within the service company that identifies lines of authority and responsibility in the organization.

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Resubmission Date *(Month, Day, Year)*	Year of Report Dec 31, _____

SCHEDULE XXI - METHODS OF ALLOCATION

1. Indicate the service department or function and the basis for allocation used when employees render services to more than one department or functional group. If a ratio, include the numerator and denominator.
2. Include any other allocation methods used to allocate costs.

Service Department or Function	Basis of Allocation

Appendix B

List of Commenters

1. American Public Power Association and the Florida Municipal Power Agency jointly filed Comments (APPA)
2. Edison Electric Institute (EEI)
3. National Association of Regulatory Utility Commissioners (NARUC)
4. National Grid USA (National Grid)
5. NiSource, Inc. (NiSource)
6. Progress Energy, Inc. (Progress Energy)
7. Public Service Enterprise Group Incorporated (PSEG Companies)
8. Southern Company Services and Southern Nuclear Operating Company (Southern)
9. Xcel Energy Services, Inc. (XES)

List of Supplemental Commenters

1. CMS Energy Corporation and Consumers Energy Company jointly filed Supplemental Comments (CMS)
2. Edison Electric Institute (EEI)
3. FirstEnergy Service Company (FirstEnergy)
4. National Association of Regulatory Utility Commissioners (NARUC)
5. National Rural Electric Cooperative Association (NRECA)
6. NiSource, Inc. (NiSource)
7. Pepco Holdings and PHI Service Company jointly filed Supplemental Comments (PHI Companies)
8. Seminole Electric Cooperative, Inc. (Seminole)
9. Southern Company Services and Southern Nuclear Operating Company (Southern)
10. Xcel Energy Services, Inc. (XES)

[FR Doc. 06–9003 Filed 11–6–06; 8:45 am]
BILLING CODE 6717–01–C

Federal Register

Tuesday,
November 7, 2006

Part III

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry; Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–2006–0699; FRL–8239–9]

RIN 2060–AN71

Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry; Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to section 111(b)(1)(B) of the Clean Air Act, the EPA has reviewed the emission standards for volatile organic compounds contained in the standards of performance for equipment leaks of volatile organic compounds in the synthetic organic chemicals manufacturing industry and equipment leaks of volatile organic compounds in petroleum refineries. This action proposes amendments to these standards based on this review. Specifically, we are proposing amendments to increase the stringency of the leak definitions for pumps and valves. We are also proposing several technical clarifications and corrections to existing provisions. The clarifications and corrections in the regulations would apply to all sources that are subject to rules that reference these regulations.

DATES: Comments. Comments on the proposed amendments must be received on or before January 8, 2007.

Public hearing. If anyone contacts EPA requesting to speak at a public hearing by November 27, 2006, a public hearing will be held on December 7, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0699, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* U.S. Postal Service, send comments to: Air and Radiation Docket (6102T), Docket No. EPA–HQ–OAR–2006–0699, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20460.
- *Hand Delivery:* In person or by Courier, deliver comments to: Air and Radiation Docket (6102T), EPA West Building, Room B–102, 1301 Constitution Ave., NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2006–0699. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the Federal Docket Management System index at *www.regulations.gov.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA West Building, Room B–102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

Note: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to make hand deliveries or visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* for current information on docket operations, locations, and telephone numbers. The Docket Center's mailing address for U.S. mail and the procedure for submitting comments to *www.regulations.gov* are not affected by the flooding and will remain the same.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Rackley, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number (919) 541–0634; fax number (919) 541–0246; e-mail address: *rackley.karen@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	NAICS* code	Examples of potentially regulated entities
Industry	32411	Petroleum refiners
	Primarily 325110, 325192, 325193, and 325199.	Synthetic organic chemicals manufacturing industry (SOCMI) units, e.g., producers of benzene, toluene, or any other chemical listed in 40 CFR 60.489.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 60.480 and 40 CFR 60.590. If you have any questions regarding the applicability of the proposed amendments to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Submitting CBI. Do not submit information that you consider to be CBI electronically through *www.regulations.gov* or e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), U.S. EPA, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, Attention Docket ID EPA–HQ–OAR–2006–0699. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket.

If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the proposed amendments is available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the proposed amendments will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control.

Public Hearing. If a public hearing is held, it will begin at 10 a.m. and will be held at EPA's campus located at 109 T.W. Alexander Drive, Research Triangle Park, NC, or at an alternate facility nearby. Persons interested in presenting oral testimony or inquiring as to whether a public hearing is to be held should contact Ms. Karen Rackley, listed in the **FOR FURTHER INFORMATION CONTACT** section, at least 2 days in advance of the hearing.

Docket. The docket number for the proposed amendments to the standards of performance (40 CFR part 60, subpart VV and 40 CFR part 60, subpart GGG) is Docket ID No. OAR–2006–0699. Legacy dockets for the standards of performance include Docket ID Nos. A–79–32 and A–80–44.

Outline. The information presented in this preamble is organized as follows:

I. Background Information
A. What is the statutory authority for the proposed amendments?
B. What are the current equipment leak NSPS?
II. Summary of the Proposed Amendments
III. Rationale for the Proposed Amendments
A. How did EPA determine the amended standards for equipment leaks in the SOCMI (40 CFR part 60, subpart VV)?
B. How did EPA determine the amended standards for equipment leaks in other NSPS?
IV. Request for Comments
V. Modification and Reconstruction Provisions
VI. Summary of Cost, Environmental, Energy, and Economic Impacts
A. What are the impacts for SOCMI process units?
B. What are the impacts for petroleum refining process units?
C. What are the economic impacts?
VII. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use
I. National Technology Transfer and Advancement Act

I. Background Information

A. What is the statutory authority for the proposed amendments?

New source performance standards (NSPS) implement Clean Air Act (CAA) section 111(b) and are issued for categories of sources which cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The primary purpose of the NSPS are to attain and maintain ambient air quality by ensuring that the best demonstrated emission control technologies are installed as the industrial infrastructure is modernized. Since 1970, the NSPS have been successful in achieving long-term emissions reductions at numerous industries by assuring cost-effective controls are installed on new, reconstructed, or modified sources.

Section 111 of the CAA requires that NSPS reflect the application of the best system of emission reductions which (taking into consideration the cost of achieving such emission reductions, any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. This level of control is commonly referred to as best demonstrated technology (BDT).

Section 111(b)(1)(B) of the CAA requires the EPA periodically to review and revise the standards of performance, as necessary, to reflect improvements in methods for reducing emissions.

B. What are the current equipment leak NSPS?

New source performance standards for equipment leaks of volatile organic compounds (VOC) have been developed for four source categories. Subpart VV to 40 CFR part 60 applies to SOCMI process units. Subpart DDD to 40 CFR part 60, Standards of Performance for VOC Emissions from the Polymer Manufacturing Industry, applies to polypropylene, polyethylene, polystyrene, and poly (ethylene terephthalate) process units. Subpart GGG to 40 CFR part 60 applies to petroleum refining process units. Subpart KKK to 40 CFR part 60 applies to onshore natural gas processing plants. Subparts DDD, GGG, and KKK of 40 CFR part 60 cross-reference the requirements in 40 CFR part 60, subpart VV, and they specify source-category-specific definitions and exceptions to the requirements in 40 CFR part 60, subpart VV.

The NSPS for equipment leaks of VOC in the SOCMI (40 CFR part 60, subpart VV) were originally promulgated on October 18, 1983 (48 FR 48335) and apply to all equipment, as defined by the rule, within a process unit in the synthetic organic chemicals manufacturing industry (SOCMI) that commenced construction, reconstruction, or modification after January 5, 1981. For the purpose of 40 CFR part 60, subpart VV, the SOCMI consists of process units producing any of the chemicals listed in 40 CFR 60.489 of subpart VV. The standards apply to pumps, compressors, pressure relief devices, sampling connection systems, open-ended lines, valves, and flanges or other connectors in VOC service. Depending on the type of equipment, the standards require either periodic

monitoring for and repair of leaks, the use of specified equipment to minimize leaks, or specified work practices. Monitoring for leaks must be conducted using EPA Method 21 in appendix A to 40 CFR part 60 or other equivalent monitoring techniques. Owners and operators must keep records that identify the equipment that are subject to the standards, identify equipment that are leaking, and document attempts at repair. Information related to leaks and repair attempts also must be included in semiannual reports. This subpart has been amended several times between 1984 and 2000. Typically, these amendments added definitions, exemptions, alternative compliance options, and clarifications. For example, one amendment provides an option to comply with the equipment leak provisions in the Consolidated Federal Air Rule (CAR) for equipment leaks (40 CFR part 65, subpart F). None of these amendments increased the intended performance level of the standards.

The NSPS for equipment leaks of VOC in petroleum refineries (40 CFR part 60, subpart GGG) apply to petroleum refining process units for which construction, reconstruction, or modification commenced after January 4, 1983. Those standards were originally promulgated on May 30, 1984 (49 FR 22606), and have been amended only once since the original promulgation (65 FR 61768, October 17, 2000) to update the American Society for Testing and Materials (ASTM) test method references.

II. Summary of the Proposed Amendments

We are proposing a variety of amendments to 40 CFR part 60, subpart VV; most of these amendments would also apply to affected sources under other NSPS that cross-reference 40 CFR part 60, subpart VV (*i.e.*, 40 CFR part 60, subparts DDD, GGG, and KKK). Some of the amendments to 40 CFR part 60, subpart VV would change the leak detection and repair (LDAR) standards for pumps and valves in SOCMI process units that commence construction, reconstruction, or modification as of today's date. We are also proposing amendments to 40 CFR part 60, subpart GGG that would make the same changes in the LDAR standards for pumps and valves in new petroleum refining process units, but these changes would not apply to affected sources under 40 CFR part 60, subparts DDD and KKK. Other amendments to 40 CFR part 60, subpart VV would add compliance options, add new provisions to ensure that existing standards achieve the expected emission reductions, clarify ambiguous provisions, and correct miscellaneous errors. These proposed amendments to 40 CFR part 60, subpart VV would apply to affected sources under all other NSPS that cross-reference 40 CFR part 60, subpart VV (*i.e.*, 40 CFR part 60, subparts DDD, GGG, and KKK).

We are proposing amendments to the LDAR requirements for pumps and valves in SOCMI process units that are subject to 40 CFR part 60, subpart VV and begin construction, reconstruction, or modification after November 7, 2006. These amendments would increase the stringency of the leak definition for pumps in light liquid service from 10,000 parts per million (ppm) to 2,000 ppm (5,000 ppm for pumps handling polymerizing monomers) and increase the stringency of the leak definition for valves in gas/vapor service or light liquid service from 10,000 ppm to 500 ppm. We are also proposing to amend subpart GGG to 40 CFR part 60 to specify that the above changes also apply to petroleum refining process units that begin construction, reconstruction, or modification after November 7, 2006. These proposed amendments reflect BDT for these sources based on the performance and cost of the LDAR programs.

We are proposing several amendments to subpart VV of 40 CFR part 60 which would add provisions designed to ensure that expected emissions reductions under the existing standards are being achieved. For example, these amendments would require an owner or operator to monitor the cap, plug, blind flange, or second valve on open-ended lines once per year. In addition, a calibration drift assessment would be required at the end of each day of monitoring, and records of monitoring instrument calibrations would be required. Finally, flow indicators or closure devices would be required on bypass lines that could divert flow away from control devices, consistent with requirements in the National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks (HON) (40 CFR part 63, subpart H), the National Emission Standards for Equipment Leaks-Control Level 2 Standards (Generic MACT) (40 CFR part 63, subpart UU), and the CAR (40 CFR part 65, subpart F), hereafter referred to as ''other equipment leak rules.'' All of these proposed changes would apply to affected sources under rules that cross-reference 40 CFR part 60, subpart VV (*i.e.*, 40 CFR part 60, subparts DDD, GGG, and KKK).

We are proposing an amendment to simplify the compliance requirements for pumps. When indications of liquids dripping are observed during weekly inspections, 40 CFR part 60, subpart VV currently requires repair of the leak following the same procedures as if the leak were detected by monitoring. The proposed amendment would allow the owner or operator to either repair the leak by eliminating the indications of liquids dripping or determine if it is leaking based on the instrument reading obtained by monitoring the pump in accordance with EPA Method 21 or other equivalent monitoring techniques. This change would make the requirements in subpart VV consistent with the requirements in other equipment leak rules. This option would also be available for affected sources under subparts DDD, GGG, and KKK of 40 CFR part 40.

We are proposing an alternative compliance option consisting of less frequent monitoring for pumps and valves in process units that operate part-time during the year. This alternative would apply to currently required monthly, quarterly, and semiannual monitoring intervals; less frequent monitoring would not be allowed for monitoring that is currently required on an annual or less frequent basis. For example, pumps in a process that operates 5,250 hours per year (about 60 percent of full-time operation) could be monitored every other month rather than monthly. This alternative is consistent with options in other equipment leak rules, and it would be available for affected facilities at sources subject to other NSPS that cross-reference 40 CFR part 60, subpart VV.

Several proposed amendments are intended to clarify the requirements in 40 CFR part 60, subpart VV. These changes would make the rule language consistent with language that has been included in more recent equipment leak rules. These amendments include clarification of the definition of ''process unit,'' requirements for new equipment added to a process unit, requirements for containers in closed-purge sampling systems, monitoring requirements for pumps for which repair has been delayed, and examples of actions considered to be first attempts at repair of pumps. We are also proposing a clarification of the definition of ''process unit'' in 40 CFR part 60, subpart GGG that is comparable to the proposed clarification of the definition in subpart VV.

Finally, the proposed amendments include a few technical corrections to fix references and other miscellaneous errors in both subpart VV and subpart GGG of 40 CFR part 60. The specific changes are detailed in sections III.A and III.B of this preamble.

III. Rationale for the Proposed Amendments

To determine the need for revisions to 40 CFR part 60, subpart VV, we reviewed requirements in other Federal equipment leak rules (*e.g.*, recent National Emission Standards for Hazardous Air Pollutants (NESHAP) and the CAR), State rules, and recent consent decrees between many petroleum refiners and the United States government (representing EPA and various individual States, depending on the petroleum refining company). State rules that were reviewed included rule 1173 in California's South Coast Air Quality Management District, rule 8–18 in California's Bay Area Air Quality Management District, and requirements for highly reactive VOC in title 30, part 1, chapter 115, subchapter H of the Texas Administrative Code (TAC). An example of the equipment leak provisions included in the petroleum refinery consent decrees (from the consent decree for Sunoco, Inc.) can be found in Docket ID No. EPA–HQ–OAR–2006–0699. The consent decrees in their entirety are located at *http://cfpub.epa.gov/compliance/cases/*. As a result of this review, we developed amendments to improve the performance of the Equipment Leak NSPS that would require lower leak definitions for pumps in light liquid service and valves in gas/vapor service or light liquid service. We also considered a second option that would require monitoring of connectors in gas/vapor or light liquid service and define a leak for all connectors as an instrument reading of 500 ppm or greater. We have decided not to propose this second option at this time. See section IV of this preamble for a discussion of this option.

As a result of the review, we identified several other changes that would help ensure that the existing standards achieve the intended level of control. We also noted the need for a number of clarifications to make the requirements in the NSPS consistent with requirements in other equipment leak rules.

A. How did EPA determine the amended standards for equipment leaks in the SOCMI (40 CFR part 60, subpart VV)?

1. Amended Work Practice Standards

Leak definition for pumps and valves. Typically, reducing the leak definition reduces emissions because leaks are identified and fixed when they are smaller. Leak definitions for pumps and valves in numerous other regulations and requirements are much lower than the 10,000 ppm leak definitions in 40 CFR part 60, subpart VV. For example, all NESHAP for SOCMI sources (*e.g.*, the HON, Generic MACT, and the CAR) specify leak definitions of 500 ppm for valves in gas/vapor service and light liquid service. The NESHAP also specify a leak definition of 1,000 ppm for pumps in light liquid service (except for pumps handling polymerizing monomers or in food/medical service, which have leak definitions of 5,000 ppm and 2,000 ppm, respectively). Although a pump is considered to be leaking at 1,000 ppm, repairs are required only if the instrument reading is at least 2,000 ppm.

Requirements in documents other than Federal NESHAP also have lower leak definitions than subpart VV. For example, most of the consent decrees for petroleum refineries specify leak definitions of 500 ppm for valves and 2,000 ppm for pumps. The consent decrees also require first attempts to repair valves when instrument readings exceed 100 ppm or 200 ppm. This effort has been only marginally successful because evidence to date shows such attempts are almost as likely to make emissions worse as to fix the valve. These results suggest that there are limits below which lowering the leak definition results in significantly diminished returns.

Finally, some State rules also have leak definitions that are lower than in 40 CFR part 60, subpart VV. For example, Air Quality Management Districts in California (*e.g.*, BAAQMD rule 8–18) specify leak definitions as low as 100 ppm for valves and 500 ppm for pumps. Data on leak frequencies and other performance measures for facilities implementing LDAR programs with these very low leak definitions are not available.

Based on our experience with NESHAP and the consent decrees with petroleum refiners, we have concluded that BDT for pumps and valves includes lower leak definitions than in 40 CFR part 60, subpart VV as currently written. Specifically, these regulations and other requirements indicate BDT includes leak definitions of 500 ppm for valves and 2,000 ppm for pumps. Even lower leak definitions theoretically would result in lower emissions, but available evidence to date does not support selection of lower values. Our impacts analysis indicates that lowering the leak definitions to 500 ppm for valves and 2,000 ppm for pumps would reduce emissions from new SOCMI sources by 230 Mg/yr in the fifth year after implementation of such requirements, and the cost would be $310/Mg removed. This cost is considered to be reasonable. Therefore, we are proposing to lower the leak definitions in 40 CFR part 60, subpart VV to 2,000 ppm for pumps and to 500 ppm for valves.

2. New Compliance Demonstration Requirements

As mentioned previously, the proposed amendments include provisions to ensure that intended emissions reductions are being achieved. The proposed clarifications summarized in this section would apply to all process units subject to 40 CFR part 60, subpart VV as well as units subject to subparts that reference subpart VV.

Open-ended lines. Section 60.482–6(a)(1) specifies that, except in certain situations, each open-ended valve or line shall be equipped with a cap, plug, blind flange, or a second valve. If installed properly, the control efficiency of these measures is assumed to be essentially 100 percent. Inspections conducted by enforcement agencies, however, have found that many of these components are leaking due to improper installation. In order to increase compliance with the original standards for open-ended lines and achieve the intended emission reductions, we are proposing a requirement to monitor each open-ended line once per year. An instrument reading of 500 ppm or greater would be considered a leak. The 500 ppm level was selected because this requirement is comparable to the ''no detectable emissions'' option for pumps, compressors, and valves. Repair of leaks would be required within 15 days after the leak is detected. Examples of repair attempts include tightening or replacing the cap, plug, blind flange, or second valve. Records of all monitoring results, each leak detected, and each repair attempted would be required. Documentation of the total number of leaks and number for which repair was delayed would be required in semiannual reports.

Requirements for Pumps. Sections 60.482–2(b)(2) and (d)(6)(i) of subpart VV currently specify that a leak is detected if indications of liquids dripping from the pump seal are observed during weekly inspections. These leaks must be repaired just as leaks detected by instrument readings greater than the leak definition must be repaired. We have determined that this requirement is overly burdensome because not all liquids dripping are process fluids, and not all drips of process fluids would create emissions concentrations greater than the applicable leak definitions. To mitigate this burden, we are proposing to revise the weekly inspection requirements in a

manner similar to the requirements in the CAR.

The proposed amendments would require the owner or operator to either monitor the pump or designate visual indications of liquids dripping as a leak. If the owner or operator chooses to monitor the pump and the instrument reading is greater than or equal to the applicable leak definition, then a leak is detected, and it must be repaired following the same procedures as any other leak. If the instrument reading is less than the applicable leak definition, the indications of drips are not a leak, and no further action would be required. If the indications of liquids dripping are designated as a leak, then the owner or operator would have to repair the leak by eliminating the visual indications of liquids dripping. Eliminating visual indications of liquids dripping is less burdensome than meeting the definition of ''repaired'' because monitoring is not required to verify that the repair was successful. (Note that we are also proposing to revise the definition of the term ''repaired'' to be consistent with the definition in other equipment leak rules and to further clarify the definition. See section III.A.3 of this preamble.) Although 40 CFR part 60, subpart VV does not explicitly specify procedures to follow when indications of liquids dripping are observed between scheduled weekly inspections, the Agency has determined that owners and operators must follow the same requirements as when indications of liquids dripping are found during the weekly inspection.

The most obvious difference between the proposed amendments and the requirements in the CAR and Generic MACT is that the proposed amendments would explicitly require the owner or operator to designate visual indications of liquids dripping as a leak if monitoring is not conducted. However, this language is consistent with the intent of the CAR and Generic MACT. In the preamble to the proposed CAR (63 FR 57448, October 28, 1998), we explained that the new option to eliminate visual indications of liquids dripping constitutes leak repair for such situations. Another difference between the proposed amendments and the CAR is that the CAR essentially requires monitoring twice per month for pumps with continuing indications of liquids dripping (i.e., according to § 65.107(b)(4)(i), monitoring is required after the first weekly inspection each month). The proposed language in 40 CFR part 60, subpart VV would require monitoring after only the first weekly inspection that revealed indications of liquids dripping. For subsequent months, routine monitoring in accordance with § 60.482–2(a)(1) is still required, but no monitoring would be required after any of the weekly inspections. Note, however, that if the pump is repaired (by either eliminating indications of liquids dripping or other means), then the clock resets and monitoring would again be required after the first weekly inspection during which indications of liquids dripping are observed.

Requirements for Closed-vent Systems. We are proposing to add a paragraph to the end of § 60.482–10 requiring owners and operators to ensure that there is no flow through bypass lines that could divert flow away from control devices. This requirement may be fulfilled by installing a flow indicator on each bypass line or securing the bypass line valve in the non-diverting position. Corresponding recordkeeping requirements are being proposed in 40 CFR 60.486(d)(6) and include either hourly records of whether the flow indicator was operating and whether a diversion into the bypass line was detected or records of monthly visual inspections and whether the seal is broken. We are also proposing that semiannual reports include records of all periods when the vent stream is diverted from the control device through a bypass line and all times when maintenance is performed in car-sealed valves, when the seal is broken, when the bypass line valve position is changed, or the key for a lock-and-key type configuration has been checked out. The changes to the monitoring, recordkeeping, and reporting requirements for bypass lines on closed-vent systems are being proposed to make 40 CFR part 60, subpart VV consistent with other equipment leak rules.

Testing Requirements. We are proposing two changes to the testing methods and procedures in 40 CFR 60.485 of subpart VV: addition of a daily calibration drift assessment and clarification of the calibration gases that must be used.

Section 60.485(b)(1) of subpart VV specifies that monitoring instruments must be calibrated before use each day. To ensure that the monitoring results are as accurate as possible, we are proposing to require a drift assessment at the end of each monitoring shift. The instrument would be checked with the same calibration gases as before use, and the percent difference from the initial calibration value would be calculated. If the drift assessment shows a negative drift of more than 10 percent, equipment monitored since the previous calibration that showed readings between the leak definition and 20 percent of the leak definition must be re-monitored. For example, equipment with readings between 100 ppm and 500 ppm would have to be re-monitored if the leak definition is 500 ppm, and equipment with readings between 400 ppm and 2,000 ppm would have to be re-monitored if the leak definition is 2,000 ppm. We are specifically requesting comments on the proposed calibration drift requirement. In particular, we are requesting information on the environmental benefit of this assessment and any alternatives that should also be considered.

Section 60.485(b)(1)(ii) of subpart VV currently requires calibration with a mixture of methane or n-hexane and air at a concentration of about, but less than, 10,000 ppm methane or n-hexane. This is appropriate for the 10,000 ppm leak definitions as currently specified in the rule. However, because we are proposing lower leak definitions for pumps and valves, we are also proposing to revise the calibration gas requirements to match the requirements in other equipment leak rules that specify a variety of leak definition levels, such as the Generic MACT (40 CRF 63.1023(b)(4)) and the CAR (40 CFR 65.104(b)(4)).

The proposed amendments would require a mixture of methane or n-hexane and air at a concentration of no more than 2,000 ppm greater than the leak definition concentration of the equipment monitored. Alternatively, if the monitoring instrument allows for multiple calibration scales, then the lower scale should be calibrated with a calibration gas that is no higher than 2,000 ppm above the applicable leak definition, and the highest scale should be calibrated with a calibration gas that is approximately equal to 10,000 ppm. If only one scale will be used during a day's monitoring, then only that scale will need to be calibrated.

Records of Instrument Calibrations. EPA Method 21 specifies instrument calibration requirements, and as discussed above, we are proposing additional calibration requirements in 40 CFR part 60, subpart VV. Neither the method nor subpart VV, however, require records of the calibrations. This information is needed by enforcement agencies to ensure compliance. Therefore, we are proposing to amend 40 CFR 60.486(e) of subpart VV to require records of calibrations. The proposed amendments would require an owner or operator to maintain records of the calibration dates, identification of the operator performing the calibration,

information about the cylinder gas(es) used, a description of any corrective action taken if the meter readout could not be adjusted to correspond to the calibration gas value, and results of calibration drift assessments.

3. Technical Corrections and Clarifications

We are proposing several technical corrections to the current subpart VV of 40 CFR part 60 requirements in the proposed amendments. These amendments are being proposed to clarify the intent of the current requirements, correct inaccuracies, and correct oversights in previous versions that were promulgated. The proposed clarifications summarized in this section are consistent with other equipment leak rules and apply to all process units subject to subpart VV as well as units subject to subparts that reference subpart VV.

Pumps. We are proposing several clarifications to the standards for pumps in light liquid service (40 CFR 60.482–2). The current provisions are unclear regarding when a new pump on an affected process unit must be monitored for the first time, especially if the new pump is added to the process unit between monitoring cycles. We are proposing to revise 40 CFR 60.482–2(a)(1) to specify that a new pump must be monitored for the first time during the next regularly scheduled monitoring cycle for existing pumps.

We are also proposing to amend the delay of repair requirements specific to pumps. We are proposing to add 40 CFR 60.482–9(f) to clarify that an owner or operator may elect to discontinue monitoring for a pump for which repair has been delayed; if this option is chosen, the pump is presumed to be leaking until repaired. Alternatively, an owner or operator may choose to continue monitoring and consider the pump to be repaired if two consecutive monthly monitoring instrument readings are below the leak definition.

Finally, we are proposing several minor clarifications for pumps. We are proposing to add specific examples of practices that are considered to be options for first attempt at repair. The examples are consistent with other equipment leak rules. In a related amendment, we are proposing to amend 40 CFR 60.482–8(d) to include a reference to 40 CFR 60.482–2(c)(2) where first attempt at repair is discussed. We are also proposing to add 40 CFR 60.486(e)(6) to state explicitly that records of the weekly visual inspections must be kept.

Valves. Similar to pumps, the current provisions are unclear regarding when a new valve on an affected process unit must be monitored for the first time. We are proposing to add 40 CFR 60.482–7(a)(2) to specify that a new valve must be monitored for the first time within 1 month after installation to ensure that the valve has been properly installed, except for valves that are designated for no detectable emissions, as unsafe to monitor, or as difficult to monitor. Subsequent monitoring for the new valve would begin during the next regularly scheduled monitoring cycle for that process unit. Unlike when a process unit first becomes subject to 40 CFR part 60, subpart VV, monitoring in two consecutive months before implementing less frequent monitoring would not be required. Similarly, we are proposing to add 40 CFR 60.483–2(b)(7) to indicate that monitoring is required within 1 month after installation of a new valve on a process unit being monitored according to the skip period frequency; subsequent monitoring for the new valve would begin during the quarter in which the existing valves on that process unit are monitored. The proposed amendments are consistent with the requirement to monitor valves monthly within a month after a process becomes subject to subpart VV, and they will ensure that a valve added to a process unit complying with 40 CFR 60.482–7(c) or 40 CFR 60.483–2 does not leak for up to 3 months or 1 year, respectively, before being monitored.

We are also proposing to amend the delay of repair requirements specific to valves. Similar to pumps, we are proposing to add 40 CFR 60.482–9(f) to clarify that an owner or operator may elect to discontinue monitoring for a valve for which repair has been delayed; if this option is chosen, the valve is presumed to be leaking until repaired. Alternatively, an owner or operator may choose to continue monitoring and consider the valve to be repaired once two consecutive monthly monitoring instrument readings are below the leak definition.

Sampling Connection Systems. For consistency with other equipment leak rules, we are proposing to add definitions of ''closed-loop system'' and ''closed purge system'' that are consistent with the definitions in other equipment leak rules. In addition, we are proposing to clarify that containers that are part of a closed-purge system must be covered when not being filled or emptied. Stating this requirement explicitly in the rule language is consistent with previous amendments to other equipment leak rules. Finally, we are proposing to rearrange the paragraphs in 40 CFR 60.482–5 for clarity.

Intermittent Process Operation. When process units operate on a variable, part-time basis during the year, there are issues about the monitoring requirements, particularly for batch processes. One issue is whether the monitoring frequency should be the same as for processes operating continuously, and another is how to monitor when the process does not operate during a normally scheduled monitoring period. For example, it is not clear what an owner or operator should do if a process unit is not operating during the first month of a quarter when valve monitoring would normally be required. To address these issues, we are proposing to add provisions like those in § 63.1036(c)(3)(iii) and (iv) of the Generic MACT for equipment leaks (40 CFR part 63, subpart UU). These provisions reduce the frequency of monitoring required for part time operation, and specify that the monitoring intervals may be adjusted to accommodate process operations, provided the monitoring is conducted at a ''reasonable interval'' after completion of the last monitoring campaign. For example, monitoring pumps in a process that operates about 70 percent of the days in a year may be done every other month rather than monthly. In addition, for a process that is not operating in the first month of a quarter, a ''reasonable interval'' is defined as within a period equal to 30 percent of the monitoring interval (*i.e.*, 30 percent of 3 months, if quarterly monitoring is otherwise required).

Definitions. The current rule does not clearly specify whether equipment in lines between storage tanks and process vessels are part of the process and therefore part of the affected source. We are proposing to revise the definition of ''process unit'' to clarify our intent that the pipes and ducts connecting storage tanks and transfer racks to process vessels are included as part of a process unit. We are also proposing to add definitions of ''storage vessel'' and ''transfer rack'' to further clarify the definition of ''process unit.'' All of the above definitions are similar to the definitions found in other equipment leak rules.

In a related amendment, we are proposing to add 40 CFR 60.485(b)(3) to allow flexibility in the monitoring of the equipment in a process unit. At some facilities, the storage tanks and transfer racks may be located far from the process vessels. Although the equipment on the pipes connecting the storage tanks and transfer racks to the process vessels are considered part of the same process unit, it may not make

geographic sense to monitor all the equipment at the same time. Instead, it may be more efficient to monitor all equipment on pipes or ducts near the tanks at a different time than the equipment on the process vessel. For example, a facility complying with quarterly monitoring for valves may choose to monitor the valves near the tanks in January and April and monitor the process vessel valves in February and May. Our intent in proposing a revision to the definition of ''process unit'' is not to remove any monitoring flexibility. As long as all the equipment that is part of one process unit is monitored at the applicable leak definition for that process unit and the overall monitoring frequency is maintained as specified by the applicable provisions (such as in the example provided above), the process unit would be considered to be in compliance with the monitoring requirements of 40 CFR part 60, subpart VV.

We are also proposing a revised definition of ''repaired'' to reflect our clarifications regarding how a leak is determined. The current definition does not explicitly explain how to verify that a repair has been successful. One interpretation of this language is that a successful repair is any action taken to address one of the three indications of a leak as stated in the definition of ''repaired.'' However, this interpretation is not consistent with our intent or the language in other equipment leak rules. In addition, the current definition does not accurately reflect our proposed amendments to clarify the procedures when indications of liquids dripping from pumps are detected and to lower the leak definitions for new valves and pumps. Therefore, we are proposing to revise the definition of ''repaired'' to address these concerns. The proposed definition does not include a specific reference to a leak definition of 10,000 ppm and clarifies that, typically, equipment must be monitored after it is repaired to verify that it is no longer leaking. The only exception is that pumps for which visual indications of liquids dripping were observed during weekly inspections may be repaired by eliminating the visual indications of liquids dripping.

Recordkeeping. As specified above, 40 CFR 60.486 would be amended to correspond with particular proposed amendments for pumps in light liquid service, closed-vent systems with bypass lines, and calibration procedures. Specifically, we are proposing to amend 40 CFR 60.486 to require records of the weekly visual inspections for pumps and documentation of the monitoring of bypass lines on closed-vent systems (either continuous records for a flow indicator or monthly visual inspections of the valve position).

We are also proposing to add a requirement to keep records of all instrument readings. The information to record would include identification of the monitoring instrument, operator, and equipment monitored; date and time of monitoring; and the instrument reading. This information would be useful as a means of verifying that the monitoring was performed, and it would be useful for assessing leak growth rates and leak distributions. Many facilities already record this information; therefore, we expect this requirement to impose minimal burden.

In addition, we are proposing to amend 40 CFR 60.486(c), which specifies the information to record when a leak is detected. Currently, 40 CFR 60.486(c)(4) requires only a note if an instrument reading above 10,000 ppm is detected after a repair attempt (i.e., a note that the repair attempt was unsuccessful). We are proposing to amend this paragraph to require a record of the maximum instrument reading once the leak is either repaired or determined to be nonrepairable. This change would take into account changes in the leak definitions, as well as the fact that the leak definitions may not be the same for all components. This language would make this requirement consistent with other equipment leak rules.

Reporting. As specified above, 40 CFR 60.487 would be amended to correspond with the proposed amendments for closed-vent systems with bypass lines and open-ended lines. Specifically, we are proposing to amend 40 CFR 60.487 to require semiannual reports to include records of all periods when the vent stream is diverted from the control device through a bypass line; records of all times when maintenance is performed in car-sealed valves, when the seal is broken, when the bypass line valve position is changed, or the key for a lock-and-key type configuration has been checked out; the number of open-ended lines for which leaks were detected; and the number of open-ended lines for which leaks were not repaired as required.

Miscellaneous Corrections. We are proposing the following miscellaneous technical corrections throughout 40 CFR part 60, subpart VV:

- Replacing ''construction or modification'' with ''construction, reconstruction, or modification'' throughout subpart VV;
- adding the word ''Value'' to the table in the definition of the term ''capital expenditure'';
- correcting the spelling of the word ''judgment'' in the definition of the term ''hard piping'';
- replacing ''§ 60.482(a), (b), (c), (d), (e), and (h)'' with ''paragraphs (a) through (e) and (h) of this section'' in 40 CFR 60.482–3;
- correcting the spelling of the word ''equivalence'' in 40 CFR 60.484(a); and
- replacing ''demonstrate that an equipment'' with ''demonstrate that a piece of equipment'' in 40 CFR 60.485(e) to correct a grammatical error.

B. How did EPA determine the amended standards for equipment leaks in other NSPS?

Of the four subparts in part 60 that contain NSPS for equipment leak emissions, our current review examines only subparts VV and GGG. We will review and determine the need for source-specific amendments to subparts DDD and KKK of 40 CFR part 60 at a later date. Except for the changes to the LDAR standards for pumps and valves, all of the other proposed amendments to subpart VV would apply to sources subject to any rule that cross-references subpart VV. Other proposed changes to subpart GGG are discussed below.

1. LDAR for Pumps and Valves

The proposed amendments to the standards in 40 CFR part 60, subpart VV (i.e., the increased stringency of the leak definitions for pumps and valves) have been written in such a way that they apply only to SOCMI affected sources that commence construction, reconstruction, or modification after today's publication of the proposed amendments. Based on the requirements in consent decrees and the Petroleum Refineries NESHAP (40 CFR part 63, subpart CC), however, it is clear that these proposed provisions are also technically viable and in widespread use for equipment leaks from petroleum refineries. Our impacts analysis (see section VI of this preamble) indicates that their implementation would reduce VOC emissions by 13 Mg/yr from new process units at refineries in the fifth year after implementing such requirements, and the cost to achieve these reductions would be $3,400/Mg removed. The annual emissions reductions are relatively small because more than 76 percent of the refiners are currently complying with consent decrees that require compliance with comparable leak definitions. If these consent decrees expire at some point in the future, the potential emissions reductions would greatly increase. The

cost to achieve these reductions is considered reasonable. Therefore, we are proposing to add an exception in 40 CFR 60.593(f) of subpart GGG to specify that these changes to the standards in 40 CFR part 60, subpart VV would also apply to petroleum refining process units that commence construction, reconstruction, or modification after today's publication of proposed amendments.

2. Clarifications for Valves

Section 60.592(b) of 40 CFR part 60, subpart GGG currently allows a petroleum refiner to comply with the alternative standards for valves in 40 CFR 60.483–1 or 40 CFR 60.483–2 of subpart VV. We are proposing to allow compliance with the Phase III provisions in 40 CFR 63.168 of subpart H in the HON as an additional option. The Phase III provisions specify a leak definition of 500 ppm for valves, which we are proposing for new petroleum refining process units, as noted above. Many other Phase III requirements for monitoring and repairing leaking valves also are comparable to the requirements in subpart VV, but the Phase III provisions have slightly different ''skip monitoring'' options. Similarities include the requirement to conduct monitoring in accordance with EPA Method 21, to monitor monthly initially, and, if more than 2 percent leak when conducting ''skip-monitoring,'' to make a first attempt at repair no later than 5 calendar days after a leak is detected and complete repair no later than 15 calendar days after a leak is detected, and the requirements for valves that are unsafe-to-monitor or difficult-to-monitor. The Phase III ''skip monitoring'' options allow an owner or operator to choose a monitoring frequency depending on the percentage of valves found to be leaking (e.g., if less than 1 percent of the valves in a process unit are leaking, the owner or operator may monitor once every two quarters; if less than 0.5 percent of the valves in a process unit are leaking, the owner or operator may monitor once every four quarters). Subpart VV allows an owner or operator to skip quarterly monitoring periods until annual monitoring is established as long as the number of leaking valves remains below 2 percent for a process unit.

Compliance with this option would achieve essentially the same emissions reductions as compliance with the proposed changes to 40 CFR part 60, subpart VV. Many petroleum refiners already have process units subject to 40 CFR part 63, subpart H, as well as other petroleum refining process units that are subject to equivalent requirements under 40 CFR part 63, subpart CC. Allowing compliance with subpart H for petroleum refining process units that are subject only to the NSPS (i.e., no hazardous air pollutant (HAP) emissions) may reduce their burden if it reduces the number of different LDAR programs they must implement.

3. Clarifications for Open-Ended Lines

There is a potential safety concern with requiring a cap, blind flange, plug, or a second valve on an open-ended line containing asphalt. Plugs may become stuck and require removal with a torch. If a secondary valve is used, some residual asphalt may remain in the line between the primary and secondary valves following sampling. This residual asphalt can harden in the line, resulting in no flow when the secondary valve is opened to obtain the next sample. When the secondary valve is opened wider to encourage flow, the hardened asphalt may be forced out of the line, splattering hot asphalt on the sampling technicians. Because of this safety issue, and because asphalt has a lower volatility than other petroleum products, we are proposing to add an exemption to the open-ended line requirements for process lines containing asphalt. We are also proposing to add a definition of ''asphalt'' to subpart GGG to clarify which open-ended lines qualify for this exemption. Since asphalt is highly variable depending on the crude oil from which it is derived and the processing steps, we are specifically requesting comment on whether this definition adequately defines asphalt at petroleum refineries and whether the exemption should be limited to specific types of asphalt.

4. Clarification of Definitions

We are proposing to make changes to the definition of ''process unit'' in 40 CFR 60.591 of subpart GGG consistent with the proposed changes to this definition in 40 CFR part 60, subpart VV. These changes would specify that storage tanks and transfer racks are included as part of a process unit. As in subpart VV, these changes are needed to clarify that equipment in the lines between feed or product storage tanks and process units, between process units and transfer racks, or between product storage tanks and transfer racks are subject to the equipment leak standards. This change will make the definition of ''process unit'' in the NSPS consistent with the definition of ''process unit'' in the subpart CC to 40 CFR part 63.

5. Miscellaneous Corrections

We are proposing the following miscellaneous technical corrections throughout 40 CFR part 60, subpart GGG:

- Replacing ''construction or modification'' with ''construction, reconstruction, or modification'' in 40 CFR 60.590;
- changing ''Each compressor is presumed not be in hydrogen service'' to ''Each compressor is presumed not to be in hydrogen service'' in 40 CFR 60.593(b)(2);
- changing the reference to the section in 40 CFR part 60, subpart VV regarding compressors from §§ 60.482 through 60.482–3 in 40 CFR 60.593(c); and
- changing the reference to the section incorporating test methods by reference from §§ 60.18 through 60.17 in 40 CFR 60.593(d).

IV. Request for Comments

We welcome comments on all aspects of the proposed amendments. We are specifically requesting comments on two potential amendments that we have decided not to propose at this time. These potential amendments involve required repair attempts for valves and monitoring for connectors in gas/vapor service and light liquid service.

1. Drill and Tap Repair Attempts

The State of Texas recently promulgated a rule requiring ''extraordinary efforts'' to repair leaking valves in highly reactive volatile organic compound (VOC) service in eight counties before delay of repair is allowed (30 TAC 115.780 through 115.789). Similarly, recent consent decrees with petroleum refiners also require ''extraordinary efforts'' to fix valves that are leaking at concentrations of either 50,000 ppm or 10,000 ppm before delay of repair is allowed. In both the Texas rule and the consent decrees, drill and tap procedures are identified as an example of an extraordinary repair method. We considered amending 40 CFR part 60, subpart VV to include a similar requirement. However, available information indicates that sealant injection procedures such as drill and tap methods have advanced in recent years to the point that they are a viable on-line repair technique for many leaking valves. Vendors market these services for valves in a wide range of service, and they indicate success rates greater than 90 percent. Based on this information, we believe that drill and tap procedures have evolved past ''extraordinary'' methods and are more widely feasible. Therefore, we believe

that an amendment is not needed because subpart VV, as currently written, can be interpreted to require drill and tap repair attempts, at least for valves with leaks at or above the current leak definition of 10,000 ppm. According to 40 CFR 60.482–9(a) of subpart VV, delay of repair is allowed if repair is technically infeasible without a process unit shutdown, and 40 CFR 60.482–9(c) of subpart VV allows delay of repair of valves if emissions associated with immediate repair would exceed continued emissions from the leak. Since drill and tap is technically feasible, and emissions associated with such a repair attempt would be negligible, one interpretation of these provisions is that drill and tap repair attempts are required before delay of repair is allowed.

We are soliciting comment on our interpretation of the delay of repair provisions in 40 CFR part 60, subpart VV and that an explicit requirement to use drill and tap procedures would be redundant. We are specifically interested in information regarding any types of valves or applications where drill and tap repair attempts are inherently unsafe or unlikely to be successful. In addition, given that we are proposing to lower the leak definition for valves from 10,000 ppm to 500 ppm, we are also interested in whether the interpretation that drill and tap is feasible should extend to valves with monitoring instrument readings in this range. Information on any other repair techniques that should be considered ''extraordinary'' and whether the rule should include a provision to require such techniques in certain situations is also of interest.

2. Leak Detection and Repair for Connectors

We have considered amending 40 CFR part 60, subpart VV (and possibly 40 CFR part 60, subpart GGG) to require monitoring of connectors in gas vapor service and light liquid service. Arguments in favor of such amendments are that NESHAP for chemical manufacturing sources already require connector monitoring for new processes that emit HAP, and our impacts analysis shows the cost of such monitoring would be reasonable, at least for SOCMI processes. Furthermore, the potential emission reductions from connector LDAR are greater than the potential reductions for the proposed amendments to the LDAR for pumps and valves. However, because of uncertainties regarding the leak frequencies and emission factors, we have decided not to propose LDAR requirements for connectors at this time. We are soliciting comments on this decision and the underlying data and assumptions; these data and the accompanying analyses can be found in Docket ID No. EPA–HQ–OAR–2006–0699. Based on information provided by commenters, we may decide to propose connector LDAR in the future.

Many of the SOCMI processes listed in 40 CFR 60.489 of subpart VV and subject to subpart VV will also be subject to the HON, the NESHAP for Miscellaneous Organic Chemical Manufacturing (MON) (40 CFR part 63, subpart FFFF), or the NESHAP for Source Categories: Generic Maximum Achievable Control Technology Standards (Ethylene NESHAP) (40 CFR part 63, subpart YY). All of these NESHAP require monitoring of connectors at new sources, and the leak definition in each rule is 500 ppm. About 62 percent of the SOCMI chemicals are chemicals that are also listed in Table 1 to subpart F of the HON, 8 percent are ethylene or propylene, and the remainder are materials meeting the criteria listed in 40 CFR 63.2435 of the MON. Only three types of processes would not be subject to one of these NESHAP: (1) Processes at area sources for HAP emissions; (2) processes that emit VOC, but no HAP; and (3) processes making MON materials that are not part of a new affected source under the MON. Of the existing SOCMI process units, we estimated that 15 percent of them are at area sources based on information in the 2002 National Emission Inventory database; see Docket ID No. EPA–HQ–OAR–2006–0699 for details regarding how this estimate was developed. Except for a small percentage of the processes making MON materials, we assumed that all of the processes use or generate HAP and, thus, would be subject to the NESHAP if other applicability requirements are met. In the absence of process-specific emissions information, we assumed that 20 percent of the processes making MON materials would emit VOC but no HAP. A new affected source under subpart VV would be part of a new affected source under the MON only if it were part of a greenfield facility or it was a dedicated process unit that by itself has the potential to emit HAP at levels above one of the major source thresholds (*i.e.*, 10 tons per year (tpy) of one HAP or 25 tpy of a combination of HAP). Due to the prevalence of batch operations for specialty chemical manufacturing, we anticipate that most new process units that make MON materials will be part of existing sources under the MON. Therefore, we assumed that only 20 percent of the process units making MON materials would be part of a new affected source under the MON. Overall, we expect a majority of process units that become affected sources under subpart VV in the next 5 years will be subject to connector LDAR under a NESHAP. We are unaware of any technological differences that would preclude connector monitoring for the other SOCMI process units.

Petroleum refining process units, on the other hand, are not subject to connector monitoring under any NESHAP. The preamble to the final rule (40 CFR part 63, subpart CC, 60 FR 43244, August 18, 1995) states that connector monitoring was not required because of uncertainty in the emission and cost estimates. However, Texas requires monitoring of connectors in highly reactive VOC service in certain counties (see 30 TAC 115.352 and 115.781), and the leak definition is 500 ppm. Several Air Districts in California (Bay Area, Ventura County, South Coast, and San Joaquin Valley) also require connector monitoring, and the applicable leak definitions range from 100 ppm to 10,000 ppm. Although we expect few new petroleum refining process units will be subject to connector LDAR under other rules, we are unaware of any technological limitations that would preclude an LDAR requirement.

To estimate the impacts of LDAR for connectors, we estimated the number of affected processes over the next 5 years, represented these process units using model processes that were developed for NESHAP impacts analyses, estimated average uncontrolled and controlled emission rates per connector, and estimated the various monitoring and repair costs. Details of the analysis are presented in Docket ID No. EPA–HQ–OAR–2006–0699. The results show an LDAR program with a leak definition of 500 ppm would reduce emissions from connectors by about 250 megagrams per year (Mg/yr) and 83 Mg/yr for SOCMI and petroleum refining process units, respectively. In addition, the average LDAR cost-effectiveness, without considering recovery credits, is estimated to be about $2,500/Mg of VOC controlled for SOCMI process units and $12,000/Mg of VOC controlled for petroleum refining process units. Two factors account for most of the difference in the costs. First, although implementing LDAR would reduce emissions from connectors by nearly 50 percent in both cases, the estimated controlled and uncontrolled emission factors are about three times higher for SOCMI units than for petroleum

refining process units. This occurs even though the leak frequencies were estimated to be lower for SOCMI units. The second reason the costs for SOCMI units are lower is that the lower leak frequency means the SOCMI units could be monitored every 4 years while connectors in petroleum refining process units would have to be monitored annually (assuming the LDAR program includes skip monitoring as in other rules like the HON and Generic MACT). Based on this analysis, the costs of connector LDAR for SOCMI units are considered to be reasonable, but the costs for petroleum refining process units are unreasonable.

Given the information presented above, we considered amending 40 CFR part 60, subpart VV to require connector LDAR for SOCMI units and exempt affected facilities subject to other rules that cross-reference subpart VV. However, we have not yet proposed such amendments because we have reservations about some of the data and assumptions used in the impacts analysis. We are requesting comments and data to either bolster support for the existing analysis or provide rationale for changes to it. One of our concerns involves the emission factors for uncontrolled and controlled connectors in SOCMI units. The uncontrolled factor was derived from initial leak fraction data (for a variety of chemical and polymer manufacturing processes) that were provided by industry in comments on the proposed MON (Docket Number A–96–04, Docket Item IV–D–123). Since this initial leak fraction was less than 0.5 percent (well below the performance level of 2 percent in other rules), we assumed the final leak fraction after implementing LDAR would not be any lower. We also assumed that after repair, the leak fraction would not return to this level until the end of the 4-year monitoring cycle, and that it would increase in direct proportion to the time elapsed. This means the average leak fraction over the 4-year cycle was 1 one-half of the initial leak fraction. We also assumed these leak fractions are what an affected source would measure when implementing an LDAR program, but enforcement inspectors would measure higher leak fractions. We assumed the actual leak fractions would be 1.7 times higher than the measured leak fractions, based on information from enforcement inspections of valves at refineries. Average leak rates were estimated using these actual leak fractions and the procedures in ''Protocol for Equipment Leak Emission Estimates'' (EPA–453/R–95–017). As a result, we estimated uncontrolled and controlled leak rates of 0.000307 kilograms per hour per connector (kg/hr/connector) and 0.000162 kg/hr/connector, respectively, which indicated the LDAR would reduce emissions by nearly 50 percent. Another issue is whether there are any specific technological or economic factors that should change the analysis for area sources relative to major sources. We also are interested in any other arguments for or against amending 40 CFR part 60, subparts VV and GGG to include LDAR for connectors.

V. Modification and Reconstruction Provisions

Existing affected sources that are modified or reconstructed would be subject to today's proposed amendments. A modification is any physical or operational change to an existing facility which results in an increase in the facility's emission rate (40 CFR 60.14 of subpart A). Changes to an existing facility that do not result in an increase in the emission rate, either because the nature of the change has no effect on emissions or because additional control technology is employed to offset an increase in the emission rate, are not considered modifications. In addition, certain changes have been exempted under the General Provisions (40 CFR 60.14 of subpart A). These exemptions include an increase in the hours of operation, addition or replacement of equipment for emission control (as long as the replacement does not increase the emission rate), and use of an alternative fuel if the existing facility was designed to accommodate it.

Rebuilt SOCMI and petroleum refinery process units would become subject to the proposed amendments under the reconstruction provisions, regardless of changes in emission rate. Reconstruction means the replacement of components of an affected facility such that; (1) the fixed capital cost of the new components exceeds 50 percent of the cost of an entirely new SOCMI or petroleum refinery process unit of comparable design, and (2) it is technologically and economically feasible to meet the applicable standard (40 CFR 60.15 of subpart A).

VI. Summary of Cost, Environmental, Energy, and Economic Impacts

In setting standards, the CAA requires us to consider alternative emission control approaches, taking into account the estimated costs and benefits, as well as the energy, solid waste, and other effects. We request comment on whether we have identified the appropriate alternatives and whether the proposed standards adequately take into consideration the incremental effects in terms of emission reductions, energy, and other effects of these alternatives. The EPA will consider the available information in developing the final rule.

We are presenting estimates of the impacts for the proposed amendments that change the performance standards: the 500 ppm leak definition for valves and the 2,000 ppm leak definition for pumps. The other proposed amendments are clarifications to the existing 40 CFR part 60, subparts VV and GGG to ensure that the expected emission reductions are being achieved and have no emission reduction impacts. The costs, environmental, and economic impacts of the amendments are expressed as incremental differences between the impacts of SOCMI and petroleum refining process units complying with the proposed amendments and the current NSPS requirements (*i.e.*, baseline). The impacts are presented for new SOCMI and petroleum refining process units constructed over the next 5 years. The analyses and the documents referenced below can be found in Docket ID No. EPA–HQ–OAR–2006–0699.

The EPA estimates that there are no significant energy or secondary environmental impacts as a result of the proposed amendments. The proposed amendments are changes to work practice requirements and do not require changes to equipment or control devices. Use of fuel or electricity is not expected to increase significantly as a result of the proposed amendments. The proposed amendments would not increase wastewater or solid waste from SOCMI or petroleum refinery process units.

A. What are the impacts for SOCMI process units?

Using the 2004 SRI Consulting Directory of Chemical Manufacturers and the list of chemicals provided in 40 CFR 60.489 of subpart VV, we estimated that there are currently 1,272 total SOCMI process units potentially subject to subpart VV. To estimate the number of new and reconstructed SOCMI process units, we assumed that the SOCMI industry would grow proportionally to the projected increase in the gross domestic product (GDP). Estimates of the annual increase in the GDP over the next 5 years range from 2.7 to 3.4 percent. Assuming an annual average growth rate of 3 percent, we estimate that there will be 191 new or reconstructed SOCMI process units over the next 5 years.

SOCMI process units subject to the HON, the MON, or the Ethylene

NESHAP are already subject to the lower leak definitions proposed for 40 CFR part 60, subpart VV. Therefore, the baseline impacts for process units subject to these standards are equivalent to the impacts of the proposed amendment. As previously discussed (see section IV of this preamble), we assumed that 15 percent of the new or reconstructed SOCMI process units would be located at area sources and that 20 percent of the processes making MON chemicals would emit VOC but no HAP. An estimated 39 process units meet these criteria and would not be subject to a NESHAP.

Our analysis included several other assumptions and estimates as well. The basic structure for the impacts analysis was adapted from the analysis performed to estimate impacts for other equipment leak rules, and several assumptions were kept, including the percentage of the process units represented by the small, medium, and large process unit models and the monitoring costs. We also assumed that of the 191 new or reconstructed sources over the next 5 years, 60 percent will be new and 40 percent will be reconstructed. Initial costs of lowering the leak definition for a reconstructed process unit are expected to be lower than initial costs of beginning an LDAR program for a new process unit. Initial leak fraction data were provided by industry in comments on the proposed MON (Docket Number A–96–04, Docket Item IV–D–123), and the methodology for estimating emissions was based on procedures in ''Protocol for Equipment Leak Emission Estimates'' (EPA–453/R–95–017, November 1995) (the Protocol document).

Based on the assumptions described above, we estimate that the proposed amendments will reduce emissions of VOC about 230 Mg/yr from the baseline. The estimated increase in annual cost, including annualized initial costs, is about $72,000. The cost-effectiveness is about $310 per ton of VOC removed. The estimated nationwide 5-year incremental emissions reductions and cost impacts for the proposed amendments are summarized in Table 1 of this preamble. In addition to the annual cost for the proposed lower leak definitions for valves and pumps, the estimated increase in annual cost for the proposed record keeping and reporting requirements is $369,000.

TABLE 1.—NATIONAL EMISSION REDUCTIONS AND COST IMPACTS FOR SOCMI UNITS SUBJECT TO AMENDED STANDARDS UNDER SUBPART VV OF 40 CFR PART 60 (5TH YEAR AFTER PROPOSAL)

Amendment	Annual emissions reductions (Mg/yr)	Total initial cost ($/yr)	Annual cost ($/yr)	Cost-effectiveness ($/Mg)
Lower leak definition for valves and pumps	230	130,000	72,000	310

B. What are the impacts for petroleum refining process units?

We estimated that there are currently 150 petroleum refineries, based on the 2004 Oil and Gas Journal and the Energy Information Administration 2004 Refinery Capacity Report, and we estimated the average number of process units at each refinery from information presented in the 2004 Oil and Gas Journal. To project the number of new or reconstructed petroleum refinery process units, we assumed that the growth will be proportional to the distribution of process units at an average refinery. We estimated that about three refineries' worth of process units would become subject to 40 CFR part 60, subpart GGG per year (equivalent to a 2 percent growth rate), with 60 percent of those being new process units. We estimate that there will be 195 new or reconstructed process units that emit VOC over the next 5 years.

In estimating the impacts of the proposed amendments for petroleum refineries, we took into account that a large number of petroleum refineries (equivalent to 76.5 percent of the industry capacity) currently comply with a consent decree, and new or reconstructed units at these facilities will be subject to requirements equivalent to the proposed amendments to 40 CFR part 60, subparts VV and GGG. Therefore, the baseline impacts for process units subject to a consent decree are equivalent to the impacts of the proposed amendment (i.e., there are no incremental impacts for these process units). Subpart CC to 40 CFR part 63 includes lower leak definitions for valves and pumps on new sources since July 14, 1994, so the baseline impacts for process units subject to this standard are also equivalent to the impacts of the proposed amendment. Therefore, we estimated the impacts of the proposed amendments to lower the leak definition for valves and pumps for the 17 new or reconstructed process units not subject to subpart CC or a consent decree.

Our analysis included several other assumptions and estimates as well. Most are similar to the assumptions described above for the SOCMI analysis, including the monitoring costs per component. There are, however, a few major differences. One difference is that the model is based on number of process units subject to a certain scenario (e.g., number of new process units subject to a consent decree) rather than size of the process unit (although the model does consider the differences in number of components on a process unit at a small refinery versus a unit at a large refinery). Also, emissions estimates are based on data provided in *Analysis of Refinery Screening Data* (American Petroleum Institute, November 1997) as well as the Protocol document.

Based on the assumptions described above, we estimate that the proposed amendments will reduce emissions of VOC about 13 Mg/yr from the baseline. The estimated increase in annual cost, including annualized initial costs, is about $45,000. The cost-effectiveness is about $3,400 per ton of VOC removed. The estimated nationwide 5-year incremental emissions reductions and cost impacts for the proposed amendments are summarized in Table 2 of this preamble. In addition to the annual cost for the proposed lower leak definitions for valves and pumps, the estimated increase in annual cost for the proposed record keeping and reporting requirements is $120,000.

TABLE 2.—NATIONAL EMISSIONS REDUCTIONS AND COST IMPACTS FOR PETROLEUM REFINERY UNITS SUBJECT TO AMENDED STANDARDS UNDER SUBPART GGG OF 40 CFR PART 60 (5TH YEAR AFTER PROPOSAL)

Amendment	Annual emissions reductions (Mg/yr)	Total initial cost ($/yr)	Annual cost ($/yr)	Cost-effectiveness ($/Mg)
Lower leak definition for valves and pumps	13	27,000	45,000	3,400

C. What are the economic impacts?

An economic impacts analysis was performed to compare the control costs associated with producing a product at petroleum refineries and various types of SOCMI facilities to the average value of shipments from such facilities. Since we are unable to associate projected control costs with specific facilities, we examined the polar costs of all of the affected process units being at one facility in the industry versus no more than one affected process unit at any given facility. In all cases, the magnitude of the costs is quite small. The only scenario for which the control costs reach 0.2 percent of the facility value of shipments is if all the national costs for SOCMI fell on one average ethyl alcohol manufacturing facility. The impact of the regulation on prices and profitability depends on the extent that the costs of control are passed on in the form of higher prices or absorbed by the facility. Because the costs are so small, any price increases or loss of profit would be quite small. No significant impact is expected because of the proposed amendments to standards of performance for equipment leaks of VOC for the petroleum refining industry and SOCMI.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is, therefore, not subject to review under the Executive Order.

B. Paperwork Reduction Act

The OMB has previously approved the information collection requirements in the existing rules (40 CFR part 60, subparts VV and GGG). The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 1854.05 for the consolidation of all ICRs related to rule that apply to the SOCMI, including 40 CFR part 60, subpart VV and EPA ICR number 0983.09 for 40 CFR part 60, subpart GGG.

The information to be collected for the proposed amendments to 40 CFR part 60, subparts VV and GGG are based on recordkeeping and reporting requirements in the NSPS General Provisions in 40 CFR part 60, subpart A, which are mandatory for all operators subject to new source performance standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA policies set forth in 40 CFR part 2, subpart B.

The proposed amendments to 40 CFR part 60, subparts VV and GGG would require sources to maintain records of leaking open-ended lines, instrument calibration activities, all instrument readings, the results of weekly pump inspections, and information about possible flow in lines that bypass control devices. Additionally, the sources would be required to include information about leaking open-ended lines and flow in bypass lines in semi-annual compliance reports.

The annual projected burden for EPA ICR number 1854.05 (40 CFR part 60, subpart VV) to owners and operators of affected sources subject to the final rule is estimated to be 1,999,723 labor-hours per year, with a total annual cost of $95.3 million per year. The hour burden is based on an estimated 199.6 hours per response on a semi-annual basis by 3,349 respondents.

The annual projected burden for EPA ICR number 0983.06 (40 CFR part 60, subpart GGG) to owners and operators of affected sources subject to the final rule is estimated to be 8,317 labor-hours per year. The hour burden is based on an estimated 82 hours per response on a semi-annual basis by 49 respondents.

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

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

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA–HQ–OAR–2006–0699. Submit any comments related to the ICR for this proposed rule to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after November 7, 2006, a comment to OMB is best assured of having its full effect if OMB receives it by December 7, 2006. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

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

organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the proposed amendments on small entities, small entity is defined as: (1) A small business according to Small Business Administration size standards by the NAICS category of the owning entity; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. For the SOCMI, a small business ranges from less than 500 employees to less than 1,000 employees, depending on the NAICS code. For petroleum refiners, a small business has no more than 1,500 employees and a crude oil distillation capacity of no more than 125,000 barrels per calendar day.

After considering the economic impacts of today's proposed amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

An economic impacts analysis was performed to compare the control costs associated with producing a product at petroleum refineries and various types of SOCMI facilities to the average value of shipments from such facilities. In all cases, the costs are small relative to facility sales figures. Thus, any price increases or loss of profit would be quite small. While the distribution of costs to small entities is unknown, no significant impact is expected for facilities of any size. For more information on the results of the analysis of small entity impacts, please refer to the economic impact analysis in the docket.

Although the proposed NSPS would not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of the proposed amendments on small entities. In the proposed amendments, the Agency is applying the minimum level of control and the minimum level of monitoring, recordkeeping, and reporting to affected sources allowed by the CAA. This provision should reduce the size of small entity impacts. We continue to be interested in the potential impacts of the proposed amendments on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

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

EPA has determined that the proposed amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. As discussed earlier in this preamble, the estimated expenditures for the private sector in the fifth year after proposal are $72,000 for SOCMI units and $41,000 for petroleum refineries. Thus, the proposed amendments are not subject to the requirements of section 202 and 205 of the UMRA.

In addition, EPA has determined that the proposed amendments contain no regulatory requirements that might significantly or uniquely affect small governments. The proposed amendments contain no requirements that apply to such governments, impose no obligations upon them, and would not result in expenditures by them of $100 million or more in any 1 year or any disproportionate impacts on them. Therefore, the proposed amendments are not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

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

The proposed amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State governments. Thus, Executive Order 13132 does not apply to the proposed amendments.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on these proposed amendments from State and local officials.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR

67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The proposed amendments do not have tribal implications, as specified in Executive Order 13175. They will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to the proposed amendments.

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

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

EPA interpret Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The proposed amendments are not subject to Executive Order 13045 because they are based on technology performance and not on health or safety risks.

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

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

I. National Technology Transfer and Advancement Act

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

The proposed amendments do not involve technical standards. Therefore, EPA is not considering the use of any VCS.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 31, 2006.

Stephen L. Johnson,

Administrator.

For the reasons cited in the preamble, title 40, chapter I, part 60 of the Code of Federal Regulations is proposed to be amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart VV—[Amended]

2. Section 60.480 is amended by revising paragraph (b) to read as follows:

§ 60.480 Applicability and designation of affected facility.

* * * * *

(b) Any affected facility under paragraph (a) of this section that commences construction, reconstruction, or modification after January 5, 1981, shall be subject to the requirements of this subpart.

* * * * *

3. Section 60.481 is amended in paragraph (a)(3) by:

a. Revising the table heading ''Table for Determining Applicable for B'' to read ''Table for Determining Applicable Value for B'' in the definition of ''Capital expenditure'';

b. Revising the word ''judgement'' to read ''judgment'' in the definition of ''Hard-piping'';

c. Revising the definitions ''Process unit'' and ''Repaired''; and

d. Adding, in alphabetical order, new definitions ''Closed-loop system,'' ''Closed-purge system,'' ''Storage vessel,'' and ''Transfer rack'' to read as follows:

§ 60.481 Definitions.

* * * * *

Closed-loop system means an enclosed system that returns process fluid to the process and is not vented directly to the atmosphere.

Closed-purge system means a system or combination of systems and portable containers to capture purged liquids. Containers must be covered or closed when not being filled or emptied.

* * * * *

Process unit means the equipment assembled and connected by pipes or ducts to process raw materials and to produce, as intermediate or final products, one or more of the chemicals listed in § 60.489 of this part. A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the product. For the purpose of this subpart, process unit includes any feed, intermediate and product storage vessels, product transfer racks, and connected ducts and piping. A process unit includes pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, and control devices or systems.

* * * * *

Repaired means that equipment is adjusted, or otherwise altered, in order to eliminate a leak as defined in the applicable sections of this subpart and, except as otherwise specified in § 60.482–2(c)(2)(ii) and (d)(6), is re-monitored as specified in § 60.485(b) to verify that emissions from the equipment are below the applicable leak definition.

* * * * *

Storage vessel means a tank or other vessel that is used to store organic liquids that are used in the process as raw material feedstocks, produced as products, or generated as wastes.

* * * * *

Transfer rack means the collection of loading arms and loading hoses, at a single loading rack, that are used to fill tank trucks and/or railcars with organic liquids.

* * * * *

4. Section 60.482–1 is amended by adding paragraph (e) to read as follows:

§ 60.482–1 Standards: General.

* * * * *

(e)(1) If a dedicated process unit operates less than 365 days during a year, an owner or operator may monitor

to detect leaks from pumps and valves at the frequency specified in the following table instead of monitoring as specified in §§ 60.482–2, 60.482–7, and 60.483.2:

Operating time (% of days during year)	Equivalent monitoring frequency time in use		
	Monthly	Quarterly	Semiannually
0 to <25%	Quarterly	Annually	Annually.
25 to <50%	Quarterly	Semiannually	Annually.
50 to <75%	Bimonthly	Three times	Semiannually.
75 to <100%	Monthly	Quarterly	Semiannually.

(2) Pumps and valves that are shared among two or more process units that are part of an affected facility as defined in § 60.480 may be monitored at the frequencies specified in paragraph (e)(1) of this section, provided the operating time of all such process units is considered.

(3) The monitoring frequencies specified in paragraph (e)(1) of this section are not requirements for monitoring at specific intervals and can be adjusted to accommodate process operations. An owner or operator may monitor at any time during the specified monitoring period (e.g., month, quarter, year), provided the monitoring is conducted at a reasonable interval after completion of the last monitoring campaign. For example, if the equipment is not operating during the first month of a quarter when valve monitoring is normally scheduled, the monitoring may be done within a period equal to 30 percent of the applicable monitoring period after startup. Similarly, if a process is not operating during the second week of a month when pump monitoring is normally scheduled, the monitoring can be done within 30 percent of the applicable monitoring period after startup.

5. Section 60.482–2 is amended by:

a. Revising paragraph (a)(1);

b. Revising paragraph (b);

c. Revising paragraph (c)(2);

d. Revising paragraphs (d) introductory text, (d)(4), (d)(5), and (d)(6) to read as follows:

§ 60.482–2 Standards: Pumps in light liquid service.

(a)(1) Each pump in light liquid service shall be monitored monthly to detect leaks by the methods specified in § 60.485(b), except as provided in § 60.482–1(c) and paragraphs (d), (e), and (f) of this section. A pump that is placed into light liquid service after the initial startup date for the process unit must be monitored for the first time during the next monthly monitoring period for the existing pumps in the process unit, except as provided in § 60.482–1(c) and paragraphs (d), (e), and (f) of this section.

* * * * *

(b)(1)(i) Except as specified in paragraph (b)(1)(ii) of this section, if an instrument reading of 10,000 parts per million (ppm) or greater is measured, a leak is detected.

(ii) If the affected facility as defined in § 60.480 commences construction, reconstruction, or modification after November 7, 2006, the instrument reading that defines a leak is specified in paragraphs (b)(1)(ii)(A) and (B) of this section.

(A) 5,000 ppm or greater for pumps handling polymerizing monomers;

(B) 2,000 ppm or greater for all other pumps.

(2) If there are indications of liquids dripping from the pump seal at the time of the weekly inspection, the owner or operator shall follow the procedure specified in either paragraph (b)(2)(i) or (ii) of this section. This requirement does not apply to a pump that was monitored after a previous weekly inspection if the instrument reading for that monitoring event was less than the concentration specified in paragraph (b)(1)(i) or (ii) of this section, whichever is applicable, and the pump was not repaired since that monitoring event.

(i) Monitor the pump as specified in § 60.485(b). A leak is detected if the instrument reading measured during monitoring indicates a leak as specified in paragraph (b)(1)(i) or (ii) of this section, whichever is applicable. The leak shall be repaired using the procedures in paragraph (c) of this section.

(ii) Designate the visual indications of liquids dripping as a leak, and repair the leak using either the procedures in paragraph (c) of this section or by eliminating the visual indications of liquids dripping.

(c) * * *

(2) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected. First attempts at repair include, but are not limited to, the practices described in paragraphs (c)(2)(i) and (ii) of this section, where practicable.

(i) Tightening the packing gland nuts;

(ii) Ensuring that the seal flush is operating at design pressure and temperature.

(d) Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of paragraph (a), provided the requirements specified in paragraphs (d)(1) through (6) of this section are met.

* * * * *

(4)(i) Each pump is checked by visual inspection, each calendar week, for indications of liquids dripping from the pump seals.

(ii) If there are indications of liquids dripping from the pump seal at the time of the weekly inspection, the owner or operator shall follow the procedure specified in either paragraph (d)(4)(ii)(A) or (B) of this section prior to the next required inspection.

(A) The owner or operator shall monitor the pump as specified in § 60.485(b) to determine if there is a leak of VOC in the barrier fluid. If an instrument reading of 2,000 ppm or greater is measured, a leak is detected.

(B) Designate the visual indications of liquids dripping as a leak.

(5)(i) Each sensor as described in paragraph (d)(3) is checked daily or is equipped with an audible alarm.

(ii) The owner or operator determines, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(iii) If the sensor indicates failure of the seal system, the barrier fluid system, or both, based on the criterion established in paragraph (d)(5)(ii) of this section, a leak is detected.

(6) When a leak is detected pursuant to paragraph (d)(4)(ii)(A) or (d)(5)(iii) of this section, it shall be repaired as specified in paragraph (c) of this section. A designated leak pursuant to paragraph (d)(4)(ii)(B) of this section shall be repaired either as specified in paragraph (c) of this section or by

eliminating visual indications of liquids dripping.

* * * * *

6. Section 60.482–3 is amended by revising paragraph (j) to read as follows:

§ 60.482–3 Standards: Compressors.

* * * * *

(j) Any existing reciprocating compressor in a process unit which becomes an affected facility under provisions of § 60.14 or § 60.15 is exempt from paragraphs (a) through (e) and (h) of this section, provided the owner or operator demonstrates that recasting the distance piece or replacing the compressor are the only options available to bring the compressor into compliance with the provisions of paragraphs (a) through (e) and (h) of this section.

7. Section 60.482–5 is amended by revising paragraphs (a) and (b) to read as follows:

§ 60.482–5 Standards: Sampling connection systems.

(a) Each sampling connection system shall be equipped with a closed-purge, closed-loop, or closed-vent system, except as provided in § 60.482–1(c).

(b) Each closed-purge, closed-loop, or closed-vent system as required in paragraph (a) of this section shall comply with the requirements specified in paragraphs (b)(1) through (3) of this section.

(1) Gases displaced during filling of the sample container are not required to be collected or captured.

(2) Containers that are part of a closed-purge system must be covered or closed when not being filled or emptied.

(3) Each closed-purge, closed-loop, or closed-vent system shall be designed and operated to meet requirements in either paragraph (b)(3)(i), (ii), (iii), or (iv) of this section.

(i) Return the purged process fluid directly to the process line.

(ii) Collect and recycle the purged process fluid to a process.

(iii) Capture and transport all the purged process fluid to a control device that complies with the requirements of § 60.482–10.

(iv) Collect, store, and transport the purged process fluid to any of the following systems or facilities:

(A) A waste management unit as defined in 40 CFR 63.111, if the waste management unit is subject to, and operated in compliance with the provisions of 40 CFR part 63, subpart G, applicable to Group 1 wastewater streams;

(B) A treatment, storage, or disposal facility subject to regulation under 40 CFR part 262, 264, 265, or 266; or

(C) A facility permitted, licensed, or registered by a State to manage municipal or industrial solid waste, if the process fluids are not hazardous waste as defined in 40 CFR part 261.

* * * * *

8. Section 60.482–6 is amended by adding paragraph (a)(3) to read as follows:

§ 60.482–6 Standards: Open-ended valves or lines.

(a) * * *

(3) Each open-ended valve or line shall be monitored annually to detect leaks by the methods specified in § 60.485(b), except as provided in § 60.482–1(c) and paragraphs (d) and (e) of this section. If the open-ended valve or line is equipped with a cap, blind flange, or plug, monitoring shall occur at the interface of the cap, blind flange, or plug and the end of the line. If the open-ended valve or line is equipped with a second valve, monitoring shall occur at the open end of the line. If an instrument reading of 500 ppm or greater is measured, a leak is detected. When a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in § 60.482–9. Examples of attempts at repair include replacing gaskets, adding Teflon tape, or tightening or replacing the cap, plug, blind flange, or second valve.

* * * * *

9. Section 60.482–7 is amended by revising paragraphs (a), (b), and (c)(1) to read as follows:

§ 60.482–7 Standards: Valves in gas/vapor service and in light liquid service.

(a)(1) Each valve shall be monitored monthly to detect leaks by the methods specified in § 60.485(b) and shall comply with paragraphs (b) through (e), except as provided in paragraphs (f), (g), and (h) of this section; § 60.483–1 and 2; and § 60.482–1(c).

(2) A valve that is placed into gas/vapor service or light liquid service after the initial startup date for the process unit must be monitored for the first time within 1 month after being placed into service to ensure proper installation, except as provided in paragraphs (f), (g), and (h) of this section. Subsequent monitoring must be on the same schedule as monitoring for existing valves in the process unit, except as provided in paragraphs (f), (g), and (h) of this section; § 60.483–1 and 2; and § 60.482–1(c).

(b)(1) Except as specified in paragraph (b)(2) of this section, if an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(2) If the affected facility as defined in § 60.480 commences construction, reconstruction, or modification after November 7, 2006 and an instrument reading of 500 ppm or greater is measured, a leak is detected.

(c)(1) Any valve for which a leak is not detected for 2 successive months may be monitored the first month of every quarter, beginning with the next quarter, until a leak is detected. As an alternative to monitoring all of the valves in the first month of a quarter, an owner or operator may elect to subdivide the process unit into 2 or 3 subgroups of valves and monitor each subgroup in a different month during the quarter, provided each subgroup is monitored every 3 months. The owner or operator must keep records of the valves assigned to each subgroup.

* * * * *

10. Section 60.482–8 is amended by revising paragraph (d) to read as follows:

§ 60.482–8 Standards: Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and connectors.

* * * * *

(d) First attempts at repair include, but are not limited to, the best practices described under §§ 60.482–2(c)(2) and 60.482–7(e).

11. Section 60.482–9 is amended by adding paragraph (f) to read as follows:

§ 60.482–9 Standards: Delay of repair.

* * * * *

(f) When delay of repair is allowed for a leaking pump or valve that remains in service, the owner or operator may elect to discontinue monitoring the pump or valve until it is repaired. If the owner or operator elects to continue monitoring, the pump or valve may be considered to be repaired if two consecutive monthly monitoring instrument readings are below the leak definition.

12. Section 60.482–10 is amended by adding paragraph (n) to read as follows:

§ 60.482–10 Standards: Closed vent systems and control devices.

* * * * *

(n) Except for equipment needed for safety purposes such as pressure relief devices, low leg drains, high point bleeds, analyzer vents, and open-ended valves or lines, the owner or operator shall comply with the provisions of either paragraphs (n)(1) or (2) of this section for each closed vent system that contains bypass lines that could divert a vent stream to the atmosphere.

(1) Properly install, maintain, and operate a flow indicator that takes a reading at least once every 15 minutes.

Records shall be generated as specified in § 60.486(d)(6)(i). The flow indicator shall be installed at the entrance to any bypass line.

(2) Secure the bypass line valve in the non-diverting position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure the valve is maintained in the non-diverting position and the vent stream is not diverted through the bypass line. Records shall be generated as specified in § 60.486(d)(6)(ii).

13. Section 60.483–1 is amended by revising paragraph (c)(2) to read as follows:

§ 60.483–1 Alternative standards for valves-allowable percentage of valves leaking.

* * * * *

(c) * * *

(2)(i) Except as specified in paragraph (c)(2)(ii) of this section, if an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(ii) If the affected facility as defined in § 60.480 commences construction, reconstruction, or modification after November 7, 2006 and an instrument reading of 500 ppm or greater is measured, a leak is detected.

* * * * *

14. Section 60.483–2 is amended by revising paragraph (b)(5) and adding paragraph (b)(7) to read as follows:

§ 60.483–2 Alternative standards for valve-skip period leak detection and repair.

* * * * *

(b) * * *

(5) The percent of valves leaking shall be determined by dividing the sum of valves found leaking during the current monitoring and valves for which repair has been delayed by the total number of valves subject to the requirements of this section. If the process unit has been subdivided in accordance with § 60.482–7(c)(1), the sum of valves found leaking during the current monitoring includes all subgroups.

* * * * *

(7) A valve that is placed into gas/vapor service or light liquid service after implementing the provisions in this § 60.483–2 must be monitored for the first time within 1 month after being placed into service to ensure proper installation. Subsequent monitoring must begin in the next quarter during which all existing valves in the process unit must be monitored.

§ 60.484 [Amended]

15. Section 60.484 is amended by revising ''equivalance'' to read ''equivalence'' in paragraph (a).

16. Section 60.485 is amended by:

a. Revising paragraph (b)(1)(ii);

b. Adding paragraph (b)(2); and

c. Revising paragraph (e) introductory text to read as follows:

§ 60.485 Test methods and procedures.

* * * * *

(b) * * *

(1) * * *

(ii) A mixture of methane or n-hexane and air at a concentration no more than 2,000 ppm greater than the leak definition concentration of the equipment monitored. If the monitoring instrument's design allows for multiple calibration scales, then the lower scale shall be calibrated with a calibration gas that is no higher than 2,000 ppm above the concentration specified as a leak, and the highest scale shall be calibrated with a calibration gas that is approximately equal to 10,000 ppm. If only one scale on an instrument will be used during monitoring, the owner or operator need not calibrate the scales that will not be used during that day's monitoring.

(2) A calibration drift assessment shall be performed, at a minimum, at the end of each monitoring shift. Check the instrument using the same calibration gases that were used to calibrate the instrument before use. Follow the procedures specified in Method 21, except do not adjust the meter readout to correspond to the calibration gas value. Record the instrument reading for each scale used as specified in § 60.486(e)(7), and calculate the percent difference from the initial calibration value. If any calibration drift assessment shows a negative drift of more than 10 percent from the initial calibration value, then all equipment monitored since the last calibration with instrument readings below the appropriate leak definition and above 20 percent of the leak definition must be re-monitored.

* * * * *

(e) The owner or operator shall demonstrate that a piece of equipment is in light liquid service by showing that all the following conditions apply:

* * * * *

17. Section 60.486 is amended by:

a. Adding paragraph (a)(3);

b. Revising paragraphs (b) introductory text, (c) introductory text, and (c)(4); and

c. Adding paragraphs (d)(6), (e)(6), and (e)(7) to read as follows:

§ 60.486 Recordkeeping requirements.

(a) * * *

(3) The owner or operator shall record the information specified in paragraphs (a)(3)(i) through (v) of this section for each monitoring event required by §§ 60.482–2, 60.482–3, 60.482–6, 60.482–7, 60.482–8, and 60.483–2.

(i) Monitoring instrument identification.

(ii) Operator identification.

(iii) Equipment identification.

(iv) Date and time of monitoring.

(v) Instrument reading.

(b) When each leak is detected as specified in §§ 60.482–2, 60.482–3, 60.482–6, 60.482–7, 60.482–8, and 60.483–2, the following requirements apply:

* * * * *

(c) When each leak is detected as specified in §§ 60.482–2, 60.482–3, 60.482–6, 60.482–7, 60.482–8, and 60.483–2, the following information shall be recorded in a log and shall be kept for 2 years in a readily accessible location:

* * * * *

(4) Maximum instrument reading measured by Method 21 of 40 CFR part 60, appendix A at the time the leak is successfully repaired or determined to be nonrepairable.

* * * * *

(d) * * *

(6) For each closed vent system that contains bypass lines that could divert a vent stream away from the control device and to the atmosphere, the owner or operator shall keep a record of the information specified in either paragraph (d)(6)(i) or (ii) of this section, as applicable.

(i) Hourly records of whether the flow indicator specified under § 60.482–10(n)(1) was operating and whether a diversion was detected at any time during the hour, as well as records of the starting and ending times of all periods when the vent stream is diverted from the control device or the flow indicator is not operating.

(ii) Where a seal mechanism is used to comply with § 60.482–10(n)(2), hourly records of flow are not required. In such cases, the owner or operator shall record that the monthly visual inspection of the seals or closure mechanisms has been done, and shall record the occurrence of all periods when the seal mechanism is broken, the bypass line valve position has changed, or the key for a lock-and-key type lock has been checked out, and records of any car-seal that has been broken.

(e) * * *

(6) The date and results of the weekly visual inspection for indications of liquids dripping from pumps in light liquid service.

(7) Records of the information specified in paragraphs (e)(7)(i) through (vi) of this section for monitoring

instrument calibrations conducted according to sections 8.1.2 and 10 of EPA Method 21 and § 60.485(b).

(i) Date of calibration and initials of operator performing the calibration.

(ii) Calibration gas cylinder identification, certification date, and certified concentration.

(iii) Instrument scale(s) used.

(iv) A description of any corrective action taken if the meter readout could not be adjusted to correspond to the calibration gas value in accordance with section 10.1 of EPA Method 21.

(v) Results of each calibration drift assessment required by § 60.485(b)(2) (*i.e.*, instrument reading for calibration at end of monitoring shift and the calculated percent difference from the initial calibration value).

(vi) If an owner or operator makes their own calibration gas, a description of the procedure used.

* * * * *

18. Section 60.487 is amended by:

a. Revising paragraphs (c)(2)(iii), (c)(2)(iv), and (c)(2)(vi);

b. Redesignating paragraph (c)(2)(vii) as paragraph (c)(2)(xi); and

c. Adding new paragraphs (c)(2)(vii) through (c)(2)(x) to read as follows:

§ 60.487 Reporting requirements.

* * * * *

(c) * * *

(2) * * *

(iii) Number of pumps for which leaks were detected as described in § 60.482–2(b), (d)(4)(ii)(A), or (d)(5)(iii),

(iv) Number of pumps for which leaks were not repaired as required in § 60.482–2(c)(1) and (d)(6),

* * * * *

(vi) Number of compressors for which leaks were not repaired as required in § 60.482–3(g)(1),

(vii) Number of open-ended lines for which leaks were detected as described in § 60.482–6(a)(3),

(viii) Number of open-ended lines for which leaks were not repaired as required in § 60.482–6(a)(3),

(ix) Starting and ending times of all periods recorded under § 60.486(d)(6)(i) when the vent stream is diverted from the control device through a bypass line,

(x) Instances recorded under § 60.486(d)(6)(ii) when maintenance is performed in car-sealed valves, when the seal is broken, when the bypass line valve position is changed, or the key for a lock-and-key type configuration has been checked out, and

(xi) The facts that explain each delay of repair and, where appropriate, why a process unit shutdown was technically infeasible.

* * * * *

Subpart GGG—[Amended]

19. Section 60.590 is amended by revising paragraph (b) to read as follows:

§ 60.590 Applicability and designation of affected facility.

* * * * *

(b) Any affected facility under paragraph (a) of this section that commences construction, reconstruction, or modification after January 4, 1983, is subject to the requirements of this subpart.

* * * * *

20. Section 60.591 is amended by adding a definition in alphabetical order for ''Asphalt'' and revising the definition of ''Process unit'' to read as follows:

§ 60.591 Definitions.

* * * * *

Asphalt (also known as Bitumen) is a black or dark brown solid or semi-solid thermo-plastic material possessing waterproofing and adhesive properties. It is a complex combination of higher molecular weight organic compounds containing a relatively high proportion of hydrocarbons having carbon numbers greater than C25 with a high carbon to hydrogen ratio. It is essentially non-volatile at ambient temperatures with closed cup flash point of 445 °F (230 °C) or greater.

* * * * *

Process unit means the equipment assembled and connected by pipes or ducts to process raw materials and to produce intermediate or final products from petroleum, unfinished petroleum derivatives, or other intermediates. A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the product. For the purpose of this subpart, process unit includes any feed, intermediate and product storage vessels, product transfer racks, and connected ducts and piping. A process unit includes pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, and control devices or systems.

21. Section 60.592 is amended by revising paragraph (b) to read as follows:

§ 60.592 Standards.

* * * * *

(b) For a given process unit, an owner or operator may elect to comply with the requirements of paragraphs (b)(1), (2), or (3) of this section as an alternative to the requirements in § 60.482–7.

(1) Comply with § 60.483–1.

(2) Comply with § 60.483–2.

(3) Comply with the Phase III provisions in 40 CFR 63.168, except an owner or operator may elect to follow the provisions in § 60.482–7(f) instead of 40 CFR 63.168 for any valve that is designated as being leakless.

* * * * *

22. Section 60.593 is amended by:

a. Revising the first sentence of paragraph (b)(2) and paragraphs (c) and (d); and

b. Adding paragraphs (f) and (g) to read as follows:

§ 60.593 Exceptions.

* * * * *

(b) * * *

(2) Each compressor is presumed not to be in hydrogen service unless an owner or operator demonstrates that the piece of equipment is in hydrogen service.* * *

* * * * *

(c) Any existing reciprocating compressor that becomes an affected facility under provisions of § 60.14 or § 60.15 is exempt from § 60.482–3 (a), (b), (c), (d), (e), and (h) provided the owner or operator demonstrates that recasting the distance piece or replacing the compressor are the only options available to bring the compressor into compliance with the provisions of § 60.482–3 (a), (b), (c), (d), (e), and (h).

(d) An owner or operator may use the following provision in addition to § 60.485(e): Equipment is in light liquid service if the percent evaporated is greater than 10 percent at 150 °C as determined by ASTM Method D86–78, 82, 90, 95, or 96 (incorporated by reference as specified in § 60.17).

* * * * *

(f) When §§ 60.482(b)(1)(ii), 60.482–7(b)(2), and 60.483–1(c)(2)(ii) refer to an affected facility as defined in § 60.480, it means an affected facility as defined in § 60.590 for the purposes of this subpart.

(g) Open-ended valves or lines containing asphalt as defined in § 60.591 are exempt from the requirements of § 60.482–6(a) through (c).

[FR Doc. E6–18646 Filed 11–6–06; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Tuesday,
November 7, 2006

Part IV

Department of Housing and Urban Development

24 CFR Part 291

Disposition of HUD-Acquired Single Family Property; Disciplinary Actions Against HUD-Qualified Real Estate Brokers; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 291

[Docket No. FR–4871–F–02]

RIN 2502–AI08

Disposition of HUD-Acquired Single Family Property; Disciplinary Actions Against HUD-Qualified Real Estate Brokers

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule establishes the basis and procedures for removing real estate brokers from HUD's qualified selling broker list and for prohibiting removed brokers from using HUD's systems to participate in the sale of HUD-owned, single family properties. This rule is similar to existing removal rules for Federal Housing Administration (FHA) appraisers, consultants, and nonprofit organizations, and provides HUD a more expeditious disciplinary procedure for real estate brokers than the suspension and debarment procedures that would otherwise be applicable. This final rule follows publication of a September 17, 2004, proposed rule, and takes into consideration the public comments received on the proposed rule.

DATES: *Effective Date:* December 7, 2006.

FOR FURTHER INFORMATION CONTACT: Ivery W. Himes, Division Director, Asset Management and Disposition Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9176, Washington, DC 20410–8000; telephone (202) 708–1672 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background—The September 17, 2004, Proposed Rule

HUD published the proposed rule on September 17, 2004 (68 FR 56118), to add a new paragraph (i) to § 291.100 for the purpose of addressing real estate broker participation in predatory lending practices, such as property ''flipping,'' inflated appraisals, falsified loan documents, and/or fraudulent underwriting targeted at FHA borrowers, and violating the terms of the Selling Broker Certification (form SAMS–1111–A). The proposed rule provided for the removal by HUD, for good cause, of a real estate broker from HUD's qualified selling broker list and the deactivation of the broker's name and address identifier (NAID). A NAID provides a broker with access to HUD systems and enables a broker to participate in the sale of HUD-owned property and be compensated for services rendered. The proposed rule provided several examples of activities that would constitute good cause, such as fraudulent activities, the use of false and misleading statements, the loss of a state license, or acting in concert with an appraiser to arrive at an artificial appraised value, and laid out the procedure that would be followed in removing a broker from the list and deactivating the broker's NAID.

II. Discussion of the Public Comments Received on the September 17, 2004, Proposed Rule

The public comment period for the September 17, 2004, proposed rule closed on November 16, 2004. HUD received eight comments: three from businesses, two from local associations, one from a national association, one from an individual, and one from a state agency. The issues and questions raised by the commenters on the September 17, 2004, proposed rule, along with HUD's responses, are grouped below according to the relevant section or subject of the proposed rule.

Section 291.100(i)(1)—In General

Comment: HUD already has procedures in place to remove participants such as appraisers and nonprofit entities from its programs, and those procedures should apply to brokers as well. These procedures entail HUD initiating an internal inquiry based on its own observations, based on program controls that indicate a problem, or in response to an external complaint. Before HUD arrives at a decision, the results of the inquiry are reviewed by senior area office personnel. If it is deemed appropriate, the case is referred to the Inspector General's office.

HUD response: It is HUD's goal with this rule to establish a procedure that is tailored to instances where removal from the roster is sufficient protection of HUD's interests, and to provide the affected brokers with an expeditious process for contesting removal. Consistent with HUD's goal, this rule gives a broker the opportunity to respond fully, both in writing and by requesting a conference, to HUD's initial findings before any disciplinary action is taken. In addition, the time frames within which a broker and HUD must act under the rule are intended to quickly resolve issues or remove a broker from participation in the sale of HUD-owned, single family properties without undue delay. A fair and expeditious disciplinary procedure will serve to promote the integrity of, and the public's confidence in, the process for disposition of HUD-owned single family properties.

Section 291.100(i)(2)(ii)(F)—Violation of Section 8(a)

Comment: With regard to using a violation of section 8(a) of the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2607(a)) as a basis for removal, the Federal circuit courts have split as to what constitutes a violation under section 8 of RESPA. This provision should be eliminated as a ground for removal until there is national uniformity in the interpretation of section 8.

HUD response: HUD has determined that it is not appropriate to exclude entirely any basis for disciplinary action that is intended to protect the public interest and maintain the integrity of HUD's single family disposition program. HUD will consider aggravating and mitigating factors, including those relating to RESPA, when deciding whether to initiate an action and when disposing of an action. However, HUD is also revising § 291.100(i)(2)(ii)(F) to replace the narrow focus on section 8(a) with a statement more broadly referring to ''Violating the Real Estate Settlement Procedures Act'' as a basis for removal.

Section 291.100(i)(2)(ii)(G)—Any Other Offense

Comment: The rule does not specify sufficiently what ''any other offense that reflects on the broker's character and integrity'' means as a basis for removal. The phrase is overly broad, can be open to misinterpretation, and may include inconsequential or minor offenses that HUD does not intend to address. The phrase should be clarified or it should be deleted. Several examples of suggested clarifying language were submitted.

HUD response: The proposed rule stated at § 291.100(i)(2)(ii)(G) that good cause for removal includes, but is not limited to, committing any other offense that reflects on the broker's character and integrity, including non-compliance with civil rights requirements regarding the sale of HUD-owned single family properties. In general, the rule makes clear that the list at § 291.100(i)(2)(ii) is not exhaustive, but only provides examples of broker acts or omissions that constitute good cause for purposes of proceeding with a disciplinary action. However, following consideration of

these comments and suggested revisions, HUD will clarify the proposed language of § 291.100(i)(2)(ii)(G) in this final rule by listing ''non-compliance with civil rights requirements regarding the sale of HUD-owned single family properties'' as an individual example of good cause in paragraph (G), and by adding a separate paragraph (I), which is more focused on factors that are housing-related than the language that was in the proposed rule. Paragraph (I) reads, ''Any other actions or omissions that evidence a lack of business integrity or non-compliance with the laws, regulations, and rules applicable to housing, lending, or real estate sales.'' To provide more guidance as to what constitutes ''good cause,'' an additional example is added as paragraph (H) to read, ''Involvement in, or knowledge of, any fraudulent activity by any person involved in the REO sales transaction.''

Comment: While convictions under 18 U.S.C. 1010 should serve as grounds for disciplinary action, so should state criminal convictions, state or federal civil judgments, or state regulatory actions taken as a result of conduct described in § 291.100(i)(2)(ii)(A)–(E).

HUD response: The change by this rule discussed in the previous response, which describes additional examples of good cause for removal provided in §§ 291.100(i)(2)(ii)(H) and (I), will permit HUD to take action as described in the comment. To provide additional clarity, HUD is including a specific reference to a conviction under 18 U.S.C. 371, which would apply to conspiring to defraud a federal agency, along with the existing reference 18 U.S.C. 1010.

Section 291.100(i)(4)—Response and Conference

Comment: HUD should provide a longer period, such as 30 days, rather than the proposed 20 days for a broker to respond or request a conference. HUD should consider granting extensions to the response times for reasonable cause. The 15-day deadline for the conference should be extended to 30 days to provide more time for the broker to prepare.

HUD response: As noted in the proposed rule and above in this preamble, the rule is intended to provide a more expeditious disciplinary procedure for real estate brokers, and the time periods stated in the rule are consistent with this intent. The rule does permit the written notice from HUD to provide a longer period of time to submit a written response and/or request a conference, such as when the complexity of the issues involved requires additional time. Following consideration of the public comments, HUD has decided that it would be appropriate for the rule to also allow HUD to extend the 15-day period, upon notification to the broker, and to request additional information at or following a conference, and to provide a broker additional time to submit such information. These changes accommodate the concern that complex issues be given the consideration they deserve, while still preserving the more expeditious nature of the procedure. HUD has also changed the rule to reflect that the conference is not considered closed until the broker has had an opportunity to submit additional information requested by HUD and until HUD has reviewed the additional information. As discussed below, § 291.100(i)(4) is redesignated as § 291.100(i)(5).

Section 291.100(i)(5)(ii)—Disposition/HUD Response

Comment: The various time limits imposed on HUD seem burdensome. HUD should provide itself additional time before it must hold a conference with the real estate broker or before it must respond to a broker's response.

HUD response: As noted above in the response to the comments on § 291.100(i)(4), this final rule permits HUD to request additional information following a conference and to provide a broker additional time to submit such information. This change should also adequately address the concern in this comment on § 291.100(i)(5)(ii). As discussed below, § 291.100(i)(5) is redesignated as § 291.100(i)(6).

Comment: Brokers should not be suspended until they have exhausted their due process rights to a hearing before an Administrative Law Judge (ALJ). At the least, brokers should be allowed to request that the ALJ issue an order requiring HUD to allow them to continue to participate in the program until the case is finally resolved. Because so many small brokers rely on their participation in SAMS for their livelihood, deactivation from that system should take place only upon a finding of wrongdoing by a neutral third party.

HUD response: HUD has adopted this rule to provide an expeditious disciplinary procedure while still providing a broker a fair opportunity to present for consideration any exculpatory or mitigating information. A finding by HUD in these circumstances is significant enough to properly require action to protect the interests of the public and HUD, and those interests must be HUD's paramount, though not sole, consideration.

Additional Sanctions

Comment: For violations of § 291.100(i), HUD may also wish to sanction real estate agents who work with HUD-qualified brokers. While such agents may not be on a HUD list, HUD may wish to prevent the future addition of such agents to the qualified broker list unless they can provide just cause for qualifying at that time. HUD needs to take legal action against all who create or aid and abet mortgage fraud.

HUD response: The suggested actions are beyond the scope of this rule, which focuses on HUD-qualified brokers; however, this comment, as other comments also did, recognized the connection between an agent's actions and a broker's responsibility. Although agents are not themselves listed individually, agents must work through a listed broker, who is the point of contact and enforcement with HUD. As discussed below in HUD's response under the heading ''Individual agent NAIDS,'' §§ 291.100(i)(2)(i) and 291.100(i)(2)(ii) are revised in this final rule to clarify this point and refer specifically to actions by a broker or an agent.

Comment: The names and license numbers of brokers removed from HUD's qualified selling broker list should be referred to the appropriate state licensing authority. This will assist the public, and state agencies may be permitted by their statutes to assess more stringent penalties.

HUD response: This is HUD's current practice following disciplinary action, and this practice will continue.

Individual Agent NAIDS

Comment: Even though brokers are responsible for monitoring the activities of their agents, HUD should consider assigning NAIDS to individual agents as well. When HUD suspends a broker from the program, it affects all the agents in a firm even if a single agent caused the problem.

HUD response: Approved brokers act as gatekeepers for the competitive sales Real Estate-Owned (REO) program. HUD regulations at 24 CFR 291.100(h) and 291.205(a)(1) require that all bids placed in the competitive sales program go through approved brokers, unless the bid is submitted by a government or nonprofit entity. Individual agents must work through an approved broker in the competitive sales REO program. As such, brokers are the logical enforcement point for HUD.

To make explicit the connection between the actions of an agent and the responsibilities of a broker that was recognized in this and in other

comments, §§ 291.100(i)(2)(i) and 291.100(i)(2)(ii) are revised in this final rule to refer to actions by a broker or an agent supervised by that broker and acting within the scope of the agent's duties.

Comment: If HUD cannot assign NAIDS to individual agents, and a problem is the result of an individual agent whom the broker subsequently fired and the broker has implemented management controls to prevent a reoccurrence, HUD's remedy should not entail removal from the program.

HUD response: HUD will consider the sufficiency of corrective actions taken by a broker in reaching its decision under § 291.100(i)(6)(ii), which has been revised to specifically provide for HUD's consideration of such corrective action.

III. Changes to the Proposed Rule in This Final Rule

The following changes to the September 17, 2004, proposed rule are made by this final rule, consistent with the discussion of public comments in this preamble, and as further explained below:

1. Section 291.100(i)(2)(i) is revised to read, ''Conviction under 18 U.S.C. 371 or 1010 of a broker or an agent supervised by that broker and acting within the scope of the agent's duties.''

2. Section 291.100(i)(2)(ii) is revised to read, ''Any of the following actions by a broker or an agent supervised by that broker and acting within the scope of the agent's duties.''

3. Because form numbers are subject to change, the reference to form SAMS–1111–A in § 291.100(i)(2)(ii)(D) is removed and is replaced with language cross-referencing HUD's earnest money deposit requirements found elsewhere in part 291.

4. Section 291.100(i)(2)(ii)(F) is revised to read, ''Violating the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2601 *et seq.*).''

5. The proposed language of § 291.100(i)(2)(ii)(G) is divided into two separate paragraphs in this final rule by listing, ''Non-compliance with civil rights requirements regarding the sale of HUD-owned single family properties'' as an individual example of good cause in paragraph (G), and by clarifying the remaining language originally in paragraph (G) by adding a separate paragraph (I) to read, ''Any other actions or omissions that evidence a lack of business integrity or non-compliance with the laws, regulations, and rules applicable to housing, lending, or real estate sales.'' To provide more guidance as to what constitutes ''good cause,'' an additional example is added at paragraph (H) to read, ''Involvement in, or knowledge of, any fraudulent activity by any person involved in the REO sales transaction.''

6. To better organize the final rule and improve its internal consistency, paragraphs (A) and (B) of § 291.100(i)(3)(iv) in the proposed rule are redesignated as § 291.100(i)(4)(i) and (ii), and the clause ''unless the broker submits a written response or requests a conference in accordance with paragraph (i)(5) of this section'' is added to redesignated § 291.100(i)(4)(i). The succeeding paragraphs of § 291.100(i) are renumbered accordingly.

7. Provisions are added to the proposed language of § 291.100(i)(4) (redesignated in this final rule as § 291.100(i)(5)) to allow HUD to extend the 15-day period for holding a conference by providing written notice to the broker and to allow HUD to request additional information and to provide a broker additional time to submit the information. Also added is clarification that the conference is not considered completed until the date set for submission if the information requested by HUD is not submitted, or until after HUD considers the information that was timely submitted.

8. To resolve an inconsistency that appeared in § 291.100(i)(5)(ii) of the proposed rule, which stated, ''Participation in the appeal process before the ALJ is not a prerequisite to filing an action for judicial review under the Administrative Procedure Act,'' the final rule removes the references to a hearing before an ALJ and provides (in redesignated § 291.100(i)(6)(ii)) that, ''The written decision by HUD shall constitute final agency action.'' Final agency action is a prerequisite to filing an action for judicial review, and the language of the proposed rule left the point of final agency action open to question.

IV. Findings and Certifications

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule does not impose any Federal mandate on any state, local, or tribal government or the private sector within the meaning of UMRA.

Environmental Impact

This rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Regulatory Flexibility Act

The Secretary has reviewed this rule before publication and, by approving it, certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this rule would not have a significant economic impact on a substantial number of small entities. The rule would establish uniform and expeditious requirements and procedures to remove real estate brokers from HUD's qualified selling broker list. As such, the rule would benefit both the industry and the government in that it clarifies the terms of the relationship between HUD and its listed real estate brokers.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either: (1) Imposes substantial direct compliance costs on state and local governments and is not required by statute or (2) the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the executive order. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the executive order.

Executive Order 12866, Regulatory Planning and Review

OMB reviewed this rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this rule is a ''significant regulatory action,'' as defined in section 3(f) of the executive order (although not economically significant, as provided in section 3(f)(1) of the executive order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

List of Subjects in 24 CFR Part 291

Community facilities, Conflict of interests, Homeless, Lead poisoning, Low and moderate income housing, Mortgages, Reporting and recordkeeping requirements, Surplus government property.

■ Accordingly, HUD amends 24 CFR part 291 as follows:

PART 291—DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY

■ 1. The authority citation for 24 CFR part 291 continues to read as follows:

Authority: 12 U.S.C. 1701 *et seq.*; 42 U.S.C. 1441, 1441a, and 3535(d).

■ 2. In § 291.100, add paragraph (i) to read as follows:

§ 291.100 General policy.

* * * * *

(i) *Disciplinary actions against HUD-qualified real estate brokers.*

(1) *In general.* Real estate brokers that are involved in Real Estate Owned (REO) sales will be removed from HUD's qualified selling broker list and will be prohibited from using HUD systems to participate in the sale of HUD-owned single family properties for good cause in accordance with the procedures of this paragraph. Nothing in this section prohibits HUD from taking such other action against a broker as provided in 24 CFR part 24 or from seeking any other available remedy.

(2) *Good cause.* Good cause includes, but is not limited to:

(i) Conviction under 18 U.S.C. 371 or 1010 of a broker or an agent supervised by that broker and acting within the scope of the agent's duties;

(ii) Any of the following actions by a broker or an agent supervised by that broker and acting within the scope of the agent's duties:

(A) Falsifying loan documents or aiding or abetting persons in the use of false or misleading information including, but not limited to, forged or fraudulent gift letters and owner occupant certifications;

(B) Acting in concert with an appraiser to arrive at an artificial appraised value;

(C) Engaging in fraudulent activities (with or without the assistance of an appraiser) that have led to default and payment of an insurance claim;

(D) Failing to comply with earnest money collection, management, and disbursement procedures as set forth in this part;

(E) Failing to maintain a current state license;

(F) Violating the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2601 *et seq.*);

(G) Non-compliance with civil rights requirements regarding the sale of HUD-owned single family properties;

(H) Involvement in, or knowledge of, any fraudulent activity by any person involved in the REO sales transaction; and

(I) Any other actions or omissions that evidence a lack of business integrity or non-compliance with the laws, regulations, and rules applicable to housing, lending, or real estate sales.

(3) *Written notice.* Once HUD makes an initial finding that there is good cause to remove a broker, HUD will provide the broker with written notice of proposed removal from HUD's qualified selling broker list and deactivation of the broker's access to HUD systems to participate in the sale of HUD-owned properties. The notice will:

(i) State the reasons that HUD is taking the action;

(ii) Identify the violations or deficiencies involved;

(iii) Provide a citation to the relevant regulation, statute, or policy; and

(iv) State the effective date and duration of the removal and deactivation.

(4) *Effective date and duration of removal.* (i) The effective date of the broker's removal will be the 30th day after the date of the notice, unless the broker submits a written response or requests a conference in accordance with paragraph (i)(5) of this section;

(ii) HUD's determination of the duration of removal and deactivation will be based upon HUD's consideration of the number and seriousness of the broker's violations and deficiencies.

(5) *Response and conference.* Real estate brokers will be given 20 days after the date of the notice (or longer, if provided in the notice) to submit a written response to HUD opposing the proposed removal and to request a conference. A request for a conference must be in writing and must be submitted along with the written response. If a conference is requested, it will occur within 15 days after the date of receipt of the request. HUD may extend the 15-day period by providing written notice to the broker. HUD may request additional information at or following a conference and provide additional time to submit such information. If the information is not submitted by the time set by HUD, the conference is completed. If the information is timely submitted, the conference is not completed until HUD has considered the additional information.

(6) *Disposition.* (i) *No response from real estate broker.* If the real estate broker does not submit a written response within the time provided, the removal and deactivation take effect in accordance with the notice.

(ii) *Response from real estate broker.* If the real estate broker submits a written response within the time provided, the removal and deactivation are delayed until HUD considers the response and makes a final determination. HUD will consider the sufficiency of any corrective actions taken by a broker with respect to its procedures and, if relevant, its agents, in reaching its decision. Within 20 days after the date of receipt of the written response, or if a conference is requested, within 20 days after the date of completion of the conference, HUD will advise the real estate broker in writing of the decision to rescind, modify, or affirm the removal from HUD's qualified selling broker list and the deactivation of the broker's access to HUD systems to participate in the sale of HUD-owned properties. The written decision by HUD shall constitute final agency action.

(7) *Effect of removal proceeding on bids.* All bids submitted and commissions earned by the real estate broker prior to removal will be honored, unless HUD determines they were made under fraudulent circumstances.

Dated: October 27, 2006.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E6–18698 Filed 11–6–06; 8:45 am]

BILLING CODE 4210–67–P

Federal Register

Tuesday,
November 7, 2006

Part V

Department of Transportation

Federal Transit Administration

Fiscal Year 2007 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Fiscal Year 2007 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: Appendix A of this Notice contains the Federal Transit Administration's (FTA) comprehensive compilation of the certifications and assurances for Federal fiscal year 2007 to be used in connection with all Federal assistance programs that FTA administers during Federal fiscal year 2007. FTA is required by 49 U.S.C. 5323(n) to compile an annual list of certifications and assurances and publish them as required by 49 U.S.C. 5536(d)(2). FTA's annual certifications and assurances have been revised to accommodate statutory, regulatory, and programmatic changes not in effect.

DATES: *Effective Date:* These certifications and assurances were effective on October 1, 2006, the first day of Federal fiscal year 2007.

FOR FURTHER INFORMATION CONTACT: FTA staff in the appropriate Regional Office listed below. For copies of other related documents, see the FTA Web site at *http://www.fta.dot.gov* or contact FTA's Office of Administration at (202) 366–4022.

Region 1: Boston

States served: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont, Telephone # 617–494–2055.

Region 2: New York

States served: New York, New Jersey, and the Virgin Islands, Telephone # 212–668–2170.

Region 3: Philadelphia

States served: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia, Telephone # 215–656–7100.

Region 4: Atlanta

States served: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, and Tennessee, Telephone # 404–562–3500.

Region 5: Chicago

States served: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin, Telephone # 312–353–2789.

Region 6: Dallas/Ft. Worth

States served: Arkansas, Louisiana, Oklahoma, Texas, and New Mexico, Telephone # 817–978–0550

Region 7: Kansas City

States served: Iowa, Kansas, Missouri, and Nebraska, Telephone # 816–329–3920.

Region 8: Denver

States served: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming, Telephone # 720–963–3300.

Region 9: San Francisco

States served: Arizona, California, Hawaii, Nevada, Guam, American Samoa, and the Northern Mariana Islands, Telephone # 415–744–3133.

Region 10: Seattle

States served: Alaska, Idaho, Oregon, and Washington, Telephone # 206–220–7954.

SUPPLEMENTARY INFORMATION: Before FTA may award Federal financial assistance through a Federal grant or cooperative agreement, the Applicant must submit all certifications and assurances pertaining to itself and its project as required by Federal laws and regulations. These certifications and assurances must be submitted to FTA irrespective of whether the project is financed under the authority of 49 U.S.C. chapter 53, or Title 23, United States Code, or another Federal statute.

The Applicant's annual certification and assurances for Federal fiscal year 2007 cover all projects for which the Applicant seeks funding during Federal fiscal year 2007 through the next fiscal year until FTA issues its annual certifications and assurances for Federal fiscal year 2008. An Applicant's annual certifications and assurances applicable to a specific grant or cooperative agreement generally remain in effect for either the duration of the grant or cooperative agreement to project closeout or the duration of the project or project property when a useful life or industry standard is in effect, whichever occurs later; except, if the Applicant provides certifications and assurances in a later year that differ from certifications and assurances previously provided, the later certifications and assurances will apply to the grant, cooperative agreement, project, or project property, unless FTA permits otherwise.

Background: Since Federal fiscal year 1995, FTA has been consolidating the various certifications and assurances that may be required of its Applicants and their projects into a single document for publication in the **Federal Register**. FTA intends to continue publishing this document annually, often in conjunction with its publication of the FTA annual apportionment notice, which sets forth the allocations of funds made available by the latest U.S. Department of Transportation (U.S. DOT) annual appropriations act.

Effect of the Certifications and Assurances: In view of the many projects that will be implemented substantially by a subrecipient of the Applicant, FTA cautions the Application that, absent a written determination by FTA to the contrary, the Applicant will be responsible for compliance both by itself and by each of its subrecipients with all certifications and assurances the Applicant has selected that would involve the subrecipient or the subrecipient's activities with respect to the project. Thus, the Applicant itself is ultimately responsible for compliance with its certifications even though a project may be carried out in whole or in part by one or more subrecipients. Consequently, in providing certifications and assurances that involve the compliance of any prospective subrecipient, the Applicant is strongly encouraged to take the appropriate measures, including but not limited to, obtaining sufficient documentation from each subrecipient to assure the validity of the certifications and assurances the Applicant has made.

Federal Fiscal Year 2007 Changes: Apart from minor editorial revisions, significant changes to FTA's certifications and assurances for Federal fiscal year 2007 are set forth below:

(1) In the Introductory paragraphs preceding the text of the certifications and assurances, the FTA Web Site for the FTA Master Agreement for Federal fiscal year 2007 is *http://www.fta.dot.gov/documents/13-Master.doc.*

(2) Subcategories 01.F(5)(e), (f), and (g) have been amended to substitute updated citations for the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. 1101 *et seq.,* the Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, as amended, 42 U.S.C. 4541 *et seq.,* and the Public Health Service Act of 1912, as amended, 42 U.S.C. 201 *et seq.*

(3) In Category 06, a provision is added to alert the Applicant of changes to the Pre-Award and Post-Delivery requirements for rolling stock set forth in section 3023(k) of SAFETEA–LU that have not as of October 1, 2006 been incorporated in FTA's implementing regulations at 49 U.S.C. part 663.

(4) In category 15, the following changes have been made:

(a) A Statement has been added reminding each Applicant for Urbanized Area Formula Assistance that in addition to making its certification required by 49 U.S.C. 5307(d)(1)(J) that it will expend at least one (1) percent of its Urbanized Area Formula Program assistance for public transportation security projects unless it has certified to FTA that such expenditures are not necessary, the Applicant also will need to disclose its decision in the ''Security'' tab page of the TEAM–Web ''Project Information'' window.

(b) Subcategory K has been amended to permit a single Designated Recipient of Urbanized Area Formula assistance to indicate that an agreement has been reached among some or all of the Designated Recipients in a single urbanized area of more than 200,000 population to certify that no less than 1 percent of section 5307 funds apportioned by FTA to that urbanized area among those Designated Recipients will be used for transit enhancements as provided by 49 U.S.C. 5307(d)(1)(K)(i) and to submit the report with the list of transit enhancement projects implemented by those Designated Recipients as required by 49 U.S.C. 5307(d)(1)(K)(ii). Should it wish to do so, a single Designated Recipient, however, may expend one (1) per cent of its section 5307 funds for transit enhancements and submit its own report listing the transit enhancement projects it has implemented in the last fiscal year as required by 49 U.S.C. 5307(d)(1)(K)(ii). The Designated Recipient generally sets forth this information in its quarterly report for the fourth quarter of the preceding Federal fiscal year; thus that quarterly report will be incorporated by reference and made part of the Designated Recipient's certifications and assurances. A Designated Recipient that prepares a report on behalf of some or all other Designated Recipients in its urbanized area will need to provide a copy of its report to the other Designated Recipients on whose behalf the report is prepared.

(5) Category 16 has been amended to add a certification at Subcategory J that vehicles financed under the Clean Fuels Grants Program will be operated using only clean fuels, and ''clean diesel'' buses financed under that program will be operated using only ultra-low sulfur diesel fuel.

(6) In Category 17, the following changes have been made:

(a) In Subcategory A, the United States Code note reference for the Elderly Individuals and Individuals with Disabilities Pilot Program has been added.

(b) In Subcategory F, the subject selection and planning certification requirements that were effective for the Elderly Individuals and Individuals with Disabilities Pilot Program required by section 3012(b)(2) of SAFETEA–LU beginning in Federal fiscal year 2006 are not applicable to the Elderly Individuals and Individuals with Disabilities Program, as required by 49 U.S.C. 5310(d)(2)(B).

(7) Category 18 has been amended to clarify that certifications and assurances for the Nonurbanized Area Formula Program do not apply to an Indian tribe that is an Applicant for Tribal Transit Program assistance under 49 U.S.C. 5311(c)(1), and that FTA has prepared separate certifications and assurances for that program.

(8) Category 19 has been amended to add a new certification requiring the chief executive officer of the state, or his or her designee to certify to the Federal Transit Administrator, apart from these annual certifications, that all of the objectives of 49 U.S.C. 5316 are being met in the area from which such funding would be derived before using JARC funds to support projects in areas other than those designated in 49 U.S.C. 5316.

(9) In Subcategory 20.E, the project selection and planning certification requirements of 49 U.S.C. 5317(f)(3) have been added.

Text of Federal Fiscal Year 2007 Certifications and Assurances: The text of the certifications and assurances in Appendix A of this Notice appears at *http://www.fta.dot.gov/documents/2007-Certs-Appendix A.doc.* It also appears in TEAM-Web in the ''Recipients'' option of the Cert's & Assurances tab of ''View/Modify Recipients.'' It is important that each Applicant be familiar with all twenty-three (23) certification and assurance categories and their provisions, as they may be a prerequisite for receiving FTA financial assistance. Provisions of this Notice supersede conflicting statements in any FTA circular containing a previous version of FTA's annual certifications and assurances. The certifications and assurances contained in those FTA circulars are merely examples, and are not acceptable or valid for Federal fiscal year 2007; do not rely on the provisions of certifications and assurances appearing in FTA circulars.

Significance of Certification and Assurances: Selecting and submitting certifications and assurances to FTA, either through TEAM-Web or submission of the Signature Page(s) of Appendix A, signifies the Applicant's intent to comply with and secure compliance by its subrecipients, if any, with the provisions of the certifications and assurances it has selected to the extent they apply to a project for which the Applicant submits an application for assistance in Federal Register fiscal year 2007. FTA cautions, however, that certifications and assurances required by law and regulation do not address all Federal laws, regulations, or directives with which an Applicant must comply before FTA may award Federal financial assistance. We therefore strongly encourage the Applicant to review the Federal authorizing legislation, regulations, and directives pertaining to the program or programs for which the Applicant seeks Federal assistance to determine the extent of all pre-award laws, regulations, or directives applicable to those programs.

Attorney's Affirmation: FTA requires a current (Federal fiscal year 2007) affirmation, signed by the Applicant's attorney, of the Applicant's legal authority to certify compliance with the provisions of the certifications and assurances the Applicant has selected. Irrespective of whether the Applicant makes a single selection for all twenty-three (23) categories or selects individual options from the twenty-three (23) categories, the Affirmation of Applicant's Attorney from a previous year is not acceptable, unless FTA expressly determines otherwise in writing.

Deadline for Submission: All Applicants for FTA formula program or capital investment program assistance, and current FTA grantees with an active project financed with FTA formula program or capital investment program assistance, are expected to provide certifications and assurances for Federal fiscal year 2007 within 90 days from the date of this publication or as soon as feasible after their first grant application for funds authorized or made available during Federal fiscal year 2007, whichever is earlier. In addition, FTA encourages Applications seeking Federal financial assistance for other projects to submit their certifications and assurances as soon as possible.

Preference for Electronic Submission: Applicants registered in TEAM-Web must submit their certifications and assurances, as well as their applications for Federal assistance in TEAM-Web. Only if an Applicant is unable to submit its certification and assurances in TEAM-Web should the Applicant use the Signature Page(s) in Appendix A of this Notice. While not mandatory, FTA encourages an Applicant that does not submit its certifications and assurances

electronically to scan a copy of its certifications and assurances document and attach it in TEAM-Web. Likewise, if the Applicant's attorney has not submitted its affirmation in TEAM, FTA encourages the Application to scan that affirmation and attach it in TEAM-Web.

Procedures for Electronic Submission: The TEAM-Web ''Recipients'' option at the ''Cert's & Assurances'' tab of ''View/Modify Recipients'' contains fields for selecting among the twenty-three (23) Categories of certifications and assurances to be submitted. Within that tab is a field for the Applicant's authorized representative to enter its personal identification number (PIN), which constitutes the Applicant's electronic signature for the certifications and assurances it has selected. In addition, there is a field for the Applicant's attorney to enter his or her PIN, affirming the Applicant's legal authority to make and comply with the certifications and assurances the Applicant has selected. In certain circumstances, the Applicant may enter its PIN in lieu of its Attorney's PIN, provided that the Applicant has on file the Affirmation of Applicant's Attorney in Appendix A of this Notice, written and signed by the attorney and dated this Federal fiscal year. For more information, Applicants may contact the appropriate Regional Office listed in this Notice or the TEAM-Web Helpdesk.

Procedures for Paper Submission: If an Applicant is unable to submit its certifications and assurances electronically, it must mark the certifications and assurances it is making on the Signature Page(s) in Appendix A of this Notice and submit it to FTA. The Applicant may signify compliance with all Categories by placing a single mark in the appropriate space or select the Categories applicable to itself and its projects. In certain circumstances, the Applicant may enter its signature in lieu of its Attorney's signature in the Affirmation of Applicant's Attorney section of the Signature Page(s), provided that the Applicant has on file the Affirmation of Applicant's Attorney in Appendix A of this Notice, written and signed by the attorney and dated in this Federal fiscal year 2007, and has submitted a copy of this affirmation to FTA. For more information, Applicants may contact the appropriate Regional Office listed in this Notice.

References. 49 U.S.C. chapter 53; the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU); Title 23, United States Code (Highways); other Federal laws administered by FTA; U.S. DOT and FTA regulations at Title 49, Code of Federal Regulations; and FTA Circulars.

Dated: November 2, 2006.

James S. Simpson,

Administrator.

BILLING CODE 4910–57–M

APPENDIX A

FEDERAL FISCAL YEAR 2007 CERTIFICATIONS AND ASSURANCES FOR FEDERAL TRANSIT ADMINISTRATION ASSISTANCE PROGRAMS

In accordance with 49 U.S.C. 5323(n), the following certifications and assurances have been compiled for Federal Transit Administration (FTA) assistance programs. FTA requests each Applicant to provide as many certifications and assurances as needed for all programs for which the Applicant intends to seek FTA assistance during Federal Fiscal Year 2007. FTA strongly encourages each Applicant to submit its certifications and assurances through TEAM-Web, FTA's electronic award and management system, at http://ftateamweb.fta.dot.gov.

Twenty-three (23) Categories of certifications and assurances are listed by numbers 01 through 23 in the TEAM-Web "Recipients" option at the "Cert's & Assurances" tab of "View/Modify Recipients," and on the opposite side of the Signature Page(s) at the end of this document. Category 01 applies to all Applicants. Category 02 applies to all applications exceeding $100,000. Categories 03 through 23 will apply to and be required for some, but not all, Applicants and projects.

FTA and the Applicant understand and agree that not every provision of these certifications and assurances will apply to every Applicant or every project for which FTA provides Federal financial assistance through a Grant Agreement or Cooperative Agreement. The type of project and the section of the statute authorizing Federal financial assistance for the project will determine which provisions apply. The terms of these certifications and assurances reflect applicable requirements of FTA's enabling legislation currently in effect.

The Applicant also understands and agrees that these certifications and assurances are special pre-award requirements specifically prescribed by Federal law or regulation and do not encompass all Federal laws, regulations, and directives that may apply to the Applicant or its project. A comprehensive list of those Federal laws, regulations, and directives is contained in the current FTA Master Agreement MA(13) for Federal Fiscal Year 2007 at the FTA website http://www.fta.dot.gov/documents/13-Master.doc. The certifications and assurances in this document have been streamlined to remove most provisions not covered by statutory or regulatory certification or assurance requirements.

Because many requirements of these certifications and assurances will require the compliance of the subrecipient of an Applicant, we strongly recommend that each Applicant, including a State, that will be implementing projects through one or more subrecipients, secure sufficient documentation from each subrecipient to assure compliance, not only with these certifications and assurances, but also with the terms of the Grant Agreement or Cooperative Agreement for the project, and the Master Agreement incorporated therein by reference. Each Applicant is ultimately responsible for compliance with the provisions of these certifications and assurances irrespective of participation in the project by any subrecipient.

01. FOR EACH APPLICANT

Each Applicant for FTA assistance must provide all assurances in this Category "01." Unless

APPENDIX A

FTA expressly determines otherwise in writing, FTA may not award any Federal assistance until the Applicant provides the following assurances by selecting Category "01."

A. Assurance of Authority of the Applicant and Its Representative

The authorized representative of the Applicant and the attorney who sign these certifications, assurances, and agreements affirm that both the Applicant and its authorized representative have adequate authority under applicable State and local law and the Applicant's by-laws or internal rules to:

(1) Execute and file the application for Federal assistance on behalf of the Applicant;
(2) Execute and file the required certifications, assurances, and agreements on behalf of the Applicant binding the Applicant; and
(3) Execute grant agreements and cooperative agreements with FTA on behalf of the Applicant.

B. Standard Assurances

The Applicant assures that it will comply with all applicable Federal statutes and regulations in carrying out any project supported by an FTA grant or cooperative agreement. The Applicant agrees that it is under a continuing obligation to comply with the terms and conditions of the grant agreement or cooperative agreement issued for its project with FTA. The Applicant recognizes that Federal laws and regulations may be modified from time to time and those modifications may affect project implementation. The Applicant understands that Presidential executive orders and Federal directives, including Federal policies and program guidance may be issued concerning matters affecting the Applicant or its project. The Applicant agrees that the most recent Federal laws, regulations, and directives will apply to the project, unless FTA issues a written determination otherwise.

C. Intergovernmental Review Assurance

The Applicant assures that each application for Federal assistance it submits to FTA has been or will be submitted for intergovernmental review to the appropriate State and local agencies as determined by the State. Specifically, the Applicant assures that it has fulfilled or will fulfill the obligations imposed on FTA by U.S. Department of Transportation (U.S. DOT) regulations, "Intergovernmental Review of Department of Transportation Programs and Activities," 49 CFR part 17.

D. Nondiscrimination Assurance

As required by 49 U.S.C. 5332 (which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity), by Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and by U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act," 49 CFR part 21 at 21.7, the Applicant assures that it will comply with all requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21, so that no person in the United States, on

APPENDIX A

the basis of race, color, national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which the Applicant receives Federal assistance awarded by the U.S. DOT or FTA.

Specifically, during the period in which Federal assistance is extended to the project, or project property is used for a purpose for which the Federal assistance is extended or for another purpose involving the provision of similar services or benefits, or as long as the Applicant retains ownership or possession of the project property, whichever is longer, the Applicant assures that:

(1) Each project will be conducted, property acquisitions will be undertaken, and project facilities will be operated in accordance with all applicable requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21, and understands that this assurance extends to its entire facility and to facilities operated in connection with the project.
(2) It will promptly take the necessary actions to effectuate this assurance, including notifying the public that complaints of discrimination in the provision of transportation-related services or benefits may be filed with U.S. DOT or FTA. Upon request by U.S. DOT or FTA, the Applicant assures that it will submit the required information pertaining to its compliance with these provisions.
(3) It will include in each subagreement, property transfer agreement, third party contract, third party subcontract, or participation agreement adequate provisions to extend the requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d and 49 CFR part 21 to other parties involved therein including any subrecipient, transferee, third party contractor, third party subcontractor at any level, successor in interest, or any other participant in the project.
(4) Should it transfer real property, structures, or improvements financed with Federal assistance provided by FTA to another party, any deeds and instruments recording the transfer of that property shall contain a covenant running with the land assuring nondiscrimination for the period during which the property is used for a purpose for which the Federal assistance is extended or for another purpose involving the provision of similar services or benefits.
(5) The United States has a right to seek judicial enforcement with regard to any matter arising under the Act, regulations, and this assurance.
(6) It will make any changes in its Title VI implementing procedures as U.S. DOT or FTA may request to achieve compliance with the requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21.

E. Assurance of Nondiscrimination on the Basis of Disability

As required by U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," at 49 CFR 27.9, the Applicant assures that, as a condition to the approval or extension of any Federal assistance awarded by FTA to construct any facility, obtain any rolling stock or other equipment, undertake studies, conduct research, or to participate in or obtain any benefit from any program administered by FTA, no otherwise qualified person with a disability shall be, solely by reason

APPENDIX A

of that disability, excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any program or activity receiving or benefiting from Federal assistance administered by the FTA or any entity within U.S. DOT. The Applicant assures that project implementation and operations so assisted will comply with all applicable requirements of U.S. DOT regulations implementing the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, *et seq.*, and the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 *et seq.*, and implementing U.S. DOT regulations at 49 CFR parts 27, 37, and 38, and any other applicable Federal laws that may be enacted or Federal regulations that may be promulgated.

F. U.S. Office of Management and Budget (OMB) Assurances

Consistent with OMB assurances set forth in SF-424B and SF-424D, the Applicant assures that, with respect to itself or its project, the Applicant:

(1) Has the legal authority to apply for Federal assistance and the institutional, managerial, and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in its application;

(2) Will give FTA, the Comptroller General of the United States, and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives;

(3) Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain;

(4) Will initiate and complete the work within the applicable project time periods following receipt of FTA approval;

(5) Will comply with all applicable Federal statutes relating to nondiscrimination including, but not limited to:

   (a) Title VI of the Civil Rights Act, 42 U.S.C. 2000d, which prohibits discrimination on the basis of race, color, or national origin;

   (b) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 through 1683, and 1685 through 1687, and U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 CFR part 25, which prohibit discrimination on the basis of sex;

   (c) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of disability;

   (d) The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 through 6107, which prohibits discrimination on the basis of age;

   (e) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. 1101 *et seq.*, relating to nondiscrimination on the basis of drug abuse;

   (f) The Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, as amended, 42 U.S.C. 4541 *et seq.* relating to nondiscrimination on the basis of alcohol abuse or alcoholism;

   (g) The Public Health Service Act of 1912, as amended, 42 U.S.C. 201 *et seq.*, relating to confidentiality of alcohol and drug abuse patient records;

APPENDIX A

(h) Title VIII of the Civil Rights Act, 42 U.S.C. 3601 *et seq.*, relating to nondiscrimination in the sale, rental, or financing of housing; and

(i) Any other nondiscrimination statute(s) that may apply to the project;

(6) To the extent applicable, will comply with, or has complied with, the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (Uniform Relocation Act) 42 U.S.C. 4601 *et seq.*, which, among other things, provide for fair and equitable treatment of persons displaced or persons whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes and displacement caused by the project regardless of Federal participation in any purchase. As required by sections 210 and 305 of the Uniform Relocation Act, 42 U.S.C. 4630 and 4655, and by U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR 24.4, the Applicant assures that it has the requisite authority under applicable state and local law to comply with the requirements of the Uniform Relocation Act, 42 U.S.C. 4601 *et seq.*, and U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR part 24, and will comply with that Act or has complied with that Act and those implementing regulations, including but not limited to the following:

(a) The Applicant will adequately inform each affected person of the benefits, policies, and procedures provided for in 49 CFR part 24;

(b) The Applicant will provide fair and reasonable relocation payments and assistance as required by 42 U.S.C. 4622, 4623, and 4624; 49 CFR part 24; and any applicable FTA procedures, to or for families, individuals, partnerships, corporations, or associations displaced as a result of any project financed with FTA assistance;

(c) The Applicant will provide relocation assistance programs offering the services described in 42 U.S.C. 4625 to such displaced families, individuals, partnerships, corporations, or associations in the manner provided in 49 CFR part 24;

(d) Within a reasonable time before displacement, the Applicant will make available comparable replacement dwellings to displaced families and individuals as required by 42 U.S.C. 4625(c)(3);

(e) The Applicant will carry out the relocation process in such manner as to provide displaced persons with uniform and consistent services, and will make available replacement housing in the same range of choices with respect to such housing to all displaced persons regardless of race, color, religion, or national origin;

(f) In acquiring real property, the Applicant will be guided to the greatest extent practicable under state law, by the real property acquisition policies of 42 U.S.C. 4651 and 4652;

(g) The Applicant will pay or reimburse property owners for necessary expenses as specified in 42 U.S.C. 4653 and 4654, with the understanding that FTA will provide Federal financial assistance for the Applicant's eligible costs of providing payments for those expenses, as required by 42 U.S.C. 4631;

(h) The Applicant will execute such amendments to third party contracts and subagreements financed with FTA assistance and execute, furnish, and be bound by such additional documents as FTA may determine necessary to effectuate or implement the assurances provided herein; and

APPENDIX A

(i) The Applicant agrees to make these assurances part of or incorporate them by reference into any third party contract or subagreement, or any amendments thereto, relating to any project financed by FTA involving relocation or land acquisition and provide in any affected document that these relocation and land acquisition provisions shall supersede any conflicting provisions;

(7) To the extent applicable, will comply with the Davis-Bacon Act, as amended, 40 U.S.C. 3141 *et seq.*, the Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. 874, and the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 3701 *et seq.*, regarding labor standards for federally assisted projects;

(8) To the extent applicable, will comply with the flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a(a), requiring the Applicant and its subrecipients in a special flood hazard area to participate in the program and purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more;

(9) To the extent applicable, will comply with the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4831(b), which prohibits the use of lead-based paint in the construction or rehabilitation of residence structures;

(10) To the extent applicable, will not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities on which a construction project supported with FTA assistance takes place without permission and instructions from FTA;

(11) To the extent required by FTA, will record the Federal interest in the title of real property, and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project;

(12) To the extent applicable, will comply with FTA provisions concerning the drafting, review, and approval of construction plans and specifications of any construction project supported with FTA assistance. As required by U.S. DOT regulations, "Seismic Safety," 49 CFR 41.117(d), before accepting delivery of any building financed with FTA assistance, it will obtain a certificate of compliance with the seismic design and construction requirements of 49 CFR part 41;

(13) To the extent applicable, will provide and maintain competent and adequate engineering supervision at the construction site of any project supported with FTA assistance to ensure that the complete work conforms with the approved plans and specifications, and will furnish progress reports and such other information as may be required by FTA or the state;

(14) To the extent applicable, will comply with any applicable environmental standards that may be prescribed to implement the following Federal laws and executive orders:

(a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 through 4335 and Executive Order No. 11514, as amended, 42 U.S.C. 4321 note;

(b) Notification of violating facilities pursuant to Executive Order No. 11738, 42 U.S.C. 7606 note;

(c) Protection of wetlands pursuant to Executive Order No. 11990, 42 U.S.C. 4321 note;

(d) Evaluation of flood hazards in floodplains in accordance with Executive Order No. 11988, 42 U.S.C. 4321 note;

(e) Assurance of project consistency with the approved state management program developed pursuant to the requirements of the Coastal Zone Management Act of 1972,

APPENDIX A

as amended, 16 U.S.C. 1451 through 1465;

(f) Conformity of Federal actions to State (Clean Air) Implementation Plans under section 176(c) of the Clean Air Act of 1955, as amended, 42 U.S.C. 7401 through 7671q;

(g) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f through 300j-6;

(h) Protection of endangered species under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 through 1544; and

(i) Environmental protections for Federal transportation programs, including, but not limited to, protections for parks, recreation areas, or wildlife or waterfowl refuges of national, state, or local significance or any land from a historic site of national, State, or local significance to be used in a transportation project as required by 49 U.S.C. 303(b) and 303(c);

(j) Protection of the components of the national wild and scenic rivers systems, as required under the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. 1271 through 1287; and

(k) Provision of assistance to FTA in complying with section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f; with the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. 469 through 469c ; and with Executive Order No. 11593 (identification and protection of historic properties), 16 U.S.C. 470 note;

(15) To the extent applicable, will comply with the requirements of the Hatch Act, 5 U.S.C. 1501 through 1508 and 7324 through 7326, which limit the political activities of State and local agencies and their officers and employees whose primary employment activities are financed in whole or part with Federal funds including a Federal loan, grant agreement, or cooperative agreement except, in accordance with 49 U.S.C. 5307(k)(2) and 23 U.S.C. 142(g), the Hatch Act does not apply to a nonsupervisory employee of a public transportation system (or of any other agency or entity performing related functions) receiving FTA assistance to whom that Act does not otherwise apply;

(16) To the extent applicable, will comply with the National Research Act, Pub. L. 93-348, July 12, 1974, as amended, 42 U.S.C. 289 *et seq.,* and U.S. DOT regulations, "Protection of Human Subjects," 49 CFR part 11, regarding the protection of human subjects involved in research, development, and related activities supported by Federal assistance;

(17) To the extent applicable, will comply with the Laboratory Animal Welfare Act of 1966, as amended, 7 U.S.C. 2131 *et seq.*, and U.S. Department of Agriculture regulations, "Animal Welfare," 9 CFR subchapter A, parts 1, 2, 3, and 4, regarding the care, handling, and treatment of warm blooded animals held or used for research, teaching, or other activities supported by Federal assistance;

(18) Will have performed the financial and compliance audits as required by the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 *et seq.*, OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," Revised, and the most recent applicable OMB A-133 Compliance Supplement provisions for the U.S. DOT; and

(19) To the extent applicable, will comply with all applicable provisions of all other Federal laws, regulations, and directives governing the project, except to the extent that FTA has expressly approved otherwise in writing.

APPENDIX A

02. LOBBYING CERTIFICATION

An Applicant that submits or intends to submit an application to FTA for Federal assistance exceeding $100,000 is required to provide the following certification. FTA may not award Federal assistance exceeding $100,000 until the Applicant provides this certification by selecting Category "02."

A. As required by 31 U.S.C. 1352 and U.S. DOT regulations, "New Restrictions on Lobbying," at 49 CFR 20.110, the Applicant's authorized representative certifies to the best of his or her knowledge and belief that for each application to FTA for Federal assistance exceeding $100,000:
   (1) No Federal appropriated funds have been or will be paid by or on behalf of the Applicant to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress regarding the award of Federal assistance, or the extension, continuation, renewal, amendment, or modification of any Federal assistance agreement; and
   (2) If any funds other than Federal appropriated funds have been or will be paid to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application for Federal assistance, the Applicant assures that it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," including information required by the instructions accompanying the form, which form may be amended to omit such information as authorized by 31 U.S.C. 1352.
   (3) The language of this certification shall be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, subagreements, contracts under grants, loans, and cooperative agreements).

B. The Applicant understands that this certification is a material representation of fact upon which reliance is placed by the Federal Government and that submission of this certification is a prerequisite for providing Federal assistance for a transaction covered by 31 U.S.C. 1352. The Applicant also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

03. PROCUREMENT COMPLIANCE

In accordance with 49 CFR 18.36(g)(3)(ii), each Applicant that is a State, local, or Indian tribal government that is seeking Federal assistance to acquire property or services in support of its project is requested to provide the following certification by selecting Category "03." FTA also requests other Applicants to provide the following certification. An Applicant for FTA assistance to acquire property or services in support of its project that fails to provide this certification may be determined ineligible for award of Federal assistance for the project, if FTA determines that its procurement practices and procurement system are incapable of compliance with Federal

APPENDIX A

laws, regulations and directives governing procurements financed with FTA assistance.

The Applicant certifies that its procurements and procurement system will comply with all applicable third party procurement provisions of Federal laws, regulations, and directives, except to the extent FTA has expressly approved otherwise in writing.

04. PRIVATE PROVIDERS OF PUBLIC TRANSPORTATION

Each Applicant that is a State, local, or Indian tribal government that is seeking Federal assistance authorized under 49 U.S.C. chapter 53 to acquire any property or an interest in the property of a private provider of public transportation or to operate public transportation equipment or facilities in competition with, or in addition to, transportation service provided by an existing private provider of public transportation is required to provide the following certification. FTA may not award Federal assistance for such a project until the Applicant provides this certification by selecting Category "04."

As required by 49 U.S.C. 5323(a)(1), the Applicant certifies that before it acquires the property or an interest in the property of a private provider of public transportation or operates public transportation equipment or facilities in competition with, or in addition to, transportation service provided by an existing public transportation company, it has or will have:

A. Determined that the assistance is essential to carrying out a program of projects as required by 49 U.S.C. 5303, 5304, and 5306;
B. Provided for the participation of private companies engaged in public transportation to the maximum extent feasible; and
C. Paid just compensation under state or local law to the company for any franchise or property acquired.

05. PUBLIC HEARING

An Applicant seeking Federal assistance authorized under 49 U.S.C. chapter 53 for a capital project that will substantially affect a community or a community's public transportation service is required to provide the following certification. FTA may not award Federal assistance for that type of project until the Applicant provides this certification by selecting Category "05."

As required by 49 U.S.C. 5323(b), the Applicant certifies that it has, or before submitting its application, it will have:

A. Provided an adequate opportunity for public review and comment on the project preceded by adequate prior public notice of the proposed project, including a concise description of the proposed project, published in a newspaper of general circulation in the geographic area to be served;
B. Held a public hearing on the project if the project affects significant economic, social, or environmental interests after providing adequate notice as described above;
C. Considered the economic, social, and environmental effects of the proposed project; and
D. Determined that the proposed project is consistent with official plans for developing the urban area.

APPENDIX A

06. ACQUISITION OF ROLLING STOCK

An Applicant seeking Federal assistance authorized under 49 U.S.C. chapter 53 to acquire any rolling stock is required to provide the following certification. FTA may not award any Federal assistance to acquire such rolling stock until the Applicant provides this certification by selecting Category "06."

As required by 49 U.S.C. 5323(m) and implementing FTA regulations at 49 CFR 663.7, the Applicant certifies that it will comply with the requirements of 49 CFR part 663 as modified by amendments authorized by section 3023(k) of SAFETEA-LU when procuring revenue service rolling stock. Among other things, the Applicant agrees to conduct or cause to be conducted the requisite pre-award and post-delivery reviews, and maintain on file the certifications required by 49 CFR part 663, subparts B, C, and D.

07. ACQUISITION OF CAPITAL ASSETS BY LEASE

An Applicant that intends to request the use of Federal assistance to acquire capital assets by lease is required to provide the following certifications. FTA may not provide assistance to support those costs until the Applicant provides this certification by selecting Category "07."

As required by FTA regulations, "Capital Leases," at 49 CFR 639.15(b)(1) and 639.21, if the Applicant acquires any capital asset by lease financed with Federal assistance authorized for 49 U.S.C. chapter 53, the Applicant certifies as follows:

(1) It will not use Federal assistance authorized to finance the cost of leasing any capital asset until it performs calculations demonstrating that leasing the capital asset would be more cost-effective than purchasing or constructing a similar asset; and It will complete these calculations before entering into the lease or before receiving a capital grant for the asset, whichever is later; and

(2) It will not enter into a capital lease for which FTA can provide only incremental Federal assistance unless it has adequate financial resources to meet its future obligations under the lease if Federal assistance is not available for capital projects in the subsequent years.

08. BUS TESTING

An Applicant for Federal assistance appropriated or made available for 49 U.S.C. chapter 53 to acquire any new bus model or any bus model with a new major change in configuration or components is required to provide the following certification. FTA may not provide assistance for the acquisition of any new bus model or bus model with a major change until the Applicant provides this certification by selecting Category "08."

As required by 49 U.S.C. 5318 and FTA regulations, "Bus Testing," at 49 CFR 665.7, the Applicant certifies that, before expending any Federal assistance to acquire the first bus of any new bus model or any bus model with a new major change in configuration or components, or before authorizing final acceptance of that bus (as described in 49 CFR part 665), the bus model:

APPENDIX A

A. Will have been tested at FTA's bus testing facility; and
B. Will have received a copy of the test report prepared on the bus model.

09. CHARTER SERVICE AGREEMENT

An Applicant seeking Federal assistance authorized under 49 U.S.C. chapter 53 (except 49 U.S.C. 5310 or 5317), or under 23 U.S.C. 133 or 142 to acquire or operate any public transportation equipment or facilities is required to enter into the following Charter Service Agreement. FTA may not provide assistance authorized under 49 U.S.C. chapter 53 (except 49 U.S.C. 5310 or 5317), or under 23 U.S.C.133 or 142 for such projects until the Applicant enters into this Charter Service Agreement by selecting Category "09."

A. As required by 49 U.S.C. 5323(d) and (g) and FTA regulations at 49 CFR 604.7, the Applicant agrees that it and each subrecipient, lessee, and third party contractor at any tier may provide charter service for transportation projects that uses equipment or facilities acquired with Federal assistance authorized under the Federal transit laws (except 49 U.S.C. 5310 or 5317), or under 23 U.S.C. 133 or 142 only in compliance with those laws and FTA regulations, "Charter Service,"49 CFR part 604, the terms and conditions of which are incorporated herein by reference.
B. The Applicant understands that:
   (1) The requirements of 49 CFR part 604 will apply to any charter service it or its subrecipients or third party contractors provide,
   (2) The definitions of 49 CFR part 604 will apply to this Charter Service Agreement, and
   (3) A violation of this Charter Service Agreement may require corrective measures and imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

10. SCHOOL TRANSPORTATION AGREEMENT

An Applicant that is seeking Federal assistance authorized under 49 U.S.C. chapter 53 or under 23 U.S.C.133 or 142 to acquire or operate public transportation facilities and equipment is required to enter into the following School Transportation Agreement. FTA may not provide assistance for such projects until the Applicant enters into this agreement by selecting Category "10."

A. As required by 49 U.S.C. 5323(f) and (g) and FTA regulations at 49 CFR 605.14, the Applicant agrees that it and each subrecipient, lessee, or third party contractor at any tier may engage in school transportation operations in competition with private school transportation operators that uses equipment or facilities acquired with Federal assistance authorized under the Federal transit laws or under 23 U.S.C. 133 or 142, only in compliance with those laws and FTA regulations, "School Bus Operations,"49 CFR part 605, the terms and conditions of which are incorporated herein by reference.
B. The Applicant understands that:
   (1) The requirements of 49 CFR part 605 will apply to any school transportation service it or its subrecipients or third party contractors provide,

APPENDIX A

(2) The definitions of 49 CFR part 605 will apply to this School Transportation Agreement, and
(3) A violation of this School Transportation Agreement may require corrective measures and imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

11. DEMAND RESPONSIVE SERVICE

An Applicant that operates demand responsive service and applies for direct Federal assistance authorized for 49 U.S.C. chapter 53 to acquire non-rail public transportation vehicles is required to provide the following certification. FTA may not award direct Federal assistance authorized for 49 U.S.C. chapter 53 to an Applicant that operates demand responsive service to acquire non-rail public transportation vehicles until the Applicant provides this certification by selecting Category "11"

As required by U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," at 49 CFR 37.77(d), the Applicant certifies that its demand responsive service offered to individuals with disabilities, including individuals who use wheelchairs, is equivalent to the level and quality of service offered to individuals without disabilities. When the Applicant's service is viewed in its entirety, the Applicant's service for individuals with disabilities is provided in the most integrated setting feasible and is equivalent with respect to: (1) response time, (2) fares, (3) geographic service area, (4) hours and days of service, (5) restrictions on trip purpose, (6) availability of information and reservation capability, and (7) constraints on capacity or service availability.

12. ALCOHOL MISUSE AND PROHIBITED DRUG USE

If the Applicant is required to provide the following certification concerning its activities to prevent alcohol misuse and prohibited drug use in its public transportation operations, FTA may not provide Federal assistance to that Applicant until it provides this certification by selecting Category "12"

As required by FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," at 49 CFR part 655, subpart I, the Applicant certifies that it has established and implemented an alcohol misuse and anti-drug program, and has complied with or will comply with all applicable requirements of FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR part 655.

13. INTEREST AND OTHER FINANCING COSTS

An Applicant that intends to request the use of Federal assistance for reimbursement of interest or other financing costs incurred for its capital projects financed with Federal assistance under the Urbanized Area Formula Program, the Capital Investment Program, or the Alternative Transportation in Parks and Public Lands Program is required to provide the following certification. FTA may not provide assistance to support those costs until the Applicant provides

APPENDIX A

this certification by selecting Category "13."

As required by 49 U.S.C. 5307(g)(3), 5309(g)(2)(B)(iii), 5309(g)(3)(B)(iii), 5309(i)(2)(C), and 5320(h)(2)(C), the Applicant certifies that it will not seek reimbursement for interest and other financing costs unless it is eligible to receive Federal assistance for those expenses and its records demonstrate that it has used reasonable diligence in seeking the most favorable financing terms underlying those costs, to the extent FTA may require.

14. INTELLIGENT TRANSPORTATION SYSTEMS

An Applicant for FTA assistance for an Intelligent Transportation Systems (ITS) project, defined as any project that in whole or in part finances the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of one or more ITS user services as defined in the "National ITS Architecture" is requested to provide the following assurance. FTA strongly encourages any Applicant for FTA financial assistance to support an ITS project to provides this assurance by selecting Category "14." An Applicant for FTA assistance for an ITS project that fails to provide this assurance, without providing other documentation assuring the Applicant's commitment to comply with applicable ITS standards and protocols, may be determined ineligible for award of Federal assistance for the ITS project.

As used in this assurance, the term Intelligent Transportation Systems (ITS) project is defined to include any project that in whole or in part finances the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of one or more ITS user services as defined in the "National ITS Architecture."

A. As provided in SAFETEA-LU section 5307(c), 23 U.S.C. 512 note, "the Secretary shall ensure that intelligent transportation system projects carried out using funds made available from the Highway Trust Fund, including funds made available under this subtitle to deploy intelligent transportation system technologies, conform to the national architecture, applicable standards or provisional standards, and protocols developed under subsection (a)." To facilitate compliance with SAFETEA-LU section 5307(c), 23 U.S.C. 512 note, the Applicant assures it will comply with all applicable provisions of Section V (Regional ITS Architecture) and Section VI (Project Implementation) of FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," at 66 FR 1455 *et seq.*, January 8, 2001, and other FTA policies that may be issued in connection with any ITS project it undertakes financed with funds authorized under Title 49 or Title 23, United States Code, except to the extent that FTA expressly determines otherwise in writing.
B. With respect to any ITS project financed with Federal assistance derived from a source other than Title 49 or Title 23, United States Code, the Applicant assures that it will use its best efforts to ensure that any ITS project it undertakes will not preclude interface with other intelligent transportation systems in the Region.

15. URBANIZED AREA FORMULA PROGRAM

Each Applicant for Urbanized Area Formula Program assistance authorized under 49 U.S.C. 5307 is required to provide the following certifications on behalf of itself and any subrecipients

APPENDIX A

participating in its projects. Unless FTA determines otherwise in writing, the Applicant is ultimately responsible for compliance with its certifications and assurances even though a subrecipient may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its prospective subrecipients, the Applicant is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances the Applicant has made to FTA. If, however a "Designated Recipient" as defined at 49 U.S.C. 5307(a)(2)(A) enters into a Supplemental Agreement with FTA and a Prospective Grantee, that Grantee is recognized as the Applicant for Urbanized Area Formula Program assistance and must provide the following certifications.

Each Applicant is required by 49 U.S.C. 5307(d)(1)(J) to expend at least one (1) percent of its Urbanized Area Formula Program assistance for public transportation security projects, unless the Applicant has certified to FTA that such expenditures are not necessary. Information about the Applicant's intentions will be recorded in the "Security" tab page of the TEAM-Web "Project Information" window when the Applicant enters its Urbanized Area Formula Program application in TEAM-Web.

FTA may not award Urbanized Area Formula assistance to any Applicant that has received Transit Enhancement funds authorized by former 49 U.S.C. 5307(k)(1), unless a quarterly report for the fourth quarter of the preceding Federal fiscal year has been submitted to FTA and includes the requisite list for the urbanized area. Beginning this Federal fiscal year 2007, FTA may not award Urbanized Area Formula Program assistance to any Applicant that is required by 49 U.S.C. 5307(d)(1)(K) to expend one (1) percent of its Urbanized Area Formula Program assistance for eligible transit enhancements unless that Applicant's quarterly report for the fourth quarter of the preceding Federal fiscal year has been submitted to FTA and includes the requisite list or the Applicant attaches in TEAM or includes in its quarterly report information sufficient to demonstrate that the Designated Recipients in its area together have expended one (1) percent of the amount of Urbanized Area Program assistance made available to them for transit enhancement projects.

FTA may not award assistance for the Urbanized Area Formula Program to the Applicant until the Applicant provides these certifications and assurances by selecting Category "15."

As required by 49 U.S.C. 5307(d)(1), the Applicant certifies as follows:

A. In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including safety and security aspects of that program;
B. In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of Project equipment and facilities;
C. In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the Project equipment and facilities;
D. In compliance with 49 U.S.C. 5307(d)(1)(D), the Applicant will ensure that elderly individuals, individuals with disabilities, or any person presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401

APPENDIX A

et seq. or 42 U.S.C. 1395 *et seq.*), will be charged for transportation during non-peak hours using or involving a facility or equipment of a project financed with Federal assistance authorized for 49 U.S.C. 5307, not more than fifty (50) percent of the peak hour fare;

E. In compliance with 49 U.S.C. 5307(d)(1)(E), the Applicant, in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5307: (1) will use competitive procurement (as defined or approved by the Secretary), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;

F. In compliance with 49 U.S.C. 5307(d)(1)(F), the Applicant has complied with or will comply with the requirements of 49 U.S.C. 5307(c). Specifically, the Applicant: (1) has made available, or will make available, to the public information on the amounts available for the Urbanized Area Formula Program, 49 U.S.C. 5307, and the program of projects it proposes to undertake; (2) has developed or will develop, in consultation with interested parties including private transportation providers, a proposed program of projects for activities to be financed; (3) has published or will publish a proposed program of projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed program and submit comments on the proposed program and the performance of the Applicant; (4) has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed program of projects; (5) has ensured or will ensure that the proposed program of projects provides for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal Government source; (6) has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final program of projects; and (7) has made or will make the final program of projects available to the public;

G. In compliance with 49 U.S.C. 5307(d)(1)(G), the Applicant has or will have available and will provide the amount of funds required by 49 U.S.C. 5307(e) for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law;

H. In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with: 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil); 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements);

I. In compliance with 49 U.S.C. 5307(d)(1)(I), the Applicant has a locally developed process to solicit and consider public comment before raising a fare or implementing a major reduction of public transportation;

J. In compliance with 49 U.S.C. 5307(d)(1)(J), each fiscal year, the Applicant will spend at least one (1) percent of its funds authorized by 49 U.S.C. 5307 for public transportation security projects, unless the Applicant has certified to FTA that such expenditures are not necessary. Public transportation security projects include increased lighting in or adjacent to a public transportation system (including bus stops, subway stations, parking lots, and

garages), increased camera surveillance of an area in or adjacent to that system, emergency telephone line or lines to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of an existing or planned public transportation; and

K. In compliance with 49 U.S.C. 5307(d)(1)(K), if the Applicant is a Designated Recipient serving an urbanized area with a population of at least 200,000, (1) the Applicant certifies either that it has expended or will expend for transit enhancements as defined at 49 U.S.C. 5302(a)(15) not less than one (1) percent of the amount of the Urbanized Area Formula Assistance it receives this fiscal year, or that at least one Designated Recipient in its urbanized area has certified or will certify that the Designated Recipients within that urbanized area together have expended or will expend for transit enhancements as defined at 49 U.S.C. 5302(a)(15) not less than one (1) percent of the amount of the total amounts the Designated Recipients receive each fiscal year under 49 U.S.C. 5307, and (2) either the Applicant has listed or will list the transit enhancement projects it has carried out with those funds, or at least one Designated Recipient in the Applicant's urbanized area has listed or will list the transit enhancement projects carried out with funds authorized under 49 U.S.C. 5307. If the Designated Recipient's quarterly report for the fourth quarter of the preceding Federal fiscal year includes a list of transit enhancement projects the Designated Recipients in its urbanized area have implemented during that preceding fiscal year using those funds, the information in that quarterly report will fulfill the requirements of 49 U.S.C. 5307(d)(1)(K)(ii), and thus that quarterly report will be incorporated by reference and made part of the Designated Recipient's and Applicant's certifications and assurances.

16. CLEAN FUELS GRANT PROGRAM

Each Applicant for Clean Fuels Grant Program assistance authorized under49 U.S.C. 5308 is required to provide the following certifications on behalf of itself and its subrecipients. Unless FTA determines otherwise in writing, the Applicant is ultimately responsible for compliance with its certifications and assurances even though a subrecipient may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its prospective subrecipients, the Applicant is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances the Applicant has made to FTA. FTA may not award Federal assistance for the Clean Fuels Grant Program until the Applicant provides these certifications by selecting Category "16."

As required by 49 U.S.C. 5308(d)(1), which makes the requirements of 49 U.S.C. 5307 applicable to Clean Fuels Grant Program assistance, and 49 U.S.C. 5307(d)(1), the designated recipient or the recipient serving as the Applicant on behalf of the designated recipient, or the state or state organization serving as the Applicant on behalf of the state, certifies as follows:

A. In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including safety and security aspects of that program;

B. In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;

APPENDIX A

C. In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;

D. In compliance with 49 U.S.C. 5307(d)(1)(D), the Applicant will ensure that elderly individuals, individuals with disabilities, or any person presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42 U.S.C. 1395 *et seq.*), will be charged for transportation during non-peak hours using or involving a facility or equipment of a project financed with Federal assistance authorized under 49 U.S.C. 5308, not more than fifty (50) percent of the peak hour fare;

E. In compliance with 49 U.S.C. 5307(d)(1)(E), the Applicant, in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5308: (1) will use competitive procurement (as defined or approved by the Secretary), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;

F. In compliance with 49 U.S.C. 5307(d)(1)(F), the Applicant has complied with or will comply with the requirements of 49 U.S.C. 5307(c). Specifically, the Applicant: (1) has made available, or will make available, to the public information on the amounts available for the Clean Fuels Grant Program, 49 U.S.C. 5308, and the projects it proposes to undertake; (2) has developed or will develop, in consultation with interested parties including private transportation providers, the proposed projects to be financed; (3) has published or will publish a list of the proposed projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed projects and submit comments on the proposed projects and the performance of the Applicant; (4) has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed projects; (5) has ensured or will ensure that the proposed projects provide for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal Government source; (6) has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final list of projects; and (7) has made or will make the final list of projects available to the public;

G. In compliance with 49 U.S.C. 5307(d)(1)(G), the Applicant has or will have available and will provide the amount of funds required by 49 U.S.C. 5308(d)(2) for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law;

H. In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with: 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil); 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements);

I. In compliance with 49 U.S.C. 5307(d)(1)(I), the Applicant has a locally developed process to solicit and consider public comment before raising a fare or implementing a major reduction of public transportation; and

J. The Applicant certifies that it will use only clean fuels to operate any vehicles financed with

APPENDIX A

Federal assistance provided for the Clean Fuels Grant Program, 49 U.S.C. 5308, and in particular that it will use only ultra-low sulfur diesel fuel to operate "clean diesel" buses financed with Federal assistance provided for the Clean Fuels Grant Program, 49 U.S.C. 5308.

17. ELDERLY INDIVIDUALS AND INDIVIDUALS WITH DISABILITIES FORMULA PROGRAM AND PILOT PROGRAM

The State or State organization (State) that administers the Elderly Individuals and Individuals with Disabilities Formula Program and, if applicable, the Elderly Individuals and Individuals with Disabilities Pilot Program on behalf of itself and its subrecipients is required to provide the following certifications on behalf of itself and each subrecipient. Unless FTA determines otherwise in writing, the State itself is ultimately responsible for compliance with its certifications and assurances even though a subrecipient may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its prospective subrecipients, the State is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances the State has made to FTA. FTA may not award assistance for the Elderly Individuals and Individuals with Disabilities Formula Program or the Elderly Individuals and Individuals with Disabilities Pilot Program until the State provides these certifications by selecting Category "17."

A. As required by 49 U.S.C. 5310(d), which makes the requirements of 49 U.S.C. 5307 applicable to the Elderly Individuals and Individuals with Disabilities Formula Program to the extent that the Federal Transit Administrator or his or her designee determines appropriate, and 49 U.S.C. 5307(d)(1), the State or State organization serving as the Applicant (State) and that administers, on behalf of the State, the Elderly Individuals and Individuals with Disabilities Program authorized by 49 U.S.C. 5310, and, if applicable, the Elderly Individuals and Individuals with Disabilities Pilot Program authorized by subsection 3012(b) of SAFETEA-LU, 49 U.S.C. 5310 note, certifies and assures on behalf of itself and its subrecipients as follows:
   (1) In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including safety and security aspects of that program;
   (2) In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;
   (3) In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;
   (4) In compliance with 49 U.S.C. 5307(d)(1)(E), the Applicant, in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5310 or subsection 3012(b) of SAFETEA-LU: (1) will use competitive procurement (as defined or approved by the Secretary), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;

APPENDIX A

(5) In compliance with 49 U.S.C. 5307(d)(1)(G), the Applicant has or will have available and will provide the amount of funds required by 49 U.S.C. 5310(c), and if applicable by section 3012b(3) and (4), for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law; and

(6) In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with: 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil); 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements);

B. The State assures that each subrecipient either is recognized under State law as a private nonprofit organization with the legal capability to contract with the State to carry out the proposed project, or is a public body that has met the statutory requirements to receive Federal assistance authorized for49 U.S.C. 5310.

C. The private nonprofit subrecipient's application for 49 U.S.C. 5310 assistance contains information from which the State concludes that the transit service provided or offered to be provided by existing public or private transit operators is unavailable, insufficient, or inappropriate to meet the special needs of the elderly and persons with disabilities.

D. In compliance with 49 U.S.C. 5310(d)(2)(A) and section 3012(b)(2), the State certifies that, before it transfers funds to a project funded under 49 U.S.C. 5336, that project will has been or will have been coordinated with private nonprofit providers of services under 49 U.S.C. 5310;

E. In compliance with 49 U.S.C. 5310(d)(2)(C), the State certifies that allocations to subrecipients of financial assistance authorized under 49 U.S.C. 5310 or subsection 3012(b) of SAFETEA-LU will be distributed on a fair and equitable basis; and

F. In compliance with 49 U.S.C. 5310(d)(2)(B) and Subsection 3012(b)(2) of SAFETEA-LU, the State certifies that: (1) projects it has selected or will select for assistance under that program were derived from a locally developed, coordinated public transit-human services transportation plan; and (2) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and participation by the public.

18. NONURBANIZED AREA FORMULA PROGRAM

The provisions of 49 U.S.C. 5311 establishing the Nonurbanized Area Formula Program do not impose, as a pre-condition of award, any explicit certification or assurance requirements established specifically for that program. Only a State or a State organization acting as the Recipient on behalf of a State (State) may be a direct recipient of Nonurbanized Area Formula Program assistance. Separate certifications and assurances have been established for an Indian tribe that is an Applicant for Tribal Transit Program assistance authorized by 49 U.S.C. 5311(c)(1).

Before FTA may award Nonurbanized Area Formula Program assistance to a State, the U.S. Secretary of Transportation or his or her designee is required to make the pre-award

APPENDIX A

determinations required by 49 U.S.C. 5311. Because certain information is needed before the Secretary or his or her designee can make those determinations, each State is requested to provide the following assurances on behalf of itself and its subrecipients. Unless FTA determines otherwise in writing, the State itself is ultimately responsible for compliance with its certifications and assurances even though a subrecipient may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its prospective subrecipients, the State is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances the State has made to FTA. A State that fails to provide these assurances on behalf of itself and its subrecipients may be determined ineligible for a grant of Federal assistance under 49 U.S.C. 5311 if FTA lacks sufficient information from which to make those determinations required by Federal laws and regulations governing the Nonurbanized Area Formula Program authorized by 49 U.S.C. 5311. The State is thus requested to select Category "(18)."

The State or State organization serving as the Applicant and that administers, on behalf of the State (State) the Nonurbanized Area Formula Program authorized by 49 U.S.C. 5311, assures on behalf of itself and its subrecipients as follows:

A. The State has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized for 49 U.S.C. 5311; and to carry out each project, including the safety and security aspects of that project;
B. The State has or will have satisfactory continuing control over the use of project equipment and facilities;
C. The State assures that the project equipment and facilities will be adequately maintained;
D. In compliance with 49 U.S.C. 5311(b)(2)(C)(i), the State's program has provided for a fair distribution of Federal assistance authorized for 49 U.S.C. 5311 within the State, including Indian reservations within the State;
E. In compliance with 49 U.S.C. 5311(b)(2)(C)(ii), the State's program provides or will provide the maximum feasible coordination of public transportation service to receive assistance under 49 U.S.C. 5311 with transportation service assisted by other Federal sources;
F. The projects in the State's Nonurbanized Area Formula Program are included in the Statewide Transportation Improvement Program and, to the extent applicable, the projects are included in a metropolitan Transportation Improvement Program;
G. The State has or will have available and will provide the amount of funds required by 49 U.S.C. 5311(g) for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law; and
H. In compliance with 49 U.S.C. 5311(f), the State will expend not less than fifteen (15) percent of the amounts of Federal assistance authorized under 49 U.S.C. 5311 that have been provided to the State to develop and support intercity bus transportation within the State, unless the chief executive officer of the State, or his or her designee, after consultation with affected intercity bus service providers, certifies to the Federal Transit Administrator, apart from these certifications and assurances herein, that the intercity bus service needs of the State are being adequately met.

APPENDIX A

19. JOB ACCESS AND REVERSE COMMUTE FORMULA GRANT PROGRAM

Each Applicant for Job Access and Reverse Commute (JARC) Formula Grant Program assistance authorized under 49 U.S.C. 5316 is required to provide the following certifications on behalf of itself and any subrecipient that may be implementing its project. Unless FTA determines otherwise in writing, the Applicant itself is ultimately responsible for compliance with its certifications and assurances even though a subrecipient may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its prospective subrecipients, the Applicant is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances the Applicant has made to FTA. FTA may not award Federal assistance for the JARC Formula Grant Program until the Applicant provides these certifications by selecting Category "19."

A. As required by 49 U.S.C. 5316(f)(1), which makes the requirements of 49 U.S.C. 5307 applicable to Job Access and Reverse Commute (JARC) formula grants, and 49 U.S.C. 5307(d)(1), the Applicant for JARC Formula Program assistance authorized under 49 U.S.C. 5316, certifies on behalf of itself and its subrecipients, if any, as follows:
   (1) In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including safety and security aspects of that program;
   (2) In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;
   (3) In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;
   (4) In compliance with 49 U.S.C. 5307(d)(1)(D), the Applicant will ensure that elderly individuals and individuals with disabilities, or any person presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42 U.S.C. 1395 *et seq.*), will be charged for transportation during non-peak hours using or involving a facility or equipment of a project financed with Federal assistance authorized under 49 U.S.C. 5316 not more than fifty (50) percent of the peak hour fare;
   (5) In compliance with 49 U.S.C. 5307(d)(1)(E), the Applicant, in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5316: (1) will use competitive procurement (as defined or approved by the Secretary), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;
   (6) In compliance with 49 U.S.C. 5307(d)(1)(F), the Applicant has complied with or will comply with the requirements of 49 U.S.C. 5307(c). Specifically, it: (1) has made available, or will make available, to the public information on the amounts available for the JARC Formula Grant Program, 49 U.S.C. 5316, and the projects it proposes to undertake; (2) has developed or will develop, in consultation with interested parties including private transportation providers, the proposed projects to be financed; (3) has

APPENDIX A

published or will publish a list of projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed projects and submit comments on the proposed projects and the performance of the Applicant; (4) has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed projects; (5) has ensured or will ensure that the proposed projects provide for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal Government source; (6) has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final list of projects; and (7) has made or will make the final list of projects available to the public;

(7) In compliance with 49 U.S.C. 5307(d)(1)(G), the Applicant has or will have available and will provide the amount of funds required by 49 U.S.C. 5316(g) for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law;

(8) In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with: 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil); 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements); and

(9) In compliance with 49 U.S.C. 5307(d)(1)(I), the Applicant has a locally developed process to solicit and consider public comment before raising a fare or implementing a major reduction of public transportation;

B. In compliance with 49 U.S.C. 5316(d), the Applicant certifies that (1) with respect to financial assistance authorized under 49 U.S.C. 5316(c)(1)(A), it will conduct in cooperation with the appropriate MPO an areawide solicitation for applications, and make awards on a competitive basis and (2) with respect to financial assistance authorized under 49 U.S.C. 5316(c)(1)(B) or 49 U.S.C. 5316(c)(1)(C), it will conduct a statewide solicitation for applications, and make awards on a competitive basis;

C. In compliance with 49 U.S.C. 5316(f)(2), the Applicant certifies that any allocations to subrecipients of financial assistance authorized under 49 U.S.C. 5316 will be distributed on a fair and equitable basis;

D. In compliance with 49 U.S.C. 5316(g)(2), the Applicant certifies that, before it transfers funds to a project funded under 49 U.S.C. 5336, that project will has been or will have been coordinated with private nonprofit providers of services;

E In compliance with 49 U.S.C. 5316(g)(3), the Applicant certifies that: (1) the projects it has selected or will select for assistance under that program were derived from a locally developed, coordinated public transit-human services transportation plan; and (2) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and participation by the public; and

F. In compliance with 49 U.S.C. 5316(c)(3), before the Applicant uses funding apportioned under 49 U.S.C. 5316(c)(1)(B) or (C) for projects serving an area other than that specified in 49 U.S.C. 5316(2)(B) or (C), the Applicant certifies that the chief executive officer of the State, or his or her designee will have certified to the Federal Transit Administrator, apart

APPENDIX A

from these certifications herein, that all of the objectives of 49 U.S.C. 5316 are being met in the area from which such funding would be derived.

20. NEW FREEDOM PROGRAM

Each Applicant for New Freedom Program assistance authorized under 49 U.S.C. 5317 must provide the following certifications on behalf of itself and any subrecipient that may be implementing its project. Unless FTA determines otherwise in writing, the Applicant itself is ultimately responsible for compliance with its certifications and assurances even though a subrecipient may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its prospective subrecipients, the Applicant is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances the Applicant has made to FTA.. FTA may not award Federal assistance for the New Freedom Program until the Applicant provides these certifications by selecting Category "20."

A. As required by 49 U.S.C. 5317(e)(1), which makes the requirements of 49 U.S.C. 5310 applicable to New Freedom grants to the extent the Federal Transit Administrator or his or her designee determines appropriate, by 49 U.S.C. 5310(d)(1), which makes the requirements of 49 U.S.C. 5307 applicable to Elderly Individuals and Individuals with Disabilities Formula grants to the extent the Federal Transit Administrator or his or her designee determines appropriate, and by 49 U.S.C. 5307(d)(1), the Applicant for New Freedom Program assistance authorized under 49 U.S.C. 5317 certifies and assures on behalf of itself and its subrecipients, if any, as follows:
   (1) In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including safety and security aspects of that program;
   (2) In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;
   (3) In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;
   (4) In compliance with 49 U.S.C. 5307(d)(1)(E), the Applicant, in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5317: (1) will use competitive procurement (as defined or approved by the Secretary), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;
   (5) In compliance with 49 U.S.C. 5307(d)(1)(G), the Applicant has or will have available and will provide the amount of funds required by 49 U.S.C. 5317(g), and if applicable by section 3012b(3) and (4), for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law; and
   (6) In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with: 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize

APPENDIX A

transportation-related fuel consumption and reliance on foreign oil); 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements);

B. In compliance with 49 U.S.C. 5317(d), the Applicant certifies that (1) with respect to financial assistance authorized under 49 U.S.C. 5317(c)(1)(A), it will conduct in cooperation with the appropriate MPO an areawide solicitation for applications, and make awards on a competitive basis and (2) with respect to financial assistance authorized under 49 U.S.C. 5317(c)(1)(B) or 49 U.S.C. 5317(c)(1)(C), it will conduct a statewide solicitation for applications, and make awards on a competitive basis;

C. In compliance with 49 U.S.C. 5317(f)(2), the Applicant certifies that, before it transfers funds to a project funded under 49 U.S.C. 5336, that project will has been or will have been coordinated with private nonprofit providers of services;

D. In compliance with 49 U.S.C. 5317(e)(2), the Applicant certifies that any allocations to subrecipients of financial assistance authorized under 49 U.S.C. 5317 will be distributed on a fair and equitable basis; and

E. In compliance with 49 U.S.C. 5317(f)(3), the Applicant certifies that: (1) projects it has selected or will select for assistance under that program were derived from a locally developed, coordinated public transit-human services transportation plan; and (2) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and participation by the public

21. ALTERNATIVE TRANSPORTATION IN PARKS AND PUBLIC LANDS PROGRAM

Each State, tribal area, or local government authority that is an Applicant for Alternative Transportation in Parks and Public Lands Program assistance (Applicant) authorized by 49 U.S.C. 5320, is required to provide the following certifications. FTA may not award assistance for the Alternative Transportation in Parks and Public Lands Program assistance to the Applicant until the Applicant provides these certifications by selecting Category "21."

A. As required by 49 U.S.C. 5320(i), which makes the requirements of 49 U.S.C. 5307 applicable to the Alternative Transportation in Parks and Public Lands Program assistance to the extent the Federal Transit Administrator or his or her designee determines appropriate, and 49 U.S.C. 5307(d)(1), the Applicant certifies as follows:

(1) In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed project, including safety and security aspects of that project;

(2) In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;

(3) In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;

(4) In compliance with 49 U.S.C. 5307(d)(1)(E) in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5320, the Applicant: (1) will use competitive procurement (as defined or approved by the Secretary), (2) will not use

APPENDIX A

exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;

(5) In compliance with 49 U.S.C. 5307(d)(1)(F) and with 49 U.S.C.5320(e)(2)(C), the Applicant has complied with or will comply with the requirements of 49 U.S.C. 5307(c). Specifically, it: (1) has made available, or will make available, to the public information on the amounts available for the Alternative Transportation in Parks and Public Lands Program, 49 U.S.C. 5320, and the projects it proposes to undertake; (2) has developed or will develop, in consultation with interested parties including private transportation providers, projects to be financed; (3) has published or will publish a list of projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed projects and submit comments on the proposed projects and the performance of the Applicant; (4) has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed projects; (5) has ensured or will ensure that the proposed projects provide for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal Government source; (6) has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final list of projects; and (7) has made or will make the final list of projects available to the public;

(6) In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with: 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil); 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements).

(7) In compliance with 49 U.S.C. 5307(d)(1)(I), the Applicant has a locally developed process to solicit and consider public comment before raising a fare or implementing a major reduction of public transportation.

B. In compliance with 49 U.S.C.5320(e)(2)(A), (B), and (D), the Applicant assures that it will:

(1) Comply with the metropolitan planning provisions of 49 U.S.C. 5303;

(2) Comply with the statewide planning provisions of 49 U.S.C. 5304; and

(3) Consult with the appropriate Federal land management agency during the planning process.

22. INFRASTRUCTURE FINANCE PROJECTS

Each Applicant for Infrastructure Finance assistance authorized under 23 U.S.C. chapter 6, is required to provide the following certifications. FTA may not award Infrastructure Finance assistance to the Applicant until the Applicant provides these certifications by selecting Category "22."

APPENDIX A

A. As required by 49 U.S.C. 5323(o), which makes the requirements of 49 U.S.C. 5307 applicable to Applicants seeking Infrastructure Finance assistance authorized under 23 U.S.C. chapter 6, and by 49 U.S.C. 5307(d)(1), the Applicant certifies as follows:

(1) In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including safety and security aspects of that program;

(2) In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;

(3) In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;

(4) In compliance with 49 U.S.C. 5307(d)(1)(D), the Applicant will ensure that elderly individuals and individuals with disabilities, or any person presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42 U.S.C. 1395 *et seq.*), will be charged for transportation during non-peak hours using or involving a facility or equipment of a project financed with Federal assistance authorized under 23 U.S.C. chapter 6 not more than fifty (50) percent of the peak hour fare;

(5) In compliance with 49 U.S.C. 5307(d)(1)(E), the Applicant, in carrying out a procurement financed with Federal assistance authorized under 23 U.S.C. chapter 6: (1) will use competitive procurement (as defined or approved by the Secretary), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;

(6) In compliance with 49 U.S.C. 5307(d)(1)(F), the Applicant has complied with or will comply with the requirements of 49 U.S.C. 5307(c). Specifically, it: (1) has made available, or will make available, to the public information on the amounts available for Infrastructure Finance assistance, 23 U.S.C. chapter 6, and the projects it proposes to undertake; (2) has developed or will develop, in consultation with interested parties including private transportation providers, the proposed projects to be financed; (3) has published or will publish a list of projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed projects and submit comments on the proposed projects and the performance of the Applicant; (4) has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed projects; (5) has ensured or will ensure that the proposed projects provide for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal Government source; (6) has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final list of projects; and (7) has made or will make the final list of projects available to the public;

(7) In compliance with 49 U.S.C. 5307(d)(1)(G), the Applicant has or will have available and will provide the amount of funds required for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law;

(8) In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with: 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure,

APPENDIX A

and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil); 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements);

(9) In compliance with 49 U.S.C. 5307(d)(1)(I), the Applicant has a locally developed process to solicit and consider public comment before raising a fare or implementing a major reduction of public transportation;

(10) To the extent that the Applicant will be using funds authorized under 49 U.S.C. 5307 for the project, in compliance with 49 U.S.C. 5307(d)(1)(J), each fiscal year, the Applicant will spend at least one (1) percent of those funds authorized under 49 U.S.C. 5307 for public transportation security projects (this includes only capital projects in the case of a Applicant serving an urbanized area with a population of 200,000 or more), unless the Applicant has certified to FTA that such expenditures are not necessary. Public transportation security projects include increased lighting in or adjacent to a public transportation system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, emergency telephone line or lines to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of an existing or planned public transportation; and

(11) To the extent that the Applicant will be using funds authorized under 49 U.S.C. 5307 for the project, in compliance with 49 U.S.C. 5309(d)(1)(K): (1) an Applicant that serves an urbanized area with a population of at least 200,000 will expend not less than one (1) percent of the amount it receives each fiscal year under 49 U.S.C. 5307 for transit enhancements, as defined at 49 U.S.C. 5302(a), and (2) if it has received transit enhancement funds authorized by 49 U.S.C. 5307(k)(1), its quarterly report for the fourth quarter of the preceding Federal fiscal year includes a list of the projects it has implemented during that fiscal year using those funds, and that report is incorporated by reference and made part of its certifications and assurances.

B. As required by 49 U.S.C. 5323(o), which makes the requirements of 49 U.S.C. 5309 applicable to Applicants seeking Infrastructure Finance assistance authorized under 23 U.S.C. chapter 6, and by 49 U.S.C. 5309(g)(2)(B)(iii), 5309(g)(3)(B)(iii), and 5309(i)(2)(C), the Applicant certifies that it will not seek reimbursement for interest and other financing costs incurred in connection with the Project unless it is eligible to receive Federal assistance for those expenses and its records demonstrate that it has used reasonable diligence in seeking the most favorable financing terms underlying those costs, to the extent FTA may require.

23. DEPOSITS OF FEDERAL FINANCIAL ASSISTANCE TO STATE INFRASTRUCTURE BANKS

The State organization that administers the State Infrastructure Bank (SIB) Program on behalf of a State (State) and that is also an Applicant for Federal assistance authorized under 49 U.S.C. chapter 53 that it intends to deposit in its SIB is requested to provide the following assurances on behalf of itself, its SIB, and each subrecipient. Unless FTA determines otherwise in writing, the

APPENDIX A

State itself is ultimately responsible for compliance with its certifications and assurances even though the SIB and a subrecipient may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its SIB and prospective subrecipients, the State is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from the SIB and each subrecipient, to assure the validity of all certifications and assurances the State has made to FTA.. FTA may not award assistance for the SIB Program to the State until the State provides these assurances by selecting Category "23."

The State organization, serving as the Applicant (State) for Federal assistance for its State Infrastructure Bank (SIB) Program authorized by section 1602 of SAFETEA-LU, now codified at 23 U.S.C. 610, or by section 1511 of TEA-21, 23 U.S.C. 181 note, or by section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 181 note, agrees and assures the agreement of its SIB and the agreement of each recipient of Federal assistance derived from the SIB within the State (subrecipient) that each public transportation project financed with Federal assistance derived from SIB will be administered in accordance with:

A. Applicable provisions of section 1602 of SAFETEA-LU, now codified at 23 U.S.C. 610, or by section 1511 of TEA-21, 23 U.S.C. 181 note, or by section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 181;
B. The provisions of the FHWA, FRA, and FTA or the FHWA and FTA cooperative agreement with the State to establish the State's SIB Program; and
C. The provisions of the FTA grant agreement with the State that provides Federal assistance for the SIB, except that any provision of the Federal Transit Administration Master Agreement incorporated by reference into that grant agreement will not apply if it conflicts with any provision of section 1602 of SAFETEA-LU, now codified at 23 U.S.C. 610, or section 1511 of TEA-21, 23 U.S.C. 181 note, or section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 181 note, or Federal guidance pertaining to the SIB Program, the provisions of the cooperative agreement establishing the SIB Program within the State, or the provisions of the FTA grant agreement.
D. The requirements applicable to projects of 49 U.S.C. 5307 and 5309, as required by 49 U.S.C. 5323(o); and
E. The provisions of any applicable Federal guidance that may be issued as it may be amended from time-to-time, unless FTA has provided written approval of an alternative procedure or course of action.

##

Selection and Signature Page(s) follow.

APPENDIX A

FEDERAL FISCAL YEAR 2007 CERTIFICATIONS AND ASSURANCES FOR FEDERAL TRANSIT ADMINISTRATION ASSISTANCE PROGRAMS

(Signature page alternative to providing Certifications and Assurances in TEAM-Web)

Name of Applicant: _____

The Applicant agrees to comply with applicable provisions of Categories 01 – 23. _____

OR

The Applicant agrees to comply with the applicable provisions of the following Categories it has selected:

Category	Description	
01.	For Each Applicant.	_____
02.	Lobbying.	_____
03.	Procurement Compliance.	_____
04.	Private Providers of Public Transportation.	_____
05.	Public Hearing.	_____
06.	Acquisition of Rolling Stock.	_____
07.	Acquisition of Capital Assets by Lease.	_____
08.	Bus Testing.	_____
09.	Charter Service Agreement.	_____
10.	School Transportation Agreement.	_____
11.	Demand Responsive Service.	_____
12.	Alcohol Misuse and Prohibited Drug Use.	_____
13.	Interest and Other Financing Costs.	_____
14.	Intelligent Transportation Systems.	_____
15.	Urbanized Area Formula Program.	_____
16.	Clean Fuels Grant Program.	_____
17.	Elderly Individuals and Individuals with Disabilities Formula Program and Pilot Program.	_____
18.	Nonurbanized Area Formula Program.	_____
19.	Job Access and Reverse Commute Program.	_____
20.	New Freedom Program.	_____
21.	Alternative Transportation in Parks and Public Lands Program.	_____
22.	Infrastructure Finance Projects.	_____
23.	Deposits of Federal Financial Assistance to a State Infrastructure Banks.	_____

APPENDIX A

FEDERAL FISCAL YEAR 2007 FTA CERTIFICATIONS AND ASSURANCES SIGNATURE PAGE

(Required of all Applicants for FTA assistance and all FTA Grantees with an active capital or formula project)

AFFIRMATION OF APPLICANT

Name of Applicant: _____

Name and Relationship of Authorized Representative: _____

BY SIGNING BELOW, on behalf of the Applicant, I declare that the Applicant has duly authorized me to make these certifications and assurances and bind the Applicant's compliance. Thus, the Applicant agrees to comply with all Federal statutes, regulations, executive orders, and directives applicable to each application it makes to the Federal Transit Administration (FTA) in Federal Fiscal Year 2007.

FTA intends that the certifications and assurances the Applicant selects on the other side of this document, as representative of the certifications and assurances in this document, should apply, as provided, to each project for which the Applicant seeks now, or may later, seek FTA assistance during Federal Fiscal Year 2007.

The Applicant affirms the truthfulness and accuracy of the certifications and assurances it has made in the statements submitted herein with this document and any other submission made to FTA, and acknowledges that the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 *et seq.*, and implementing U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31 apply to any certification, assurance or submission made to FTA. The criminal fraud provisions of 18 U.S.C. 1001 apply to any certification, assurance, or submission made in connection with a Federal public transportation program authorized in 49 U.S.C. chapter 53 or any other statute

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant are true and correct.

Signature_____ Date: _____

Name_____
Authorized Representative of Applicant

AFFIRMATION OF APPLICANT'S ATTORNEY

For (Name of Applicant): _____

As the undersigned Attorney for the above named Applicant, I hereby affirm to the Applicant that it has authority under State and local law to make and comply with the certifications and assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the certifications and assurances have been legally made and constitute legal and binding obligations on the Applicant.

I further affirm to the Applicant that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the validity of these certifications and assurances, or of the performance of the project.

Signature_____ Date: _____

Name_____
Attorney for Applicant

Each Applicant for FTA financial assistance and each FTA Grantee with an active capital or formula project must provide an Affirmation of Applicant's Attorney pertaining to the Applicant's legal capacity. The Applicant may enter its signature in lieu of the Attorney's signature, provided the Applicant has on file this Affirmation, signed by the attorney and dated this Federal fiscal year.

[FR Doc. 06–9103 Filed 11–6–06; 8:45 am]
BILLING CODE 4910–57–C

Federal Register

Tuesday,
November 7, 2006

Part VI

The President

Proclamation 8081—World Freedom Day, 2006

Federal Register
Vol. 71, No. 215
Tuesday, November 7, 2006

Presidential Documents

Title 3—

The President

Proclamation 8081 of November 2, 2006

World Freedom Day, 2006

By the President of the United States of America

A Proclamation

On November 9, 1989, the Berlin Wall was torn down by the desire of a people to be free. On World Freedom Day, we commemorate this historic event and reflect on liberty's power to change lives and raise societies.

After decades of oppression, the fall of the Berlin Wall brought the light of liberty to the people of East Berlin, and the events that followed set the course for a new era of freedom in Germany and in much of Central and Eastern Europe. Today, we again face an ideological struggle with the enemies of freedom, democracy, and moderation. In this struggle, America will continue to stand with those who seek to build societies where people live in freedom and at peace with each other and the world.

The collapse of the Berlin Wall demonstrated that when liberty flourishes, nations become more tolerant, hopeful, and secure. On World Freedom Day, we celebrate the power of freedom and democracy. We are also reminded that free countries have the responsibility to work together to protect the fundamental rights of all people and help others realize the blessings of liberty.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 9, 2006, as World Freedom Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities, reaffirming our dedication to freedom and democracy.

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

[FR Doc. 06–9132
Filed 11–6–06; 8:45 am]
Billing code 3195–01–P

Reader Aids

Federal Register

Vol. 71, No. 215

Tuesday, November 7, 2006

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives. gov/federal__register**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, NOVEMBER

64111–64438 1
64439–64630 2
64631–64880 3
64881–65034 6
65035–65364 7

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
8074 64613
8075 64615
8076 64617
8077 64619
8078 64621
8079 64623
8080 64627
8081 65363

Executive Orders:
13067 (See Notice of November 1, 2006) 64629
13400 (See Notice of November 1, 2006) 64629
13412 (See Notice of November 1, 2006) 64629

Administrative Orders:
Notices:
Notice of November 1, 2006 64629
Presidential Determinations:
No. 2006-25 64431
No. 2006-26 of September 29, 2006 65035
No. 2007-1 64435
No. 2007-2 64437

7 CFR

958 65037
1210 64439
1290 64631

Proposed Rules:
51 64478
301 64767

9 CFR

Proposed Rules:
55 64650
81 64650

10 CFR

Proposed Rules:
35 64168
51 64169

14 CFR

39 ..... 64441, 64881, 64884, 65041, 65043, 65045, 65047
71 64887
93 64111

Proposed Rules:
25 64478
39 ..... 64482, 64484, 64651, 64653, 64904, 65062

17 CFR

140 64443

Proposed Rules:
170 64171

18 CFR

292 64342
366 ..... 65049, 65200
367 65200
368 65200
369 65200
375 65200
385 65049

Proposed Rules:
38 64655
40 64770
284 64655

21 CFR

520 65052
522 ..... 64451, 65052
558 65053

22 CFR

97 64451

23 CFR

Proposed Rules:
630 64173

24 CFR

291 ..... 64422, 65322

25 CFR

Proposed Rules:
15 64181
18 64181
150 64181
152 64181
179 64181

26 CFR

1 64458
301 64458

Proposed Rules:
1 64488
20 64488
25 64488
31 64488
53 64488
54 64488
56 64488
301 ..... 64496, 54501

28 CFR

Proposed Rules:
524 64504
545 64505
550 64507

32 CFR

58 64631
312 64631
318 64632

323 64633

33 CFR

117 ....64113, 64888
165 ....64114, 64116, 64634
Proposed Rules:
165 64662

34 CFR

668 ....64378, 64402
673 64378
682 64378
685 64378
690 64402
691 64402

37 CFR

1 64636
201 64639

39 CFR

3 64647
111 ....64118, 64121

40 CFR

52 ....64125, 64460, 64465, 64468, 64470, 64647, 64888, 64891
81 64891
174 64128
Proposed Rules:
52 ....64182, 64668, 64906
60 65302
63 64907
81 64906
82 64668

43 CFR

Proposed Rules:
4 64181
30 64181

44 CFR

67 ....64132, 64141, 64148
Proposed Rules:
67 ....64183, 64208, 64211, 64674

45 CFR

1624 65053
Proposed Rules:
1621 65064

47 CFR

73 ....64150, 64152, 64153, 64154
76 64154
Proposed Rules:
27 64917

49 CFR

571 64473

50 CFR

622 65061
635 64165
648 64903
665 64474
Proposed Rules:
17 65064
635 64123
648 64214
660 64216
679 64218

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT NOVEMBER 7, 2006

FEDERAL TRADE COMMISSION

Appliances, consumer; energy consumption and water use information in labeling and advertising:

Comparability ranges—

Water heaters, room air conditioners, furnaces, boilers and pool heaters; published 8-9-06

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:

Bambermycins; published 11-7-06

Ivermectin, etc.; published 11-7-06

Lincomycin; published 11-7-06

SECURITIES AND EXCHANGE COMMISSION

Securities, etc:

Executive and director compensation, etc.; disclosure requirements; published 9-8-06

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Milk marketing orders:

Appalachian and Southeast; comments due by 11-13-06; published 9-13-06 [FR 06-07497]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Interstate transportation of animals and animal products (quarantine):

Brucellosis in cattle—

State and area classifications; comments due by 11-14-06; published 9-15-06 [FR E6-15327]

Plant-related quarantine, domestic:

Gypsy moth; comments due by 11-13-06; published 9-12-06 [FR E6-15059]

Mediterranean fruit fly; comments due by 11-13-06; published 9-13-06 [FR E6-15213]

AGRICULTURE DEPARTMENT

Forest Service

Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):

Federal Subsistence Regional Advisory Councils; membership qualifications; comments due by 11-13-06; published 10-12-06 [FR 06-08594]

AGRICULTURE DEPARTMENT

Rural Utilities Service

Seismic safety; comments due by 11-15-06; published 10-16-06 [FR E6-17065]

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Americans with Disabilities Act; implementation:

Accessibility guidelines—

Passenger vessels; comments due by 11-13-06; published 9-12-06 [FR E6-15062]

COMMERCE DEPARTMENT

Economic Analysis Bureau

International services survey:

BE-120; transactions in selected services; intangible assets with foreign persons; comments due by 11-14-06; published 9-15-06 [FR E6-15304]

COMMERCE DEPARTMENT

Foreign-Trade Zones Board

Applications, hearings, determinations, etc.:

Georgia

Eastman Kodak Co.; x-ray film, color paper, digital media, inkjet paper, entertainment imaging, and health imaging; Open for comments until further notice; published 7-25-06 [FR E6-11873]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Atlantic highly migratory species—

Commercial shark management measures; comments due by 11-13-06; published 11-1-06 [FR 06-09008]

Northeastern United States fisheries—

Atlantic herring; comments due by 11-13-06; published 9-27-06 [FR 06-08263]

Atlantic herring; correction; comments due by 11-13-06; published 10-17-06 [FR E6-17239]

Summer flounder, scup, and black sea bass; comments due by 11-17-06; published 10-27-06 [FR 06-08932]

International fisheries regulations:

West Coast States and Western Pacific fisheries—

Fraser River sockeye salmon; comments due by 11-15-06; published 10-31-06 [FR E6-18292]

COMMODITY FUTURES TRADING COMMISSION

Commodity pool operators and commodity trading advisers:

Electronic filing and notices of exemption and exclusion; comments due by 11-13-06; published 10-13-06 [FR E6-16947]

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Lobbying restrictions; changes; comments due by 11-13-06; published 9-14-06 [FR 06-07604]

EDUCATION DEPARTMENT

Vocational and adult education:

National Reporting System for Adult Education; measuring educational gain; comments due by 11-17-06; published 10-18-06 [FR 06-08709]

ENVIRONMENTAL PROTECTION AGENCY

Air programs:

Fuel and fuel additives—

Renewable Fuel Standard Program; comments due by 11-12-06; published 9-22-06 [FR 06-07887]

Air quality implementation plans:

Preparation, adoption, and submittal—

Prevention of significant deterioration and nonattainment new source review; debottlenecking, aggregation, and project netting; comments due by 11-13-06; published 9-14-06 [FR E6-15248]

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

Maine; comments due by 11-16-06; published 10-17-06 [FR E6-17226]

Air quality implementation plans; approval and promulgation; various States:

Alabama; comments due by 11-13-06; published 10-11-06 [FR E6-16812]

Arizona; comments due by 11-16-06; published 10-17-06 [FR E6-17233]

New York; comments due by 11-13-06; published 10-12-06 [FR E6-16931]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Difenoconazole; comments due by 11-13-06; published 9-13-06 [FR E6-15090]

Endosulfan, etc.; comments due by 11-14-06; published 9-15-06 [FR E6-15258]

Epoxiconazole; comments due by 11-13-06; published 9-13-06 [FR E6-14994]

Eucalyptus oil; comments due by 11-13-06; published 9-13-06 [FR E6-14995]

FEDERAL COMMUNICATIONS COMMISSION

Radio services, special:

Maritime communications; Automatic Identification Systems; channels designation for exclusive use, etc.; comments due by 11-13-06; published 10-12-06 [FR E6-16832]

Radio services; special:

Private land mobile services—

Upper 700 MHz guard band licenses; operational, technical, and spectrum requirements; comments due by 11-13-06; published 11-6-06 [FR 06-09102]

FEDERAL HOUSING FINANCE BOARD

Privacy Act; implementation; comments due by 11-16-06;

published 10-17-06 [FR E6-17298]

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):
Lobbying restrictions; changes; comments due by 11-13-06; published 9-14-06 [FR 06-07604]

Federal Management Regulation:
Personal property disposition; comments due by 11-17-06; published 10-18-06 [FR E6-17340]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:
New York; comments due by 11-18-06; published 8-1-06 [FR E6-12278]
Pennsylvania; comments due by 11-13-06; published 9-11-06 [FR E6-14983]

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
Great Lakes; Coast Guard water training areas; comments due by 11-13-06; published 8-1-06 [FR E6-12332]

INTERIOR DEPARTMENT

Indian Affairs Bureau

Land and water:
Irrigation operation and maintenance; comments due by 11-14-06; published 7-17-06 [FR E6-11293]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Federal Subsistence Regional Advisory Councils; membership qualifications; comments due by 11-13-06; published 10-12-06 [FR 06-08594]

Endangered and threatened species:
Critical habitat designations—
Marbled murrelet; comments due by 11-13-06; published 9-12-06 [FR 06-07437]
Slickspot peppergrass; comments due by 11-13-06; published 10-23-06 [FR 06-08833]

LABOR DEPARTMENT

Employee Benefits Security Administration

Employee Retirement Income Security Act:
Participant directed individual account plans; default investment alternatives; comments due by 11-13-06; published 9-27-06 [FR 06-08282]

LABOR DEPARTMENT

Occupational Safety and Health Administration

Occupational safety and health standards:
Hazard communication; comments due by 11-13-06; published 9-12-06 [FR 06-07584]

Shipyard employment safety and health standards:
Fire protection; comments due by 11-16-06; published 10-17-06 [FR E6-17125]

LIBRARY OF CONGRESS

Copyright Royalty Board, Library of Congress

Agency organization, administration, and procedural regulations; Title 37 CFR Chapter III; establishment; comments due by 11-13-06; published 9-11-06 [FR E6-14893]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):
Lobbying restrictions; changes; comments due by 11-13-06; published 9-14-06 [FR 06-07604]

INTERIOR DEPARTMENT

National Indian Gaming Commission

Indian Gaming Regulatory Act:
Electronic or electromechanical facsimile of games and electronic, computer, or other technologic aids to Class II games; definitions; comments due by 11-15-06; published 9-29-06 [FR E6-15992]

NUCLEAR REGULATORY COMMISSION

Nuclear power plants; licenses, certifications, and approvals; comments due by 11-16-06; published 10-17-06 [FR 06-08656]

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:
Approved spent fuel storage casks; list; comments due by 11-15-06; published 10-16-06 [FR E6-17079]

POSTAL SERVICE

Domestic Mail Manual:
Domestic mailing services; new standards; comments due by 11-13-06; published 9-27-06 [FR 06-07751]

SECURITIES AND EXCHANGE COMMISSION

Securities:
Broker-dealers; net capital rule, debt agreements and financial responsibility; comments due by 11-13-06; published 10-13-06 [FR E6-16956]

SOCIAL SECURITY ADMINISTRATION

Organization and procedures:
Official records and information; privacy and disclosure; comments due by 11-13-06; published 9-13-06 [FR E6-15101]

STATE DEPARTMENT

Intercountry Adoption Act of 2000:
Hague Convention—
Emigrating children; convention and non-convention adoptions; reporting requirements; comments due by 11-13-06; published 9-13-06 [FR 06-07526]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Airbus; comments due by 11-13-06; published 10-12-06 [FR E6-16880]
Boeing; comments due by 11-13-06; published 9-12-06 [FR E6-14618]
Bombardier; comments due by 11-13-06; published 10-12-06 [FR E6-16881]
Eurocopter; comments due by 11-13-06; published 9-12-06 [FR 06-07560]
Fokker; comments due by 11-13-06; published 10-12-06 [FR E6-16894]
Pratt & Whitney Canada; comments due by 11-13-06; published 9-14-06 [FR E6-15139]
Sikorsky; comments due by 11-14-06; published 9-15-06 [FR E6-15331]

Airworthiness standards:
Special conditions—
Boeing Model 777 series airplane; comments due by 11-13-06; published 11-2-06 [FR 06-09025]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:
Electronic stability control systems; comments due by 11-17-06; published 9-18-06 [FR 06-07598]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:
Foreign corporations; interest expense deduction determination; comments due by 11-15-06; published 8-17-06 [FR E6-13409]

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/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. 6061/P.L. 109–367

Secure Fence Act of 2006 (Oct. 26, 2006; 120 Stat. 2638)

Last List October 19, 2006

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

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.