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

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

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3550

RIN 0575–AC54

Direct Single Family Housing Loans and Grants

AGENCY: Rural Housing Service, USDA.

ACTION: Direct final rule.

SUMMARY: Through this action, the Rural Housing Service (RHS) is revising and clarifying the definition for an existing dwelling and a new dwelling or unit, removing specific dollar limits with regards to insurance deductible clauses, and establishing the amount of insurance required to conform to industry standards. These changes are being made to make more clear what constitutes an existing and a new dwelling, and to conform insurance coverage requirements to industry standards. The intended effect is to improve the delivery and implementation of the Direct Single Family Housing programs.

DATES: This rule is effective April 25, 2005, unless we receive written adverse comments or written notices of intent to submit adverse comments on or before April 11, 2005.

ADDRESSES: You may submit comments to this rule by any of the following methods:

- Agency Web site: *http://rdinit.usda.gov/regs/.* Follow the instructions for submitting comments on the Web site.
- E-Mail: *comments@usda.gov.* Include the RIN number (0575–AC54) in the subject line of the message.
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250–0742.
- Hand Delivery/Courier: Submit written comments via Federal Express Mail or another mail courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW., Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at the 300 7th Street, SW., address listed above.

FOR FURTHER INFORMATION CONTACT: Janet L. Carter, Senior Loan Specialist, Rural Housing Service, Stop 0783; 1400 Independence Avenue, SW., Washington, DC 20250–0783; Telephone: 202–720–1489; Fax: 202–690–3555; e-mail: *Janet.Carter@usda.gov.*

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Paperwork Reduction Act of 1995

The information collection requirements contained in this regulation have been approved by OMB under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0575–0172, in accordance with the Paperwork Reduction Act (PRA) of 1995. This rule does not impose any new or modified information collection requirements.

GPEA Statement

RHS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies, in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with the regulations of the National Appeals Division of USDA in 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule, unless those regulations specifically allow bringing suit at an earlier time.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 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, 2 U.S.C. 1532, RHS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires RHS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal Governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Programs Affected

The programs affected by this final rule are 10.410 Very Low to Moderate Income Housing Loans and 10.417 Very Low-Income Housing Repair Loans and Grants.

Intergovernmental Consultation

For the reasons set forth in the final rule related Notice to 7 CFR part 3015, subpart V, these programs are not subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' It is the determination of RHS that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and

in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program.

Background

It is the policy of RHS to publish rules determined to be non-controversial and unlikely to result in adverse comments as direct final rules. RHS Policy for direct final rules was published on March 27, 2003 at 68 FR 14889. No adverse comments are anticipated on the changes in this rule. Adverse comments suggest that the rule should not be adopted or that a change should be made to the rule. Unless any adverse comments are received within 60 days of publication, this rule will be effective 75 days from the date of publication.

Definition of Existing Dwelling

According to 7 CFR 3550.10, an existing dwelling is currently defined as a dwelling that is more than 1 year old, or less than 1 year old and covered by an approved 10-year warranty plan. 7 CFR 3550.10 further defines a new dwelling as a dwelling that is to be constructed, or an already-existing dwelling that is less than 1 year old and is not covered by an approved 10-year warranty plan. This gives the impression that the major difference between a new and existing dwelling is coverage by a 10-year warranty plan. This has been a cause for much confusion with field staff, applicants, contractors, and Realtors. The 10-year warranty allows the Agency to provide full financing on homes that are less than 1 year old when there is not other means of adequate and verifiable documentation of construction quality of new dwellings. This change will simplify the definitions of new and existing homes but does not otherwise change any policy on how new and existing homes are financed. The only anticipated impact of this change is clarity on what constitutes a new or existing dwelling for the purposes of financial assistance through the Direct Single Family Housing programs. No change will result from this revision regarding the applicability or value of a 10-year warranty.

Insurance Deductible Clauses

According to 7 CFR 3550.61(b) and 7 CFR 3550.110(b) essential buildings must be insured in an amount at least equal to the balance of the secured debts. Many companies are reluctant to issue policies when the coverage is well in excess of the replacement value of the home. This is a particular problem in areas of high land costs and makes it extremely difficult for borrowers/homeowners to secure affordable insurance coverage. In addition, according to 7 CFR 3550.61(d) and 7 CFR 3550.110(d) loss deductible clauses may not exceed $250 or 1 percent of the insurance coverage, whichever is greater. The deductible for any 1 building may not exceed $750. The cost of housing has risen dramatically and so has the cost of insurance. Some companies are reluctant to provide coverage with deductible clauses with a low dollar threshold. This makes it very difficult for new homeowners to secure affordable insurance coverage.

The change in this requirement conforms with industry standards and will adequately protect both the borrower's and the government's interest. With this change, the borrower will be asked to insure their house in an amount that is the lesser of 100% of the insurable value (*i.e.* the cost to restore the property back to its state prior to a loss) of the house or the unpaid principal balance. The loss deductible clause requirement will be based on the higher of 1% of the face value of the policy or $1,000 unless state law requires a higher maximum deductible amount. This change will make it easier for applicants to secure affordable insurance coverage.

List of Subjects in 7 CFR Part 3550

Administrative practice and procedure, Conflict of interests, Environmental impact statements, Equal credit opportunity, Fair housing, Accounting, Grant programs—Housing and community development, Housing, Loan programs—Housing and community development, Low and moderate income housing, Manufactured homes, Reporting and recordkeeping requirements, Rural areas, Subsidies.

■ For the reasons stated in the preamble, chapter XXXV, Title 7 of the Code of Federal Regulations, is amended as follows:

PART 3550—DIRECT SINGLE FAMILY HOUSING LOANS AND GRANTS

■ 1. The authority citation for part 3550 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1480.

Subpart A—General

Section 3550.10 is amended by revising definitions for ''existing dwelling or unit'' and ''new dwelling'' to read as follows:

§ 3550.10 Definitions.

* * * * *

Existing dwelling or unit. A dwelling or unit that has either been previously owner-occupied or has been completed for more than 1 year as evidenced by an occupancy permit, certificate of occupancy or similar document issued by the local authority.

* * * * *

New dwelling or unit. A dwelling that is to be constructed, or a dwelling that is less than 1 year old as evidenced by an occupancy permit, certificate of occupancy or similar document issued by the local authority and has never been occupied.

* * * * *

Subpart B—Section 502 Origination

■ 2. Section 3550.61 is amended by revising paragraphs (b) and (d)(1) to read as follows:

§ 3550.61 Insurance.

* * * * *

(b) *Amount.* The dwelling and any other essential buildings must be insured in an amount that is the lesser of 100% of the insurable value (*i.e.* the cost to restore the property back to its state prior to a loss) of the house or the unpaid principal balance.

* * * * *

(d) * * *

(1) Loss deductible clauses for required insurance coverage may not exceed the higher of 1% of the face value of the policy or $1,000 unless state law requires a higher maximum deductible amount.

* * * * *

Subpart C—Section 504 Origination and Section 306C Water and Waste Disposal Grants

■ 3. Section 3550.110 is amended by revising paragraphs (b) and (d)(1) to read as follows:

§ 3550.110 Insurance (loans only).

* * * * *

(b) *Amount.* The dwelling and any other essential buildings must be insured in an amount that is the lesser of 100% of the insurable value of the house or the unpaid principal balance.

* * * * *

(d) * * *

(1) Loss deductible clauses for required insurance coverage may not exceed the higher of 1% of the face value of the policy or $1,000 unless state law requires a higher maximum deductible amount.

* * * * *

Dated: December 27, 2004.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. 05–2429 Filed 2–7–05; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 53 and 71

[Docket No. 02–091–2]

Spring Viremia of Carp; Payment of Indemnity

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the general indemnity regulations to provide for the payment of indemnity to owners for fish destroyed because of spring viremia of carp. We also amended the interstate movement regulations to prevent the movement of fish infected with or exposed to spring viremia of carp. These actions were necessary to help control and eradicate this disease in the United States.

DATES: *Effective Date:* The interim rule became effective on May 12, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Jill Rolland, Fishery Biologist, Certification and Control Team, VS, APHIS, 4700 River Road Unit 46, Riverdale, MD 20737–1231; (301) 734–7727.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective May 12, 2004, and published in the **Federal Register** on May 17, 2004 (69 FR 27823–27827, Docket No. 02–091–1), we amended the general indemnity regulations contained in 9 CFR part 53 to provide for the payment of indemnity to owners for fish destroyed because of spring viremia of carp (SVC). We also amended the interstate movement regulations to prevent the movement of fish infected with or exposed to SVC. These actions were necessary to help control and eradicate this disease in the United States.

Comments on the interim rule were required to be received on or before July 16, 2004. We received one comment by that date, from a private citizen. This commenter raised several issues related to the interim rule. These issues are discussed below.

The commenter objected to payment of indemnity to eligible owners on the grounds that such payment is contrary to the public interest and will only reward poor practice among aquaculturists. We believe that payment of indemnity is necessary to provide an incentive for aquaculturists to participate in the surveillance and eradication program and thus to ensure the success of the program. We are making no changes to the rule in response to this comment.

The commenter stated that since fish destroyed as a result of infection or exposure to SVC may be sold for rendering or salvage value, the payment received for such sales should be all the recompense aquaculturists receive. We note that not all fish destroyed because of SVC may be sold for rendering or salvage value, such as ornamental fish infected with SVC. The regulations provide that any salvage value collected for fish destroyed because of SVC will be subtracted from the amount of any indemnity payment a producer may receive.

The commenter stated that the United States Department of Agriculture should neither support aquaculture nor extend payment of indemnity to aquaculturists because fish are not livestock. We point out that the National Aquaculture Act of 1980, as amended by the National Aquaculture Improvement Act of 1985 (16 U.S.C. 2801–2810), requires the Secretary to support and develop aquaculture programs. Furthermore, the Animal Health Protection Act (7 U.S.C. 8301–8317), from which the Animal and Plant Health Inspection Service (APHIS) derives its authority to regulate matters associated with animal health, defines livestock as ''all farm-raised animals.'' We interpret this to mean aquatic as well as terrestrial animals. We are making no changes to the rule in response to this comment.

The commenter further stated that the importation of carp should be prohibited and carp should be banned in the United States. We believe such measures to be unwarranted. We are making no changes to the rule in response to this comment.

The commenter noted that since the disease survives in mud and water, eradication would be impossible or at least expensive. We note that there are two treatments available to control the survival of the virus in mud and water. Depending on the size of the pond, it may simply be allowed to dry out, or it may be treated with slaked lime, which raises the pH of the pond, penetrates the mud, and renders the virus inactive. Neither of these treatments is difficult or excessively expensive. We are making no changes to the rule in response to this comment.

The commenter also objected to the practice of aquaculture on the grounds that it represents an environmental threat. We note that APHIS's mission is to protect plant and animal health, not to dictate the means by which plants and animals are raised, unless those means pose a risk to plant or animal health. We do not believe that aquaculture in itself poses an inherent risk to the health of fish so raised. We are making no changes to the rule in response to this comment.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, this action has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

List of Subjects

9 CFR Part 53

Animal diseases, Indemnity payments, Livestock, Poultry and poultry products.

9 CFR Part 71

Animal disease, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 53—FOOT-AND-MOUTH DISEASE, PLEUROPNEUMONIA, RINDERPEST, AND CERTAIN OTHER COMMUNICABLE DISEASES OF LIVESTOCK OR POULTRY

PART 71—GENERAL PROVISIONS

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR parts 53 and 71 and that was published at 69 FR 27823–27827 on May 17, 2004.

Done in Washington, DC, this 2nd day of February 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–2323 Filed 2–7–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 327

[Docket No. 99–018F]

Addition of Slovakia to the List of Countries Eligible To Export Meat Products to the United States

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is adding Slovakia to the list of countries eligible to export meat products to the United States. Reviews of Slovakia's laws, regulations, and other written materials show that its meat processing system meets requirements that are equivalent to the relevant provisions of the Federal Meat Inspection Act (FMIA) and its implementing regulations.

Meat products processed in certified establishments in Slovakia will be eligible to be exported to the United States only if these products are derived from cattle, sheep, swine, or goats slaughtered in federally inspected establishments in the United States, or in certified slaughter establishments in other countries eligible to export meat to the United States. All meat products exported from Slovakia to the United States will be subject to reinspection at the U.S. ports-of-entry by FSIS inspectors as required by law.

EFFECTIVE DATE: April 11, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Sally White, Director, International Equivalence Staff, Office of International Affairs; (202) 720–6400.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 2001, FSIS published a proposal in the **Federal Register** (66 FR 42472) to add Slovakia to the list of countries eligible to export meat and meat products to the United States. As discussed in that proposed rulemaking, in 1993, the country formerly known as Czechoslovakia split into two separate countries, the Czech Republic and Slovakia. Although Czechoslovakia had been listed as eligible to export meat and meat products to the United States since 1972, the part of the country that became Slovakia had never had any establishments certified to export meat or meat products to the United States. Thus, FSIS did not have sufficient information about Slovakia's meat inspection system to determine whether it was equivalent to the U.S. system. Therefore, the Agency required that Slovakia request and receive approval from FSIS before it could be deemed eligible to export meat and meat products to the United States.

In the proposed rule, FSIS reported that Slovakia had met the certification requirements imposed in the United States' meat inspection regulations, that its meat processing inspection system is equivalent to that of the United States, and that its official residue control laboratory is fully capable of testing meat food products. Therefore, FSIS proposed to permit Slovakia to export processed meat products to the United States.

Because only one pork processing establishment in Slovakia had requested certification to export meat products to the United States, Slovakia requested that FSIS evaluate and approve only its meat processing inspection system. Thus, FSIS' equivalence evaluation of Slovakia's meat inspection system did not include a review of the slaughter inspection component. As a result, the carcasses or parts of any cattle, sheep, swine, or goats processed in establishments in Slovakia approved to export to the United States must be derived from animals slaughtered in the United States under USDA inspection or in establishments in other countries that are certified as eligible to export to the United States. The government of Slovakia has agreed to conduct its program in a way that ensures that meat products processed in Slovakia are only prepared from cattle, sheep, swine, or goats that were slaughtered in certified establishments in eligible countries. If FSIS were to evaluate Slovakia's slaughter inspection system and determine that it is equivalent to that of the United States, the Agency would conduct a separate rulemaking.

Therefore, when this rule becomes effective, meat products processed in certified establishments in Slovakia will be eligible for exportation to the United States only if these products are derived from cattle, sheep, swine, or goats slaughtered in federally inspected establishments in the United States, or in certified slaughter establishments in other countries eligible to export meat to the United States.

Comments

FSIS received 36 comments on the proposed rule. Most were from private citizens and individual members of a women's agricultural organization, a few were from small cattle producers, and one was from a national cattle producer trade association. All commenters opposed adding Slovakia to the list of countries eligible to export meat and meat products into the United States.

Comment: Most of the commenters opposed the proposed rule because, at the time that the rule was published, Slovakia was listed in USDA's Animal and Plant Health Inspection Service (APHIS) regulations as a region that presents an undue risk of introducing bovine spongiform encephalopathy (BSE) into the United States (9 CFR 94.18(a)(2)). After publication of the proposed rule, APHIS amended its regulations to add Slovakia to the list of countries in which BSE is known to exist (9 CFR 94.18(a)(1)). The commenters stated that, because of Slovakia's BSE status, it should remain ineligible to export meat and meat products to the United States under FSIS' regulations.

One commenter opposed permitting Slovakia to export meat and meat products to the United States because Slovakia is not listed by APHIS as a region that is free from foot and mouth disease (FMD)(9 CFR 94.1). The commenter stated that if Slovakia were listed as eligible to export meat and meat products to the United States, there is a risk that these products could introduce FMD to the United States.

Response: FSIS considered both BSE and FMD risk in its evaluation process for meat products currently proposed for importation into the United States from Slovakia.[1] Although Slovakia would be listed in FSIS' regulations as eligible to export meat products to the United States, FSIS' regulations that list countries eligible to export products of cattle, sheep, swine, and goats to the United States do not authorize the entry of products that are ineligible for importation into the United States because they are from countries in which certain contagious and communicable diseases, such as FMD, exist as provided in 9 CFR part 94 (*see* 9 CFR 327.2(b)). Meat products must comply with all U.S. requirements prior to entry. Before a shipment of meat or meat products may be presented for re-inspection at the port-of entry by FSIS,

[1] Currently, the one establishment that would be certified to export meat food products from Slovakia to the United States intends to export only pork products.

it must have first met the requirements of both the U.S. Customs Service and APHIS.

APHIS is responsible for keeping animal diseases, such as BSE and FMD, out of the country. Under Title 9, part 94 of its regulations (9 CFR 94), APHIS sets forth restrictions on the importation of any fresh, frozen, and chilled meat, meat products, and certain other edible products from countries in which certain animal diseases exist. Those products that APHIS has restricted from entering the United States because of animal disease conditions in the country of origin will be refused entry before reaching an FSIS import inspection facility.

FSIS and APHIS work closely together to ensure that meat and meat products imported into the United States comply with the regulatory requirements of both agencies. The agencies have established procedures for communication to ensure that products that APHIS has restricted from entering the United States because of animal disease concerns are refused entry into the United States.

For the reasons discussed above, FSIS believes that sufficient controls are in place to ensure that listing Slovakia as eligible to export meat and meat products processed in Slovakia will not pose a BSE or FMD risk to the United States.

Comment: Several commenters, all individual consumers, opposed the importation of beef from any foreign country into the United States due to general concerns about the safety of foreign beef.

Response: Meat and meat products exported to the United States from another nation must meet equivalent safety standards applied to meat and meat products produced in the United States. FSIS makes determinations of equivalence by evaluating whether foreign food regulatory systems have in place the appropriate level of protection to meet the equivalent level of food safety as provided by the U.S. domestic system. Thus, while foreign food regulatory systems need not be identical to the U.S. system, they must employ equivalent sanitary measures that provide the same level of protection against food hazards as is achieved domestically. Beef and beef products from foreign countries that do not comply with these requirements are ineligible for importation into the United States.

As discussed above, only one pork processing establishment in Slovakia has requested certification to export meat products to the United States. Furthermore, beef and beef products are among the products that are ineligible for importation into the United States under 9 CFR part 94 of APHIS' regulations. Thus, at this time, Slovakia will not be exporting beef to the United States.

Comment: One commenter objected to the importation of live cattle into the United States until the United States has a ''* * * rigid inspection system set up [that] is fool proof against any bioterrorism attack.''

Response: This comment is outside the scope of this rulemaking. This final rule does not affect the importation of live cattle from Slovakia into the United States. The importation of live cattle from Slovakia into the United States is prohibited by APHIS under 9 CFR 94.18(a)(1).

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this final rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866. It has been determined to be non-significant, for purposes of E.O. 12866, and therefore, has not been reviewed by the Office of Management and Budget (OMB).

There is only one establishment in Slovakia that has applied to export meat products to the United States. This establishment plans to export non-heat treated shelf stable pork products, such as sausages and salami, and non-shelf stable cooked pork products, such as pasteurized hams and specialty cured, cooked, and smoked meat products. U.S. imports from this establishment are expected to total 520 tons per year.

U.S. firms currently export no meat products and only a small amount of poultry products to Slovakia. Table A presents the most updated information currently available of U.S. exports of poultry and pork products to Slovakia from 1994 to 2000. Poultry exports were highest in 1994, before declining and eventually falling to zero in 1996. Poultry exports reappeared again in 1998, but again at relatively low levels.

Table A also reports U.S. exports of pork products to Slovakia. Between 1994 and 2000, U.S. firms exported pork products to Slovakia only once, in 1994. Since then, the U.S. has not had any exports of meat products to Slovakia.

This final rule could begin to reopen trade between the United States and Slovakia. During much of the mid-1990's, many emerging democratic nations faced substantial economic obstacles. Listing Slovakia as a country eligible to export meat and meat products to the United States could begin the process of reacquainting Slovakia with U.S. firms.

Expected benefits from this rule would generally accrue to consumers from an increased choice of meat products in the marketplace. The costs of this final rule will accrue primarily to producers in the form of greater competition from Slovakia. However, the volume of trade stimulated by this rule is expected to be very small and is likely to have little effect on supply and farm-level prices.

In addition to this action, FSIS considered the option of not listing Slovakia as eligible to export meat and meat products to the United States. This alternative was rejected however, because FSIS found that the Slovakian meat inspection system complies with all the requirements of the FMIA and FSIS regulations for exporting processed meat and meat products to the United States.

TABLE A.—U.S. EXPORTS OF POULTRY AND PORK PRODUCTS TO SLOVAKIA, 1994–2000

Calendar year	Quantity (tons)	Value	Average price per ton
Poultry:			
1994 ..	283	$354,000	$1250.88
1995 ..	22	20,000	909.09
1996 ..	0	0.00	NA
1997 ..	0	0.00	NA
1998 ..	68	68,000	1000.00
1999 ..	24	14,000	583.30
2000 ..	69	55,000	797.10
Pork:			
1994 ..	38	39,480	1038.95
1995 ..	0	0.00	NA
1996 ..	0	0.00	NA
1997 ..	0	0.00	NA
1998 ..	0	0.00	NA
1999 ..	0	0.00	NA
2000 ..	0	0.00	NA

Source: USDA Foreign Agricultural Service.

Effect on Small Entities

The Administrator, FSIS, has made an initial determination that this final rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule adds Slovakia to the list of countries eligible to export meat and meat products to the United States. Only one establishment in Slovakia has applied to

export product to the United States. This establishment plans to export approximately 520 tons of non-heat treated shelf stable pork products and non-shelf stable cooked pork products to the United States per year. Because the volume of pork products exported from Slovakia to the United States is expected to be very small, this final rule is not likely have much of an effect on supply and prices. Therefore, this final rule is not expected to have a significant impact on small domestic entities that produce these types of products.

Paperwork Requirements

No new paperwork requirements are associated with this final rule. A foreign country that wants to export meat products to the United States is required to provide information to FSIS to certify that its inspection system provides standards equivalent to those of the United States and that the legal authority for the system and its implementing regulations are equivalent to those of the United States before it may start exporting such product to the United States. FSIS collects this information one time only. FSIS gave Slovakia questionnaires asking for detailed information about the country's inspection practices and procedures to assist the country in organizing its materials. This information collection was approved under OMB number 0583–0094. This final rule contains no other paperwork requirements.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this final rule, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov.*

The Regulations.gov Web site is the central online rulemaking portal of the United States government. It is being offered as a public service to increase participation in the Federal government's regulatory activities. FSIS participates in Regulations.gov and will accept comments on documents published on the site. The site allows visitors to search by keyword or Department or Agency for rulemakings that allow for public comment. Each entry provides a quick link to a comment form so that visitors can type in their comments and submit them to FSIS. The Web site is located at *http://www.regulations.gov.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS web page. Through Listserv and the web page, FSIS is able to provide information to a much broader, more diverse audience.

List of Subjects 9 CFR Part 327

Imports, Meat and meat products.

■ For the reasons set out in the preamble 9 CFR part 327 is amended as follows:

PART 327—IMPORTED PRODUCTS

■ 1. The authority citation for part 327 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

■ 2. Section 327.2 is amended by adding ''Slovakia'' with footnote 1 in alphabetical order to the list of countries in paragraph (b) to read as follows:

§ 327.2 Eligibility of foreign countries for importation of products into the United States.

* * * * *

(b) * * *

Slovakia [1]

Done at Washington, DC, on: February 3, 2005.

Barbara J. Masters,

Acting Administrator.

[FR Doc. 05–2389 Filed 2–7–05; 8:45 am]

BILLING CODE 3410–DM–P

[1] May export to the United States only processed meat food products derived from animals slaughtered under Federal inspection in the United States, or in a country eligible to export meat and meat products to the United States.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 232, 240, 249 and 270

[Release Nos. 33–8529, 34–51129, 35–27944, 39–2432, IC–26747; File Number S7–35–04]

RIN 3235–AJ32

XBRL Voluntary Financial Reporting Program on the EDGAR System

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting rule amendments to enable registrants to submit voluntarily supplemental tagged financial information using the eXtensible Business Reporting Language (XBRL) format as exhibits to specified EDGAR filings under the Securities Exchange Act of 1934 and the Investment Company Act of 1940. Registrants choosing to participate in the voluntary program also will continue to file their financial information in HTML or ASCII format, as currently required. To participate in the program, volunteers need to submit their XBRL formatted information in accordance with the amendments. The voluntary program is intended to help us evaluate the usefulness of data tagging and XBRL to registrants, investors, the Commission and the marketplace.

EFFECTIVE DATE: March 16, 2005.

FOR FURTHER INFORMATION CONTACT: If you have questions about the amendments, please contact one of the following members of our staff: Brigitte Lippmann or Mark W. Green, Division of Corporation Finance (202–942–2910), Jeffrey W. Naumann, Office of the Chief Accountant (202–942–4400), or Toai P. Cheng (202–942–0590) or David S. Schwartz (202–942–0721), Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. If you have technical questions about the EDGAR system, please contact the EDGAR Filer Support Office (202–942–8900) or Richard Heroux, EDGAR Program Manager (202–942–8800), in the Office of Information Technology.

We also invite public inquiries and comments regarding the voluntary program through the use of an Internet electronic mailbox at *http://www.sec.gov/spotlight/xbrl.htm.* Because electronic mail (e-mail) on the Internet is not secure, you should not send confidential or sensitive information.

SUPPLEMENTARY INFORMATION: We are adopting [1] amendments that will add Rules 401 [2] and 402 [3] to Regulation S–T, revise Rules 11 [4] and 305 [5] under Regulation S–T,[6] Item 601 [7] under

[1] The amendments were proposed in Release No. 33–8496 (Sept. 27, 2004) [69 FR 59094] (''Proposing Release'').

[2] 17 CFR 232.401.

[3] 17 CFR 232.402.

[4] 17 CFR 232.11.

[5] 17 CFR 232.305.

[6] 17 CFR 232.10 *et seq.* We also are adopting an amendment to add a heading for Rules 401 and 402.

[7] 17 CFR 229.601.

Regulation S–K,[8] Item 601 [9] under Regulation S–B,[10] Rules 13a–14 [11] and 15d–14 [12] under the Securities Exchange Act of 1934 (''Exchange Act'') [13] and Rules 8b–1,[14] 8b–2 [15] and 30a–2 [16] under the Investment Company Act of 1940 (''Investment Company Act'').[17] We also are adopting amendments that revise Forms 20–F [18] and 6–K [19] under the Exchange Act and add new Rule 8b–33 under the Investment Company Act.

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I. Background

On September 27, 2004, we proposed to adopt amendments to Regulation S–T to allow registrants to supplement their Commission filings by furnishing financial data on the Commission's Electronic Data Gathering, Analysis and Retrieval System (''EDGAR'') as an exhibit using eXtensible Business Reporting Language (''XBRL''),[20] beginning with the 2004 calendar year-end reporting season.

All registrants who file with the Commission are generally required to file electronically on EDGAR.[21] The EDGAR database, accessible on our Web site at *http://www.sec.gov,* provides ready access to a broad range of registrant information. Electronic submissions are governed by Regulation S–T, in conjunction with the EDGAR Filer Manual [22] and the electronic filing provisions of applicable rules, regulations, and forms. Since we first adopted rules to implement the operational phase of EDGAR, we have continually sought to make EDGAR more useful to the investing public. Proponents of the XBRL reporting standard assert that it offers benefits for all participants in the financial information supply chain, from registrants, who would benefit from potential efficiencies in preparing their filings, and improved transparency of their filings, resulting in broader analyst coverage, more market exposure and greater investor confidence, to regulators and investors, who would benefit from ready access to tagged financial data for analytical and review purposes.[23]

The amendments that we adopt today will permit volunteers to submit on EDGAR supplemental exhibits using XBRL for the purpose of allowing registrants, the Commission and others to test and evaluate tagging technology. The voluntary program will permit any registrant to participate merely by submitting an XBRL exhibit in the required manner. The XBRL exhibits will be publicly available but will be considered furnished rather than filed. Although XBRL exhibits will be required to accurately reflect the information that appears in the corresponding part of the official filing, the purpose of submitting XBRL data is to test the related format and technology and, as a result, investors and others should continue to rely only on the official version of a filing and not rely on the XBRL data in making investment decisions. We will include cautionary language to this effect on the Commission's Web site.

We received 28 comment letters relating to the Proposing Release from various constituencies, including issuers, accounting firms, financial analysts, filing agents and associations representing the interests of such constituencies.[24] Commenters expressed general overall support for the Commission's approach to implementing the voluntary program and investigating tagged data. Commenters also supported our approach of not limiting the program by size or specific industry.[25] The final rules include a number of changes from the proposed rules to address the comment letters, including commenters' recommendations to encourage participation in the program and provide volunteers with greater flexibility. For example, we have addressed commenters' requests to allow volunteers the option of whether to submit the notes to the financial statements in XBRL in the voluntary program.[26] There were many additional

[8] 17 CFR 229.10 *et seq.*

[9] 17 CFR 228.601.

[10] 17 CFR 228.10 *et seq.*

[11] 17 CFR 240.13a–14.

[12] 17 CFR 240.15d–14.

[13] 15 U.S.C. 78a *et seq.*

[14] 17 CFR 270.8b–1.

[15] 17 CFR 270.8b–2.

[16] 17 CFR 270.30a–2.

[17] 15 U.S.C. 80a–1 *et seq.*

[18] 17 CFR 249.220f.

[19] 17 CFR 249.306.

[20] XBRL is an open standard that provides a format for tagging financial information and allows users to extract, exchange, analyze and display financial information. XBRL was developed and continues to be supported by XBRL International, a collaborative consortium of approximately 250 organizations representing many constituents of the financial reporting community. Organizations in the consortium include issuers, public accounting firms, software companies, filing agents, data aggregators, stock exchanges, regulators, financial services companies, and industry associations. The Commission is not a member of the consortium. XBRL International and its related entities have been developing standard taxonomies that they state classify and define financial information in accordance with U.S. Generally Accepted Accounting Principles (''GAAP'') and our regulations. An XBRL taxonomy is a standard description and classification system for business reporting and financial data. Tags consist of specific financial data, such as the line items presented in the financial statements, and words or labels, such as headers in the notes to the financial statements. *See http://www.xbrl.org.* and Release No. 33–8497 (Sept. 27, 2004) [69 FR 59111] (''Concept Release'') for a further description of XBRL.

[21] Rules 100 and 101 of Regulation S–T (17 CFR 232.100 and 232.101).

[22] *See* Rule 301 of Regulation S-T (17 CFR 232.301). We originally adopted the EDGAR Filer Manual on July 1, 1993, with an effective date of July 26, 1993. Release No. 33–6986 (Apr. 1, 1993) [58 FR 18638]. We most recently updated the EDGAR Filer Manual on August 6, 2004, the current version of which can be found at *http://www.sec.gov/info/edgar.shtml.* See Release No. 33–8454 (Aug. 6, 2004) [69 FR 49803].

[23] *See http://www.xbrl.org.*

[24] *See* letters from American Accounting Association (''AAA''); American Institute of Certified Public Accountants (''AICPA''); Arbortext XML Solutions; Blastradius; Business Wire (''Bus Wire''); Capricorn Research; The Consortium of EDGAR Filing Agents and Software Developers (''CEFASD''); Steve Cushing; Deloitte & Touche LLP (''D&T''); EDGAR Online, Inc.; Ernst & Young LLP (''E&Y''); Federal Deposit Insurance Corporation; Federal Financial Institutions Examination Council; Financial Executives International (''FEI''); C.R. Fonseca; Grant Thornton LLP (''Grant Thornton''); Institute of Management Accountants (''IMA''); Investment Company Institute (''ICI''); KPMG LLP (''KPMG''); Eric Paul Linder (''Linder''); Microsoft Corporation (''MSFT''); James L. Nesfield; New York Society of Security Analysts (''NYSSA''); New York State Bar Association (''NYSBA''); PricewaterhouseCoopers LLP (''PWC''); PR Newswire Association LLC; Barry J. Reischling; and Spredgar Software (''Spredgar''). The public comments we received and a summary of the comments prepared by our staff are available for inspection in our Public Reference Room at 450 Fifth Street, NW., Washington, DC 20549, in File No. S7–35–04, or may be viewed at *http://www.sec.gov/rules/proposed/s73504.shtml.*

[25] *See,* for example, the letters from AAA, AICPA, CEFASD, E&Y, FEI, IMA and PWC.

[26] *See,* for example, the letters from AAA, AICPA, D&T, IMA, KPMG and MSFT.

comments addressing the development of the voluntary program and the XBRL technology, including taxonomy development, auditor attestation and audit opinions. We discuss specific comments where applicable in this release; otherwise we may consider these comments in the future based on our experience with the voluntary program.

We emphasize that we are in the preliminary phases of testing XBRL and we may amend the voluntary program as the technology becomes more mature and based on our experience with the program.

II. The Amendments

In conjunction with establishing the voluntary filing program, we are adding new Rule 401 to Regulation S–T that will allow filers, on a voluntary basis, to furnish supplemental financial information using XBRL. The revision to Rule 11 of Regulation S–T, adopted as proposed, makes ''XBRL-Related Documents'' a defined term that means documents related to presenting financial information in XBRL format that are part of a voluntary submission in electronic format in accordance with new Rule 401. New Rule 401 generally provides that a registrant participating in the voluntary program (a ''volunteer'') may submit XBRL-Related Documents in electronic format if they meet all the conditions of the rule. Appendix L to the EDGARLink Filer Manual will provide instructions and guidance on the preparation, submission, and validation of EDGAR-acceptable electronic filings with attached XBRL-Related Documents.[27] The EDGAR system upgrade to Release 8.10 is scheduled to become available on February 7, 2005 to, among other things, enable EDGAR to process XBRL-Related Documents when the voluntary program becomes effective on March 16, 2005.[28]

A. Form of XBRL Submissions

The amendments require that volunteers furnish XBRL-Related Documents as an exhibit to either the Exchange Act or Investment Company Act filing from which they were derived, or as an exhibit to a filing on Form 8–K[29] or Form 6–K,[30] as applicable, that references, and is submitted no earlier than, the related filing.[31] The Forms 8–K and 6–K alternative does not apply to volunteers that are registered management investment companies because they are generally not eligible to file those forms.[32] XBRL-Related Documents will be identifiable as Exhibit 100 to the corresponding filing.

B. Description of XBRL Data

Rule 401, as adopted, contains three requirements for disclosure that must appear in the filing with which the XBRL-Related Documents are submitted. These requirements were not included in the rule as proposed. First, Rule 401 requires volunteers to describe the XBRL-Related Documents (whether they are filed as an exhibit to the related official filing or to a Form 8–K or Form 6–K that references such filing) either as ''unaudited'' or, for quarterly financial statements, ''unreviewed.'' Second, Rule 401 requires volunteers to provide cautionary language advising investors that the purpose of furnishing XBRL data is to test the format and the technology and, as a result, investors should not rely on the XBRL data in making investment decisions. This additional disclosure will complement the similar cautionary statements we plan to add to our Web site as described in the Proposing Release. Finally, Rule 401 provides that, if a reason to file a Form 8–K or Form 6–K or an amendment to a Form 8–K or Form 6–K is to submit as an exhibit XBRL-Related Documents that present information related to financial information filed as part of a different filing (*e.g.*, a Form 8–K that references a previously filed Form 10–Q[33]), volunteers must reference the official filing from which the data in the XBRL-Related Documents was derived.[34] These disclosures should be provided, as applicable, in:

- The exhibit index of the Forms 10–K,[35] 10–Q, 10,[36] 10–SB,[37] 10–KSB,[38] 10–QSB[39] or 20–F,
- Item 2.02 or 8.01 of Form 8–K, or
- The body of the Forms 6–K, N–CSR[40] or N–Q.[41]

We received several comments and recommendations regarding disclosure about furnishing XBRL data.[42] One commenter agreed that it is reasonable to require registrants to describe the official filings to which the XBRL exhibits correspond because investors may not be aware that Exhibit 100 reflects XBRL data.[43] Another commenter[44] recommended that volunteers submit a letter describing management's basic decisions involving the use of taxonomies and policies about creating instance documents, including the correlation to printed financial statements and other relevant resources, the selection of taxonomies, additions and adjustments to the base taxonomy or taxonomies, and the level of tagging detail.[45] Another commenter

[27] Rule 301 of Regulation S–T, the regulation that governs the preparation and transmission of electronic filings on the Commission's EDGAR system, requires electronic filings to be prepared in accordance with the provisions of the EDGAR Filer Manual. The Filer Manual contains the technical formatting requirements for electronic submissions. Filers must comply with those requirements to ensure the timely receipt and acceptance of documents submitted to the Commission in an electronic format. *See* the companion EDGAR Filer Manual adopting release (Release No. 33–8528 (Feb. 3, 2005)) updating the EDGAR Filer Manual to reflect EDGAR Release 8.10.

[28] These submissions will be required to be made in accordance with the EDGAR Filer Manual and the exhibit provisions of Item 601(b) (100) of Regulation S–K or S–B, revised Form 20–F, revised Form 6–K or Rule 8b–33 under the Investment Company Act, as applicable. As proposed, the items and rule will list the Exchange Act and Investment Company Act filings, in addition to Forms 20–F and 6–K, with which volunteers can submit XBRL-Related Documents. We are adopting as proposed revisions to Rules 8b–1 and 8b–2 under the Investment Company Act to reflect the addition of Rule 8b–33. Finally, we are adopting as proposed the revision to Rule 305(b) of Regulation S–T to exempt the submissions from the formatting requirements of Rule 305(a) because the formatting requirements are unnecessary in this context.

[29] 17 CFR 249.308. Commenters supported allowing volunteers to furnish XBRL data in a Form 8–K. *See*, for example, the letters from CEFASD and KPMG.

[30] As proposed, we are revising Form 6–K to permit submission of XBRL-Related Documents as Exhibit 100.

[31] As noted in the Proposing Release, in addition to domestic issuers, the voluntary program is available to foreign private issuers that otherwise file their primary financial statements in accordance with U.S. GAAP.

[32] *See* Rules 13a–11(b) and 15d–11(b) under the Exchange Act. [17 CFR 240.13a–11(b) and 240.15d–11(b)].

[33] 17 CFR 249.308a.

[34] The disclosure requirement also addresses the concern of one commenter (CEFASD) about a Form 8–K whose sole purpose is to accompany an XBRL Exhibit 100. The commenter noted that in such circumstances, if the exhibit were removed, the surviving, disseminated cover page would contain no useful information. The commenter recommended that in such circumstances, the Commission should suspend the entire filing. Although it would not be feasible to suspend the entire filing, the required disclosures would clearly identify the purpose of the filing. In this regard, we note that even without the purpose disclosure requirement, a form with an exhibit list would refer to Exhibit 100 and that would identify the intent to submit XBRL data.

[35] 17 CFR 249.310.

[36] 17 CFR 249.210.

[37] 17 CFR 249.210b.

[38] 17 CFR 249.310b.

[39] 17 CFR 249.308b.

[40] 17 CFR 249.331 and 274.128.

[41] 17 CFR 249.332 and 274.130.

[42] *See* the letters from AICPA, E&Y and PWC.

[43] *See* the letter from AICPA.

[44] *See* the letter from PWC.

[45] As noted in Section I of this release, an XBRL taxonomy is intended to be a standard description and classification system for business reporting and financial data. An instance document, which is a machine readable form, pairs a tag from the taxonomy with the related piece of financial information. For additional detail regarding instance documents, see Section II.C.1 of the Proposing Release.

believed that volunteers should be encouraged to disclose:

- That the financial information in the XBRL-Related Documents is appropriately tagged,
- The source of the tagged information (*e.g.*, the financial statements, MD&A),
- The extent of tagging used, including whether there have been any changes in the extent of tagging or the use of extensions as compared to XBRL-Related Documents furnished for previous fiscal periods, and
- Whether any extensions meet the XBRL International technical specification.[46]

To facilitate participation, we have decided not to require such disclosure for the voluntary program; however, we encourage volunteers to provide the additional disclosure recommended by the commenters.

C. Timing of XBRL Submissions

The XBRL-Related Documents may be submitted at the same time as the official EDGAR filing to which they relate, either as an exhibit to the official filing or, for operating companies, as an exhibit to a Form 8–K or Form 6–K[47] filed simultaneously. Alternatively, the XBRL-Related Documents may be filed subsequent to the official EDGAR filing to which they relate, either in a later amendment to the official filing or, for operating companies, as an exhibit on Form 8–K or Form 6–K. Volunteers will not be permitted to submit the XBRL-Related Documents before they file the related official document. Although the amendments do not establish a deadline for submitting or amending XBRL data, volunteers are encouraged to submit the XBRL-Related Documents with the official document or shortly after the official document is filed. Volunteers will be free to submit their XBRL exhibits regularly or from time to time and can stop or start as they choose. If a volunteer amends the XBRL-Related Documents it submitted earlier, it should amend the filing to which the XBRL-Related Documents are attached as an exhibit.[48]

Many commenters asserted that allowing volunteers to submit their XBRL-tagged financial statements after they file the related official filing will be important to securing volunteers.[49] Commenters recommended that a reasonable period of time be allowed for submitting XBRL-Related Documents and suggested periods typically ranging from 30 days up to 90 days.[50] One commenter recommended that no deadline be required.[51] Other commenters approved of a delay, but did not specify a time period.[52]

As proposed, we have not implemented a submission deadline for furnishing XBRL data. One of the reasons for this decision is that volunteers may wish to furnish XBRL-Related Documents that relate to historical financial information from their previous Commission filings. While it would be preferable for registrants to submit all XBRL-Related Documents promptly, data elements in the submission would include date information and the voluntary program includes safeguards against reliance on the data. In addition, we recognize that registrants may be discouraged from participating in the voluntary program if we impose deadlines, especially during the early stages of the program when volunteers are testing the technology.

Some commenters recommended that rather than amend submissions, the volunteers be allowed to ''withdraw'' them from EDGAR.[53] However, submissions to EDGAR cannot, as a practical matter, be withdrawn after public dissemination.

D. Official Filings Still Required

The XBRL-Related Documents submitted in the voluntary program will be supplemental submissions and will not replace the required HTML or ASCII version of the financial information they contain. Volunteers will be required to continue to file their official EDGAR filings.

E. Voluntary Program Content and Format

XBRL-Related Documents must contain only voluntary program content (''Voluntary Program Content'') that appears in voluntary program format (''Voluntary Program Format'') as further described below.

Voluntary Program Content must consist of mandatory content (''Mandatory Content'') and may be accompanied by optional content (''Optional Content'').

Mandatory Content consists of a complete set of information for all periods presented in the corresponding official EDGAR filing from one or more of the following categories (as filed in the corresponding official EDGAR filing):[54]

- The complete set of financial statements (the only exceptions are that notes to the financial statements and schedules related to the financial statements may be omitted[55] unless the volunteer is a registered management investment company, in which case it must include Schedule I—Investments in Securities of Unaffiliated Issuers);[56]
- Earnings information set forth in Form 6–K or Items 2.02 or 8.01 of Form 8–K (whether contained in the body of the Form 8–K or Form 6–K or in an exhibit, and whether filed or furnished); or
- Financial highlights or condensed financial information[57] (if the volunteer is a registered management investment company).

Optional Content can consist only of a complete set of information that is:

- For all periods presented in the corresponding official EDGAR filing;
- Related to financial information in the corresponding official EDGAR filing that is simultaneously submitted as Mandatory Content; and
- From one or more of the following categories (as filed in the corresponding official EDGAR filing):[58]

[46] *See* the letter from E&Y.

[47] As further discussed below, XBRL-Related Documents will not be deemed filed or incorporated by reference regardless of whether they are exhibits to a document incorporated by reference into another filing (*e.g.*, an XBRL exhibit to a Form 10–K filing will not be incorporated into a Form S–3 [17 CFR 239.13] registration statement even though other portions of the Form 10–K are so incorporated).

[48] For example, if the volunteer submitted XBRL data with a Form 8–K, it should amend the Form 8–K. A volunteer must amend XBRL-Related Documents it submitted earlier if they did not comply with the content and format requirements of new Rule 401.

[49] *See,* for example, the letters from AAA, AICPA, Blastradius, CEFASD, E&Y, IMA, KPMG, MSFT and PWC.

[50] *See,* for example, the letters from AAA, Blastradius and IMA.

[51] *See* the letter from MSFT.

[52] *See,* for example, the letter from D&T.

[53] *See* the letters from AICPA, E&Y and NYSBA.

[54] Although volunteers may furnish data as Mandatory Content from certain specific categories of financial information in the corresponding official EDGAR filing in XBRL format (*e.g.*, financial statements only, omitting notes), the financial information in the specific category provided in XBRL format must be complete (*e.g.*, if the financial statements are provided, income statement, balance sheet, cash flows and equity statements must all be submitted).

[55] In the Proposing Release at note 47, we stated that financial statements other than those for investment company volunteers should not include the related schedules when submitted as XBRL-Related Documents in the voluntary program. In order to provide additional testing opportunities, however, we are permitting operating companies to provide these schedules in the voluntary program. We further discuss below related schedules of investment companies.

[56] Rule 12–12 of Regulation S–X [17 CFR 210.12–12].

[57] Item 8(a) of Form N–1A, Item 4.1 of Form N–2 and Item 4(a) of Form N–3 [17 CFR 274.11A, 274.11a–1 and 274.11b]. Forms N–1A, N–2 and N–3 also are authorized under the Securities Act of 1933 (''Securities Act'') [15 U.S.C 77a *et seq.*] under 17 CFR 239.15A, 239.14 and 239.17a.

[58] Although volunteers may furnish data as Optional Content from certain specific categories of

Continued

- Audit opinions;[59]
- Interim review reports;[60]
- Reports of management on the financial statements;
- Certifications; or
- Management's Discussion and Analysis of Financial Condition and Results of Operations (''MD&A''),[61] Management's Discussion and Analysis or Plan of Operation,[62] Operating and Financial Review and Prospects[63] or Management's Discussion of Fund Performance (''MDFP'').[64]

Voluntary Program Content is in Voluntary Program Format if:

- Each data element (*i.e.*, all text and all line item names and associated values, dates and other labels) contained in the XBRL-Related Documents reflects the same information in the corresponding official EDGAR filing (*i.e.*, the HTML or ASCII version);
- No data element in the corresponding official EDGAR filing is changed, deleted or summarized in the XBRL-Related Documents;
- The XBRL-Related Documents correlate to the appropriate version of a standard taxonomy, supplemented with extension taxonomies as specified in the EDGAR Filer Manual;
- Each data element contained in the XBRL-Related Documents is matched with the appropriate tag in accordance with any applicable taxonomy; and
- The XBRL-Related Documents contain any additional mark-up related content (*e.g.*, the XBRL tags themselves, identification of the core XML documents used and other technology related content) not found in the corresponding official EDGAR filing that are necessary to comply with the EDGAR Filer Manual requirements.

We had proposed to require volunteers to furnish in XBRL format a complete set of financial statements, including notes to the financial statements. This approach would have provided a comprehensive test of the capacity of the XBRL format for financial information to replicate the HTML and ASCII versions. The proposal also asked for comment on whether volunteers should be permitted to omit the notes to the financial statements. Many commenters disagreed with the proposal to require a complete set of the notes to the financial statements in XBRL format.[65] Several commenters expressed the view that the taxonomy development of the notes to the financial statements is not detailed enough in the standard taxonomies to facilitate easy tagging.[66] As a result, commenters generally believed that volunteers would need to create substantial extensions, which would be burdensome and could discourage registrants from participating in the program.[67] Several commenters recommended allowing volunteers to submit financial statements in XBRL format that omit the notes to the financial statements.[68] Other commenters indicated that the notes to the financial statements should be included in XBRL format, noting, however, that the Commission could limit the notes required to be tagged or allow the use of a single tag for all notes.[69] Some commenters recommended that volunteers be afforded flexibility in determining the level of detail to which the notes to the financial statements are tagged.[70]

Although we consider the notes to the financial statements to be an integral part of the financial statements for filing purposes, we have determined not to mandate them for purposes of the voluntary program. Recognizing the technical issues presented by tagging the notes to the financial statements, and in light of the other safeguards in the rules, we are providing volunteers with additional flexibility to determine whether or not to include the notes to the financial statements. If volunteers do choose to tag the notes to the financial statements in their XBRL-Related Documents, they must tag all the notes so that they meet the requirements of Voluntary Program Content. Representing the entire set of notes to the financial statements with a single tag does not appear to be useful to users because of the difficulty of consuming such a large volume of data in that format. Consequently, we encourage volunteers that choose to tag the notes to the financial statements to tag at a level that provides practical data to users and furthers the goal of testing the capabilities of the XBRL technology.

As proposed, investment company volunteers would have been required to submit the schedules related to the financial statements when submitting the financial statements in XBRL format. One commenter voiced the concern that, because the XBRL taxonomy for investment companies may not be sufficiently developed to support tagging of these schedules, requiring inclusion of the related schedules would force investment company volunteers to create a substantial set of taxonomy extensions, which would discourage participation in the program.[71] We generally agree and have modified the rules to limit the related schedules that registered management investment company volunteers must submit in XBRL format with the financial statements to Schedule I—Investments in Securities of Unaffiliated Issuers.[72] We believe that this schedule must be provided in XBRL format because the information is critical to an understanding of investment company financial statements and to testing the XBRL program with regard to investment company filings.

Some commenters requested clarification of the requirement to provide XBRL data containing the ''same information'' as in the official filing to which it relates.[73] In response to these comments, as discussed above, we have revised proposed Rule 401 to provide more detailed specification of the various respects in which the information in the XBRL-Related Documents must be the ''same'' as that in the official filing to which it relates. We have explained that no information in the corresponding official filing may be deleted, changed or summarized in the XBRL format. For example, if the revenue line item in the related official filing's income statement is broken down into different segments, the XBRL data must also contain the revenue line items for each segment; the volunteer cannot only include the total revenue line item. If a volunteer submits MD&A or MDFP in XBRL format, all text in

information in the corresponding official EDGAR filing in XBRL format (*e.g.*, MD&A), the information in the specific category provided in XBRL format must be complete (*e.g.*, if MD&A is provided, all the MD&A in the corresponding official EDGAR filing must be submitted).

[59] Rule 2–02 of Regulation S–X [17 CFR 210.2–02].

[60] Rule 10–01(d) of Regulation S–X [17 CFR 210.10–01(d)].

[61] Item 303 of Regulation S–K [17 CFR 229.303].

[62] Item 303 of Regulation S–B [17 CFR 228.303].

[63] Item 5 of Form 20–F.

[64] Item 22(b)(7) of Form N–1A.

[65] *See* the letters from AAA, AICPA, D&T, IMA, KPMG and MSFT.

[66] *See*, for example, the letters from AICPA, D&T, KPMG and PWC.

[67] *See*, for example, the letters from D&T and KPMG.

[68] *See*, for example, the letters from AICPA, D&T, KPMG and MSFT.

[69] *See*, for example, the letters from CESFASD (allow a single tag for all notes) and PWC (limit the notes required to be tagged).

[70] *See*, for example, the letters from AICPA, D&T, E&Y and KPMG.

[71] *See* the letter from ICI.

[72] Registered management investment company volunteers may, but are not required to, submit other related schedules in XBRL format with financial statements in XBRL format including the following: Schedule II—Investments—other than securities [17 CFR 210.12–13]; Schedule III—Investments in and advances to affiliates [17 CFR 210.12–14]; Schedule IV—Investments—securities sold short [17 CFR 210.12–12A]; Schedule V—Open option contracts written [17 CFR 210.12–12B]; and Schedule VI—Summary schedule of investments in securities of unaffiliated issuers [17 CFR 210.12–12C].

[73] *See,* for example, the letters from AICPA, D&T, NYSBA and PWC.

addition to the tables and schedules must be tagged. We did not take the approach suggested by some commenters to require that the XBRL data be ''consistent with'' [74] or ''materially the same'' [75] as the official filing because we believe that this could cause uncertainty, reduce the disclosure provided in an XBRL format, and impair our pursuit of the objectives of the voluntary program.

One commenter recommended that the voluntary program exclude XBRL tagging of earnings releases, selected financial data and schedules of ratio of earnings to fixed charges because there are no clear standards regarding the content and presentation of such information.[76] This commenter also was concerned that some volunteers may interpret the proposed rule to allow XBRL-Related Documents to contain partial financial presentations so long as the elements of such a presentation are ''the same information'' as presented in (*i.e.,* consistent with) the complete set of annual or interim financial statements or in MD&A. As noted above, we have clarified that partial financial presentations are not permissible content for XBRL submissions. Also, in view of the goals of the voluntary program to test and evaluate data tagging, we would like to test a wide variety of XBRL data. Therefore, volunteers will be able to present, among other information, earnings information, MD&A, MDFP, financial highlights, management or accounting reports and certifications [77] in XBRL format.

F. XBRL Data Must Correlate to Standard XBRL Taxonomies

The voluntary program requires all volunteers to use the appropriate version of a standard taxonomy, supplemented with extension taxonomies as specified by the EDGAR Filer Manual. The XBRL Consortium has publicly announced that it will finalize the following standard taxonomies, which have all completed at least one review and comment period, by the end of the first quarter of 2005: [78]

- Commercial and Industrial; [79]
- Banking and Savings Institutions;
- Insurance; and
- Investment Companies.[80]

We have chosen March 16, 2005 as the effective date for the program, since this is the date by which accelerated filers with December 31 fiscal year ends are required to file their Form 10–Ks. We will provide notice on our Web site of the taxonomies supported for the voluntary program and expect that additional standard taxonomies will be permitted on the EDGAR system as they are finalized.[81] The final standard taxonomies will be incorporated into the EDGAR system and volunteers may not attach the standard taxonomies to filings made on EDGAR.

Commenters generally believed that the draft U.S. GAAP taxonomies are sufficiently developed for use in the voluntary program, but acknowledged that most volunteers will need to create extensions to meet their reporting requirements.[82] Some commenters believed there are sufficient software tools available in the market to create such extensions, but noted that the software requires further development for satisfactory end-user implementation.[83] One commenter, while strongly supporting the voluntary program, recommended that the XBRL specification for the standard taxonomies be changed to eliminate the required use of what the commenter described as its complex proprietary structure.[84] This commenter believed that the full XBRL specification will not be useful to financial analysts because the customized extensions must be analyzed to determine comparability among companies. We expect that the voluntary program will enable us to better analyze the adequacy of the standard taxonomies and whether it would be desirable to develop our own taxonomy for some or all regulatory reporting requirements.[85]

G. Use of Tagged Data

As discussed in the Proposing Release, we had considered developing an application, such as a standard style sheet, so that users would be able to view XBRL data in a human readable format on our Web site. This application would have converted XBRL files into a document that would have the appearance of traditional financial information, such as a balance sheet or income statement.

Commenters generally did not support a standard style sheet.[86] Some commenters believed that a standard style sheet was not feasible because it would not be able to render extensions.[87] A style sheet that could not render extensions would not display all the information tagged from the corresponding official EDGAR filing.

We have decided to commence the voluntary program without providing a style sheet or other rendering application on our Web site. Users of EDGAR data on *http://www.sec.gov* will be able to download the XBRL data to perform their own financial analysis if they have appropriate software.[88] We plan to continue to analyze rendering and other capabilities and we may add these features in the future. Users will continue to be able to view the official filing in ASCII or HTML format, as they can today.

H. Liability Issues

Because the voluntary program is experimental, contains other appropriate safeguards, and should not unnecessarily deter volunteers from participating, the revised rules provide limited protections from liability under the federal securities laws. Commenters generally supported the proposed liability protections; [89] however, several commenters requested clarification as further discussed below. Accordingly,

[74] *See* the letters from D&T and PWC.

[75] *See* the letter from NYSBA.

[76] *See* the letter from E&Y.

[77] Commenters generally supported not requiring certifications. See, for example, the letters from AAA, AICPA, CEFASD, D&T, E&Y, FEI, IMA, KPMG, MSFT, NYSBA, and PWC. Several commenters further suggested that volunteers should be allowed to submit certifications. See, for example, the letters from AICPA, D&T, IMA and PWC.

[78] The XBRL Consortium has publicly announced that it will finalize the Commercial and Industrial, Banking and Savings Institutions and Insurance standard taxonomies by February 28, 2005. It also has publicly announced that it will finalize the Investment Company taxonomy by March 31, 2005. See *http://www.xbrl.org.*

[79] This taxonomy has detailed financial reporting elements specific to commercial and industrial-type companies. If a registrant is not a bank, savings institution, insurance company, broker-dealer or investment company, it would likely use the commercial and industrial standard taxonomy. See *http://www.xbrl.org.*

[80] The investment companies taxonomy was released for public comment on December 21, 2004 with a request for comments to be submitted by January 20, 2005.

[81] Commenters noted that they were unaware of any other standard taxonomies that are sufficiently developed to support Commission submissions. Some commenters noted that the Commission may wish to consider allowing volunteers to use International Financial Reporting Standards, formerly known as International Accounting Standards, taxonomies as a means of encouraging non-U.S. issuers to participate. *See* the letters from AAA, CEFASD, FEI, IMA, MSFT and PWC. We are continuing to consider this suggestion.

[82] *See,* for example, the letters from AAA, AICPA, FEI, IMA, KPMG, MSFT and PWC.

[83] *See,* for example, the letters from AAA, AICPA, IMA, MSFT and PWC.

[84] *See* the letter from Linder.

[85] The letter from AAA noted that the Commission should develop a small taxonomy that covers the key reporting elements.

[86] *See,* for example, the letters from AAA, CEFASD, IMA, KPMG and PWC. One commenter, however, stated that the Commission should provide a standard template to render information and allow participants to provide their own company specific presentation template. See the letter from Grant Thornton.

[87] *See* the letters from CEFASD, IMA and KPMG.

[88] *See* the letters from Blastradius and FEI.

[89] *See,* for example, AAA, AICPA and FEI.

we are adopting Rule 402 as proposed with minor clarifying revisions.[90]

Rule 402(a) generally will provide that XBRL-Related Documents submitted in the program:

- Are not deemed filed for purposes of Section 18 of the Exchange Act [91] or Section 34(b) of the Investment Company Act [92] or otherwise subject to the liability of these sections; [93]
- Are not deemed incorporated by reference; [94]
- Are subject to all other liability and anti-fraud provisions of the Exchange Act and Investment Company Act; [95] and
- Are deemed filed for purposes of Rule 103 of Regulation S–T.[96]

Rule 402(b) provides additional relief from liability under the Securities Act, Exchange Act, Public Utility Holding Company Act, Trust Indenture Act and Investment Company Act for information in a volunteer's XBRL-Related Documents that complies with the content and format requirements of Rule 401, to the extent that the information in the corresponding portion of the official EDGAR filing was not materially false or misleading.[97]

Rule 402(b) also provides additional relief from liability to volunteers that fail to comply with the content and format requirements of Rule 401 if:

- The volunteer has made a good faith and reasonable attempt to comply with the content and format requirements,
- As soon as reasonably practicable after the volunteer becomes aware that the information in the XBRL-Related Documents does not comply with the content and format requirements, the volunteer amends the XBRL-Related Documents to correct the problem, and
- The information in the corresponding official EDGAR filing was not materially false or misleading.

As discussed earlier, several commenters asked us to clarify the reference in proposed Rule 402(b) to presenting information in the XBRL-Related Documents that ''reflects the same information as appears in the corresponding portion of the official version of the filing to which they relate.'' [98] Accordingly, Rule 402(b), as adopted, clarifies the reference by specifying that the information must comply with the content and format requirements of Rule 401.

One commenter asserted that proposed Rule 402(b) established a ''negligence'' standard and suggested that we establish an ''actual knowledge'' standard instead. We have decided to adopt the standard as proposed. A volunteer that fails to satisfy Rule 402(b) still may rely on the liability protections of Rule 402(a). In addition, the Commission has provided similar protections to those in Rule 402 in other appropriate circumstances and it appears that these protections are workable for filers in those circumstances.[99]

Finally, for purposes of the voluntary program, new paragraph (f) of Rules 13a–14 and 15d–14 under the Exchange Act and new paragraph (d) of Rule 30a–2 under the Investment Company Act provide that XBRL-Related Documents are not subject to the certification requirements of these rules.[100]

One commenter voiced concern that investment companies would be discouraged from participating in the voluntary program if they were required to provide additional certifications when filing amendments whose sole purpose was to submit XBRL-Related Documents attached as exhibits.[101] The commenter emphasized that the concern applied to investment companies in particular because operating companies can file a Form 8–K rather than an amendment to submit XBRL-Related Documents after the corresponding official EDGAR filing has been filed. Rule 12b–15 under the Exchange Act [102] and Rule 8b–15 under the Investment Company Act [103] generally provide that any amendment to a filing that required a certification must contain another certification. We clarify that, consistent with the exclusion of XBRL-Related Documents from the disclosure certification requirements discussed above, an amendment whose sole purpose is to submit XBRL-Related Documents attached as exhibits for the voluntary program is not subject to the certification requirements of Rule 12b–15 under the Exchange Act and Rule 8b–15 under the Investment Company Act.

Two of the items these certifications must address are internal control over financial reporting and disclosure controls and procedures.[104] In this regard, several commenters asked us to clarify that XBRL-Related Documents are not subject to the internal control over financial reporting and disclosure controls and procedures provisions [105]

[90] This rule will not affect in any way participants' existing obligations with respect to official filings. The official financial information required to be filed by participants in HTML or ASCII will continue to be subject to the liability provisions of the federal securities laws.

[91] 15 U.S.C 78r.

[92] 15 U.S.C. 80a–33(b). We modified proposed Rule 402(a) by omitting references to the XBRL-Related Documents as not deemed filed under Section 16 of the Public Utility Holding Company Act of 1935 (''Public Utility Holding Company Act'') [15 U.S.C. 79p] and Section 323 of the Trust Indenture Act of 1939 (''Trust Indenture Act'') [15 U.S.C. 77www]. We omitted these references as unnecessary because XBRL-Related Documents only will be submitted as exhibits to filings under the Exchange Act and the Investment Company Act.

[93] We will caution users on the Commission's Web site that, although XBRL-Related Documents are required to comply with format and content requirements related to the corresponding official filing, the purpose of submitting the XBRL-Related Documents is to test the related format and technology and, as a result, investors and others should continue to rely on the official version of the filing and not rely on the XBRL-Related Documents in making investment decisions.

[94] Because the XBRL-Related Documents will not be filed under the Exchange Act, they will not be incorporated by reference into registration statements filed under the Securities Act or prospectuses they contain. These protections will apply regardless of whether the documents are exhibits to a document otherwise incorporated by reference into a filing.

[95] For example, material misstatements or omissions in an XBRL submission will continue to be subject to liability under Section 10(b) [15 U.S.C. 78j(b)] and Rule 10b–5 [17 CFR 240.10b–5] under the Exchange Act.

[96] 17 CFR 232.103. Rule 103 generally provides that an electronic filer is not subject to liability as to an error or omission in an electronic filing resulting solely from electronic transmission errors beyond the control of the filer if the filer corrects the problem through an amendment as soon as reasonably practicable after the filer becomes aware of the problem.

[97] XBRL-Related Documents that do not meet the requirements for the relief provided by Rule 402(b) still would receive the relief provided by Rule 402(a). In adopting Rule 402(a) we changed our proposal to remove references to liability relief under the Securities Act, Public Utility Holding Company Act and Trust Indenture Act because XBRL-Related Documents cannot be submitted under those Acts. We maintained these references in Rule 402(b), however, because, unlike Rule 402(a), Rule 402(b)'s protections are not tied to filing status.

[98] *See,* for example, the letters from AICPA, D&T, NYSBA and PWC.

[99] *See,* for example, General Instruction B.2 of Form 8–K (''The information in a report furnished pursuant to Item 2.02 (Results of Operations and Financial Condition) or Item 7.01 (Regulation FD Disclosure) shall not be deemed to be 'filed' for purposes of Section 18 of the Exchange Act or otherwise subject to the liabilities of that section unless the registrant specifically states that the information is to be considered 'filed' under the Exchange Act or incorporates it by reference into a filing under the Securities Act or Exchange Act.'').

[100] As a result of recently adopted rule revisions, we are adopting new paragraph (f) rather than the proposed new paragraph (h) of Rules 13a–14 and 15d–14. After we issued the Proposing Release, we adopted amendments to Rules 13a–14 and 15d–14, effective March 8, 2005, that, among other things, remove paragraphs (f) and (g) of these rules. Consequently, in order to add a new last paragraph to each of these rules, we add paragraph (f). *See* Release No. 33–8518 (Dec. 22, 2004) [70 FR 1506].

[101] *See* the letter from ICI.

[102] 17 CFR 240.12b–15.

[103] 17 CFR 270.8b–15.

[104] *See,* for example, Item 601(b)(31)(i) of Regulation S–K [17 CFR 229.601(b)(31)(i)].

[105] *See* Exchange Act Rule 13a–15(e) and Investment Company Act Rule 30a–3(c) (defining ''disclosure controls and procedures'') and Exchange Act Rule 13a–15(f) and Investment Company Act Rule 30a–3(d) (defining ''internal control over financial reporting'') [17 CFR 240.13a–15(e), 270.30a–3(c), 240.13a–15(f) and 270.30a–3(d)].

that we have adopted after passage of the Sarbanes-Oxley Act.[106] We clarify that, for purposes of the voluntary program and consistent with the exclusion of XBRL-Related Documents from the disclosure certification requirements discussed above, XBRL-Related Documents are not subject to any of the internal control over financial reporting provisions adopted under Section 404 of the Sarbanes-Oxley Act or the disclosure controls and procedures provisions.[107]

III. Paperwork Reduction Act

The new and amended rules contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[108] We published a notice requesting comment on the collection of information requirements in the Proposing Release, and submitted a request to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[109] OMB approved the request on a pilot basis. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number.

The title of the new collection of information is ''Voluntary XBRL-Related Documents'' (OMB Control No. 3235–0611). This collection of information stems from already existing regulations and forms adopted under the Exchange Act and Investment Company Act that set forth financial disclosure requirements for annual and periodic reports as well as current reports.[110] The new and amended rules will allow registrants to furnish specified financial information in XBRL-Related Documents as exhibits to their current or periodic reports filed on EDGAR. The specified financial information already is required under existing periodic and annual report requirements, but will be tagged using XBRL. During the voluntary program, registrants will continue to include this information in ASCII or HTML format in their official EDGAR filings, but also will furnish the XBRL tagged data as exhibits to these filings. The XBRL-Related Documents will consist of an instance document, a schema file,[111] and linkbase files.[112] Submission of XBRL-Related Documents will be voluntary and the information submitted will not be kept confidential.

We estimate for PRA purposes that each of 80 participants will submit four sets of XBRL-Related Documents per year that will result in an internal preparation burden of 60 hours per year and an external cost of $6,333 per year.[113] We base this estimate on discussions regarding XBRL and data tagging in general.[114]

Two commenters responded to our request for comments on the PRA.[115] Neither commenter addressed specifically our actual estimates.

One commenter stated that our cost estimates are based on current manual processes, ignore costs to those other than preparers and do not address the cost savings the commenter expects will accrue in connection with preparation, distribution and analysis of financial information over time as XBRL and the process efficiencies it enables take hold. As to non-preparer costs, the commenter asserted that public accounting firms will need to invest in training and skill development to enable them to provide the assurance on XBRL data that the public ultimately will expect.[116] These comments do not raise issues for our PRA estimates because our estimates are based on registrant costs.

Similarly, the other commenter asserted that our cost estimates fall short because they are based on the need of most registrants to automate what are today almost entirely manual reporting processes, take into account the cost to prepare but not consume information and omit anticipated cost savings over time as adoption of XBRL spreads to more internal and external processes of information exchange.[117]

We note that for PRA purposes we estimate the average yearly cost to a registrant that participates in the voluntary program over a three-year period.[118] Consequently, our estimates are intended to reflect both initial cost and on-going cost over a three-year period. In calculating these costs, we have tried to take into account, among other things, the current state of reporting process automation, automation that likely would be introduced in connection with the initial cost incurred and the efficiencies that likely would be realized over the course of three years.

As reflected throughout this release, we also received comments, not specifically in response to the PRA, directed at the substance of the new and amended rules. As previously discussed, we have revised the proposals in response to these comments. As noted earlier, we are adding to proposed Rule 401 requirements to label XBRL data as ''unaudited'' or ''unreviewed,'' provide cautionary language concerning reliance on XBRL-Related Documents and, in some cases, reference the official filing from which XBRL data was derived. In this regard, we note the revision to proposed Rule 401 to make it optional, rather than required, to tag financial statement footnotes would reduce the burden.[119] Therefore, on balance, we do not change our estimates.

[106] *See,* for example, the letters from E&Y (addressing internal control over financial reporting) and NYSBA (addressing internal control over financial reporting and disclosure controls and procedures).

[107] Section 404 and the rules we have adopted under that section do not apply to registered management investment companies.

[108] 44 U.S.C. 3501 *et seq.*

[109] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[110] The proposed voluntary program allows for XBRL-Related Documents to be furnished in connection with Exchange Act registration through Forms 10, 10–SB and 20–F. We expect, however, that volunteers for the program will already be subject to Exchange Act reporting requirements and, as a result, do not include an analysis relating to Forms 10 and 10–SB or, to the extent it can be used to for Exchange Act registration, Form 20–F.

[111] The XBRL data file that a participant creates can adhere to either a standard taxonomy or a standard taxonomy with extensions. Extensions to the standard taxonomy further refine the data contained in the standard taxonomy so that the XBRL data can present the information in the corresponding official EDGAR filing. Such extensions would be included in a schema file. For additional detail regarding schema files, see Section II.C.2 of the Proposing Release.

[112] Linkbase files, in general, manage references, labels and relationships for an instance document. For additional detail regarding linkbase files, see Section II.C.3 of the Proposing Release.

[113] In our initial PRA request, our external cost estimate of $6,000 focused on the cost of professionals and consultants. It is our understanding that many participants will also have annual software licensing costs. From further discussions with software providers and others familiar with XBRL, we estimate that the cost of licensing software will range from $200 to $3,000 each year, with the majority of companies licensing less complex XBRL software in the $200 to $500 range. We also understand from these discussions that software providers have indicated that they intend to provide these products for free in the initial stages of the voluntary program. In order to determine a price estimate, we base our software cost estimate at $500, which is the highest cost for the simpler XBRL software license. We have further assumed that the first year license fee will be waived. Because the PRA estimates represent the average burden over a three-year period, we estimate the average burden for software license costs to be $333 per year.

[114] *See* Proposing Release Section VII.A.1 for a further description of our PRA estimate. We note that we expect 80 participants per year. The calculations presented in the description in the Proposing Release based on the expected number of participants per year were based on 80 participants a year.

[115] *See* the letters from AICPA and PWC.

[116] *See* the letter from AICPA.

[117] *See* the letter from PWC.

[118] While the PRA requires an estimate based on a hypothetical three years of participation, as noted earlier, a registrant could participate in the voluntary program by submitting XBRL data over a shorter period or even just once as the registrant chooses.

[119] *See* Proposing Release, Part VII for a description of, and the burden estimates for, the

Continued

Compliance with the amendments is mandatory for those who wish to participate in the voluntary program. There is no retention period for the information disclosed.

IV. Cost-Benefit Analysis

The adopted voluntary program reflects our desire to increase EDGAR's efficiency and utility. The tagging of financial and other information submitted to us through EDGAR has the potential to improve the analysis of that information. In order to evaluate data tagging, we are allowing registrants to furnish XBRL-Related Documents as exhibits to their official EDGAR filings.

A. Benefits

We believe that tagged financial information may allow more efficient and effective retrieval, research and analysis of financial information through automated means. The adopted voluntary program will assist us in assessing whether using XBRL tagged financial information enhances the analysis of financial information included in Commission filings. The voluntary program also will facilitate our ability to assess the technical requirements of processing XBRL-Related Documents using EDGAR.

Today, a number of companies use the financial information provided on EDGAR to create databases of tagged information that they resell to users of the information. Allowing registrants to tag their own financial data has the potential to reduce third party participation in the tagging process and may reduce the cost of access to tagged information. Data tagging by registrants may make the tagging process more accurate. Additionally, the voluntary program may benefit registrants and the public by permitting experimentation with data tagged using XBRL. In the future, increased availability of accurate, tagged financial information could reduce the cost of research and analysis and create new opportunities for companies that compile, provide and analyze data to provide more value added services. Enhanced access to tagged information has the potential to increase analyst coverage and investor interest in a registrant's securities, which could increase liquidity in the market and lower the cost of capital. These benefits, however, are difficult to quantify and may only be realized if a significant number of registrants provide data in XBRL format. Many of the commenters cited one or more of these or related potential benefits.

As to related benefits, commenters stated, among other things, that:

- XBRL will lower the cost of producing information through automation;[120]
- XBRL will free resources from manual reporting to do work that adds value to the business;[121]
- XBRL-tagged data will motivate registrants to provide comparable information;[122]
- Registrants that use XBRL internally will have improved internal reporting processes;[123] and
- Tagged data may assist auditors.[124]

One commenter asserted that, in order to realize the benefit of enhanced financial analysis, XBRL must be revised by:

- Restructuring the taxonomies to break down items into a more hierarchical format without alternative classification locations that can lead to non-comparable data;
- Enabling end-users to validate and read the level of adherence to the standard industrial taxonomies without high-level XBRL processing; and
- Eliminating duplicate elements in the standard industrial taxonomies so end users can map to a spreadsheet template or EDGAR web site/style sheet without complex programming code.[125]

Another commenter stated that the Commission should be able to assess more effectively whether the benefits of full-scale implementation justify the costs by taking steps in the initial implementation of XBRL to assess:

- How XBRL is being used by investors and analysts;
- Whether the structure of the XBRL specification facilitates broad-based use by sophisticated users and third-party software developers; and
- Whether adequate safeguards are in place to ensure that the data is prepared and disseminated correctly.[126]

We acknowledge these commenters' concerns and suggestions. We plan to monitor the voluntary program accordingly.

B. Costs

The voluntary program will lead to some additional costs for registrants choosing to furnish XBRL-Related Documents as exhibits to their periodic and current reports. Some companies may already tag their financial information using XBRL, in which case the additional cost of submitting XBRL-Related Documents will be minimal. The proposals do not dictate that companies follow any particular procedure; however, some participants may choose to acquire additional software or hire consultants to assist them with data tagging. Based on discussions with software providers and others familiar with XBRL, we estimate that between 60 and 100 registrants will participate in the voluntary program at an annual cost per registrant based on our PRA estimates.[127] Based on the foregoing discussion, we estimate the aggregate cost to registrants that choose to participate in the voluntary program will be between $1,009,980 and $1,683,300 in the first year.[128]

Due to the recent development of the technology, we have had limited data to quantify the cost of implementing data tagging using XBRL. Further, methods of tagging data may vary considerably, making accurate cost estimates difficult. In the future, there may be additional costs to participants in the EDGAR data stream, including lower demand for data tagging and data dissemination. The availability of registrant tagged data, however, may provide these

voluntary program. We note that we expect 80 participants per year. The calculations presented in the description based on the expected number of participants per year were based on 80 participants a year.

[120] *See* the letters from AICPA and PWC.

[121] *See* the letter from PWC.

[122] *See* the letters from AAA, D&T (market demand will encourage registrants to adopt financial reporting practices that increase comparability) and Spredgar (XBRL would produce comparable data across companies).

[123] *See* the letters from AAA, Bus Wire and IMA (creation of financial data in an XML-based language will prepare the registrant to re-use the data for internal reporting activities that might help the registrant improve its internal controls).

[124] *See* the letter from D&T (tagged data allows auditors to do better risk assessment and analytics and may allow systematic identification of unusual transactions the net result of which may be a more effective and efficient audit process).

[125] *See* the letters from Linder and NYSSA (supports these changes).

[126] *See* the letter from NYSSA.

[127] To determine the annual cost, assuming 80 registrants will participate, we estimate that the incremental burden would result in 4800 internal burden hours and $506,640 in external costs including $26,640 in software licensing costs. Assuming a cost of $175 per hour for in-house professional staff, the total cost associated with internal burden hours would be $840,000. Consequently, the PRA cost estimate is $1,346,640 or $16,833 per registrant. Proposing Release note 87 inadvertently overestimated the number of internal burden hours and, as a result, also overestimated the total in-house professional staff cost and the aggregate cost estimate on both per registrant and gross bases.

[128] Based on discussions with software providers and others familiar with XBRL, we believe that our initial estimate of software costs at $3,000 per registrant is not an accurate assumption of the average cost to participants. We currently understand that annual software licensing costs will likely range between $200 and $3,000 and that a number of software providers intend to provide XBRL software free in the initial stages of the program. We have revised our PRA estimates to account for software licensing costs and no longer treat them separately in the cost-benefit analysis. The figures in this release correct the estimates provided in the Proposing Release.

participants with alternative business opportunities.[129]

In the Proposing Release, we sought comments and supporting data on our estimates. We received no comments specifically on the estimates we provided in our cost-benefit discussion.[130] Three commenters expressly cited software and personnel costs as we did in the Proposing Release.[131] Some commenters cited other specific types of costs.

For example, two commenters suggested that the initial cost of participating in the voluntary program would be significant.[132] Two commenters suggested that costs would go down over time,[133] while one commenter stated that the costs would remain significant.[134]

Two commenters emphasized that XBRL is complex. One commenter asserted that its complexity has the potential to cause errors in both preparation and dissemination of financial data.[135] The other commenter stated that the XBRL specification, though openly disclosed, is so complex that it virtually requires use of specialized software tools to create, access and validate data and, as a result increases costs, reduces transparency, raises the potential for erroneous data use, unduly complicates the analytical process, restricts analytical creativity and violates the easy equal access nature of EDGAR.[136]

One commenter suggested that registrants that participate in the voluntary program at the outset may face a costly reworking of their XBRL implementation as methods and procedures are refined and, to minimize this, the Commission could encourage experimentation but should oversee full implementation of XBRL by a small subset of registrants to make any appropriate adjustments before broad implementation.[137]

We intend to monitor the voluntary program as to complexity, ongoing adjustments and other matters.

V. Final Regulatory Flexibility Analysis

We prepared this Final Regulatory Flexibility Analysis (''FRFA''), in accordance with the Regulatory Flexibility Act.[138] This FRFA relates to amendments we are adopting that allow registrants, on a voluntary basis, to tag financial information in specified filings using XBRL. The amendments set forth the method by which a registrant participating in the voluntary program may furnish XBRL-Related Documents as an exhibit to its official EDGAR filing.

A. Reasons for, and Objectives of, the Amendments

The purpose of the amendments is to further our ability to assess the feasibility and desirability of using tagged data on a more widespread basis in EDGAR filings. We believe the program to accept XBRL-Related Documents through EDGAR on a voluntary basis will better enable us to study the extent to which XBRL enhances the comparability of that data, its usefulness for financial analysis, and our staff's ability to review and assess filings. In addition, the voluntary program will help us assess the effect of XBRL data tagging on the quality and transparency of financial information as well as the compatibility of XBRL data tagging with the Commission's financial reporting requirements.

B. Significant Issues Raised by Public Comment

The Initial Regulatory Flexibility Act Analysis (''IRFA'') appeared in the Proposing Release. We requested comment on any aspect of the IRFA, including the number of small entities that would be affected by the proposals, the nature of the impact, and how to quantify the impact of the proposals.

Two commenters specifically responded to our request.[139] Both commenters stated that:

- It is difficult to quantify the impact of the proposed rules on small entities;
- The impact will include the initial investment for first-time creation of an instance document followed by more efficient creation of subsequent instance documents;
- Small entities that participate will benefit from greater market visibility due to the ability of analysts to incorporate their results quickly into their analysis; and
- Additional exemptions should not be required during the early stages of the voluntary program and the extension of the program throughout calendar 2005 will enable more small entities to participate after their initial reporting under the Sarbanes-Oxley requirements.

One of the commenters asserted that many small entities may choose to defer participation until system developers provide the ability to create XBRL documents as a standard output option, thereby making the process much easier and cheaper.[140] Similarly, the other commenter stated that it expected small entities, having documented their reporting processes and controls, to automate their systems and in doing so implement XBRL-enabled streamlining of their reporting.[141]

C. Small Entities Subject to the Amendments

The voluntary program may have an impact on three broad categories of small entities: all filers; participants in the voluntary program; and non-filers that interact with EDGAR. Filers include operating companies and investment companies. Under Exchange Act Rule 0–10, for purposes of the Regulatory Flexibility Act, an issuer, other than an investment company, that on the last day of its most recent fiscal year, has total assets of $5 million or less is a ''small business'' or ''small organization.''[142] We estimate there are approximately 2500 small operating company issuers. Under Rule 0–10 under the Investment Company Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[143] We estimate that there are approximately 186 investment companies that file reports on Forms N–CSR and N–Q that meet this definition. These and other filers may be affected by any change to the EDGAR system.

A small subset of these operating and investment company issuers may voluntarily participate in the program;

[129] For example, an entity that traditionally has focused on data dissemination might be able to re-direct its data processing abilities to perform and sell analyses of registrant-tagged data.

[130] We note, however, the estimates we provided in our cost-benefit discussion were based on our PRA estimates that two commenters questioned as previously discussed in Section III.

[131] *See* the letters from AAA, D&T and IMA.

[132] *See* the letters from D&T and NYSSA. One commenter stated that it believed the assumed investment in training and workload to produce the first filing has been underestimated. See the letter from Grant Thornton.

[133] *See* the letters from D&T and PWC. Another commenter addressing costs over time stated that the cost of capital will be reduced in relation to improved transparency and timeliness and this reduction would more than offset the costs of XBRL if XBRL's potential benefits were realized. See the letter from AAA.

[134] *See* the letter from NYSSA.

[135] *See* the letter from NYSSA.

[136] *See* the letters from Linder and NYSSA (some of its members are concerned that XBRL is so complex that it would be difficult and costly for even sophisticated users to create applications). Another commenter stated, however, that unless taxonomies are a good fit with companies' reporting practices, there will be a potential loss of data that would force the capital markets to process two sets of data with a negative effect on trust that increases relational risk and, consequently, the cost of capital. See the letter from AAA.

[137] *See* the letter from NYSSA.

[138] 5 U.S.C. 603.

[139] See letters from AICPA and PWC.

[140] *See* the letter from AICPA.

[141] *See* the letter from PWC.

[142] 17 CFR 240.0–10.

[143] 17 CFR 270.0–10.

however, we estimate that number will be very low.

Finally, the dissemination of XBRL data may have an impact on those entities that interact with the EDGAR data stream. We are aware that entities have developed certain products and services based on data in EDGAR; many entities disseminate, re-package, analyze and sell the information. The Commission does not regulate all these entities and therefore it is currently not feasible to accurately estimate the number or size of these potentially affected entities. We sought comment on the number of small entities that would be impacted by the proposal and did not receive any additional information that would allow us to accurately estimate the number or size of these potentially affected entities.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The voluntary program is an experiment to determine the feasibility of using XBRL on a broader basis. Therefore, the cost of participating, the burden on the EDGAR system and the possible effect on those entities that use the EDGAR data stream are somewhat speculative at this point.

As the amendments relate to a voluntary filing program, no registrant is required to file XBRL-Related Documents. If a voluntary participant already uses XBRL to tag data, it may incur minimal additional cost to participate. Other participants who wish to volunteer may have to purchase software or retain a consultant to assist in tagging data. The inclusion of XBRL-Related Documents on EDGAR may also have effects on other filers, including small entities, who use the system.

The voluntary program may have some effect on any entity that interacts with the data dissemination stream. Allowing filers to submit information in XBRL, even voluntarily, may have an impact on entities providing EDGAR-based services and products. The limited, voluntary nature of the program will help the Commission assess the impact, if any, on these entities.

E. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. The purpose of the proposals is to further our ability to assess the feasibility and desirability of using tagged data on a more widespread basis. Provision of the XBRL-Related Documents is voluntary. We have considered different or simpler requirements for small entities. For tagged data to provide benefits such as ready comparability, however, the data tagging system cannot have alternative requirements. Similarly, in order to achieve the benefits of data tagging, use of a single data tagging technology is necessary. If we determine to require data tagging in the future, we will look to the results of the voluntary program to find alternatives to minimize any burden on small entities. Two commenters stated that additional exemptions should not be required for small entities during the early stages of the voluntary program.[144]

VI. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act[145] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, Section 2(b)[146] of the Securities Act, Section 3(f)[147] of the Exchange Act, and Section 2(c)[148] of the Investment Company Act require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

In the Proposing Release, we considered the amendments in light of the standards set forth in the above statutory sections. We requested comment on whether the proposals, if adopted, would promote efficiency, competition and capital formation or have an impact or burden on competition. We also requested commenters to provide empirical data and other factual support for their views if possible. No commenter addressed anti-competitive effects.[149] Some commenters addressed efficiency and capital formation which we considered and addressed in the cost-benefit section.

The adopted amendments seek to implement a voluntary program and are intended to help us evaluate the usefulness to registrants, investors and the Commission of data tagging in general, and XBRL in particular. We believe that the amendments will promote efficiency because tagged data may allow more efficient and effective retrieval, research and analysis of financial information through automated means. Because the program is voluntary and the amendments are designed to permit filers to provide information in a format that we believe has the potential to be more useful to investors, we believe the amendments do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

VII. Statutory Basis and Text of Amendments

We are adopting the amendments outlined above under Sections 19(a) and 28 of the Securities Act, Sections 3, 12, 13, 14, 15(d), 23(a), 35A and 36 of the Exchange Act, Section 20(a) of the Public Utility Holding Company Act, Section 319(a) of the Trust Indenture Act, Sections 8, 30 and 38 of the Investment Company Act and Section 3(a) of the Sarbanes-Oxley Act.

List of Subjects in 17 CFR Parts 228, 229, 232, 240, 249 and 270

Reporting and recordkeeping requirements, Securities.

■ For the reasons set forth above, we amend title 17, Chapter II of the Code of Federal Regulations as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

■ 1. The authority citation for Part 228 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a-8, 80a–29, 80a–30, 80a–37, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350.

* * * * *

■ 2. Amend § 228.601 by:

■ a. Revising the exhibit table; and

■ b. Adding paragraph (b)(100).

The revision and addition read as follows.

§ 228.601 (Item 601) Exhibits.

(a) * * *

[144] *See* the letters from AICPA and PWC.

[145] 15 U.S.C. 78w(a)(2).

[146] 15 U.S.C. 77b(b).

[147] 15 U.S.C. 78c(f).

[148] 15 U.S.C. 80a–2(c).

[149] We discuss efficiency-related issues in Section IV.

Exhibit Table

BILLING CODE 4310–05–P

	Securities Act Forms					Exchange Act Forms			
	SB-2	S-2	S-3	S-4[3]	S-8	10-SB	8-K[5]	10-QSB	10-KSB
(1) Underwriting agreement	X	X	X	X			X		
(2) Plan of purchase, sale, reorganization, arrangement, liquidation or succession	X	X	X	X		X	X	X	X
(3) (i) Articles of Incorporation	X			X		X	X	X	X
(ii) Bylaws	X			X		X	X	X	X
(4) Instruments defining the rights of security holders, including indentures	X	X	X	X	X	X	X	X	X
(5) Opinion on legality	X	X	X	X	X				
(6) No exhibit required	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(7) Correspondence from an independent accountant regarding non-reliance upon a previously issued audit report or completed interim review							X		
(8) Opinion on tax matters	X	X	X	X					
(9) Voting trust agreement and amendments	X			X		X			X
(10) Material contracts	X	X		X		X		X	X
(11) Statement re: computation of per share earnings	X	X		X		X		X	X
(12) No exhibit required	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(13) Annual report to security holders for the last fiscal year, Form 10-Q or 10-QSB or quarterly report to security holders[1]	X	X		X					X
(14) Code of ethics							X		X
(15) Letter on unaudited interim financial information	X	X	X	X	X			X	
(16) Letter on change in certifying accountant[4]	X	X		X		X	X		X
(17) Letter on departure of director							X		
(18) Letter on change in accounting principles								X	X
(19) Reports furnished to security holders								X	
(20) Other documents or statements to security holders or any document incorporated by reference								X	X
(21) Subsidiaries of the small business issuer	X			X		X			X
(22) Published report regarding matters submitted to vote of security holders								X	X
(23) Consents of experts and counsel	X	X	X	X	X		X[2]	X[2]	X[2]

(24) Power of attorney	X	X	X	X	X	X	X	X	X
(25) Statement of eligibility of trustee	X	X	X	X					
(26) Invitations for competitive bids		X	X	X	X				
(27) through (30) [Reserved]									
(31) Rule 13a-14(a)/15d-14(a) Certifications								X	X
(32) Section 1350 Certifications								X	X
(33) through (98)[Reserved]									
(99) Additional exhibits	X	X	X	X	X	X	X	X	X
(100) XBRL-Related Documents						X	X	X	X

[1] Only if incorporated by reference into a prospectus and delivered to holders along with the prospectus as permitted by the registration statement; or in the case of a Form 10-KSB, where the annual report is incorporated by reference into the text of the Form 10-KSB.

[2] Where the opinion of the expert or counsel has been incorporated by reference into a previously filed Securities Act registration statement.

[3] An issuer need not provide an exhibit if: (1) an election was made under Form S-4 to provide S-2 or S-3 disclosure; and (2) the form selected (S-2 or S-3) would not require the company to provide the exhibit.

[4] If required under Item 304 of Regulation S-B.

[5] A Form 8-K exhibit is required only if relevant to the subject matter reported on the Form 8-K report. For example, if the Form 8-K pertains to the departure of a director, only the exhibit described in paragraph (b)(17) of this section need be filed. A required exhibit may be incorporated by reference from a previous filing.

(b) * * *

(100) *XBRL-Related Documents.* An electronic filer that participates in the voluntary XBRL (eXtensible Business Reporting Language) program may submit XBRL-Related Documents (§ 232.11 of this chapter) in electronic format as an exhibit to: the filing to which they relate; an amendment to such filing; or a Form 8–K (§ 249.308 of this chapter) that references such filing, if the Form 8–K is submitted no earlier than the date of that filing.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 3. The authority citation for Part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 79e, 79j, 79n, 79t, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 4. Amend § 229.601 by:

■ a. Revising the exhibit table; and

■ b. Adding paragraph (b)(100).

The revision and addition read as follows:

§ 229.601 (Item 601) Exhibits.

(a) * * *

Exhibit Table

Instructions to the Exhibit Table

* * * * *

EXHIBIT TABLE

	Securities Act Forms										Exchange Act Forms				
	S-1	S-2	S-3	S-4[3]	S-8	S-11	F-1	F-2	F-3	F-4[3]	10	8-K[5]	10-D	10-Q	10-K
(1) Underwriting agreement	X	X	X	X	---	X	X	X	X	X	---	X	---	---	---
(2) Plan of acquisition, reorganization, arrangement, liquidation or succession	X	X	X	X	---	X	X	X	X	X	X	X	---	X	X
(3) (i) Articles of incorporation	X	---	---	X	---	X	X	---	---	X	X	X	X	X	X
(ii) By-laws	X	---	---	X	---	X	X	---	---	X	X	X	X	X	X
(4) Instruments defining the rights of security holders, including indentures	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
(5) Opinion re legality	X	X	X	X	X	X	X	X	X	X	---	---	---	---	---
(6) [Reserved]	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(7) Correspondence from an independent accountant regarding non-reliance on a previously issued audit report or completed interim review	---	---	---	---	---	---	---	---	---	---	---	X	---	---	---
(8) Opinion re tax matters	X	X	X	X	---	X	X	X	X	X	---	---	---	---	---
(9) Voting trust agreement	X	---	---	X	---	X	X	---	---	X	X	---	---	---	X
(10) Material contracts	X	X	---	X	---	X	X	X	---	X	X	---	X	X	X
(11) Statement re computation of per share earnings	X	X	---	X	---	X	X	X	---	X	X	---	---	X	X
(12) Statements re computation of ratios	X	X	X	X	---	X	X	X	---	X	X	---	---	---	X
(13) Annual report to security holders, Form 10-Q and 10-QSB, or quarterly report to security holders[1]	---	X	---	X	---	---	---	---	---	---	---	---	---	---	X
(14) Code of Ethics	---	---	---	---	---	---	---	---	---	---	---	X	---	---	X
(15) Letter re unaudited interim financial information	X	X	X	X	X	X	X	X	X	X	---	---	---	X	---
(16) Letter re change in certifying accountant[4]	X	X	---	X	---	X	---	---	---	---	X	X	---	---	X
(17) Correspondence on departure of director	---	---	---	---	---	---	---	---	---	---	---	X	---	---	---
(18) Letter re change in accounting principles	---	---	---	---	---	---	---	---	---	---	---	---	---	X	X
(19) Report furnished to security holders	---	---	---	---	---	---	---	---	---	---	---	---	---	X	---
(20) Other documents or statements to security holders	---	---	---	---	---	---	---	---	---	---	---	X	---	---	---

(21) Subsidiaries of the registrant	X	---	---	X	---	X	X	---	---	X	X	---	---	---	X
(22) Published report regarding matters submitted to vote of security holders	---	---	---	---	---	---	---	---	---	---	---	---	X	X	X
(23) Consents of experts and counsel	X	X	X	X	X	X	X	X	X	X	---	X[2]	X[2]	X[2]	X[2]
(24) Power of attorney	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
(25) Statement of eligibility of trustee	X	X	X	X	---	X	X	X	X	X	---	---	---	---	---
(26) Invitations for competitive bids	X	X	X	X	---	---	X	X	X	X	---	---	---	---	---
(27) through (30) [Reserved]															
(31) (i) Rule 13a-14(a)/15d-14(a) Certifications (ii) Rule 13a-14(d)/15d-14(d) Certifications[6]	--- ---	--- ---	--- ---	--- ---	--- ---	--- ---	--- ---	--- ---	--- ---	--- ---	--- ---	--- ---	--- ---	X ---	X X
(32) Section 1350 Certifications[6]	---	---	---	---	---	---	---	---	---	---	---	---	---	X	X
(33) Report on assessment of compliance with servicing criteria for asset-backed securities	---	---	---	---	---	---	---	---	---	---	---	---	---	---	X
(34) Attestation report on assessment of compliance with servicing criteria for asset-backed securities	---	---	---	---	---	---	---	---	---	---	---	---	---	---	X
(35) Servicer compliance statement	---	---	---	---	---	---	---	---	---	---	---	---	---	---	X
(36) through (98) [Reserved]	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(99) Additional exhibits	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
(100) XBRL-Related Documents											X	X		X	X

[1] Where incorporated by reference into the text of the prospectus and delivered to security holders along with the prospectus as permitted by the registration statement; or, in the case of the Form 10-K, where the annual report to security holders is incorporated by reference into the text of the Form 10-K.

[2] Where the opinion of the expert or counsel has been incorporated by reference into a previously filed Securities Act registration statement.

[3] An exhibit need not be provided about a company if: (1) with respect to such company an election has been made under Form S-4 or F-4 to provide information about such company at a level prescribed by Form S-2, S-3, F-2 or F-3; and (2) the form, the level of which has been elected under Form S-4 or F-4, would not require such company to provide such exhibit if it were registering a primary offering.

[4] If required pursuant to Item 304 of Regulation S-K.

[5] A Form 8-K Exhibit is required only if relevant to the subject matter reported on the Form 8-K report. For example, if the Form 8-K pertains to the departure of a director, only the exhibit described in paragraph (b)(17) of this section need be filed. A required exhibit may be incorporated by reference from a previous filing.

[6] Pursuant to §§ 240.13a-13(b)(3) and 240.15d-13(b)(3) of this chapter, asset-backed issuers are not required to file reports on Form 10-Q.

BILLING CODE 8010–01–C

(b) * * *

(100) *XBRL-Related Documents.* An electronic filer that participates in the voluntary XBRL (eXtensible Business Reporting Language) program may submit XBRL-Related Documents (§ 232.11 of this chapter) in electronic format as an exhibit to: the filing to which they relate; an amendment to such filing; or a Form 8–K (§ 249.308 of this chapter) that references such filing, if the Form 8–K is submitted no earlier than date of that filing.

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 5. The authority citation for Part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.*; and 18 U.S.C. 1350.

* * * * *

■ 6. Amend § 232.11 by adding the following definition in alphabetical order.

§ 232.11 Definition of terms used in part 232.

* * * * *

XBRL-Related Documents. The term *XBRL-Related Documents* means documents related to presenting information in eXtensible Business Reporting Language that are part of a voluntary submission in electronic format in accordance with § 232.401.

■ 7. Amend § 232.305 by revising paragraph (b) to read as follows:

§ 232.305 Number of characters per line; tabular and columnar information.

* * * * *

(b) Paragraph (a) of this section does not apply to HTML documents or XBRL-Related Documents (§ 232.11).

■ 8. Amend Part 232 by adding an undesignated center heading and text to §§ 232.401 and 232.402 to read as follows:

XBRL-Related Documents

§ 232.401 XBRL-Related Document submissions.

(a) An electronic filer that participates in the voluntary XBRL (eXtensible Business Reporting Language) program may submit XBRL-Related Documents (§ 232.11) in electronic format as an exhibit to: the filing to which they relate; an amendment to such filing; or, if the electronic filer is eligible to file a Form 8–K (§ 249.308 of this chapter) or a Form 6–K (§ 249.306 of this chapter), a Form 8–K or a Form 6–K, as applicable, that references the filing to which the XBRL-Related Documents relate if such Form 8–K or Form 6–K is submitted no earlier than the date of that filing. The XBRL-Related Documents must comply with the content and format requirements of this section, be submitted as an exhibit to a form that contains the disclosure required by this section and be submitted in accordance with the EDGAR Filer Manual and, as applicable, one of Item 601(b)(100) of Regulation S–K (§ 229.601(b)(100) of this chapter), Item 601(b)(100) of Regulation S–B (§ 228.601(b)(100) of this chapter), Form 20–F (§ 249.220f of this chapter), Form 6–K or § 270.8b–33 of this chapter.

(b) XBRL-Related Documents must consist of mandatory content and may consist of optional content but only if the optional content accompanies the mandatory content in the same submission.

(1) Mandatory content consists of a complete set of information for all periods presented in the corresponding official EDGAR filing from one or more of the following categories (as filed in the corresponding official EDGAR filing):

(i) The complete set of financial statements (the only exceptions are that notes to the financial statements and schedules related to the financial statements may be omitted unless the electronic filer is a registered management investment company in which case it must include *Schedule I—Investments in Securities of Unaffiliated Issuers* (§ 210.12–12 of this chapter));

(ii) Earnings information set forth in Form 6–K or Items 2.02 or 8.01 of Form 8–K (whether contained in the body of the Form 6–K or Form 8–K or in an exhibit, and whether filed or furnished); or

(iii) Financial highlights or condensed financial information set forth in Item 8(a) of Form N–1A (§ 239.15A and § 274.11A of this chapter), Item 4.1 of Form N–2 (§ 239.14 and § 274.11a–1 of this chapter) or Item 4(a) of Form N–3 (§ 239.17a and § 274.11b of this chapter), as applicable.

(2) Optional content can consist only of a complete set of information that is:

(i) For all periods presented in the corresponding official EDGAR filing;

(ii) Related to financial information in the corresponding official EDGAR filing that is simultaneously submitted as mandatory content (as specified in paragraph (b)(1) of this section); and

(iii) From one or more of the following categories (as filed in the corresponding official EDGAR filing):

(A) Audit opinions (as specified by Rule 2–02 of Regulation S–X (§ 210.2–02 of this chapter));

(B) Interim review reports (as specified by Rule 10–01(d) of Regulation S–X (§ 210.10–01(d) of this chapter));

(C) Reports of management on the financial statements;

(D) Certifications;

(E) Management's discussion and analysis of financial condition and results of operations (as specified by Item 303 of Regulation S–K (§ 229.303 of this chapter));

(F) Management's discussion and analysis or plan of operation (as specified by Item 303 of Regulation S–B (§ 228.303 of this chapter));

(G) Operating and financial review and prospects (as specified by Item 5 of Form 20–F); or

(H) Management's discussion of fund performance (as specified by Item 22(b)(7) of Form N–1A).

(c) XBRL-Related Documents must appear in voluntary program format. XBRL-Related Documents appear in voluntary program format if:

(1) Each data element (*i.e.*, all text and all line item names and associated values, dates and other labels) contained in the XBRL-Related Documents reflects the same information in the corresponding official EDGAR filing (*i.e.*, the HTML or ASCII version);

(2) No data element contained in the corresponding official EDGAR filing is changed, deleted or summarized in the XBRL-Related Documents;

(3) The XBRL-Related Documents correlate to the appropriate version of a standard taxonomy, supplemented with extension taxonomies as specified in the EDGAR Filer Manual (§ 232.11);

(4) Each data element contained in the XBRL-Related Documents is matched with an appropriate tag in accordance with any applicable taxonomy; and

(5) The XBRL-Related Documents contain any additional mark-up related content (*e.g.*, the XBRL tags themselves, identification of the core XML documents used and other technology related content) not found in the corresponding official EDGAR filing that are necessary to comply with the EDGAR Filer Manual requirements.

(d) The filing with which XBRL-Related Documents are submitted as an exhibit must contain the disclosures specified in paragraph (d)(1) of this section in the location specified in paragraph (d)(2) of this section.

(1) The filing must disclose:

(i) That the financial information contained in the XBRL-Related Documents is ''unaudited'' or ''unreviewed,'' as applicable;

(ii) That the purpose of submitting the XBRL-Related Documents is to test the related format and technology and, as a result, investors should not rely on the

XBRL-Related Documents in making investment decisions; and

(iii) The identity of the corresponding official EDGAR filing (but only if the filing is a Form 8–K or Form 6–K or an amendment to a Form 8–K or Form 6–K and a purpose of filing the form was to submit as an exhibit XBRL-Related Documents that present information related to financial information filed as part of a different form in the corresponding official EDGAR filing).

(2) The disclosures required by paragraph (d)(1) of this section must appear, as applicable, in:

(i) The exhibit index of a Form 10–K (§ 249.310 of this chapter), 10–Q (§ 249.308a of this chapter), 10 (§ 249.210 of this chapter), 10–SB (§ 249.210b of this chapter), 10–KSB (§ 249.310b of this chapter), 10–QSB (§ 249.308b of this chapter) or 20–F;

(ii) Item 2.02 or 8.01 of a Form 8–K; or

(iii) The body of a Form 6–K, N–CSR (§ 274.128 of this chapter) or N–Q (§ 274.130 of this chapter).

Note to § 232.401: Although XBRL-Related Documents are required by this section to comply with content and format requirements related to the corresponding official EDGAR filing, the purpose of submitting the XBRL-Related Documents is to test the related format and technology and, as a result, investors and others should continue to rely on the official version of the filing and not rely on the XBRL-Related Documents in making investment decisions.

§ 232.402 Liability for XBRL-Related Documents.

(a) *Not deemed filed for liability purposes.* XBRL-Related Documents, regardless of whether they are exhibits to a document incorporated by reference into a filing:

(1) Are not deemed filed for purposes of section 18 of the Exchange Act (15 U.S.C. 78r) or section 34(b) of the Investment Company Act (15 U.S.C. 80a–33(b)) or otherwise subject to the liabilities of these sections;

(2) Are not deemed incorporated by reference;

(3) Are subject to all other liability and anti-fraud provisions of these Acts; and

(4) Are deemed filed for purposes of Item 103 of Regulation S–T (§ 232.103).

(b) *Accurate reflection of underlying documents.* An electronic filer is not liable under the Securities Act, Exchange Act, Public Utility Act, Trust Indenture Act or Investment Company Act for information in its XBRL-Related Documents that complies with the requirements of Item 401 of Regulation S–T (§ 232.401) to the extent that such information was not materially false or misleading in the corresponding official EDGAR filing. To the extent the information in an electronic filer's XBRL-Related Documents does not comply with the requirements of Item 401, the information in the XBRL-Related Documents will be deemed to comply with Item 401 for purposes of this paragraph if the electronic filer makes a good faith and reasonable attempt to comply with Item 401 and, as soon as reasonably practicable after the electronic filer becomes aware that the information in the XBRL-Related Documents does not comply with Item 401, the electronic filer amends the XBRL-Related Documents and, as a result, the information complies with Item 401.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 9. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 10. Amend § 240.13a–14 by adding paragraph (f) to read as follows:

§ 240.13a–14 Certification of disclosure in annual and quarterly reports.

* * * * *

(f) The certification requirements of this section do not apply to XBRL-Related Documents, as defined in § 232.11 of this chapter.

* * * * *

■ 11. Amend § 240.15d–14 by adding paragraph (f) to read as follows:

§ 240.15d–14 Certification of disclosure in annual and quarterly reports.

* * * * *

(f) The certification requirements of this section do not apply to XBRL-Related Documents, as defined in § 232.11 of this chapter.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 12. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 13. Amend Form 20–F (referenced in (§ 249.220f) by reserving paragraphs 16 through 99 and adding paragraph 100 at the end of ''Instructions as to Exhibits'' to read as follows:

Note: The text of Form 20–F does not and this amendment will not appear in the Code of Federal Regulations.

FORM 20–F

* * * * *

INSTRUCTIONS AS TO EXHIBITS

* * * * *

16 through 99 [Reserved]

100. *XBRL-Related Documents.* XBRL-Related Documents (§ 232.11 of this chapter).

* * * * *

■ 14. Amend Form 6–K (referenced in (§ 249.306) by adding paragraph (5) to General Instruction C to read as follows:

Note: The text of Form 6–K does not and this amendment will not appear in the Code of Federal Regulations.

Form 6–K

* * * * *

GENERAL INSTRUCTIONS

* * * * *

C. * * *

(5) *XBRL-Related Documents.* XBRL-Related Documents (§ 232.11 of this chapter) can be submitted if listed as exhibit 100.

* * * * *

PART 270—GENERAL RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 15. The authority citation for Part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

* * * * *

■ 16. Revise § 270.8b–1 to read as follows:

§ 270.8b–1 Scope of §§ 270.8b–1 to 270.8b–33.

The rules contained in §§ 270.8b–1 to 270.8b–33 shall govern all registration statements pursuant to section 8 of the Act (15 U.S.C. 80a–8), including notifications of registration pursuant to section 8(a), and all reports pursuant to section 30(a) or (b) of the Act (15 U.S.C. 80a–29(a) or (b)), including all amendments to such statements and reports, except that any provision in a form covering the same subject matter as any such rule shall be controlling.

§ 270.8b–2 [Amended]

■ 17. Amend § 270.8b–2 by revising the phrase ''§§ 270.8b–1 through 270.8b–32'' to read ''§§ 270.8b–1 through 270.8b–33'' in the introductory text of the section.

■ 18. Add § 270.8b–33 to read as follows:

§ 270.8b–33 XBRL-Related Documents.

A registrant that participates in the voluntary XBRL (eXtensible Business

Reporting Language) program may submit, in electronic format as an exhibit to a filing on Form N–CSR (§§ 249.331 and 274.128 of this chapter) or Form N–Q (§§ 249.332 and 274.130 of this chapter) to which they relate, XBRL-Related Documents (§ 232.11 of this chapter). A registrant that submits XBRL-Related Documents as an exhibit to a form must name each XBRL-Related Document ''EX–100'' as specified in the EDGAR Filer Manual and submit the XBRL-Related Documents in such a manner that will permit the information for each series of an investment company registrant and each contract of an insurance company separate account to be separately identifiable. A registrant may submit such exhibit with, or in an amendment to, the filing to which it relates.

■ 19. Amend § 270.30a–2 by adding paragraph (d) to read as follows:

§ 270.30a–2 Certification of Forms N–CSR and N–Q.

* * * * *

(d) The certification requirements of this section do not apply to XBRL-Related Documents, as defined in § 232.11 of this chapter.

Dated: February 3, 2005.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 05–2391 Filed 2–7–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33–8528; 34–51128; 35–27943; 39–2431; IC–26746]

RIN 3235–AG96

Adoption of Updated EDGAR Filer Manual

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (the Commission) is adopting revisions to the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) Filer Manual to reflect updates to the EDGAR system. The revisions are being made primarily to support a voluntary program that would allow the submission of eXtensible Business Reporting Language (XBRL) documents to assess the usefulness of data tagging in general and XBRL in particular. Revisions are also being made to provide support for the new requirement for filers to enter an effectiveness date on submission types 485BPOS and 486BPOS; addition of new Exhibit EX–99.Rule23C1 for Form N–CSR and rescinding of submission types N–23C–1 and N–23C–1/A; changes to submission form type 25, which the Commission has proposed to be filed electronically by a national securities exchange to delist and/or deregister a class of securities under Section 12(b) of the Exchange Act, and by an issuer to voluntarily remove a class of securities from listing on a national securities exchange and/or registration under Section 12(b); and the list of Self-Regulatory Organizations in Appendix C section C.1.5 of the EDGAR Release 8.10 EDGARLink Filer Manual has been updated to show the name change of Cincinnati Stock Exchange to National Stock Exchange.

The revisions to the Filer Manual reflect changes within Volumes I, II and III, entitled ''EDGAR Release 8.10 EDGARLink Filer Manual,'' ''EDGAR Release 8.10 N–SAR Supplement Filer Manual,'' and ''EDGAR Release 8.10 OnlineForms Filer Manual'' respectively. The updated manual will be incorporated by reference into the Code of Federal Regulations.

EFFECTIVE DATES: February 7, 2005. The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the Federal Register as of February 7, 2005.

FOR FURTHER INFORMATION CONTACT: In the Office of Information Technology, Rick Heroux, at (202) 942–8800; for questions concerning the Division of Investment Management filings, in the Division of Investment Management, Ruth Armfield Sanders, Senior Special Counsel, at (202) 942–0978; for questions concerning the Division of Corporation Finance filings, in the Division of Corporation Finance, Herbert Scholl, Office Chief, EDGAR and Information Analysis, at (202) 942–2940; for questions concerning the Division of Market Regulation filings, in the Division of Market Regulation, Sharon Lawson, Senior Special Counsel, at (202) 942–0182; for questions concerning the Office of the Chief Accountant, Jeff Naumann, Enabling Technologies Specialist, at (202) 942–4400; and, in the Office of Filings and Information Services, Margaret A. Favor, at (202) 942–8900.

SUPPLEMENTARY INFORMATION: Today we are adopting an updated EDGAR Filer Manual (Filer Manual). The Filer Manual describes the technical formatting requirements for the preparation and submission of electronic filings through the EDGAR system.[1] It also describes the requirements for filing using modernized EDGARLink.[2]

The Filer Manual contains all the technical specifications for filers to submit filings using the EDGAR system. Filers must comply with the applicable provisions of the Filer Manual in order to assure the timely acceptance and processing of filings made in electronic format.[3] Filers should consult the Filer Manual in conjunction with our rules governing mandated electronic filing when preparing documents for electronic submission.[4]

The revisions are being made primarily to support a voluntary program[5] that would allow the submission of eXtensible Business Reporting Language (XBRL) documents to assess the usefulness of data tagging in general and XBRL in particular. XBRL is an eXtensible Markup Language (XML) based language that is being developed by an international consortium. During the initial ''voluntary'' period that would begin in accordance with the requirements of the XBRL Voluntary Financial Reporting Program on the EDGAR System, EDGAR

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[1] We originally adopted the Filer Manual on April 1, 1993, with an effective date of April 26, 1993. Release No. 33–6986 (April 1, 1993) [58 FR 18638]. We implemented the most recent update to the Filer Manual on August 23, 2004. *See* Release No. 33–8454 (August 6, 2004) [69 FR 49803].

[2] This is the filer assistance software we provide filers filing on the EDGAR system.

[3] *See* Rule 301 of Regulation S–T (17 CFR 232.301).

[4] *See* Release Nos. 33–6977 (February 23, 1993) [58 FR 14628], IC–19284 (February 23, 1993) [58 FR 14848], 35–25746 (February 23, 1993) [58 FR 14999], and 33–6980 (February 23, 1993) [58 FR 15009] in which we comprehensively discuss the rules we adopted to govern mandated electronic filing. *See also* Release No. 33–7122 (December 19, 1994) [59 FR 67752], in which we made the EDGAR rules final and applicable to all domestic registrants; Release No. 33–7427 (July 1, 1997) [62 FR 36450], in which we adopted minor amendments to the EDGAR rules; Release No. 33–7472 (October 24, 1997) [62 FR 58647], in which we announced that, as of January 1, 1998, we would not accept in paper filings that we require filers to submit electronically; Release No. 34–40934 (January 12, 1999) [64 FR 2843], in which we made mandatory the electronic filing of Form 13F; Release No. 33–7684 (May 17, 1999) [64 FR 27888], in which we adopted amendments to implement the first stage of EDGAR modernization; Release No. 33–7855 (April 24, 2000) [65 FR 24788], in which we implemented EDGAR Release 7.0; Release No. 33–7999 (August 7, 2001) [66 FR 42941], in which we implemented EDGAR Release 7.5; Release No. 33–8007 (September 24, 2001) [66 FR 49829], in which we implemented EDGAR Release 8.0; Release No. 33–8224 (April 30, 2003) [66 FR 24345], in which we implemented EDGAR Release 8.5; Release Nos. 33–8255 (July 22, 2003) [68 FR 44876] and 33–8255A (September 4, 2003) [68 FR 53289] in which we implemented EDGAR Release 8.6; Release No. 33–8409 (April 19, 2004) [69 FR 21954] in which we implemented EDGAR Release 8.7; and Release No. 33–8454 (August 6, 2004) [69 FR 49803] in which we implemented EDGAR Release 8.8.

[5] *See* Release No. 33–8529 (February 3, 2005).

will support unofficial XBRL document attachments to official EDGAR submissions. Instructions for attaching unofficial XBRL documents to electronic submissions are included in Appendix L of the EDGAR Release 8.10 EDGARLink Filer Manual.

Revisions are also being made to provide support for the new requirement for filers to enter an effectiveness date on submission types 485BPOS and 486BPOS and the addition of the new Exhibit EX–99.Rule23C1 for Form N–CSR and rescinding of submission types N–23C–1 and N–23C–1/A.[6]

Earlier last year, we proposed to amend Rule 12d2–2 under the Exchange Act to expand the use of Form 25 so that all issuers and national securities exchanges seeking to delist and deregister a class of securities under Section 12(b) of the Exchange Act in accordance with the rules of the exchange and the Commission would file a Form 25.[7] In addition, we proposed to amend Rule 101 of Regulation S–T to make mandatory the electronic submission on Form 25 of the delisting and/or deregistration. We have not yet adopted our proposed amendment to Rule 101; in the meantime, we will continue to accept paper submissions of Form 25 filings from exchanges, and paper applications for delisting and/or deregistration from exchanges and issuers. In addition, the list of Self-Regulatory Organizations in Appendix C.1.5 has been updated to show the name change of Cincinnati Stock Exchange to National Stock Exchange.

For EDGAR Release 8.10, the EDGARLink software and submission templates 1, 2, 3 and 5 will be updated to support the aforementioned submission form type changes. It is highly recommended that filers download, install, and use the new EDGARLink software and submission templates to ensure that submissions will be processed successfully. Previous versions of the templates may not work properly. Notice of the update has previously been provided on the EDGAR Filing Web site and on the Commission's public Web site. The discrete updates are reflected on the EDGAR Filing Web site and in the updated Filer Manual Volumes.

Along with adoption of the Filer Manual, we are amending Rule 301 of Regulation S–T to provide for the incorporation by reference into the Code of Federal Regulations of today's revisions. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51.

You may obtain paper copies of the updated Filer Manual at the following address: Public Reference Room, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549–0102. We will post electronic format copies on the Commission's Web site; the address for the Filer Manual is *http://www.sec.gov/info/edgar.shtml.* You may also obtain copies from Thomson Financial Inc, the paper and microfiche contractor for the Commission, at (800) 638–8241.

Since the Filer Manual relates solely to agency procedures or practice, publication for notice and comment is not required under the Administrative Procedure Act (APA).[8] It follows that the requirements of the Regulatory Flexibility Act [9] do not apply.

The effective date for the updated Filer Manual and the rule amendments is February 7, 2005. In accordance with the APA,[10] we find that there is good cause to establish an effective date less than 30 days after publication of these rules. The EDGAR system upgrade to Release 8.10 is scheduled to become available on February 7, 2005. The Commission believes that it is necessary to coordinate the effectiveness of the updated Filer Manual with the scheduled system upgrade.

Statutory Basis

We are adopting the amendments to Regulation S–T under Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,[11] Sections 3, 12, 13, 14, 15, 23, and 35A of the Securities Exchange Act of 1934,[12] Section 20 of the Public Utility Holding Company Act of 1935,[13] Section 319 of the Trust Indenture Act of 1939,[14] and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.[15]

List of Subjects in 17 CFR Part 232

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

Text of the Amendment

■ In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The authority citation for Part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.*; and 18 U.S.C. 1350.

* * * * *

■ 2. Section 232.301 is revised to read as follows:

§ 232.301 EDGAR Filer Manual.

Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. The requirements for filers using modernized EDGARLink are set forth in the EDGAR Release 8.10 EDGARLink Filer Manual Volume I, dated February 2005. Additional provisions applicable to Form N–SAR filers and Online Forms filers are set forth in the EDGAR Release 8.10 N–SAR Supplement Filer Manual Volume II, dated February 2005, and the EDGAR Release 8.10 OnlineForms Filer Manual Volume III, dated February 2005. All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. You must comply with these requirements in order for documents to be timely received and accepted. You can obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0102 or by calling Thomson Financial Inc at (800) 638–8241. Electronic format copies are available on the Commission's Web site. The address for the Filer Manual is *http://www.sec.gov/info/edgar.shtml.* You can also photocopy the document at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

By the Commission.

[6] *See* Release No. 33–8335 (November 10, 2003) [68 FR 64952], removing Form N–23C–1 and amending Rule 23c–1 and Form N–CSR.

[7] *See* Release No. 34–49858 (June 15, 2004) [69 FR 34860] (proposing to amend the procedures for removing from listing and/or withdrawing from registration, securities under Section 12(b) of the Securities Exchange Act of 1934).

[8] 5 U.S.C. 553(b).

[9] 5 U.S.C. 601–612.

[10] 5 U.S.C. 553(d)(3).

[11] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

[12] 15 U.S.C. 78c, 78*l*, 78m, 78n, 78o, 78w, and 78*ll*.

[13] 15 U.S.C. 79t.

[14] 15 U.S.C. 77sss.

[15] 15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37.

Dated: February 3, 2005.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 05–2390 Filed 2–7–05; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–102–FOR]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving, with certain exceptions, a proposed amendment to the West Virginia regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). West Virginia proposed revisions to the Code of State Regulations (CSR), as authorized by Committee Substitute for House Bill 4193. The State revised its program to be consistent with certain corresponding Federal requirements, and to include other amendments at its own initiative. The amendments include, among other things, new provisions to ensure reclamation and husbandry techniques that are conducive to the development of productive forestlands and wildlife habitat after mining.

EFFECTIVE DATE: February 8, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301. Telephone: (304) 347–7158, Internet address: *chfo@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Submission of the Amendment

By letter dated March 25, 2004 (Administrative Record Number WV–1389), the West Virginia Department of Environmental Protection (WVDEP) submitted an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment consists of Committee Substitute for House Bill 4193, which authorizes amendments to the West Virginia Surface Mining Reclamation Rules at CSR 38–2. Committee Substitute for House Bill 4193 passed the Legislature on March 12, 2004, and was signed by the Governor on April 5, 2004. West Virginia Code (W.Va. Code or WV Code) 64–3–1(g) specifically authorizes WVDEP to promulgate the revisions as legislative rules.

In its letter, the WVDEP stated that the rules at CSR 38–2 were amended to be consistent with the counterpart Federal regulations. In addition, the amendment adds new provisions concerning ''Forestland'' and ''Wildlife'' to ensure that reclamation techniques and husbandry practices that are conducive to productive forestlands and wildlife habitats are followed. The WVDEP also included in its submittal, a memorandum from the West Virginia State Forester in which the State Forester endorsed the proposed rules and also provided comments on them.

The WVDEP also submitted Committee Substitute for Senate Bill 616, which was adopted by the Legislature on March 21, 2004. The Bill increased the membership of the Environmental Protection Advisory Council and established a new Quality Assurance Compliance Advisory Committee. Because this Bill was vetoed by the Governor on April 6, 2004, it is not being considered in this rulemaking.

The amendment submitted by WVDEP includes amendments to CSR 38–2–24 concerning the exemption for coal extraction incidental to the removal of other minerals. However, none of these provisions at CSR 38–2–24, which the State is proposing to amend, were previously submitted to OSM for approval. Therefore, we included CSR 38–2–24 in its entirety in our proposed rule notice, and we requested public comment on all of Section 24 (Administrative Record Number WV–1390) (Finding 10 below).

We announced receipt of the proposed amendment in the May 12, 2004, **Federal Register** (69 FR 26340). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment (Administrative Record Number WV–1396). We did not hold a hearing or a meeting because no one requested one. The public comment period closed on June 11, 2004. We received comments from one individual and two Federal agencies.

We note that the proposed rules that we announced in the May 12, 2004, **Federal Register** differ in some respects from the final rules that are on file with the West Virginia Secretary of State. While these differences are minor and do not affect our findings below one way or the other, we recommend that the State correct these differences to avoid any confusion in the future.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment, except as discussed below. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes and are approved here without discussion.

1. CSR 38–2–3.12.a.1. Subsidence Control Plan

This provision is amended by changing a term relating to the scale of the topographic map that must be submitted with the subsidence control plan. In the first sentence, the word ''less'' is deleted and replaced by the word ''more.'' In the last sentence, the word ''less'' is deleted and replaced by the word ''larger.''

The revision of the scale term used in this provision is intended to adopt standard language concerning map scales. Concerning the map scale of 1″ = 1000′ or ''larger,'' the word ''larger'' is intended to indicate that an acceptable scale would also be, for example, 1″ =

750′ or 1″ = 500′. Such larger scales, though smaller in number, would allow a map to accurately show the location of small structures such as houses, churches, community buildings, etc.

We find that the amendment to the last sentence, where the word ''less'' is deleted and replaced by the word ''larger,'' is consistent with and no less effective than the Federal regulations at 30 CFR 784.20(a)(1) concerning the map to be submitted with a pre-subsidence survey and can be approved. The amendment to the first sentence, however, contains an inadvertent error. In the first sentence, the word ''less'' is deleted and replaced by the word ''more.'' It is our understanding that the word ''more'' is intended to be ''larger,'' and the inadvertent error will be corrected in the future. Our approval of the amendments to CSR 38–2–3.12.a.1 is based upon that understanding.

We note that the amendments to this paragraph satisfy an issue in a 30 CFR part 732 notification dated June 7, 1996, that we had previously sent the State (Administrative Record Number WV–1037(a)). The Federal regulations at 30 CFR 732.17(d) provide that OSM must notify the State of all changes in SMCRA and the Federal regulations that will require an amendment to the State program. Such letters sent by us are often referred to as ''732 letters or notifications.'' The part 732 letter issue that is being satisfied concerns the scale of the subsidence control plan map as required by the State at CSR 38–2–3.12.a.1.

2. CSR 38–2–7.6. Forest Land

This entire subsection is new. As we stated above at Section II, Submission of the Amendment, the State is adding new provisions concerning ''Forestland'' and ''Wildlife'' to ensure that reclamation techniques and husbandry practices that are conducive to productive forestlands and wildlife habitats are followed by coal mining operators. The WVDEP also included in its submittal, a memorandum from the West Virginia State Forester in which the State Forester endorsed the proposed rules and also provided comments on them.

Trees are a renewable resource, and we believe that reforestation is a good investment, both environmentally and economically. Environmentally, trees minimize soil erosion, remove carbon dioxide from the air, provide wildlife habitat and diverse plant species, and help conserve water resources. Economically, high quality timber can offer substantial revenue for landowners and job opportunities for local residents in terms of logging, furniture making, woodworking, etc. In addition, planting trees restores our forests, which are important recreational areas for hunting, hiking, camping and mountain biking.

For the past several years, OSM has been working with its partners in the coal mining States to identify and promote methods that would enhance postmining land use by planting more high-value hardwood trees on reclaimed coal mined lands and enhancing the survival and growth rates of those trees that are planted. To accomplish these goals, OSM conducted several outreach symposia and interactive forums with coal mining States, industry representatives, reclamation researchers and others to identify information on successful reforestation efforts and technologies. OSM has also sought to identify and remove specific impediments to tree planting and for promoting technologies with potential for enhancing reforestation efforts. Recently, to promote reforestation in the Appalachian Region, OSM and the States of Kentucky, Maryland, Ohio, Pennsylvania, Tennessee, Virginia and West Virginia have jointly started the Appalachian Regional Reforestation Initiative (ARRI) to accomplish the goals of reclaiming more active and abandoned mined lands with hardwood forests, and increasing the survival and growth rates of the planted trees.

The ARRI promotes the use of specific planting methods that increase the survival and growth rates of trees. Collectively, these methods are referred to as the forestry reclamation approach (FRA). The FRA methods focus on the following: (1) Creating a suitable rooting medium for good tree growth that is no less than four feet deep and comprised of topsoil, weathered sandstone and/or the best available material; (2) loosely grading the topsoil or topsoil substitutes to create a non-compacted growth medium; (3) use of native and non-competitive ground covers that are compatible with growing trees; (4) planting two types of trees—early succession species for wildlife and soil stability, and commercially valuable crop trees; and (5) using proper tree planting techniques. Over the past 20 years of Federal oversight, OSM has learned that soil compaction by heavy equipment during postmining reclamation is a primary factor that inhibits vigorous tree growth. Likewise, OSM has learned that competition with ground cover vegetation also seriously inhibits successful reforestation. The FRA methods identified above clearly focus on eliminating both of these impediments to successful reforestation.

West Virginia's proposed regulations at CSR 38–2–7.6 concerning forest land postmining land use (this Finding), and CSR 38–2–7.7 concerning wildlife postmining land use (Finding 3 below) incorporate the FRA methods identified above and are intended to promote vigorous hardwood forests, while providing for wildlife habitat. In this finding and in Finding 3 below, in addition to evaluating the proposed provisions for consistency with the Federal regulations, we will also review the proposed provisions in the light of the planting methods recommended under the FRA for promoting vigorous hardwood forests.

a. 7.6.a. This subsection provides as follows:

> 7.6.a. The Secretary may authorize forest land as a postmining land use only if the following conditions have been met: Provided, however; this subsection only applies to AOC mining operations that propose to utilize auger, area, mountain top and contour methods of mining. Proposed underground mining, coal preparation facilities, coal refuse disposal, haulroads and their related incidental facilities are not subject to the provisions of this subsection but must comply with all other applicable sections of this rule.

New CSR 38–2–7.6.a clarifies that the forest land provisions at CSR 38–2–7.6 apply only to mining operations on lands that will be returned to their approximate original contour (AOC). Other State forestry-related provisions apply to mining operations on lands that receive a variance from the requirements to return mined lands to AOC under CSR 38–2–14.12 and W.Va. Code 22–3–13(c). Specifically, CSR 38–2–7.4 provides the standards applicable to mountaintop removal mining operations with a variance from the requirement to return the land to AOC and that have a postmining land use of commercial forestry and forestry. We note that the proposed provision does not specifically provide that other applicable provisions of the approved surface mining program continue to apply. However, there is nothing in proposed subsection 7.6.a that supersedes or negates compliance with other applicable provisions such as with the general provisions concerning premining and postmining land use at CSR 38–2–7.1, the alternative postmining land use requirements at CSR 38–2–7.3, or with the bond release requirements at CSR 38–2–12.2. Therefore, it is our understanding that the other applicable provisions of the West Virginia program continue to apply to the extent they are consistent with promoting vigorous reforestation as stated above. While there is no specific Federal counterpart to proposed CSR 38–2–7.6.a, we find that this provision

is not inconsistent with the Federal regulations at 30 CFR 780.23 concerning reclamation plans and postmining land use information and can be approved. Our approval of this provision is based upon our understanding noted above.

b. 7.6.b. Planting Plan. Subsection 7.6.b. contains requirements concerning the development, contents, and review of the planting plan. Subsection 7.6.b. contains the following requirements.

7.6.b.1.A. West Virginia registered professional forester shall develop a planting plan for the permitted area that meets the requirements of the West Virginia Surface Coal Mining and Reclamation Act. This plan shall be made a part of the mining permit application. The plans shall be in sufficient detail to demonstrate that the requirements of forestland use can be met. The minimum contents of the plan shall be as follows:

7.6.b.1.A.1. A premining native soils map and brief description of each soil mapping unit to include at a minimum: Areal extent expressed in acres, total depth and volume to bedrock, soil horizons, including the O, A, E, B, and C horizon depths, soil texture, structure, color, reaction, bedrock type, and a site index for northern red oak. A site index for white oak for each soil mapping unit should also be provided if available. A weighted, average site index for northern red oak, based on acreage per soil mapping unit, shall be provided for the permitted area.

7.6.b.1.A.2. A surface preparation plan that includes a description of the methods for replacing and grading the soil and other soil substitutes and their preparation for seeding and tree planting.

7.6.b.1.A.3. Liming and fertilizer plans.

7.6.b.1.A.4. Mulching type, rates and procedures.

7.6.b.1.A.5. Species seeding rates and procedures for application of perennial and annual herbaceous, shrub and vine plant materials for ground cover.

7.6.b.1.A.6. A site specific tree planting prescription to establish forestland to include species, stems per acre and planting mixes.

7.6.b.1.B. Review of the Planting plan.

7.[6.]b.1.B.1. Before approving a forestland postmining land use, the Secretary shall assure that the planting plan is reviewed and approved by a forester employed [by] the Department of Environmental Protection. Before approving the planting plan, the Secretary shall assure that the reviewing forester has made site-specific written findings adequately addressing each of the elements of the plans. The reviewing forester shall make these findings within 45 days of receipt of the plans.

7.6.b.1.B.2. If after reviewing the planting plan, the reviewing forester finds that the plan complies with the requirements of this section, they shall prepare written findings stating the basis of approval. A copy of the findings shall be sent to the Secretary and shall be made part of the Facts and Findings section of the permit application file.

The Secretary shall ensure that the plans comply with the requirements of this rule and other provisions of the approved State surface mining program.

7.6.b.1.B.3. If the reviewing forester finds the plans to be insufficient, the forester shall either:

7.6.b.1.B.3.(a). Contact the preparing forester and the permittee and provide the permittee with an opportunity to make the changes necessary to bring the planting plan into compliance; or,

7.6.b.1.B.3.(b). Notify the Secretary that the planting plan does not meet the requirements of this rule. The Secretary may not approve the surface mining permit until finding that the planting plans satisfy all of the requirements of this rule.

We note that proposed CSR 38–2–7.6.b.1.B.2. provides that the Secretary of WVDEP shall ensure that the planting plans submitted under CSR 38–2–7.6.b. comply with the requirements of this rule (CSR 38–2) and other provisions of the approved State surface mining program. That is, in addition to complying with the provisions of CSR 38–2–7.6 concerning forest land postmining land use, the applicant must also comply with the other provisions of the approved State surface mining program, such as CSR 38–2–9.3.a., which allows the planting plan to be amended or modified prior to implementation, and CSR 38–2–9.3.b., which requires the submission of a final planting report following Phase 1 bond reduction.

It is our understanding that the ''forester employed [by] the Department of Environmental Protection'' at proposed CSR 38–2–7.6.b.1.B.1 would only be a forester within that agency. The Federal regulations at 30 CFR 816.116(b)(3)(i) provide that minimum stocking and planting arrangements shall be specified by the regulatory authority on the basis of local and regional conditions and after consultation with and approval by the State agency responsible for the administration of forestry. Consultation and approval may occur on either a program wide or a permit-specific basis. Under the approved State program, consultation regarding stocking standards occurs on a program wide basis with assistance from the Division of Forestry on an as needed basis. A memorandum of understanding (MOU) dated June 4, 1998, currently exists between the Division of Forestry and the WVDEP. *See* Administrative Record Number WV–1109. It is our understanding that this MOU is being updated and the required consultation with the State agency responsible for the administration of forestry would continue to occur under this MOU (Administrative Record Number WV–1404). We note that this agreement is being updated to provide for future coordination in the development and approval of planting plans specified in this proposed provision and to ensure compliance with WV Code 30–19–1 *et seq.*, concerning Registered Foresters. Under the revised MOU, the Division of Forestry will provide WVDEP technical assistance upon request and assist State registered professional foresters in the development of those permit applications where the postmining land use includes forest land (CSR 38–2–9.3.g), commercial reforestation (CSR 38–2–9.3.h), commercial forestry (CSR 38–2–7.4), or forest land (proposed CSR 38–2–7.6).

There are no direct Federal counterparts to the proposed provisions at subsection 7.6.b concerning planting plan. However, we find that the proposed provisions at CSR 38–2–7.6.b. are not inconsistent with the Federal requirements at 30 CFR 780.18(b)(5) concerning revegetation plan, and we are approving these provisions based upon our understanding, as noted above. In the future, if the State fails to update the MOU or fails to continue the MOU in force, OSM may reconsider this decision and, if appropriate, require the State to amend the West Virginia program to add the specifics contained in the MOU, including the requirement to consult with the Division of Forestry.

c.7.6.c. Soil placement, Substitute material and Grading. This new provision provides as follows:

7.6.c.1. Except for valley fill faces, soil or soil substitutes shall be redistributed in a uniform thickness of at least four feet across the mine area.

7.6.c.2. The use of topsoil substitutes may be approved by the Secretary providing the applicant demonstrates: the volume of topsoil on the permit area is insufficient to meet the depth requirements of 7.6.c.1, the substitute material consists of at least 75% sandstone, has a composite paste pH between 5.0 and 7.5, has a soluble salt level of less than 1.0 mmhos/cm. and is in accordance with 14.3.c. [concerning Top Soil Substitutes.]. The Secretary may allow substitute materials with less than 75% sandstone provided the applicant demonstrates the overburden in the mine area does not contain an adequate volume of sandstone to meet the depth requirements of 7.6.c.1, or the quality of sandstone in the overburden does not meet the requirements of this rule. This information shall be made a part of the permit application.

7.6.c.3. Soil shall be placed in a loose and non-compacted manner while achieving a static safety factor of 1.3 or greater. Grading and tracking shall be minimized to reduce compaction. Final grading and tracking shall be prohibited on all areas that are equal to or less than a 30 percent slope. Organic debris such as forest litter, tree tops, roots, and root balls may be left on and in the soil.

7.6.c.4. The permittee may regrade and reseed only those rills and gullies that are unstable and/or disrupt the approved postmining land use or the establishment of

vegetative cover or cause or contribute to a violation of water quality standards for the receiving stream.

We find that proposed 7.6.c.1, which requires at least four feet of soil or soil substitutes to be redistributed in a uniform thickness, is consistent with and no less effective than the Federal regulations concerning redistribution of topsoil at 30 CFR 816.22(d) and can be approved. As we noted above in Finding 2.a., it is our understanding that the other applicable provisions of the West Virginia program, such as CSR 38–2–14.3.a concerning the removal and storage of topsoil, will continue to apply to the extent they are consistent with these provisions in promoting reestablishment of vigorous hardwood forests. Our approval of proposed 7.6.c.1 is based upon that understanding.

Proposed 7.6.c.2, concerning the demonstrations needed for the approval of topsoil substitutes, is consistent with and no less effective than 30 CFR 816.22(b) concerning soil substitutes and supplements and can be approved. We note that proposed 7.6.c.2 specifically requires compliance with the topsoil substitute requirements at CSR 38–2–14.3.c., which require a demonstration of the suitability of the substitutes for the approved postmining land use.

We find that proposed 7.6.c.3., which requires non-compaction of the replaced soil, is consistent with and no less effective than the Federal regulations at 30 CFR 816.22(d), concerning redistribution of soil and can be approved. 30 CFR 816.22(d) requires redistribution of soil in a manner which, at (i), is consistent with the approved postmining land use, and, at (ii), prevents excess compaction of the materials.

The proposed requirement for a static safety factor of 1.3 at 7.6.c.3 is consistent with and no less effective than the Federal regulations at 30 CFR 816.102(a)(3), which require the backfill to achieve a long-term slope stability factor of 1.3 and to prevent slides. The proposed authorization to allow organic debris to be left on the surface and in the soil is not inconsistent with the Federal regulations, so long as placement of the organic material is limited to the topsoil, or topsoil substitute, and this practice does not affect stability in accordance with the Federal regulations at 30 CFR 816.71(e)(1) and 816.102(a)(3). The emphasis of the State provisions toward minimizing compaction and inoculating the soil with organic materials is consistent with the needs of forestry and tree growth, and with the Federal soil redistribution requirements at 30 CFR 816.22(d). In addition, the proposed rule prohibits ''final'' grading and tracking on slopes of less than 30 percent or about 17 degrees. We note that the grading limitation on slopes of less than 30 percent at proposed 7.6.c.3 is restricted to ''final'' grading or tracking, and initial or subsequent grading will not be prohibited on any slopes, regardless of steepness. Furthermore, it is our understanding that if some areas with less than 30 percent slope require grading or tracking to ensure stability, minimize erosion, or to prevent slippage, the proposed rule would not preclude an operator from undertaking grading or tracking and normal husbandry practices as provided by CSR 38–2–11.7 and 14.15.a.1 and the Federal regulations at 30 CFR 816.102(a)(3) and 816.116(c)(4). Our approval of these provisions is based upon that understanding.

Proposed 7.6.c.4, provides for the repair of rills and gullies that are unstable and/or disrupt the postmining land use or vegetative cover or cause or contribute to a violation of water quality standards. The Federal regulations at 30 CFR 816.95(b) require that rills and gullies that either (1) disrupt the postmining land use or the reestablishment of the vegetative cover or (2) cause or contribute to the violation of water quality standards must be filled, regraded, or otherwise stabilized. We understand the amended State provision concerning repair of rills and gullies at CSR 38–2–7.6.c.4 to mean that a permittee is generally not authorized to repair rills and gullies, except those rills and gullies that are unstable and/or disrupt the approved postmining land use, the establishment of vegetative cover, or cause or contribute to a violation of water quality standards for the receiving stream. This provision is intended to eliminate the compaction of soils and the destruction of established vegetative cover that would normally take place during routine repair of rills and gullies. Such compaction can have a detrimental effect on tree growth. Therefore, we find the limitation on the repair of rills and gullies is intended to protect tree seedlings and other vegetative growth and help assure the success of the forest land postmining land use.

CSR 38–2–7.6.c.4 does not explicitly require the repair of rills and gullies that disrupt the approved postmining land use, the establishment of vegetative cover, or cause or contribute to a violation of water quality standards for the receiving stream. However, the proposed provision in no way prohibits the repair of such rills and gullies. Moreover, the approved State program already requires restoration of the premining land use, or establishment of an approved alternative postmining land use after mining (CSR 38–2–7.1.a. and 7.3, respectively), the establishment of vegetative cover (CSR 38–2–7.6.e.1), and compliance with applicable water quality standards (CSR 38–2–14.5.b). It necessarily follows from these provisions that rills and gullies that could prevent compliance with the above requirements must be filled, regraded, or otherwise stabilized. For this reason, we find that the proposed amendment at CSR 38–2–7.6.c.4, taken in concert with the above-referenced State regulatory requirements, does not render the program less effective than 30 CFR 816.95(b) and can be approved, so long as it is implemented in a manner consistent with that Federal provision and CSR 38–2–9.2.e. If, in future reviews, we should determine that West Virginia is implementing these provisions in a manner that is inconsistent with this finding, a further amendment may be required.

d. 7.6.d. Liming and Fertilizing. This new provision provides as follows:

7.6.d. Liming and Fertilizing.

7.6.d.1. Lime shall be required where the average soil pH is less than 5.0. Lime rates will be used to achieve a uniform soil pH of 5.5. Soil pH may vary from 5.0 to a maximum of 7.5. An alternate maximum or minimum soil pH may be approved based on the optimum pH for the revegetation species.

7.6.d.2. The Secretary shall require the permittee to fertilize based upon the needs of trees and establishment of ground cover to control surface soil erosion. Between 200 and 300 lbs./acre of 10–20–10 fertilizer shall be applied with the ground cover seeding. Other fertilizer materials and rates may be used only if the Secretary finds that the substitutions are appropriate based on soil testing performed by State certified laboratories.

There are no direct Federal counterparts to the specific liming and fertilizing rates proposed by West Virginia. We find, however, that the amendments do not render the West Virginia program less effective than the Federal requirements at 30 CFR 779.21 concerning soil resources information, 30 CFR 780.18 concerning reclamation plan general requirements, and 30 CFR 816.22 concerning topsoil and subsoil and can be approved.

e. 7.6.e. Revegetation. This new provision provides as follows:

7.6.e. Revegetation.

7.6.e.1. Temporary erosion control vegetative cover shall be established as contemporaneously as practical with backfilling and grading until a permanent tree cover can be established. This cover shall consist of a combination of native and domesticated non-competitive and non-

invasive cool and warm species grasses and other herbaceous vine or shrub species including legume species and shrubs. All species shall be slow growing and compatible with tree establishment and growth. The ground vegetation shall be capable of stabilizing the soil from excessive erosion, but the species should be slow growing and non-invasive to allow the establishment and growth of native herbaceous plants and trees. Seeding rates and composition must be in the planting plan. The following ground cover mix and seeding rates (lb./acre) are strongly recommended: winter wheat or oats (10 lbs./acre), fall seeding, foxtail millet (5 lbs./acre), summer seeding, weeping lovegrass (3 lbs./acre or redtop at 5 lbs./acre), kobe lespedeza (5 lbs./acre), birdsfoot trefoil (10lbs.,/acre), perennial rye grass (10 lbs.,/acre) and white clover (3 lbs./acres). Kentucky 31 fescue, serecia lespedeza, all vetches, clovers (except ladino and white clover) and other aggressive or invasive species shall not be used. Alternate seeding rates and composition will be considered on a case by case basis by the Secretary and may be approved if site specific conditions necessitate a deviation from the above. All mixes shall be compatible with the plant and animal species of the region and forestland use.

7.6.e.2. The selection of trees and shrubs species shall be based [on] each species' site requirements (soil type, degree of compaction, ground cover, competition, topographic position and aspect) and in accordance with the approved planting plan prepared by a registered professional forester. The stocking density of woody plants shall be at least 500 plants per acre.

7.6.e.2.A. The stocking density for trees shall be at least 350 plants per acre. There shall be a minimum of five species of trees, to include at least three higher value hardwood species (white oak, northern red oak, black oak, chestnut oak, white ash, sugar maple, black cherry and yellow poplar) and at least two lower value hardwoods or softwoods species (all hickories, red maple, basswood, cucumber magnolia, sycamore, white pine, Virginia pine and pitch x loblolly hybrid pine). There shall be at least 210 high value hardwoods plants per acre and 140 lower value hardwood or softwood plants per acre (70 plants per acre for each species selected).

7.6.e.2.B. The stocking density of shrubs and other woody plants shall not exceed 150 plants per acre. There shall be a minimum of three species of shrubs or other woody plants (black locust, bristly locust, dogwood, Eastern redbud, black alder, bigtooth aspen and bicolor lespedeza, (50 plants per acre for each species selected).

There are no direct Federal counterpart regulations to the specific provisions of CSR 38–2–7.6.e.1 concerning mixes and seeding rates of temporary erosion control vegetative cover. In addition to being compatible with plant and animal species of the region, it is our understanding that the mixes, shrubs, tree seedlings and any alternatives will, as provided by subsections 9.2.a, b, c and h and 30 CFR 816.111(a) and (b), be compatible with the approved postmining land use, have the same seasonal characteristics of growth as the original vegetation, be capable of self regeneration and plant succession, and meet State and Federal seed, poisonous, and noxious plant and introduced species requirements. Our finding that the proposed State provisions are not inconsistent with the Federal requirements concerning revegetation at 30 CFR 816.111 and 816.116 is based upon that understanding and these provisions can be approved, except as noted below.

The proposed provision at CSR 38–2–7.6.e.1 provides that the ''ground vegetation shall be capable of stabilizing the soil from excessive erosion.'' That provision is less effective than the Federal regulations at 30 CFR 816.111(a)(4), which provides that the permittee shall establish a vegetative cover that is ''[c]apable of stabilizing the soil surface from erosion.'' As proposed, CSR 38–2–7.6.e.1 is less effective than 30 CFR 816.111(a)(4) because the proposed standard to stabilize the soil is modified by the word ''excessive.'' Therefore, we are not approving the word ''excessive'' in the phrase ''capable of stabilizing the soil from excessive erosion'' at CSR 38–2–7.6.e.1.

We find that the requirements concerning the selection of tree and shrub species at CSR 38–2–7.6.e.2 are consistent with the general Federal requirements concerning revegetation at 30 CFR 816.111 and can be approved. We also find that the proposed stocking density of trees at CSR 38–2–7.6.e.2.A and the stocking density of shrubs at CSR 38–2–7.6.e.2.B, which have been approved by the Division of Forestry, are consistent with and no less effective than the Federal requirements concerning revegetation standards for success at 30 CFR 816.116(b)(3) and can be approved.

f. 7.6.f. Standards for Success. This new provision provides as follows:

7.6.f. Standards for Success.

7.6.f.1. The success of vegetation shall be determined on the basis of tree and shrub survival and ground cover.

7.6.f.2. Minimum success standard shall be tree survival (including volunteer tree species) and/or planted shrubs per acre equal to or greater than four hundred and fifty (450) trees per acre and a seventy percent (70%) ground cover where ground cover includes tree canopy, shrub and herbaceous cover, and organic litter during the growing season of the last year of the responsibility period; and

7.6.f.3. At the time of final bond release, at least eighty (80) percent of all trees and shrubs used to determine such success must have been in place for at least sixty (60) percent of the applicable minimum period of responsibility. Trees and shrubs counted in determining such success shall be healthy and shall have been in place for not less than two (2) growing seasons.

We find that the proposed success standards for revegetation at CSR 38–2–7.6.f. are consistent with and no less effective than the Federal standards for revegetation success of lands to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products at 30 CFR 816.116(b)(3) and can be approved. We note that there is an apparent typographical error in paragraph 7.6.f.2. Immediately after providing that the minimum success standard shall be tree and shrub survival per acre, the provision states that the minimum standard shall be ''450 trees per acre and a seventy percent (70%) ground cover * * *.'' It is our understanding that the intended meaning of this provision is that the minimum success standard of tree and shrub survival per acre shall be 450 trees/shrubs per acre with a seventy percent (70%) ground cover, and that this apparent typographical error will be corrected in the future. Our finding that CSR 38–2–7.6.f. is consistent with and no less effective than the Federal standards at 30 CFR 816.116(b)(3) and can be approved is based upon that understanding.

3. CSR 38–2–7.7 Wildlife

a. 7.7.a. This subsection is new and provides as follows:

7.7.a. The Secretary may authorize wildlife as a postmining land use only if the following conditions have been met. This subsection applies to all AOC mining operations that propose a postmining land use of wildlife. The Secretary shall ensure that the plans comply with the requirements of this rule and other provisions of the approved State surface mining program.

New subsection CSR 38–2–7.7.a provides that subsection CSR 38–2–7.7 applies only to surface coal mining operations where the land will be returned to AOC. In addition, the provision makes clear that plans submitted to comply with CSR 38–2–7.7 must also comply with the requirements of the other provisions of the approved State surface mining program. That is, in addition to complying with the provisions of CSR 38–2–7.7 concerning wildlife postmining land use, the applicant must also comply with the other provisions of the approved State surface mining program such as CSR 38–2–3.16 concerning fish and wildlife resources information, CSR 38–2–7.3 concerning alternative postmining land use criteria, or CSR 38–2–12.2 concerning bond release requirements. There is no specific Federal counterpart to CSR 38–2–7.7.a. However, we find that this provision is not inconsistent

with the Federal regulations at 30 CFR 780.23 concerning reclamation plans and postmining land use information and can be approved.

b. 7.7.b. Planting Plan. Subdivision 7.7.b. contains requirements concerning the development, contents, and review of the planting plan. Subsection 7.7.b. contains the following requirements:

7.7.b. Planting Plan.

7.7.b.1. A wildlife biologist employed by the West Virginia Division of Natural Resources shall develop a planting plan for the permitted area that meets the requirements of the West Virginia Surface Coal Mining and Reclamation Act. This plan shall be made a part of the mining permit application. The plans shall be in sufficient detail to demonstrate that the requirements of wildlife use can be met. The minimum contents of the plan shall be as follows:

7.7.b.1.A.1. Surface preparation plan that includes a description of the methods for replacing and grading the soil and other soil substitutes and their preparation for seeding and planting.

7.7.b.1.A.2. Liming and fertilizer plans.

7.7.b.1.A.3. Mulching type, rates and procedures.

7.7.b.1.A.4. Species seeding rates and procedures for application of perennial and annual herbaceous, shrub and vine plant materials for ground cover.

7.7.b.1.A.5. A site specific tree/shrub planting prescription to establish wildlife to include species, stems per acre and planting mixes.

We note that proposed CSR 38–2–7.7.b.1 requires the development of each proposed planting plan by a wildlife biologist employed by West Virginia Division of Natural Resources and made a part of the permit application prior to approval by the Secretary of the WVDEP. The Federal regulations at 30 CFR 816.116(b)(3)(i) provide that minimum stocking and planting arrangements may be approved by the regulatory authority, after consultation with and approval by the State agencies responsible for the administration of forestry and wildlife programs. Consultation and approval may occur on either a program wide or a permit-specific basis. Under CSR 38–2–7.7.b.1, the approval of stocking and planting arrangements will be on a permit-specific basis. An MOU currently exists between the Division of Forestry and the WVDEP (see Finding 2.b above). In addition, a Memorandum of Agreement (MOA) dated September 16, 2003, currently exists between the Division of Natural Resources and the WVDEP (Administrative Record Number WV–1405). It is our understanding that the required consultation with the State agencies responsible for the administration of forestry and planting arrangements will continue to occur under these agreements.

There are no specific Federal counterparts to the remaining proposed provisions at subsection 7.7.b concerning planting plan. Nevertheless, we find that the proposed provisions at CSR 38–2–7.7.b. are not inconsistent with the Federal requirements at 30 CFR 780.18(b)(5) concerning revegetation plan and can be approved. However, our approval of CSR 38–2–7.7.b is based upon the understanding that the MOU between the Division of Forestry and the WVDEP and the MOA between the Division of Natural Resources and the WVDEP will continue to be in force.

c. Soil Placement, Substitute Material and Grading. This new provision provides as follows:

7.7.c. Soil placement, Substitute material and Grading.

7.7.c.1. Except for valley fill faces, soil or soil substitutes shall be redistributed in a uniform thickness of at least four feet across the mine area.

7.7.c.2. The use of topsoil substitutes may be approved by the Secretary providing the applicant demonstrates: the volume of topsoil on the permit area is insufficient to meet the depth requirements of 7.6.c.1 [7.7.c.1], the substitute material consists of at least 75% sandstone, has a composite paste pH between 5.0 and 7.5, has a soluble salt level of less than 1.0 mmhos/cm. and is in accordance with 14.3.c. The Secretary may allow substitute materials with less than 75% sandstone provided the applicant demonstrates the overburden in the mine area does not contain an adequate volume of sandstone to meet the depth requirements of 7.6.c.1, or the quality of sandstone in the overburden does not meet the requirements of this rule. Such information shall be made a part of the permit application.

7.7.c.3. Soil shall be placed in a loose and non-compacted manner while achieving a static safety factor of 1.3 or greater. Grading and tracking shall be minimized to reduce compaction. Final grading and tracking shall be prohibited on all areas that are equal to or less than a 30 percent slope. Organic debris such as forest litter, tree tops, roots, and root balls may be left on and in the soil.

7.7.c.4. The permittee may regrade and reseed only those rills and gullies that are unstable and/or disrupt the approved postmining land use or the establishment of vegetative cover or cause or contribute to a violation of water quality standards for the receiving stream.

We find that proposed 7.7.c.1, which requires at least four feet of soil or soil substitutes to be redistributed in a uniform thickness, is consistent with and no less effective than the Federal regulations concerning redistribution of topsoil at 30 CFR 816.22(d) and can be approved. As we noted above in Finding 3.a., in addition to complying with the provisions of CSR 38–2–7.7, the applicant must also comply with the other provisions of the approved State program. Therefore, our approval of proposed 7.7.c.1 is based upon the understanding that the State's topsoil rules at CSR 38–2–14.3(a) and (b) regarding removal and redistribution will continue to apply in these situations.

Proposed 7.7.c.2, concerning the demonstrations needed for the approval of topsoil substitutes, is consistent with and no less effective than 30 CFR 816.22(b) concerning soil substitutes and supplements and can be approved. We note that proposed 7.7.c.2 specifically requires compliance with the topsoil substitute requirements at CSR 38–2–14.3.c., which requires a demonstration of the suitability of the substitutes for the approved postmining land use. We also note an apparent typographical error in proposed 7.7.c.2. The reference to the depth requirements of ''7.6.c.1'' should be to ''7.7.c.1.'' However, because CSR 38–2–7.6.c.1 and CSR 38–2–7.7.c.1 are substantively identical, the typographical error has no meaningful effect. Nevertheless, we recommend that the State correct it in the future.

We find that proposed 7.7.c.3., which requires non-compaction of the replaced soil, is consistent with and no less effective than the Federal regulations at 30 CFR 816.22(d), concerning redistribution of soil and can be approved. The regulations at 30 CFR 816.22(d) require redistribution of soil in a manner which, at (i), is consistent with the approved postmining land use, and, at (ii), prevents excess compaction of the materials.

The proposed requirement for a static safety factor of 1.3 at 7.7.c.3 is consistent with and no less effective than the Federal regulations at 30 CFR 816.102(a)(3), which require the backfill to achieve a long-term slope stability factor of 1.3 and to prevent slides. The proposed authorization to allow organic debris to be left on the surface and in the soil is not inconsistent with the Federal regulations, so long as the placement of organic material is limited to the topsoil, or topsoil substitute, and this practice does not affect stability in accordance with the Federal regulations at 30 CFR 816.71(e)(1) and 816.102(a)(3). The emphasis of the State provisions toward minimizing compaction and inoculating the soil with organic materials is consistent with the needs of forestry and tree growth, and with the Federal soil redistribution requirements at 30 CFR 816.22(d). In addition, the proposed rule prohibits final grading and tracking on slopes of less than 30 percent or about 17 degrees. We note that the grading limitation on slopes of less than 30 percent at proposed 7.7.c.3 is restricted to ''final''

grading or tracking, and initial or subsequent grading will not be prohibited on any slopes, regardless of steepness. Furthermore, it is our understanding that if some areas with less than 30 percent slope require final grading or tracking to ensure stability, minimize erosion, or to prevent slippage, the proposed rule would not preclude an operator from undertaking such activities and other normal husbandry practices as provided by CSR 38–2–11.7 and 14.15.a.1 and the Federal regulations at 30 CFR 816.102(a)(3) and 816.116(c)(4). Our approval of these provisions is based upon that understanding.

Proposed 7.7.c.4 provides for the repair of rills and gullies that are unstable and/or disrupt the postmining land use or vegetative cover or cause or contribute to a violation of water quality standards. The Federal regulations at 30 CFR 816.95(b) require that rills and gullies that either (1) disrupt the postmining land use or the reestablishment of the vegetative cover or (2) cause or contribute to the violation of water quality standards must be filled, regraded, or otherwise stabilized. We understand the amended State provision concerning repair of rills and gullies to mean that a permittee is generally not authorized to repair rills and gullies, except those rills and gullies that are unstable and/or disrupt the approved postmining land use, the establishment of vegetative cover, or cause or contribute to a violation of water quality standards for the receiving stream. This provision is intended to eliminate the compaction of soils and the destruction of established vegetative cover that would normally take place during routine repair of rills and gullies. Such compaction can have a detrimental effect on tree growth. Therefore, we find the limitation on the repair of rills and gullies is intended to protect tree seedlings and other vegetative growth and help assure the success of the forestry components of the wildlife postmining land use.

CSR 38–2–7.7.c.4 does not explicitly require the repair of rills and gullies that disrupt the approved postmining land use, the establishment of vegetative cover, or cause or contribute to a violation of water quality standards for the receiving stream. However, the proposed provision in no way prohibits the repair of such rills and gullies. Moreover, the approved State program already requires restoration of the premining land use, or establishment of an approved alternative postmining land use after mining, (CSR 38–2–7.1.a. and 7.3, respectively), the establishment of vegetative cover (CSR 38–2–7.7.e.1), and compliance with applicable water quality standards (CSR 38–2–14.5.b). It necessarily follows from these provisions that rills and gullies that could prevent compliance with the above requirements must be filled, regraded, or otherwise stabilized. For this reason, we find that the proposed amendment at CSR 38–2–7.7.c.4, taken in concert with the above-referenced State regulatory requirements, does not render the program less effective than 30 CFR 816.95(b) and can be approved, so long as it is implemented in a manner consistent with that Federal provision and CSR 38–2–9.2.e. If, in future reviews, we should determine that West Virginia is implementing these provisions in a manner that is inconsistent with this finding, a further amendment may be required.

d. 7.7.d. Liming and Fertilizing. This new provision provides as follows:

7.7.d. Liming and Fertilizing.

7.7.d.1. Lime shall be required where the average soil pH is less than 5.0. Lime rates will be used to achieve a uniform soil pH of 5.5. Soil pH may vary from 5.0 to a maximum of 7.5. An alternate maximum or minimum soil pH may be approved based on the optimum pH for the revegetation species.

7.7.d.2. The Secretary shall require the permittee to fertilize based upon the needs of trees and establishment of ground cover to control surface soil erosion. A minimum of 300 lbs./acre of 10–20–10 fertilizer shall be applied with the ground cover seeding. Other fertilizer materials and rates may be used only if the Secretary finds that the substitutions are appropriate based on soil testing performed by State certified laboratories.

There are no direct Federal counterparts to the specific liming and fertilizing rates proposed by West Virginia. We find, however, that the proposed amendments do not render the West Virginia program less effective than the Federal requirements at 30 CFR 779.21 concerning soil resources information, 30 CFR 780.18 concerning reclamation plan general requirements, and 30 CFR 816.22 concerning topsoil and subsoil and can be approved.

e. 7.7.e. Revegetation. This new provision provides as follows:

7.7.e. Revegetation.

7.7.e.1. Temporary erosion control vegetative cover shall be established as contemporaneously as practical with backfilling and grading until a permanent tree cover can be established. This cover shall consist of a combination of native and domesticated non-competitive and non-invasive cool and warm species grasses and other herbaceous vine or shrub species including legume species and shrubs. All species shall be slow growing and compatible with tree establishment and growth. The ground vegetation shall be capable of stabilizing the soil from excessive erosion, but the species should be slow growing and non-invasive to allow the establishment and growth of native herbaceous plants and trees. Seeding rates and composition must be in the planting plan. The following ground cover mix and seeding rates (lb./acre) are strongly recommended: winter wheat (20 lbs./acre), fall seeding, foxtail millet (10 lbs./acre), summer seeding, weeping lovegrass (3 lbs./acre or redtop at 5 lbs./acre), kobe lespedeza (5 lbs./acre), birdsfoot trefoil (15 lbs.,/acre), perennial rye grass (10 lbs.,/acre) and white clover (4 lbs./acre). Kentucky 31 fescue, serecia lespedeza, all vetches, clovers (except ladino and white clover) and other aggressive or invasive species shall not be used. Alternate seeding rates and composition will be considered on a case by case basis by the Secretary and may be approved if site specific conditions necessitate a deviation from the above. Areas designated, as openings shall contain only grasses in accordance with the approved planting plan specified under subsection 7.7.b. of this rule.

7.7.e.2. The selection of trees and shrubs species shall be based [on] each species' site requirements (soil type, degree of compaction, ground cover, competition, topographic position and aspect) and in accordance with the approved planting plan specified in under subsection 7.7.b. of this rule. The stocking density of woody plants shall be at least 500 plants per acre. Provided, that where a wildlife planting plan has been approved by a professional wildlife biologist and proposes a stocking rate of less than four hundred fifty (450) trees or shrubs per acre the standard for grasses and legumes shall meet those standards contained in subdivision 9.3.f of this rule. In all instances, there shall be a minimum of four species of tree or shrub, to include at least two hard mast producing species.

There are no direct Federal counterpart regulations concerning the specific provisions of CSR 38–2–7.7.e.1 concerning mixes and seeding rates of temporary erosion control vegetative cover. In addition to being compatible with plant and animal species of the region, it is our understanding that the mixes, shrubs, tree seedlings and any alternatives will, as provided by subsections 9.2.a, b, c and h and 30 CFR 816.111(a) and (b), be compatible with the approved postmining land use, have the same seasonal characteristics of growth as the original vegetation, be capable of self regeneration and plant succession, and meet State and Federal seed, poisonous, and noxious plant and introduced species requirements. Our finding that the proposed State provisions are not inconsistent with the Federal requirements concerning revegetation at 30 CFR 816.111 and 816.116 is based upon that understanding and can be approved, except as noted below.

The proposed provision at CSR 38–2–7.7.e.1 provides that the ''ground vegetation shall be capable of stabilizing the soil from excessive erosion.'' That

provision is less effective than the Federal regulations at 30 CFR 816/817.111(a)(4), which provides that the permittee shall establish a vegetative cover that is ''[c]apable of stabilizing the soil surface from erosion.'' As proposed, CSR 38–2–7.7.e.1 is less effective than 30 CFR 816/817.111(a)(4) because the proposed standard to stabilize the soil is modified by the word ''excessive.'' Therefore, we are not approving the word ''excessive'' in the phrase ''capable of stabilizing the soil from excessive erosion'' at CSR 38–2–7.7.e.1.

We find that the requirements concerning the selection of tree and shrub species at CSR 38–2–7.7.e.2 are consistent with the Federal requirements concerning revegetation, general requirements at 30 CFR 816.111 and can be approved, except as noted below. There is an apparent typographical error where the proposed provision requires compliance with 9.3.f when the proposed planting plan proposes a stocking rate of less than 450 trees or shrubs per acre. Given that the proposed requirements promote wildlife habitat and tree growth, the proposed citation should be to 9.3.g which provides revegetation standards for forestland and wildlife use. The citation to 9.3.f concerns revegetation success standards for grazingland, hayland and pastureland and, therefore, may not be appropriate for ''wildlife'' postmining land use. We find that the proposed stocking density of 450 woody plants at CSR 38–2–7.7.e.2 is consistent with and no less effective than the Federal requirements concerning revegetation standards for success at 30 CFR 816.116(b)(3) and can be approved. We are making this finding with the understanding that the citation of 9.3.f will be corrected to 9.3.g. Furthermore, any reduction in tree stocking rates beyond those set forth in 9.3.g and 9.3.h when the postmining land use includes forest land will require the approval of the Division of Forestry on a case-by-case basis.

As we noted above in Section II, the proposed rules differ from the final rules that are on file with the Secretary of State in some respects. The last sentence in proposed 7.7.e.2 provides, ''In all instances, there shall be a minimum of four species of tree or shrub, to include at least two hard mast producing species.'' The rules on file with the Secretary of State do not include the word ''two'' before hard mast producing species. We believe that this omission is most likely a typographical error, and that the State intends to require a minimum of two hard mast producing species. Nevertheless, because it constitutes a difference that would not further the objectives of the proposed rule, we recommend that this omission be corrected in the near future.

f. 7.7.f. Standards for Success. This new provision provides as follows:

7.7.f. Standards for Success.

7.7.f.1. The success of vegetation shall be determined on the basis of tree and shrub survival and ground cover.

7.7.f.2. Minimum success standard shall be tree survival (including volunteer tree species) and/or planted shrubs per acre equal to or greater than four hundred and fifty (450) trees per acre and a seventy percent (70%) ground cover where ground cover includes tree canopy, shrub and herbaceous cover, and organic litter during the growing season of the last year of the responsibility period;. Provided, that where a wildlife planting plan has been approved by a professional wildlife biologist and proposes a stocking rate of less than four hundred fifty (450) trees or shrubs per acre the standard for grasses and legumes shall meet those standards contained in subdivision 9.3.f of this rule.

7.7.f.3. At the time of final bond release, at least eighty (80) percent of all trees and shrubs used to determine such success must have been in place for at least sixty (60) percent of the applicable minimum period of responsibility. Trees and shrubs counted in determining such success shall be healthy and shall have been in place for not less than two (2) growing seasons.

We find that the proposed success standards for revegetation at CSR 38–2–7.7.f. are consistent with and no less effective than the Federal standards for revegetation success of lands to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products at 30 CFR 816.116(b)(3) and can be approved. We note that there is an apparent typographical error in the provision at CSR 38–2–7.7.f.2. CSR 38–2–7.7.f.1 provides that the success of vegetation shall be determined on the basis of tree and shrub survival and ground cover. The proposed provision at CSR 38–2–7.7.f.2 lacks a reference to ''shrubs'' after the standard of ''450 trees per acre.'' The standard should be ''450 trees/shrubs per acre with a 70 percent ground cover.'' It is our understanding that CSR 38–2–7.7.f. applies to trees and shrubs, and therefore, the ''450'' standard applies to both trees and shrubs. Our finding that CSR 38–2–7.7.f is consistent with and no less effective than the Federal standards at 30 CFR 816.116(b)(3) and can be approved is based upon that understanding.

4. CSR 38–2–9.3.g Revegetation Standards for Areas To Be Developed for Forest Land and/or Wildlife Use

This provision is amended by adding a sentence in the second paragraph that provides as follows:

A professional wildlife biologist employed by the West Virginia Division of Natural Resources shall develop a planting plan that meets the requirements of the West Virginia Surface Coal Mining and Reclamation Act.

We find that the new language is consistent with and no less effective than the Federal regulations at 30 CFR 816.116(b)(3)(i), concerning standards for revegetation success of wildlife habitat, and can be approved. The Federal provision at 30 CFR 816.116(b)(3)(i) provides that minimum stocking and planting arrangements shall be specified by the regulatory authority after consultation with and approval by the State agencies responsible for the administration of forestry and wildlife programs.

As discussed in Finding 2.b, an MOU currently exists between the Division of Forestry and the WVDEP. In addition, as discussed in Finding 3.b, an MOA currently exists between the Division of Natural Resources and WVDEP. Because the tree and shrub stocking and planting arrangement requirements at CSR 38–2–7.6.f.2, 7.7.f.2, and 9.3.g are identical (450 trees/shrubs) as is the ground cover standard (70 percent), it is our understanding that both agreements could apply in all three cases and would require a planting plan to be developed by a wildlife biologist employed by the Division of Natural Resources when wildlife use is to be the postmining land use. However, we should note that both agreements may need to be updated to provide for future coordination in the approval of planting plans involving forest land and/or wildlife habitat.

We note that the amendment to this paragraph satisfies an item in a 30 CFR part 732 notification dated March 6, 1990, that we had previously sent the State (Administrative Record Number WV–834). The Federal regulations at 30 CFR 732.17(d) provide that OSM must notify the State of all changes in SMCRA and the Federal regulations that will require an amendment to the State program. Such letters sent by us are often referred to as ''732 letters or notifications.'' The issue that is satisfied requires minimum stocking and planting arrangements to be specified by the regulatory authority after consultation with and approval by the State agencies responsible for the administration of forestry and wildlife programs. With this action, all issues in our March 6, 1990, part 732 notification have been satisfied.

5. CSR 38–2–14.15.a.1. Contemporaneous Reclamation Standards; General

The first sentence of this paragraph is amended by deleting the partial citation

''(c)(2),'' and adding the words ''and this rule'' immediately following the amended citation. As amended, the sentence provides as follows:

14.15.a.1. Spoil returned to the mined-out area shall be backfilled and graded to the approximate original contour unless a waiver is granted pursuant to W. Va. Code 22–3–13 and this rule with all highwalls eliminated.

The proposed rule provides for an AOC waiver pursuant to WV Code 22–3–13 and this rule (CSR 38–2). The revision clarifies when an AOC variance can be granted. In addition to the mountaintop removal AOC variance provision at WV Code 22–3–13(c)(2), there is the steep slope AOC variance provision at WV Code 22–2–13(e), and the AOC variance provisions for thin or thick overburden at WV Code 22–3–13(b). We find that the proposed revision, which includes a citation to all AOC variances authorized under the approved State program, does not render the West Virginia program less stringent than Section 515 of SMCRA nor less effective than the Federal regulations and can be approved.

6. CSR 38–2–14.15.g. Variance—Permit Applications

This paragraph is amended by adding a sentence, which provides as follows:

Furthermore, the amount of bond for the operation shall be based on the maximum amount per acre specified in WV Code 22–3–12(b)(1).

In a December 3, 2002, **Federal Register** notice (67 FR 71832), we deferred rendering a decision on an earlier proposal by WVDEP to delete the language quoted above. We deferred our decision because the deletion of the requirement was an example of an action that could adversely affect the State's alternative bonding system (ABS) and such a change needed to be reviewed by the State's Special Reclamation Fund Advisory Council. During the Interim Hearing of August 22, 2004, of the Joint State Judiciary and Economic Development Legislative Committees, the Advisory Council warned that the State's ABS still has insufficient revenue to meet its obligations. The proposed retention of the language should help to ensure that the State's ABS will generate sufficient revenue to complete reclamation of bond forfeiture sites, including those with AOC variances. Therefore, we are approving the amendment. For more information, see the December 3, 2002, **Federal Register**, Finding 12 (67 FR 71832, 71836–71837).

7. CSR 38–2–20.1.a.6. Inspection Frequencies Where Permits Have Been Revoked

This provision is new and provides as follows.

20.1.a.6. When a permit has been revoked, in lieu of the inspection frequency established in paragraphs 20.1.a.1 and 20.1.a.2 of this subsection, the Secretary shall inspect each revoked site on a set frequency commensurate with the public health and safety and environmental consideration present at each specific site, but in no case shall the inspection frequency be set at less than one complete inspection per calendar year. In selecting an alternate inspection frequency, the Secretary shall first conduct a complete inspection of the site and provide public notice. The Secretary shall place a notice in the newspaper with the broadest circulation in the locality of the revoked mine site providing the public with a 30-day period in which to submit written comments. The public notice shall contain the permittee's name, the permit number, the precise location of the land affected, the inspection frequency proposed, the general reasons for reducing the inspection frequency, the bond status of the permit, the telephone number and address of [the] Department of Environmental Protection Office where written comments on the reduced inspection frequency may be submitted, and the closing date of the comment period. Following the inspection and public notice, the Secretary shall prepare and maintain for public review a written finding justifying the alternative inspection frequency selected. This written finding shall justify the new inspection frequency by affirmatively addressing in detail all of the following criteria:

20.1.a.6.A. Whether, and to what extent, there exists on the site impoundments, earthen structures or other conditions that pose, or may reasonably be expected to ripen into, imminent dangers to the health or safety of the public or significant environmental harms to land, air, or water resources;

20.1.a.6.B. The extent to which existing impoundments or earthen structures were constructed and certified in accordance with prudent engineering designs approved in the permit;

20.1.a.6.C. The degree to which erosion and sediment control is present and functioning;

20.1.a.6.D. The extent to which the site is located near or above urbanized areas, communities, occupied dwellings, schools and other public or commercial buildings and facilities;

20.1.a.6.E. The extent of reclamation completed prior to abandonment and the degree of stability of unreclaimed areas, taking into consideration the physical characteristics of the land mined and the extent of settlement or revegetation that has occurred naturally with them; and

20.1.a.6.F. Based on a review of the complete and partial inspection report record for the site during at least two consecutive years, the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate.

The proposed revision is in response to our 30 CFR part 732 notification dated July 22, 1997 (Administrative Record Number WV–1071). We find the proposed provisions at CSR 38–2–20.1.a.6 to be substantively identical to the Federal regulations at 30 CFR 840.11(h), except as described below, and can be approved.

As we noted above in Section II, the proposed State rules differ from the final rules that are on file with the Secretary of State in some respects. The first sentence in proposed 20.1.a.6 provides, ''When a permit has been revoked and is not under a reclamation contract, in lieu of the inspection frequency established in paragraphs 20.1.a.1 and 20.1.a.2 of this subsection, the Secretary shall inspect each revoked site on a set frequency commensurate with the public health and safety and environmental consideration present at each specific site, but in no case shall the inspection frequency be set at less than one complete inspection per calendar year.'' The rule summary that was filed with us and the rules on file with the Secretary of State do not include the words ''and is not under a reclamation contract'' after the word revoked. However, this phrase does appear in the proposed State rules that were submitted to us for approval. While the presence or absence of the phrase ''and is not under a reclamation contract'' does not affect our decision concerning CSR 38–2–20.1.a.6, we recommend that the WVDEP resolve this apparent discrepancy for the clarity of the West Virginia program. Because the phrase quoted above is absent from the rule summary and the final rules which are on file with the Secretary of State, we have advised the State that the quoted language will not be included in our approval of CSR 38–2–20.1.a.6 (Administrative Record Number WV–1406).

The proposed rules at CSR 38–2–20.1.a.6.F, concerning written findings, provide for the review of the complete and partial inspection report record for the site during ''at least two consecutive years.'' The State provision differs slightly from the counterpart Federal requirement, which provides for such review of the record for the site during ''at least the last two consecutive years.'' The State provision at CSR 38–2–20.1.a.6.F lacks the requirement that the review of the inspection record must be for at least ''the last'' two consecutive years. However, in accordance with its policy dated November 3, 2004, the State will consider inspection records for at least the last two consecutive years when establishing the inspection frequency for a bond forfeiture site

(Administrative Record Number WV–1409).

The proposed rule does not include counterparts to the Federal regulations at 30 CFR 840.11(g)(1) and (g)(3). Subdivision (g) provides that ''abandoned site'' means a surface coal mining and reclamation operation for which the regulatory authority has found in writing that, at (g)(1), all surface and underground coal mining and reclamation activities at the site have ceased. Subdivision (g)(3) requires the regulatory authority to take appropriate measures to preclude a permittee, and owners and controllers of the permittee, with a revoked permit from receiving future permits, and to initiate alternative enforcement action to ensure abatement of existing violations at bond forfeiture sites. The State's approved program authorizes WVDEP to take such action, but the proposed State rules do not specifically require it. However, the WVDEP's policy dated November 3, 2004, addresses these concerns and provides the following:

In addition to the written requirements in CSR 38–2–29.1.a.6 when reducing inspection frequency at bond forfeiture sites not under reclamation contract, the following shall apply:

* * * * *

—The agency will make a written finding that all surface and underground coal mining and reclamation activities at the site have ceased;

—The agency will make a written finding that we are taking appropriate measures to preclude the permittee and operator, and owners and controllers of the permittee and operator, with a revoked permit, from receiving future permits while violations continue at the site; and

—Make a written finding that an enforcement action pursuant to West Virginia Code 22–3–17(g), (h) or (j) is being initiated to ensure abatement of existing violations or that there will not be a reoccurrence of violations at the bond forfeiture site, except where after evaluating the circumstances it concludes that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs.

Unlike the Federal rules, West Virginia's proposed rules and policy do not provide for reduced inspection frequency at abandoned sites. West Virginia does not reference its show cause procedures at WV Code 22–3–17(b) in its policy, because sites with revoked permits have already been subjected to the State's show cause process. In addition, abandoned sites for which the permits have not been revoked will still be inspected in accordance with CSR 38–2–20.1.a.1 and 38–2–20.1.a.2.

Therefore, we find that the State's proposed inspection frequency requirements, together with the implementation of the policy as described above, are no less effective than the Federal requirements at 30 CFR 840.11(g) and (h) and can be approved. Furthermore, the proposed revision and the policy mentioned above satisfy this issue as described in our 30 CFR part 732 notification dated July 22, 1997.

8. CSR 38–2–22.5.a. Coal Refuse Performance Standards—Controlled Placement

This provision is amended in the second sentence by adding the words ''hauled or conveyed and'' immediately following the words ''mine refuse shall be.'' As amended, the sentence provides that coal mine refuse shall be hauled or conveyed and placed in a controlled manner to comply with the performance standards at CSR 38–2–22.5.a.1. through 22.5.a.5. We find that by adding the words ''hauled or conveyed,'' CSR 38–2–22.5.a is substantively identical to the Federal regulations at 30 CFR 816/817.81(a) and, therefore, the amendment can be approved. We note that this change is in response to and satisfies an item in OSM's 30 CFR part 732 notification to the State of July 22, 1997 (Administrative Record Number WV–1071).

9. CSR 38–2–23. Special Authorization for Coal Extraction as an Incidental Part of Development of Land for Commercial, Residential, Industrial, or Civic Use

This section is deleted in its entirety. The remaining sections are renumbered accordingly. This provision allowed special authorizations for coal extraction as an incidental part of the development of land for commercial, residential, industrial, or civic use. The deletion of this section by the State is in response to our disapproval of Section 23 at 30 CFR 948.12(a)(4) as discussed in the May 5, 2000, and March 4, 2003, **Federal Register** notices and as required by the required program amendment codified in the Federal regulations at 30 CFR 948.16(oooo) (65 FR 26133 and 68 FR 10719, respectively). The deletion of the requirements at Section 23 renders the State's rules no less effective than the Federal regulations and can be approved. This approval resolves the required program amendment at 30 CFR 948.16(oooo), which can be removed.

10. CSR 38–2–24. Exemption for Coal Extraction Incidental to Extraction of Other Minerals

This section is new and provides as follows:

CSR 38–2–24 Exemption for Coal Extraction Incidental to Extraction of Other Minerals.

24.1. Exemption determination. The term other minerals as used in this section means any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste and fill material. No later than 90 days after [the] filing of an administratively complete request for exemption, the Secretary shall make a written determination whether, and under what conditions, the persons claiming the exemption are exempt under this section, and shall notify the person making the request and persons submitting comments on the application of the determination and the basis for the determination. The determination of exemption shall be based upon information contained in the request and any other information available to the regulatory authority at that time. If the Secretary fails to provide a determination as specified in this section, an applicant who has not begun extraction may commence pending a determination unless the Secretary issues an interim finding, together with reasons, therefore, that the applicant may not begin coal extraction. Any person adversely affected by a determination of the Secretary pursuant to this section may file an appeal only in accordance with the provisions of article one, chapter twenty-two-b of this code, within thirty days after receipt of the determination. The filing of an appeal does not suspend the effect of the determination.

24.2. Contents of request for exemption. A request for exemption shall be made part of a quarrying application and shall include at a minimum:

24.2.a. The names and business address of the requestor to include a street address or route number;

24.2.b. A list of the minerals to be extracted;

24.2.c. Estimates of annual production of coal and the other minerals over the anticipated life of the operation;

24.2.d. A reasonable estimate of the number of acres of coal that will be extracted;

24.2.e. Evidence of publication of a public notice for an application for exemption. The notice that an application for exemption has been filed with the Secretary shall be published in a newspaper of general circulation in the county in which the operation is located and shall be published once and provide a thirty day comment period. The public notice must contain at a minimum:

24.2.e.1. The quarrying number identifying the operation;

24.2.e.2. A clear and accurate location map of a scale and detail found in the West Virginia General Highway Map. The map size will be at a minimum four inches (4″) × four inches (4″). Longitude and latitude lines and north arrow will be indicated on the map and such lines will cross at or near the center of the quarrying operation;

24.2.e.3. The names and business address of the requestor to include a street address or route number;

24.2.e.4. A narrative description clearly describing the location of the quarrying operation;

24.2.e.5. The name and address of the Department of Environmental Protection Office where written comments on the request may be submitted;

24.2.f. Geologic cross sections, maps or plans of the quarrying operation determine the following information:

24.2.f.1. The locations (latitude and longitude) and elevations of all bore holes;

24.2.f.2. The nature and depth of the various strata or overburden including geologic formation names and/or geologic members;

24.2.f.3. The nature and thickness of any coal or other mineral to be extracted;

24.2.g. A map of appropriate scale which clearly identifies the coal extraction area versus quarrying area;

24.2.h. A general description of coal extraction and quarrying activities for the operation;

24.2.i. Estimated annual revenues to be derived from bona fide sales of coal and other minerals to be extracted;

24.2.j. If coal or the other minerals are to be used rather than sold, estimated annual fair market values at the time of projected use of the coal and other minerals to be extracted;

24.2.k. The basis for all annual production, revenue, and fair market value estimates;

24.2.l. A summary of sale commitments and agreements, if any, that the applicant has received for future delivery of other minerals to be extracted from the mining area, or a description of potential markets for the other minerals;

24.2.m. If the other minerals are to be commercially used by the applicant, a description specifying the use; and

24.2.n. Any other information pertinent to the qualification of the operation as exempt.

24.3. Requirements for exemption.

24.3.a. Activities are exempt from the requirements of the Act [the West Virginia Surface Coal Mining and Reclamation Act] if all of the following are satisfied:

24.3.a.1. The production of coal extracted from the mining area determined annually as described in this paragraph does not exceed 16⅔ percent of the total annual production of coal and other minerals removed during such period for purposes of bona fide sale or reasonable commercial use.

24.3.a.2. Coal is extracted from a geological stratum lying above or immediately below the deepest stratum from which other minerals are extracted for purposes of bona fide sale or reasonable commercial use.

24.3.a.3. The revenue derived from the coal extracted from the mining area, determined annually does not exceed fifty (50) percent of the total revenue derived from the coal and other minerals removed for purposes of bona fide sale or reasonable commercial use. If the coal extracted or the minerals removed are used by the operator or transferred to a related entity for use instead of being sold in a bona fide sale, then the fair market value of the coal or other minerals shall be calculated at the time of use or transfer and shall be considered rather than revenue.

24.3.b. Persons seeking or that have obtained an exemption from the requirements of the Act [West Virginia Surface Coal Mining and Reclamation Act] shall comply with the following:

24.3.b.1. Each other mineral upon which an exemption under this section is based must be a commercially valuable mineral for which a market exists or which is quarried in bona fide anticipation that a market will exist for the mineral in the reasonably foreseeable future, not to exceed twelve months. A legally binding agreement for the future sale of other minerals is sufficient to demonstrate the above standard.

24.3.b.2. If either coal or other minerals are transferred or sold by the operator to a related entity for its use or sale, the transaction must be made for legitimate business purposes.

24.4. Conditions of exemption.

A person conducting activities covered by this part shall:

24.4.a. Maintain on site the information necessary to verify the exemption including, but not limited to, commercial use and sales information, extraction tonnages, and a copy of the exemption application and the Department's exemption approval;

24.4.b. Notify the Department of Environmental Protection upon the completion or permanent cessation of all coal extraction activities.

24.5. Stockpiling of minerals.

24.5.a. Coal extracted and stockpiled may be excluded from the calculation of annual production until the time of its sale, transfer to a related entity or use:

24.5.a.1. Up to an amount equaling a 12 month supply of the coal required for future sale, transfer or use as calculated based upon the average annual sales, transfer and use from the mining area over the two preceding years; or

24.5.a.2. For a mining area where coal has been extracted for a period of less than two years, up to an amount that would represent a 12 month supply of the coal required for future sales, transfer or use as calculated based on the average amount of coal sold, transferred or used each month.

24.5.b. The Department of Environmental Protection shall disallow all or part of an operator's tonnages of stockpiled other minerals for purposes of meeting the requirements of this part if the operator fails to maintain adequate and verifiable records of the mining area of origin, the disposition of stockpiles or if the disposition of the stockpiles indicates the lack of commercial use or market for the minerals.

The Department of Environmental Protection may only allow an operator to utilize tonnages of stockpiled other minerals for purposes of meeting the requirements of this part if:

24.5.b.1. The stockpiling is necessary to meet market conditions or is consistent with generally accepted industry practices; and

24.5.b.2. Except as provided in 24.5.b.3. of this section, the stockpiled other minerals do not exceed a 12 month supply of the mineral required for future sales as approved by the regulatory authority on the basis of the exemption application.

24.5.b.3. The Department of Environmental Protection may allow an operator to utilize tonnages of stockpiled other minerals beyond the 12 month limit established in 24.5.b.2. of this section if the operator can demonstrate to the Department of Environmental Protection's satisfaction that the additional tonnage is required to meet future business obligations of the operator, such as may be demonstrated by a legally binding agreement for future delivery of the minerals.

24.5.b.4. The Department of Environmental Protection may periodically revise the other mineral stockpile tonnage limits in accordance with the criteria established by 24.5.b.2. and 3. of this section based on additional information available to the Department of Environmental Protection.

24.6. Revocation and enforcement.

24.6.a. The Department of Environmental Protection shall conduct an annual compliance review of the operation requesting exemption.

24.6.b. If the Department of Environmental Protection has reason to believe that a specific operation was not exempt at the end of the previous reporting period, is not exempt, or will be unable to satisfy the exemption criteria at the end of the current reporting period, the Department of Environmental Protection shall notify the operator that the exemption may be revoked and the reason(s) therefore. The exemption will be revoked unless the operator demonstrates to the Department of Environmental Protection within 30 days that the operation in question should continue to be exempt.

24.6.c. If the Department of Environmental Protection finds that an operator has not demonstrated that activities conducted in the operation area qualify for the exemption, the Department of Environmental Protection shall revoke the exemption and immediately notify the operator and commenter(s). If a decision is made not to revoke an exemption, the Secretary shall immediately notify the operator and commenter(s).

24.6.d. Any adversely affected person by a determination of the Secretary pursuant to this section may file an appeal only in accordance with the provisions of WV § 22B–1–1 *et seq.* of this code, within thirty days after receipt of the determination. The filing of an appeal does not suspend the effect of the determination.

24.6.e. Direct enforcement.

24.6.e.1. An operator mining in accordance with the terms of an approved exemption shall not be cited for violations of WV § 22–3 *et seq.* or [section] 38–2 *et seq.* that occurred prior to the revocation of the exemption. Provided, however, an operator who does not conduct activities in accordance with the terms of an approved exemption and knows or should have known that the activities are not in accordance with the approved exemption shall be subject to direct enforcement action for violations of WV [section] 22–3 *et seq.* or [section] 38–2 *et seq.* that occur during the period of the activities.

24.6.e.2. Upon revocation of an exemption or denial of an exemption application, an operator shall stop conducting surface coal mining operations until a permit is obtained, and shall comply with the reclamation standards of WV [section] 22–3 *et seq.* or [section] 38–2 *et seq.* with regard to conditions, areas, and activities existing at the time of revocation or denial.

24.7. Reporting requirements.

24.7.a.1. Following approval by the Department of Environmental Protection of an exemption for an operation, the person receiving the exemption shall file a quarterly production report with the Department of Environmental Protection containing the information specified in 24.7.a.3. of this section.

24.7.a.2. The report shall be filed no later than 30 days after the end of each quarter.

24.7.a.3. The information in the report shall cover:

24.7.a.3.A. Quarterly production of coal and other minerals, and

24.7.a.3.B. The cumulative production of coal and other minerals.

24.7.a.3.C. The number of tons of coal stockpiled;

24.7.a.3.D. The number of tons of other minerals stockpiled by the operator.

24.7.b.1. Following approval by the Department of Environmental Protection of an exemption for an operation, the person receiving the exemption shall file an annual production report with the Department of Environmental Protection containing the information specified in 24.7.b.3.of this section.

24.7.b.2. The report shall be filed no later than 30 days after the end of each calendar year.

24.7.b.3. The information in the report shall include:

24.7.b.3.a. The number of tons of extracted coal sold in bona fide sales and the total revenue derived from these sales;

24.7.b.3.b. The number of tons of coal extracted and used or transferred by the operator or related entity and the estimated total fair market value of this coal;

24.7.b.3.c. The number of tons of coal stockpiled;

24.7.b.3.d. The number of tons of other commercially valuable minerals extracted and sold in bona fide sales and total revenue derived from these sales;

24.7.b.3.e. The number of tons of other commercially valuable minerals extracted and used or transferred by the operator or related entity and the estimated total fair market value of these minerals;

24.7.b.3 .f. The number of tons of other commercially valuable minerals removed and stockpiled by the operator;

24.7.b.3.g. The annual production of coal and other minerals and the annual revenue derived from coal and other minerals; and

24.7.b.3.h. The annual production of coal and other minerals and the annual revenue derived from coal and other minerals during the preceding year.

24.8. Public Availability of Information.

24.8.1. Except as provided in 24.8.2, all information submitted to the Secretary shall be made immediately available for public inspection and copying at the office with jurisdiction over coal mining in the locality of the subject exempt operation, until at least three (3) years after expiration of the period during which the subject mining area is active.

24.8.2 The Secretary may keep information submitted to the Secretary confidential if the person submitting it requests in writing, at the time of submission, that it be kept confidential and if the information concerns trade secrets or is privileged commercial or financial information of the persons intending to conduct operations under this rule.

24.8.3. Information requested to be held as confidential under subsection 24.8.2 shall not be made publicly available until after notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of the information.

24.9. Right of Inspection and Entry.

24.9.1 Authorized representatives of the Secretary and the Secretary of the U.S. Department of the Interior shall have the right to conduct inspections of operations claiming exemption.

24.9.2. Each authorized representative of the Secretary and the Secretary of the U.S. Department of the Interior conducting an inspection under this rule shall:

24.9.2.a. Have a right of entry to, upon, and through any mining and reclamation operations without advance notice or a search warrant, upon presentation of appropriate credentials;

24.9.2.b. At reasonable times and without delay, have access to and copy any records relevant to the exemption; and

24.9.2.c. Have a right to gather physical and photographic evidence to document conditions, practices, or violations at a site.

24.9.3. No search warrant shall be required with respect to any activity under 24.9.1 and 24.9.2., except that a search warrant may be required for entry into a building.

The proposed revisions are in response to our 30 CFR part 732 notification dated March 6, 1990 (Administrative Record Number WV–834). Except as noted below, we find that the proposed amendments at CSR 38–2–24, concerning an exemption for coal extraction incidental to extraction of other minerals, are substantively identical to the counterpart Federal regulations at 30 CFR part 702 and can be approved.

CSR 38–2–24.2.c. The State provides that a request for an exemption shall be made part of a quarrying application and shall at a minimum include ''[e]stimates of annual production of coal and the other minerals over the anticipated life of the operation.'' The counterpart Federal regulations at 30 CFR 702.12(c) provide that, at a minimum, an application shall include estimates of annual production of coal and the other minerals within ''each mining area'' over the anticipated life of the mining operation. The proposed State provision lacks a counterpart to the Federal phrase ''each mining area.''

The Federal regulations at 30 CFR 702.5(d) define mining area to mean an individual excavation site or pit from which coal, other minerals and overburden are removed. The intended purpose of the term ''mining area'' is discussed in the December 20, 1989, **Federal Register** notice in which the Federal regulations at 30 CFR part 702 were announced (54 FR 52092, 52096). In that notice, OSM stated that the primary purpose for the definition of mining area being limited to an individual excavation site or pit is to preclude an operator from averaging mineral tonnages from different locations to gain an unwarranted exemption from the Act. The definition also prohibits an operator from claiming an exemption by combining production from distinct noncoal and coal operations. Each excavation site or pit must individually qualify for the exemption in accordance with the requirements for exemption under 30 CFR 702.14. OSM further stated that it recognizes that a single excavation site or pit may, depending on its size, include a number of individual excavation activities. In this context, OSM considers a mining area to include the excavation activities occurring within a single excavation site or pit.

It is our understanding that quarries within West Virginia can be typically characterized as single excavations that may, depending on their size, include a number of individual excavation activities. For this reason, we find that proposed CSR 38–2–24.2.c does not render the West Virginia program less effective than the Federal regulations at 30 CFR 702.5(d) and can be approved. Our approval of this provision is based upon that understanding. If the State fails to implement this provision in a manner consistent with our understanding described above, OSM may require the State to amend the West Virginia program to require that an application shall include estimates of annual production of coal and the other minerals within ''each mining area'' over the anticipated life of the mining operation.

CSR 38–2–24.2.d and 38–2–24.2.g. The Federal regulations at 30 CFR 702.12(h) provide that an application for an exemption shall include, at a minimum, an estimate to the nearest acre of the number of acres that will compose the mining area over the anticipated life of the mining operation. While the proposed rules at CSR 38–2–24 do not contain a specific counterpart to this Federal requirement, acreage identification information is indirectly provided by two State requirements. Proposed CSR 38–2–24.2.d provides that a request for an exemption shall include, at a minimum, a reasonable estimate of the number of acres of coal that will be mined. In addition, proposed CSR 38–2–24.2.g provides that a request for an exemption shall include at a minimum a map of appropriate scale which clearly identifies the coal extraction area versus the quarrying

area. We find that the information provided by an applicant for an exemption under proposed CSR 38–2–24.2.d and CSR 38–2–24.2.g renders the proposed amendments no less effective than the Federal regulations at 30 CFR 702.12(h).

CSR 38–2–24.2.e.4. This proposed provision provides that the newspaper notice published to inform the public of the application for an exemption must contain a narrative description clearly describing the location of the quarrying operation. This requirement is substantively identical to the counterpart Federal provision at 30 CFR 702.12(i), except that the State provision does not provide for a description of the proposed operation as does 30 CFR 702.12(i). We find that this omission does not render the State provision less effective because that information is available to the public via the quarry identification number that is required by proposed CSR 38–2–24.2.e.1. Under the proposed State rules, only quarries are eligible to obtain an exemption under CSR 38–2–24, and the descriptive information about those quarries is available to the public via the quarry number and the narrative describing the location of such operations. Therefore, we find that the lack of a specific State counterpart to 30 CFR 702.12(i) concerning a description of the proposed operation does not render the provision less effective than 30 CFR 702.12(i).

CSR 38–2–24.2.f.2. The Federal regulations at 30 CFR 702.12(j) provide that an application for an exemption shall include, at a minimum, the relative position and thickness of any material not classified as ''other minerals'' that will also be extracted during the conduct of mining activities. There is no specific State counterpart to this Federal provision. However, the information concerning ''other materials'' not classified as ''other minerals'' that will also be extracted during the mining activities is required by the provision at CSR 38–2–24.2.f.2. The State provision provides that an application for an exemption shall include at a minimum the nature and depth of the various strata or overburden including geologic formation names and/or geologic members. This information would include, therefore, the identification of the relative position and thickness of the coal, ''other minerals'' to be mined and the ''other materials'' not classified as ''other minerals'' that will also be extracted during the mining process. Therefore, we find that proposed CSR 38–2–24.2.f.2 renders the West Virginia program no less effective than the Federal regulations at 30 CFR 702.12(j).

CSR 38–2–24.6.c. We note that proposed CSR 38–2–24.6.c, concerning notification of the operator and commenter(s) of the WVDEP's determination to revoke or not revoke an exemption, uses the term ''commenter(s)'' whereas the counterpart Federal provision at 30 CFR 702.17(c)(1) uses the term ''intervenors.'' Under the West Virginia program, ''commenter(s)'' have the same rights as ''intervenors.'' Therefore, we find that the term ''commenter(s)'' at proposed CSR 38–2–24.6.c does not render that provision less effective than the Federal regulations at 30 CFR 702.17(c)(1).

CSR 38–2–24.7.a and 38–2–24.7.b. The proposed provisions at CSR 38–2–24 lack counterparts to the Federal definitions of ''cumulative measurement period'' at 30 CFR 702.5(a), ''cumulative production'' at 30 CFR 702.5(b), and ''cumulative revenue'' at 30 CFR 702.5(c). The Federal term ''cumulative measurement period'' means the period of time over which both cumulative production and cumulative revenue are measured. The Federal definition also provides criteria to determine the beginning of the cumulative measurement period, and for determining the date of annual reporting. West Virginia does not propose to use ''cumulative measurement period,'' ''cumulative production'' or ''cumulative revenue'' to determine eligibility for the exemption.

Under the proposed rules at CSR 38–2–24.7.a and 24.7.b, West Virginia is adopting quarterly reporting of certain information and annual reporting at the end of each calendar year, respectively. All of the data required to be reported under the Federal regulations at 30 CFR part 702 are required by the proposed State provisions, except the reporting of ''cumulative production'' and ''cumulative revenue'' throughout the ''cumulative measurement period.''

Under the Federal definition of ''cumulative measurement period'' at 30 CFR 702.5(a), both production and revenue data would be recorded from the beginning of the ''cumulative measurement period'' to the present. These cumulative data would be used to determine eligibility for initial approval of the exemption and for continued approval of the exemption. OSM explained the purpose of the ''cumulative measurement period'' in the preamble to the **Federal Register** notice in which OSM approved the regulations at 30 CFR part 702. OSM stated that production rates of coal and other minerals are usually not consistent over the life of the mining operation. In some years, a relatively large amount of coal may be produced; in other years, coal production may be small or nonexistent. ''To avoid making such operations become subject to and not subject to the jurisdiction of the Act, as may occur under the 12 consecutive month test, * * * OSM is adopting a rule that measures production, adjusted for legitimate stockpiling, and revenue on a cumulative basis'' (December 20, 1989; 54 FR 52092, 52095–6). West Virginia is proposing not to adopt the ''cumulative measurement period'' standard but, rather, will assess initial and continued eligibility for this exemption using data on an annual basis.

West Virginia has chosen not to adopt the ''cumulative measurement period'' and therefore does not allow for the possibility of such operations becoming subject to and not subject to the jurisdiction of the Act, as may occur if data are assessed only on an annual basis. We find that while the State's decision not to use the ''cumulative measurement period'' eliminates the flexibility afforded by the Federal cumulative measurement provisions, that decision does not eliminate the assurance that the tonnage or revenue derived from coal mined under an exemption in West Virginia will not exceed 16⅔ percent of the total coal and other minerals mined as required by the Federal provisions. Furthermore, as provided by 24.7.a.2 and 24.7.b.2, a person receiving the exemption shall file a quarterly production report with the WVDEP no later than 30 days after the end of each quarter and an annual production report within 30 days after the end of each ''calendar'' year, respectively.

As we noted above in Section II, the proposed rules differ from the final rules that are on file with the Secretary of State in some respects. The word ''calendar'' has been deleted at 24.7.b.2 as shown above in the rules that are on file with the Secretary of State. Nevertheless, we find this omission to be non-substantive, and the intent of this provision remains substantially the same. Therefore, we find that CSR 38–2–24 is no less effective than the Federal regulations at 30 CFR part 702 and can be approved. We should note that the implementation of the proposed provisions at CSR 38–2–24 will require the WVDEP to conduct various financial accounting and auditing activities to assess initial and continued eligibility of operations under this exemption. OSM is available to assist the WVDEP by providing training in the monitoring

and auditing of these kinds of operations.

Federal Provisions at 30 CFR Part 702 With No Direct State Counterparts

The State amendments at CSR 38–2–24 concerning exemption for coal extraction incidental to extraction of other minerals do not contain counterparts to all the Federal provisions at 30 CFR part 702. Each instance in which the State lacks a specific Federal counterpart is discussed below.

CSR 38–2–24 has no counterpart to the Federal regulations at 30 CFR 702.12(o) concerning operations having extracted coal or other minerals prior to filing an application for an exemption. It is our understanding that West Virginia does not currently authorize coal removal for quarry operations. In addition, under the proposed amendments, quarry operations must obtain an exemption prior to the removal of coal. Therefore, we find that the lack of a counterpart to 30 CFR 702.12(o) does not render the West Virginia program less effective than the Federal regulations at 30 CFR part 702.

CSR 38–2–24 has no counterpart to the Federal regulations at 30 CFR 702.15(c) concerning conducting operations in accordance with the approved application or when authorized to extract coal under 30 CFR 702.11(b) or 702.11(e)(3) prior to submittal or approval of an exemption application in accordance with the provisions at CSR 38–2–24. We find that the lack of a counterpart to 30 CFR 702.15(c) does not render the proposed rules less effective than the Federal regulations for the following reasons. The Federal regulations at 30 CFR 702.11(b) concern existing operations that have commenced coal extraction prior to the effective date of the proposed State regulations. It is our understanding that West Virginia does not currently authorize coal removal for quarry operations, and under the proposed amendments, quarry operations must obtain an exemption prior to the removal of coal. Therefore, the West Virginia program does not need a counterpart to the Federal regulations at 30 CFR 702.11(b).

The Federal regulations at 30 CFR 702.11(e)(3) concern coal removal by an applicant if the regulatory authority fails to provide the applicant with a determination within the time specified, unless the regulatory authority issues an interim finding that the applicant may not begin coal extraction. The State's counterpart to 30 CFR 702.11(e)(3) providing for an interim finding is at CSR 38–2–24.1, and is no less effective than 30 CFR 702.11(e)(3).

As we noted above, the State lacks a counterpart to the specific requirement at 30 CFR 702.15(c), which provides that a person conducting activities under an exemption shall conduct operations in accordance with the approved application. Although CSR 38–2–24 does not contain this specific provision, we believe that it is only logical that the proposed State rules implicitly require that an operator who has applied for and received an exemption under the proposed rules at CSR 38–2–24 or has applied for an exemption and more than 90 days has passed under CSR 38–2–24.1, shall conduct operations in accordance with the approved or pending application. It is also our understanding that under the proposed rules at CSR 38–2–24 an operator conducting activities to be covered by an exemption under that section will conduct such operations in accordance with CSR 38–2–24. Our finding that CSR 38–2–24 is not rendered less effective than the Federal regulations at 30 CFR part 702.15(c) is based upon our understandings discussed above. If, in future reviews, we should determine that West Virginia is implementing these provisions in a manner that is inconsistent with this finding, a further amendment may be required.

CSR 38–2–24 has no counterparts to the Federal definitions of ''annual production'' and ''annual revenue'' at 30 CFR 702.5(a) and (b), respectively. However, the proposed rules clearly require reporting starting with application approval, at the end of each calendar quarter pursuant to CSR 38–2–24.7.a.1, and at the end of each calendar year pursuant to CSR 38–2–24.7.b.1. Therefore, data will be collected commencing at application approval, and it will be reported both on a quarterly and annual basis. It is our understanding that the State will have available all the data it needs to accurately determine whether an exemption shall be continued or revoked. Therefore, we find that CSR 38–2–24 is not rendered less effective than the Federal regulations due to not having explicit definitions of ''annual production'' and ''annual revenue.''

IV. Summary and Disposition of Comments

Public Comments

On May 12, 2004, we asked for public comments on the amendment (Administrative Record Number WV–1396). One person responded on three occasions (Administrative Record Numbers WV–1395, WV–1399 and WV–1407).

The commenter criticized the 1872 Mining Law and stated that it desperately needs changing (Administrative Record Number WV–1407). One of the primary purposes of this law is to promote mineral exploration and development on Federal lands in the western United States. The commenter stated that it is time that strong State regulations are put in place to stop the 1872 law from being allowed to harm people and the environment in this country today. In response, we note that coal mining operations in West Virginia, and all other States as well, are not regulated by the 1872 General Mining law per se, but are regulated under SMCRA, a Federal law that was passed in 1977. Under SMCRA, individual States are authorized to establish and implement their own surface coal mining and reclamation programs if those programs are deemed to be no less stringent than SMCRA and no less effective than the Federal regulations that implement SMCRA. West Virginia administers its own surface coal mining regulatory program that was approved by the Secretary of the Department of the Interior in 1981.

Under SMCRA, individual states with an approved surface coal mining regulatory program may amend their programs by sending to OSM copies of the State's proposed statutory and/or regulatory changes for review and approval by OSM. If OSM approves those amendments, they will become part of the approved State regulatory program. The amendments that we are approving in this notice today were submitted by the State, in accordance with applicable Federal regulations, for our approval prior to being added to the State's approved surface coal mining regulatory program. When we approve an amendment to a State's approved coal mining regulatory program, it is our judgment that the proposed amendments are no less stringent than SMCRA and no less effective than the counterpart Federal regulations at 30 CFR part 700 to end.

The commenter also stated that an environmental performance bond of at least $25 million should be placed with the State before any work starts which guarantees environmental clean up (Administrative Record Number WV–1399). We believe this comment may address the State's amendment to CSR 38–2–14.15.g, which increases the bond amount per acre for operations seeking a variance under CSR 38–2–14.15.g, to the maximum amount specified at W. Va. Code 22–3–12(b)(1) ($5,000 per

acre). Under the Federal regulations at 30 CFR 800.14(b), the amount of a performance bond must be sufficient to assure the completion of the reclamation plan if the work has to be performed by the regulatory authority in the event of bond forfeiture, and in no case less than $10 thousand for the entire area under one permit. Under the Federal regulations, therefore, the performance bond amount is not based upon a fixed bond amount, but rather it is based upon the acreage of the proposed permit and the estimated cost of completing the reclamation plan if the work has to be performed by the regulatory authority in the event of bond forfeiture. Under the State's proposed revision at CSR 38–2–14.15.g, whenever a variance is sought under CSR 38–2–14.15.g, the site-specific bond amount per acre must be the maximum allowed under W. Va. Code 22–3–12(b)(1). This increase, while it may not result in a $25 million total bond for any specific permit, will increase the bond monies available for reclamation on all permits requesting a variance under CSR 38–2–14.15.g. As we stated above at Finding 6, this proposed requirement would also help assure that the State's alternative bonding system will generate sufficient revenue to complete reclamation of bond forfeiture sites, including those with AOC variances. Therefore, we are approving the proposed amendment to CSR 38–2–14.15.g.

The commenter provided several general statements disapproving of the way surface coal mining activities, including mountaintop removal mining operations, are being regulated within the State and by OSM (Administrative Record Numbers WV–1395, WV–1399, and WV–1407). The commenter stated a desire to protect trees, birds, wildlife and earth from mining, such as from flood damage and mountaintop removal mining, that the commenter stated is taking place today. The commenter stated that the postmining land must be left clean of toxins and residue. As we noted above, surface coal mining and reclamation activities in West Virginia are regulated under an approved State program that has been found to be no less stringent than SMCRA. The proposed State provisions at CSR 38–2–7.6 concerning forest land postmining land use and CSR 38–2–7.7 concerning wildlife postmining land use were submitted by West Virginia to ensure that reclamation techniques and husbandry practices that promote productive forestlands and wildlife habitats are followed by surface coal mining operations within the State. We believe that these provisions, once implemented, will do much to enhance reclaimed mine lands in West Virginia and to quell the commenter's concerns.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the West Virginia program (Administrative Record Number WV–1391). We received comments from the U.S. Department of Labor, Mine Safety and Health Administration (MSHA). On May 15, 2004, MSHA stated that it found no changes or issues that impact upon coal miners' health and safety (Administrative Record Number WV–1398).

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to obtain written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

By letter dated April 20, 2004, we requested comments and the concurrence from EPA on the State's program amendments (Administrative Record Number WV–1392). EPA responded by letter dated July 28, 2004, and stated that it had reviewed the revisions and determined that there are no apparent inconsistencies with the Clean Water Act or other statutes and regulations under the EPA's jurisdiction (Administrative Record Number WV–1402).

V. OSM's Decision

Based on the above findings, we are approving, except as noted below, the program amendment West Virginia sent us on March 25, 2004. In addition, the required program amendment codified at 30 CFR 948.16(oooo) is satisfied and can be removed, and the disapproval set forth at 30 CFR 948.12(a)(4) has been resolved.

At CSR 38–2–7.6.e.1, we are not approving the word ''excessive.''

At CSR 38–2–7.7.e.1, we are not approving the word ''excessive.''

To implement this decision, we are amending the Federal regulations at 30 CFR part 948, which codify decisions concerning the West Virginia program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

The provisions in the rule based on counterpart Federal regulations do not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations. The revisions made at the initiative of the State that do not have Federal counterparts have also been reviewed and a determination made that they do not have takings implications. This determination is based on the fact that the provisions are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining

operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The basis for this determination is our decision is on a State regulatory program and does not involve Federal regulations involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that a portion of the provisions in this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because they are based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations. The Department of the Interior also certifies that the provisions in this rule that are not based upon counterpart Federal regulations will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This determination is based on the fact that the provisions are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that a portion of the State provisions are based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule. For the portion of the State provisions that is not based upon counterpart Federal regulations, this determination is based upon the fact that the State provisions are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that a portion of the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate. For the portion of the State provisions that is not based upon counterpart Federal regulations, this determination is based upon the fact that the State provisions are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 29, 2004.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

■ For the reasons set out in the preamble, 30 CFR part 948 is amended as set forth below:

PART 948—WEST VIRGINIA

■ 1. The authority citation for part 948 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 948.12 is amended by adding new paragraph (h) to read as follows.

§ 948.12 State statutory, regulatory, and proposed program amendment provisions not approved.

* * * * *

(h) We are not approving the following provisions of the proposed program amendment that West Virginia submitted on March 25, 2004:

(1) At CSR 38–2–7.6.e.1, the word ''excessive.''

(2) At CSR 38–2–7.7.e.1, the word ''excessive.''

■ 3. Section 948.15 is amended by adding a new entry to the table in chronological order by ''Date of publication of final rule'' to read as follows:

§ 948.15 Approval of West Virginia regulatory program amendments.

* * * * *

Original amendment submission date	Date of publication of final rule	Citation/description of approved provisions
*	*	*
March 25, 2004	February 8, 2005	CSR 38–2–3.12.a.1; 7.6 (except the word ''excessive'' at 7.6.e.1); 7.7 (except the word ''excessive'' at 7.7.e.1); 9.3.g; 14.15.a.1; 14.15.g; 20.1.a.6; 22.5.a; 23 (deleted); and 24. Reduced Inspection Frequency Policy dated November 3, 2004.

■ 4. Section 948.16 is amended by removing and reserving paragraph (oooo).

[FR Doc. 05–2411 Filed 2–7–05; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[WA–04–006; FRL–7866–4]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes: Washington; Yakima PM–10 Nonattainment Area Limited Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is taking final action to approve the Limited Maintenance Plan (LMP) for Yakima PM–10 nonattainment area (Yakima NAA) in the State of Washington and grant a request by the State to redesignate the Yakima NAA to attainment for the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). In a concurrent notice of final rulemaking published today, EPA is correcting the boundary of the Yakima NAA to exclude a small portion that lies within the exterior boundary of the Yakama Indian Reservation. The State Implementation Plan (SIP) that we are approving with this action does not extend to lands which are within the boundaries of the Yakama Indian Reservation.

EFFECTIVE DATE: This rule is effective March 10, 2005.

ADDRESSES: Copies of the State's request and other supporting information used in developing this action are available for inspection during normal business hours at the following locations: EPA, Office of Air, Waste and Toxics (OAWT–107), 1200 Sixth Avenue, Seattle, Washington 98101. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. A reasonable fee may be charged for copies.

FOR FURTHER INFORMATION CONTACT: Gina Bonifacino, Office of Air Quality (OAWT–107), EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–2970.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''us'' or ''our'' is used, we mean EPA. Information is organized as follows:

Table of Contents

I. Background
II. Public Comments
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background

Under the authority of the Federal Clean Air Act (Clean Air Act or the Act) EPA is taking final action to approve the Limited Maintenance Plan (LMP) for the Yakima County PM–10 Nonattainment Area (Yakima NAA) in the State of Washington and to redesignate the area to attainment for PM–10. The action to redesignate the Yakima NAA to attainment is based on valid monitoring data and analysis of ambient air quality made in the demonstration that accompanies the LMP. EPA believes the area will continue to meet the National Ambient Air Quality Standards (NAAQS or standards) for PM–10 for at least 10 years beyond this redesignation, as required by the Act. In addition, EPA believes that the area will continue to meet the Limited Maintenance Plan design value criteria outlined in the LMP policy [1]. A detailed description of our proposed action to approve the Yakima NAA LMP and redesignation request was published in a proposed rulemaking in the **Federal Register** on November 29, 2004. See 69 FR 69342.

[1] August 9, 2001 memo from Lydia Wegman, Director, Air Quality Standards and Strategies Division, entitled ''Limited Maintenance Plan Option for Moderate PM–10 Nonattainment Areas.''

II. Public Comments

EPA provided a 30-day review and comment period and solicited comments on our proposal published in the November 29, 2004, **Federal Register.** See 69 FR 69342. No comments were received for the proposed rulemaking. EPA is now taking final action on the SIP revision consistent with the published proposal.

III. Final Action

EPA is taking final action to approve the Yakima County PM–10 Limited Maintenance Plan and to redesignate the Yakima County nonattainment area to attainment for PM–10. Washington has demonstrated compliance with the requirements of section 107(d)(3)(E) based on information provided by the Washington Department of Ecology and contained in the Washington SIP and Yakima NAA PM–10 Limited Maintenance Plan.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a

substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 10, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: January 21, 2005.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

■ Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart WW—Washington

■ 2. In § 52.2475 is amended by adding paragraph (e) to read as follows:

§ 52.2475 Approval of plans.

(e) Particulate matter.

(1) Yakima.

(i) EPA approves as a revision to the Washington State Implementation Plan, the Yakima County PM–10 Nonattainment Area Limited Maintenance Plan adopted by the Yakima Regional Clean Air Authority on June 9, 2004, and adopted and submitted by the Washington Department of Ecology on July 8, 2004.

(ii) [Reserved]

* * * * *

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. In § 81.348, the table entitled ''Washington —PM–10'' is amended by revising the entry for ''Yakima County'' to read as follows:

§ 81.348 Washington.

* * * * *

WASHINGTON—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * *	*	*	*	*
Yakima County The area bounded on the south by a line from UTM coordinate 694000mW, 5157000mN, west to 681000mW, 5157000mN, thence north along a line to coordinate 681000mN, 5172000mN, thence east to 694000mW, 5172000mN, thence south to the beginning coordinate 694000mW, 5157000mN, excluding the area within the exterior boundary of the Yakama Indian Reservation.	March 10, 2005	Attainment.		
* * *	*	*	*	*

* * * * *

[FR Doc. 05–1995 Filed 2–7–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATION COMMISSION

47 CFR PART 0

[DA 05–43]

Freedom of Information Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission is modifying a section of the Commission's rules that implement the Freedom of Information Act (FOIA) Fee Schedule. This modification pertains to the charge for recovery of the full, allowable direct costs of searching for and reviewing records requested under the FOIA and the Commission's rules, unless such fees are restricted or waived. The fees are being revised to correspond to modifications in the rate of pay approved by Congress.

DATES: Effective February 8, 2005.

FOR FURTHER INFORMATION CONTACT: Shoko B. Hair, Freedom of Information Act Officer, Office of Performance Evaluation and Records Management, Room 1–A827, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–1379 or via Internet at *shoko.hair@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Federal Communications Commission is modifying § 0.467(a) of the Commission's rules. This rule pertains to the charges for searching and reviewing records requested under the FOIA. The FOIA requires federal agencies to establish a schedule of fees for the processing of requests for agency records in accordance with fee guidelines issued by the Office of Management and Budget (OMB). In 1987, OMB issued its Uniform Freedom of Information Act Fee Schedule and Guidelines. However, because the FOIA requires that each agency's fees be based upon its direct costs of providing FOIA services, OMB did not provide a unitary, government-wide schedule of fees. The Commission based its FOIA Fee Schedule on the grade level of the employee who processes the request. Thus, the Fee Schedule was computed at a Step 5 of each grade level based on the General Schedule effective January 1987 (including 20 percent for personnel benefits). The Commission's rules provide that the Fee Schedule will be modified periodically to correspond with modifications in the rate of pay approved by Congress. *See* 47 CFR 0.467(a)(1) note.

In an Order adopted on January 14, 2005 and released on January 24, 2005 (DA 05–43), the Managing Director revised the schedule of fees set forth in 47 CFR 0.467 for the recovery of the full, allowable direct costs of searching for and reviewing agency records requested pursuant to the FOIA and the Commission's rules, 47 CFR 0.460, 0.461. The revisions correspond to modifications in the rate of pay, which was approved by Congress.

These modifications to the Fee Schedule do not require notice and comment because they merely update the Fee Schedule to correspond to modifications in rates of pay, as required under the current rules. The Commission will not send a copy of this Order pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the rules are a matter of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

Accordingly, pursuant to the authority contained in § 0.231(b) of the Commission's rules, 47 CFR 0.231 (b), *it is hereby ordered,* that, effective on February 8, 2005, the Fee Schedule contained in § 0.467 of the Commission's rules, 47 CFR 0.467, is amended, as described herein.

List of Subjects in 47 CFR Part 0

Freedom of information.

Federal Communications Commission.

Andrew S. Fishel,

Managing Director.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 0 as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

Authority: 47 U.S.C. 155, unless otherwise noted.

■ 2. Section 0.467 is amended by revising the last sentence of paragraph (a)(1), the table in paragraph (a)(1) and its note, and paragraph (a)(2) to read as follows:

§ 0.467 Search and review fees.

(a)(1) * * * The fee is based on the grade level of the employee(s) who conduct(s) the search or review, as specified in the following schedule:

Grade	Hourly fee
GS–1	12.10
GS–2	13.18
GS–3	14.84
GS–4	16.67
GS–5	18.65
GS–6	20.78
GS–7	23.10
GS–8	25.58
GS–9	28.26
GS–10	31.12
GS–11	34.19
GS–12	40.98
GS–13	48.73
GS–14	57.59
GS–15	67.74

Note: These fees will be modified periodically to correspond with modifications in the rate of pay approved by Congress.

(2) The fees in paragraph (a) (1) of this section were computed at Step 5 of each grade level based on the General Schedule effective January 2005 and include 20 percent for personnel benefits.

* * * * *

[FR Doc. 05–2426 Filed 2–7–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 05–28; DA 05–169]

Inquiry Regarding the Impact of Certain Rules on Competition in the Multichannel Video Programming Distribution Market

AGENCY: Federal Communications Commission.

ACTION: Review of rules and statutory provisions; solicitation of comments.

SUMMARY: This document solicits public comment on the impact of certain provisions of the Communications Act of 1934, as amended, and Commission rules on competition in the multichannel video programming distribution market. The Commission is required by legislative mandate to submit a report to Congress based on the results of this inquiry no later than September 8, 2005.

DATES: Comments may be filed on or before March 1, 2005, and reply comments may be filed on or before March 16, 2005.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marcia Glauberman, Media Bureau,

(202) 418–7046, TTY (202) 418–7172, or via e-mail at *Marcia.Glauberman@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's document in MB Docket No. 05–28, DA 05–169, released January 25, 2005. The complete text of the document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. via their Web site, *http://www.bcpi.com,* or call 1–800–378–3160.

Synopsis

1. On December 8, 2004, the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA) was enacted. (The Satellite Home Viewer Extension and Reauthorization Act, Pub. L. 108–447; 118 Stat. 2809 (2004). SHVERA was enacted as Title IX of the Consolidated Appropriations Act, 2005.) Section 208 of SHVERA requires the Commission to conduct an inquiry on the impact of specific provisions of the Communications Act of 1934, as amended, and Commission rules on competition in the multichannel video programming distribution (MVPD) market. The Commission is required to submit a report to Congress on the results of its inquiry no later than nine months after SHVERA's enactment (*i.e.*, September 8, 2005).

2. By this document, the Media Bureau (Bureau) initiates the inquiry required by section 208 and seeks comment for use in preparation of the required report. Section 208 states:

STUDY OF IMPACT ON CABLE TELEVISION SERVICE

(a) STUDY REQUIRED—No later than 9 months after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the Federal Communications Commission shall complete an inquiry regarding the impact on competition in the multichannel video programming distribution market of the current retransmission consent, network nonduplication, syndicated exclusivity, and sports blackout rules, including the impact of those rules on the ability of rural cable operators to compete with the direct broadcast satellite industry in the provision of digital broadcast television signals to consumers. Such report shall include such recommendations for changes in any statutory provisions relating to such rules as the Commission deems appropriate.

(b) REPORT REQUIRED—The Federal Communications Commission shall submit a report on the results of the inquiry required by subsection (a) to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate not later than 9 months after the date of the enactment of this Act. (SHVERA, Pub. L. 108–447 sec. 208, 118 Stat. 2809, 3428–29 (2004).)

The following is a brief explanation of the specific rules the Commission's study must address.

- Retransmission Consent: (47 U.S.C. 325(b); 47 CFR 76.64–70) In general, cable and direct broadcast satellite (DBS) operators must obtain retransmission consent from a commercial broadcast television station in order to carry its signal unless the broadcaster has elected to be carried pursuant to must-carry status. (47 U.S.C. 325(b); 47 CFR 76.64.) Under retransmission consent, the broadcaster and cable or DBS operator negotiate an agreement that may involve compensation in return for permission to retransmit the broadcast television station.
- The Network Program Nonduplication Rules (47 CFR 76.120–122 and 76.92–95) allow a local commercial television station to protect its exclusive distribution rights for network programming based on its affiliate agreement with the network within the geographic zone specified in the Commission's rules.[1] In the cable context, the station may assert these rights against duplicative programming on a broadcast station carried by a cable operator. In the satellite context, network nonduplication rights may only be asserted against the duplicative programming carried on a ''nationally distributed superstation.'' (47 CFR 76.122, 124. The FCC's definition of ''nationally distributed superstation'' can be found at 47 CFR 76.120.)
- The Syndicated Program Exclusivity Rules (47 CFR 76.101–110, 76.120 and 76.123–125) allow a local television broadcast station or distributor to protect its exclusive distribution rights for syndicated programming within the geographic zone specified in the Commission's rules.[2] In the cable context, the station or distributor may assert these rights against duplicative programming on a broadcast station carried by a cable operator. In the satellite context, syndicated exclusivity rights may only be asserted against the duplicative programming carried on a nationally distributed superstation.
- The Sports Blackout Rules (47 CFR 76.111, 76.120, 76.127–130) protect a sports team or league's exclusive distribution rights to a local sporting event (*i.e.*, a sports team). The sports blackout rules are applied only if a local TV broadcast station is not carrying the local sporting event. If a local TV broadcast station does not have permission to carry the local game, then no other broadcaster's signal displaying the game can be carried by cable or satellite to subscribers in the protected local blackout zone. (47 CFR 76.128.)

3. In addition to these existing rules, SHVERA also authorizes satellite carriers to offer distant digital stations and out-of-market ''significantly viewed'' stations to subscribers under certain circumstances. (*See* 47 U.S.C. 339 and 340, as amended by Sections 202 and 204 of SHVERA.) Existing statutory provisions permit cable operators to offer such stations. (17 U.S.C 111 (a), (c), and (f).)

4. The Bureau seeks comments, information and analysis on how these rules, individually or collectively, affect competition in the MVPD market. The Bureau also seeks studies that measure the impact of these rules, either individually or collectively, on competition generally. The Bureau further requests comment and analysis on the impact of these rules on the ability of rural cable operators to compete with DBS in the provision of digital broadcast television signals to consumers. In addition, the Bureau requests recommendations for statutory changes regarding these four rules affecting competition in the MVPD market.

Procedural Matters

5. *Ex Parte Rules.* There are no *ex parte* or disclosure requirements applicable to this proceeding pursuant to 47 CFR 1.1204(b)(1).

6. *Comment Information.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in*

[1] *See* 47 CFR 76.92 and 76.93. The Commission's rules provide stations such protection within a 35-mile geographic zone (or 55 miles in smaller markets), which extends from the reference point of the community of license of the television station. *See* 47 CFR 73.658(m), 76.53, and 76.92 Note.

[2] *See* 47 CFR 76.101 and 76.103. The Commission's rules provide such protection within a station's 35-mile geographic zone, which extends from the reference point of the community of license of the television station. *See* 47 CFR 73.658(m), 76.53, and 76.101 Note.

Rulemaking Proceedings, 63 FR 24121 (1998).

• Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov*. Filers should follow the instructions provided on the website for submitting comments.

• For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.

• Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington DC 20554.

• People with Disabilities: Contact the FCC to request materials in accessible formats (braille, large print, electronic files, audio format, etc.) by e-mail at *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0531 (voice), 202–418–7365 (TTY).

Federal Communications Commission.

William H. Johnson,

Deputy Chief, Media Bureau.

[FR Doc. 05–2267 Filed 2–7–05; 8:45 am]

BILLING CODE 6712–01–U

Proposed Rules

Federal Register
Vol. 70, No. 25
Tuesday, February 8, 2005

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 301

[Docket No. 04–092–1]

Phytophthora Ramorum; Vacuum Heat Treatment for Bay Leaves

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference in the Code of Federal Regulations, to allow leaves of the California bay laurel (*Umbellularia californica*) to be treated with vacuum heat before being moved interstate from any area quarantined because of *Phytophthora ramorum*. This action would provide an alternative to the currently approved hot water dip used to treat greenery of host plants, specifically California bay laurel leaves, which ruins the suitability of the leaves for use as a dried spice.

DATES: We will consider all comments that we receive on or before April 11, 2005.

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

- EDOCKET: Go to *http://www.epa.gov/feddocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the ''View Open APHIS Dockets'' link to locate this document.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04–092–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–092–1.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

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: You may view APHIS documents published in the **Federal Register** and related information on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Mr. James Writer, Agriculturist, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737–1231; (301) 734–7121.

SUPPLEMENTARY INFORMATION:

Background

Phytophthora ramorum is a harmful fungus that attacks certain plants, particularly trees and shrubs. *P. ramorum* is also commonly referred to as sudden oak death or ramorum leaf blight and ramorum dieback. Symptoms of infection may include new growth that droops or turns from yellow to brown, the appearance of a bleeding canker; burgundy-red to tar-black thick sap oozing on the bark surface, or leaf spotting and stem canker infections.

The regulations in ''Subpart—Phytophthora Ramorum'' (7 CFR 301.92 through 301.92–11, referred to below as the regulations) list 10 counties in California and a portion of Curry County in Oregon as quarantined areas and restrict the interstate movement of regulated articles from those areas.

In addition, on December 21, 2004, the Animal and Plant Health Inspection Service (APHIS) issued a Federal Order, effective January 10, 2005, which expands the list of quarantined areas to include Contra Costa, Humboldt, Lake, and San Francisco Counties, CA, as well as another portion of Curry County, OR. This order replaces the order of April 22, 2004, and the clarification of that order which was issued on April 23, 2004. The December 21, 2004, order is available on the Internet at *http://www.aphis.usda.gov/ppq/ispm/sod/*.

Regulated articles are identified in § 301.92–2 of the regulations. The list of regulated articles includes, among other things, unprocessed wreaths, garlands, and greenery of arrowwood (*Viburnum* x *bodnantense*), big leaf maple (*Acer macrophyllum*), black oak (*Quercus kelloggii*), California bay laurel (*Umbellularia californica*), California buckeye (*Aesculus californica*), California coffeeberry (*Rhamnus californica*), California honeysuckle (*Lonicera hispidula*), coast live oak (*Quercus agrifolia*), huckleberry (*Vaccinium ovatum*) (except fruit), madrone (*Arbutus menziesii*), manzanita (*Arctostaphylos manzanita*.), rhododendron (*Rhododendron* spp., including azalea), Shreve's oak (*Quercus parvula* var. *shrevei*), tanoak (*Lithocarpus densiflorus*), and Toyon (*Heteromeles arbutifolia*).

In the December 21, 2004, Federal Order, APHIS expanded the list of regulated articles to include 16 additional confirmed hosts of *P. ramorum*. These additional regulated articles are: *Camellia* spp., Canyon live oak (*Quercus chrysolepis*), coast redwood (*Sequoia sempervirens*), doublefile viburnum (*Viburnum plicatum* var. *tomentosum*), Douglas fir (*Pseudotsuga menziesii* var. *menziesii*), False Solomon's Seal (*Maianthemum* racemosum formerly *Smilacina* racemosa), Fraser's Photinia or Red tip (*Photinia* fraseri), Heather (*Calluna* vulgaris), Himalaya pieris (*Pieris formosa*), Japanese pieris (*Pieris japonica*), laurustinus (*Viburnum tinus*), pieris ''Brouwer's Beauty'' (*Pieris floribunda* x *japonica*), pieris ''Forest Flame'' (*Pieris formosa* x *japonica*), western starflower (*Trientalis latifolia*), witch hazel (*Hamamelis virginiana*), and wood rose (*Rosa gymnocarpa*).

Regulated articles must meet the conditions specified in the regulations before they may be moved interstate from a quarantined area. One of the conditions for movement is treatment. The Plant Protection and Quarantine Treatment Manual (PPQ Treatment Manual), which is maintained by APHIS, contains approved treatment schedules for many plant pests and diseases and is incorporated by

reference into the Code of Federal Regulations at 7 CFR 300.1. Approved treatments for some articles can also be found in the regulations. Currently, the only approved treatment for unprocessed wreaths, garlands, and greenery of host plants moving interstate from the quarantined areas is listed in § 301.92–10 of the regulations. This treatment consists of a hot water dip for 1 hour at a sustained temperature of at least 160° F. However, this treatment is not a viable option for treating leaves from the California bay laurel (*Umbellularia californica*), as it ruins the leaves for their intended use as a dried spice.

APHIS has received several requests from a spice company in California to approve the use of vacuum heat treatment as an alternative method of treatment for California bay laurel leaves that are moving interstate from a quarantined area for use as a dried spice. Vacuum heat treatment is an already existing industry standard method for treating California bay laurel leaves harvested outside the quarantined area. Research [1] conducted by APHIS' Treatment Quality Assurance Unit at the Center for Plant Health Science and Technology has demonstrated that vacuum heat treatment effectively eliminates *P. ramorum* on leaves of the California bay laurel. Therefore, we are proposing to amend the PPQ Treatment Manual to add vacuum heat treatment as an acceptable treatment method for bay leaves used as a dried spice. This action would provide an alternative to the hot water dip that is currently being used to treat greenery of the California bay laurel in the quarantined areas. The treatment procedure we would add to the PPQ Treatment Manual is described in the following paragraph.

Treatment Procedure

Place greenery in a vacuum chamber. Starting at 0 hour, gradually reduce to 0.133 Kpa vacuum at 8 hours. Maintain the vacuum until the end of the treatment. Gradually increase the temperature in the vacuum chamber from ambient temperature at 0 hour to 60 °C at 5 hours. After 5 hours, gradually lower the temperature to 30 °C at 22 hours. The length of the treatment is 22 hours.

In addition to adding this vacuum heat treatment schedule, which would be designated as T101–m–2–1–2, to the PPQ Treatment Manual, we would also amend the PPQ Treatment Manual's incorporation by reference in 7 CFR 300.1 to reflect the date of the treatment's inclusion in the manual. In addition, we would amend the list of accepted treatments in § 301.92–10 to include any treatments authorized for use on *P. ramorum* that are listed in the PPQ Treatment Manual.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

We are proposing to amend the PPQ Treatment Manual to allow leaves of the California bay laurel to be treated with vacuum heat before being moved interstate from any area quarantined because of *P. ramorum.* This action would provide an alternative to the currently approved hot water dip used to treat California bay laurel leaves, which ruins the suitability of the leaves for use as a dried spice.

Vacuum heat treatment costs are similar to costs of vapor heat and hot-air treatment systems. All three treatments require substantial initial capital investments ranging from $55,000 to $200,000 for larger commercial facilities. By comparison, hot water immersion treatment systems can be assembled for less than $8,000. Clearly, hot-water immersion treatment is less expensive, but in this case it is not feasible because it renders the treated article-bay leaves-unsuitable for its use as a dried spice.

Table 1 shows that representative unit costs for hot air or vapor heat treatments total less than $30 per ton of commodities treated. The cost of vacuum heat treatment is comparable. This cost is higher than the unit cost of hot water immersion, given the large difference in capital costs indicated above, but is relatively minor when compared to the value of the commodity being treated.

TABLE 1.—REPRESENTATIVE COSTS OF HOT AIR OR VAPOR HEAT TREATMENT OF A PERISHABLE COMMODITY

Capital costs	$4.41/metric ton of commodity treated.
Operating costs[1] ..	$25.00/metric ton of commodity treated.
Total cost	$29.41/metric ton of commodity treated.

[1] Labor, energy, maintenance, and insurance.

One pound of dried bay leaves sells for $3.75, that is, $8,267.33 per metric ton. Thus, the representative cost shown in table 1 is equal to less than 0.4 percent of the sales price of the spice. Compared to other costs, such as harvesting, storage, processing, packaging, and transport, the cost of the vacuum heat treatment is relatively insignificant overall.

We also note that use of the vacuum heat treatment would be on a voluntary basis to qualify dried bay leaves for interstate movement from the quarantined counties.

According to the 2002 Agricultural Census, there were approximately 600 nurseries in the 14 California counties operating under quarantine for *P. ramorum.* The 600 nurseries reported approximately $882 million in annual sales. A small nursery, according to Small Business Administration size standards (SBA), is one with $750,000 or less in annual receipts. APHIS does not have information on the size distribution of the nurseries in the 14 counties, in terms of annual receipts. We also do not have information on the number of these nurseries that have bay laurel trees and seedlings for sale, or of the quantity of bay laurel leaves they produce and the percentage sold to customers outside the quarantined area.

It is expected that, primarily, producers/processors of bay leaves will conduct the vacuum heat treatment. According to the 2002 Economic Census, there were approximately 44 spice and extract manufacturing establishments (NAICS 311942) in California, employing 1,521 people (or an average of 34 persons per entity). No data are available for California by county. According to the SBA definition, the size standard for a small entity in this industry is 500 or fewer employees. However, information on the size distribution of these establishments was unavailable. Even though the number and size of the entities that could be affected by the proposed rule is unknown, we have no evidence indicating that there would be a significant economic impact on any entity, large or small.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with

[1] Information concerning this research may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 301

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

Accordingly, we are proposing to amend 7 CFR parts 300 and 301 as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 would continue to read as follows:

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

2. Section 300.1 would be amended as follows:

a. In paragraph (a)(8), by removing the word ''and''.

b. In paragraph (a)(9), by removing the period and adding the word ''; and'' in its place.

c. By adding a new paragraph (a)(10) to read as set forth below:

§ 300.1 Plant Protection and Quarantine Treatment Manual.

(a) * * *

(10) Treatment T101–m–2–1–2, dated____.

* * * * *

PART 301—DOMESTIC QUARANTINE NOTICES

3. The authority citation for part 301 would continue to read as follows:

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

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

4. Section 301.92–10 would be revised to read as follows:

§ 301.92–10 Treatments.

Treatment schedules listed in the Plant Protection and Quarantine Treatment Manual to destroy *Phytophothora ramorum* are authorized for use on certain regulated articles. The Plant Protection and Quarantine Treatment Manual is incorporated by reference at § 300.1 of this chapter. The following treatments also may be used for the regulated articles indicated:

(a) *Soil*—Heat to a temperature of at least 180 °F for 30 minutes in the presence of an inspector.

(b) *Wreaths, garlands, and greenery of host material*—Dip for 1 hour in water that is held at a temperature of at least 160 °F.

Done in Washington, DC, this 2nd day of February 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–2322 Filed 2–7–05; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 923

[Docket Nos. AO–F&V–923–3; FV03–923–01]

Sweet Cherries Grown in Designated Counties in Washington; Secretary's Decision and Referendum Order on Proposed Amendments to Marketing Agreement and Order No. 923; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order; correction.

SUMMARY: The Agricultural Marketing Service published in the **Federal Register** on January 14, 2005, a Secretary's Decision and Referendum Order on proposed amendments to the Washington sweet cherry marketing order. This docket corrects the representative period for voting in the referendum from April 1, 2003, through March 31, 2004, to April 1, 2004, through February 28, 2005.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Post Office Box 1035, Moab, UT 84532, telephone: (435) 259–7988, fax: (435) 259–4945.

SUPPLEMENTARY INFORMATION:

Background

The Secretary's decision and referendum order that are the subject of this correction propose amendments to the marketing agreement and order (order) and provide growers with the opportunity to vote in a referendum to determine if they favor the proposed amendments.

Need for Correction

As published, the representative period for the purpose of the referendum is being changed from April 1, 2003, through March 31, 2004, to April 1, 2004, through February 28, 2005, to reflect the most recent crop year.

Correction of Publication

Accordingly, the publication of the proposed rule and referendum order (Docket Nos. AO–F&V–923–3; FV03–923–01), which was the subject of FR Doc. 05–825 published on January 14, 2005 (70 FR 2573) is corrected as follows:

1. On page 2574, column one, under **DATES**; the dates ''April 1, 2003, through March 31, 2004,'' are corrected to read ''April 1, 2004, through February 28, 2005.''

Authority: 7 U.S.C. 601–674.

Dated: February 3, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–2388 Filed 2–7–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NN301; Notice No. 25–05–01–SC]

Special Conditions: Boeing Model 747SP; NASA Stratospheric Observatory for Infrared Astronomy (SOFIA); Cryogenic Systems Using Liquid Nitrogen and Liquid Helium

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Boeing Model 747SP airplane. This airplane, as modified by L–3 Communications/Integrated

Systems of Waco, Texas, will have novel and unusual design features associated with cryogenic systems using liquid nitrogen and liquid helium. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before March 25, 2005.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NN301, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM301. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Kathi Ishimaru, FAA, Propulsion/Mechanical Systems Branch, ANM–112, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2674; facsimile (425) 227–1232.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended changes, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m., and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments received.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On March 17, 1997, L–3 Communications/Integrated Systems, 7500 Maehr Road, Waco, Texas 76705, applied for a Supplemental Type Certificate (STC) to modify a Boeing Model 747SP airplane for use as a flying observatory. This airplane will fly in the stratosphere to altitudes of 45,000 feet and use infrared technology to observe objects in space. The airplane is a stratospheric observatory for infrared astronomy or SOFIA. The modification consists of the installation of a 2.5-meter telescope, scientist workstations, and containment vessels for liquid helium and nitrogen (liquid converters, valves, evaporating coils, liquid lines, regulators, indicators, fittings, etc). Various science instruments (each having their own airworthiness approval), each weighing approximately 800 pounds, located in the workstation area, can be attached to the telescope for a specific mission (one per mission only).

The mission of the SOFIA airplane is to collect infrared signals. The observatory collects very weak infrared signals that were emitted by distant objects in space thousands of years ago. These signals are focused through the telescope onto sensors in the science instrument which is located on the cabin side of the telescope. To detect the weak infrared signals, the detectors in these sensors are cooled to temperatures near absolute zero by the use of cryogenic fluids. These fluids are contained in vessels similar to vacuum bottles. Their design and installation are covered by these special conditions. These extremely cold environments can only be produced by cryogenic liquids. The SOFIA observatory depends on liquid helium and nitrogen to chill the internal passageways of the detector systems. The amount of cryogens used here is small.

Cryogens, in a much greater quantity, are used in the area where the telescope mirror is installed. Liquid nitrogen is converted to a gas and circulated around the mirror to pre-cool it to prevent it from fogging up as it goes from a warm moist atmosphere on the ground to the cold dry atmosphere at high altitudes.

L–3 Communications/Integrated Systems has designed the installation to fly to 45,000 feet and fly in a gradual arc pattern for extended periods of time. Additionally, various science instruments will be installed under this STC or similar STCs, which will be referenced back to this STC.

The cryogenic systems must be designed and installed to ensure that no failure of the systems, including a leak in any part of the systems, would prevent continued safe flight and landing of the airplane.

There are no specific regulations that address the design and installation of liquid nitrogen systems and liquid helium systems. Existing requirements such as 14 CFR 25.1309 and 25.1438(b) are applicable to this installation. However, the FAA needs to specify additional design standards for systems utilizing cryogen liquids to ensure that a minimum level of safety is maintained.

Type Certification Basis

Under the provisions of 14 CFR 21.101, L–3 Communications/Integrated Systems must show that the modified Boeing Model 747SP airplane, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A20WE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.''

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for the Boeing Model 747SP airplane modified by L–3 Communications/Integrated Systems because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 747SP must comply with the fuel vent exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should L–3 Communications/Integrated Systems apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special

conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

The modified Boeing Model 747SP will incorporate the following novel or unusual design features:

1. Cryogenic fluids (liquid nitrogen and liquid helium) contained in the science instrument in the cabin compartment. The cryogenic gases could cause an asphyxiation hazard to the crew and passengers.

2. The cryogens (liquid nitrogen), stored for chilling the mirror during ascent, might come in contact with the airplane's structure, which could cause damage to the surrounding structural areas.

Discussion

There are no specific regulations that address requirements for the use of liquid cryogens on board airplanes. To ensure that a minimum level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Boeing Model 747SP airplane.

These special conditions require cryogenic systems to be designed and installed to preclude or minimize the existence of unsafe conditions that could result from system leakage, malfunction, or damage from external sources. In the event of leakage in the cabin area, ventilation must be provided that is adequate to protect crew and passengers from asphyxiation. The airplane's structure must also be protected from contacting the liquids. Rotor burst of high-energy equipment must be considered and adequate protection must be provided to protect the liquid containers (either in the cabin or in the aft telescope area).

Applicability

As discussed above, these special conditions are applicable to Boeing 747SP airplane. Should L–3 Communications/Integrated Systems apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A20WE to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on the Boeing Model 747SP airplane. It is not a rule of general applicability and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and record keeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Boeing Model 747SP airplane as modified by L–3 Communications/ Integrated Systems of Waco, Texas:

1. Occupied compartments that contain cryogenic fluids must be provided with a means of ventilation to prevent the accumulation of cryogenic gases to a level that may cause an asphyxiation hazard to the crew or passengers.

2. Cryogen dewars will be limited to a maximum capacity of 70 liters of liquid nitrogen and 80 liters of liquid helium. These limits placed on the instrument are adequate to allow the instrument to perform the mission.

3. Pressure relief valves will provide release of gases to prevent overpressure of dewars and plumbing lines. The pressure relief valves shall be vented overboard through a drain in the bottom of the airplane unless it is substantiated that the valves can be safely vented inside the airplane. The cryogenic system must be designed to prohibit the pressure relief valves from freezing due to air condensing and freezing.

4. Cryogenic equipment and plumbing installations will be designed such that a spill, rupture, or any other failure to contain the liquid cryogen will not result in direct contact of the liquid cryogen with load bearing structure or critical airplane equipment that is essential for the continued safe flight and landing of the airplane.

5. An analysis will be accomplished to substantiate that the airplane will not be overpressurized in the event of a catastrophic failure of all the dewars containing cryogenic fluid.

6. The location of the cryogenic equipment and plumbing installations shall minimize the risk of damage due to an uncontained rotor or fan blade failure. All equipment containing high-energy rotors must be considered, such as turbine engines, auxiliary power units, ram air turbines, electric/ pneumatic engine starters, air cycle machines, and certain cooling fans. In addition to properly locating the cryogenic system, operational procedures and shields may be used to minimize the risk of damage. New equipment containing high-energy rotors whose uncontained failure could damage the cryogenic system must comply with § 25.1461, Amendment 25–41.

7. The cryogenic system must be designed to minimize condensation of the atmospheric air, which could result in a liquid enriched with oxygen due to nitrogen having a lower boiling point than oxygen. Any condensation from system components or lines will be collected by drip pans, shields, or other suitable collection means and drained overboard through a drain fitting separate from the pressure relief vent fittings, if equipped for compliance with Special Condition No. 3. The condensation will be isolated from combustible materials including grease, oil, and ignition sources.

8. Instructions for continued airworthiness (ICA) will require periodic inspection of cryogenic components. The ICA will also include periodic inspection of plumbing insulation to ensure integrity.

9. Shutoff valves will be installed where multiple cryogenic pressurized storage vessels are connected together by manifolds so that a leak in one pressurized storage vessel will not allow leakage of the cryogenic fluids from any other pressurized storage vessel.

10. Cryogenic components must be burst pressure tested to 3.0 times, and proof pressure tested to 1.5 times the maximum normal operating pressure. Tests shall account for the worst-case temperature and material strength properties the components are exposed to in service.

11. The plumbing installation must be designed to consider thermal expansion and thermally induced stresses.

12. The cryogenic system must be protected from unsafe temperatures and located where the probability of hazards of rupture in a crash landing are minimized.

13. The proof of strength of airframe load bearing structure in the vicinity of cryogenic equipment and plumbing must account for temperature extremes, and the effect on the strength of materials, resulting from carriage of cryogenic fluids.

Issued in Renton, Washington, on January 28, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–2319 Filed 2–7–05; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20056 Airspace Docket No. 05–AEA–01]

Proposed Amendment to Class E Airspace; Harrisburg, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking

SUMMARY: This notice proposes to amend the Class E airspace area in the Harrisburg, PA metropolitan area. The development of multiple area navigation (RNAV) Standard Instrument Approach Procedures (SIAP) for numerous airports within the Harrisburg, PA metropolitan area with approved Instrument Flight Rules (IFR) operations and the resulting overlap of designated Class E–5 airspace have made this proposal necessary. The proposal would consolidate the Class E–5 airspace designations for ten airports and result in the rescission of seven separate Class E–5 descriptions through separate rulemaking action. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before March 10, 2005.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–20056/Airspace Docket No. 05–AEA–01 at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. FAA–2005–20056/Airspace Docket No. 05–AEA–01''. The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Documents Web page at *http://www.access.gpo.gov/nara*. Additionally, any person may obtain a copy of this notice by submitting a request to the Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both the docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677 to request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace within the Harrisburg, PA metropolitan area. The proposal would consolidate the following airport Class E–5 airspace designations into the Harrisburg, PA designation: Annville, PA, Millard Airport (N76); Carlisle, PA, Carlisle Airport (N94); Fort Indiantown Gap, PA, Muir AAF (MUI); Harrisburg, PA, Capital City Airport (CXY), Harrisburg International Airport (MDT); Lancaster, PA, Lancaster Airport (LNS); Marietta, PA, Donegal Springs Airpark (N71); Myerstown, PA, Decks Airport (9D4); York PA, York Airport (THV). This action would result in the rescission of seven Class E–5 designations under a separate docket. The affected airspace would subsequently be incorporated into the Harrisburg, PA description. The airspace will be defined to accommodate the approaches and contain IFR operations to and from those airports. This change would have no impact on aircraft operations since the type of airspace designation is not changing. Furthermore, the IFR approach procedures for the individual airports within the area would not be affected. Class E airspace designations for airspace areas extending upward from 700 ft or more above the surface are published in Paragraph 6005 of FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, is proposed to be amended as follows:

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

* * * * *

AEA PA E5 Harrisburg, PA (Revised)

That airspace extending upward from 700 feet above the surface within an area bounded by a line beginning at lat. 37°43′19″ N., long. 76°51′26″ W., to lat. 40°07′49″ N., long. 77°20′54″ W., to lat. 40°16′46″ N., long. 77°20′53″ W., to lat. 40°42′10″ N., long. 76°32′34″ W., to lat. 40°13′15″ N., long. 76°00′32″ W., to lat. 40°00′59″ N., long. 76°01′11″ W., to the point of beginning, excluding that portion that coincides with the Pottsville, PA, Class E airspace area and the Reading, PA, Class E airspace area.

* * * * *

Issued in Jamaica, New York, on January 28, 2005.

John G. McCartney,

Area Staff Manager of Eastern Terminal Operations.

[FR Doc. 05–2314 Filed 2–7–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

[Docket No. IL–104–FOR]

Illinois Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Illinois regulatory program (Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Illinois proposes revisions to its regulations and statutes to remove provisions relating to the Surface Mining Advisory Council, to update citation references, to correct typographical errors, to update procedures for relocating or closing public roads, and to clarify requirements for subsidence control. Illinois intends to revise its program to provide additional safeguards and to clarify ambiguities.

This document gives the times and locations that the Illinois program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., e.s.t., March 10, 2005. If requested, we will hold a public hearing on the amendment on March 7, 2005. We will accept requests to speak at a hearing until 4 p.m., e.s.t. on February 23, 2005.

ADDRESSES: You may submit comments, identified by Docket No. IL–104–FOR, by any of the following methods:

- *E-mail: IFOMAIL@osmre.gov.* Include Docket No. IL–104–FOR in the subject line of the message.
- *Mail/Hand Delivery:* Andrew R. Gilmore, Chief, Alton Field Division—Indianapolis Area Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204.
- *Fax:* (317) 226–6182.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Illinois program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Indianapolis Area Office.

Andrew R. Gilmore, Chief, Alton Field Division—Indianapolis Area Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204; telephone: (317) 226–6700; e-mail: *IFOMAIL@osmre.gov.*

In addition, you may review a copy of the amendment during regular business hours at the following location: Illinois Department of Natural Resources, Office of Mines and Minerals, Land Reclamation Division, One Natural Resources Way, Springfield, Illinois 62701; Telephone: (217) 782–4970.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Chief, Alton Field Division—Indianapolis Area Office. Telephone: (317) 226–6700. E-mail: *IFOMAIL@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Illinois Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Illinois program on June 1, 1982. You can find background information on the Illinois program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Illinois program in the June 1, 1982, **Federal Register** (47 FR 23858). You can also find later actions concerning the Illinois program and program amendments at 30 CFR 913.10, 913.15, 913.16, and 913.17.

II. Description of the Proposed Amendment

By letter dated December 10, 2004 (Administrative Record No. IL–5086), the Illinois Department of Natural Resources, Office of Mines and Minerals (Department) sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The Department proposed to amend its regulations at 62 Illinois Administrative Code (IAC) Parts 1700, 1761, 1762, 1772, and 1773 and its statutes at 225 Illinois Compiled Statutes (ILCS) 720/1.04. The Department sent the amendment at its own initiative. Below is a summary of the changes proposed by the Department. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES.**

A. Statute Revision

In 1997, the Illinois General Assembly added Section 1.04 to 225 ILCS 720 of the Illinois Surface Coal Mining Land Conservation and Reclamation Act (State Act) to create the Surface Mining Advisory Council to act as an advisory body to the Director of the Illinois Department of Natural Resources and to the Land Reclamation Division of the Office of Mines and Minerals on matters of mining and reclamation. The Illinois General Assembly amended the State Act by repealing 225 ILCS 720/1.04 effective July 10, 2003. Illinois is proposing to amend its program to reflect this repeal.

B. Regulation Revisions

1. 62 IAC 1700.17 Administration

a. In subsection (a), Illinois proposes to correct its citation reference to the Civil Administrative Code of Illinois from ''(Ill. Rev. Stat. 1985, ch. 127, pars. 1 *et seq.*)'' to a reference to ''[20 ILCS 5/1 *et seq.*]''; to change its reference to SMCRA from ''the Surface Mining Control and Reclamation Act of 1977'' to a reference to ''the Federal Act [30 U.S.C.A. § 1201 *et seq.*]''; and to correct its citation reference to the State Act from ''(Ill. Rev. Stat. 1985, ch. 96 ½, par. 7909.02)'' to a reference to ''[225 ILCS 720/9.02]''. Illinois also proposes minor wording changes by changing the language ''full authority to administer the State Act'' to ''full powers and authority to carry out and administer the provisions of this Act''; by changing the language ''the Department has the power and the duty to act for the State of Illinois under the Surface Mining Control and Reclamation Act of 1977 (the Federal Act), to submit and implement a State program under the Federal Act, and to apply for, receive, and use for Illinois such moneys and property as are given under the Federal Act'' to ''the Department has the power and the duty to act as the regulatory authority for the State of Illinois under the Federal Act [30 U.S.C.A. § 1201 *et seq.*], to submit and implement a State program under the Federal Act, and to apply for, receive, receipt for and use for in behalf of the State such moneys and property as are given or granted under the Federal Act''; by changing the phrase ''public or private source'' to ''public and private source''; and by changing the phrase ''the State Act'' to ''this Act.'' The revised paragraph reads as follows:

(a) General Duties and Powers. In addition to the duties and powers of the Department prescribed by the Civil Administrative Code of Illinois [20 ILCS 5/1 *et seq.*], the Department shall have full powers and authority to carry out and administer the provisions of this Act. The Department has the power and the duty to act as the regulatory authority for the State of Illinois under the Federal Act [30 U.S.C.A. § 1201 *et seq.*], to submit and implement a State program under the Federal Act, and to apply for, receive, receipt for and use for in behalf of the State such moneys and property as are given or granted under the Federal Act or any other federal law, or from any other lawful public and private source, for the purposes of this Act. [225 ILCS 720/9.02].

b. At subsection (b), Illinois proposes to correct a citation reference from ''(Ill. Rev. Stat. 1985, ch. 96 ½, par. 7909.03)'' to ''[225 ILCS 720/9.03].''

c. At subsection (c), Illinois proposes to correct a citation reference from ''(Ill. Rev. Stat. 1985, ch. 96 ½, par. 7909.04)'' to ''[225 ILCS 720/9.04].''

d. At subsection (d), Illinois proposes to correct a citation reference from ''(Ill. Rev. Stat. 1985, ch 96 ½, par. 7909.05)'' to ''[225 ILCS 720/9.05].''

2. 62 IAC 1700.18 Advisory Council on Reclamation

Because the Illinois General Assembly amended the State Act by repealing the statute at 225 ILCS 720/1.04, which created the Surface Mining Advisory Council, Illinois proposes to remove its implementing regulation at 62 IAC 1700.18.

3. 62 IAC 1761.11 Areas Where Mining is Prohibited or Limited

At subsection (e)(1), Illinois proposes to add a citation reference to its regulation at 62 IAC 1761.15 concerning submission and processing of requests for valid existing rights determinations. Revised subsection (e)(1) reads as follows:

(1) The owner thereof has provided a written waiver, pursuant to Section 1761.15, consenting to surface coal mining operations closer than 300 feet; or

4. 62 IAC 1761.14 Procedures for Relocation or Closing of a Public Road or Waiving the Prohibition on Surface Coal Mining Operations Within the Buffer Zone of a Public Road

Illinois proposes to amend its procedures for mining within 100 feet of the outside right-of-way line of a public road and for relocation or closure of a public road.

a. Illinois is amending subsection (b) by adding new paragraph (1) that requires the applicant to submit a request with an application for a new permit, a significant revision of a permit, an insignificant revision of a permit, or an incidental boundary revision, as applicable, if the applicant does not have valid existing rights and is proposing to conduct mining operations within 100 feet measured horizontally of the outside right-of-way line of any public road or if the applicant is proposing to relocate or close any public road. Illinois is also proposing to redesignate existing paragraphs (1) through (4) as paragraphs (2) through (5).

b. At newly redesigned subsection (b)(5), Illinois is proposing to remove the requirement that a written finding be made within 30 days after completion of the hearing or after any public comment period ends if no hearing is held based upon information received in writing or at the public hearing for mining within 100 feet of the outside right-of-way line of a public road and for relocation or closure of a public road. Illinois is also adding the requirement that a road may not be relocated or closed unless the Department determines that the interest of the affected public and landowners will be protected. The revised paragraph reads as follows:

(5) Make a written finding based upon information received at the public hearing, or submitted in writing, as to whether the interests of the affected public and landowners will be protected from the proposed mining operations. No mining shall be allowed within 100 feet of the outside right-of-way line of a road, nor may a road be relocated or closed unless the Department determines that the interests of the affected public and landowners will be protected.

c. At newly redesignated subsection (b)(5), Illinois is also proposing to add provisions at paragraphs (5)(i) and (ii) to provide the time frames for making written findings for requests for mining within 100 feet of the outside right-of-way line of a public road and for relocation or closure of a public road. The new paragraphs read as follows:

(i) If the proposal to conduct mining operation within 100 feet measured horizontally of the outside right-of-way line of any public road or to relocate or close any public road is contained in an application for a new permit pursuant to Section 1773.13, or a significant revision pursuant to Section 1774.13(b)(3), the written findings shall be issued concurrently with the permit decision pursuant to Section 1773.15(a); or

(ii) If the proposal to conduct mining operation within 100 feet measured horizontally of the outside right-of-way line of any public road or to relocate or close any public road is contained in an application for an insignificant revision pursuant to Section 1774.13(b), or an incidental boundary revision pursuant to Section 1774.13(d), the written findings shall be issued concurrently with the decision to issue or deny the revision.

5. 62 IAC 1761.16 Submission and Processing of Requests for Valid Existing Rights Determinations

Illinois proposes to correct two typographical errors in the second sentence of subsection (b)(3) by changing the reference from ''subsection (b)(1)'' to a reference to ''subsection (b)(2)'' and by changing the reference from ''subsection (b)(2)'' to a reference to ''subsection (b)(1).''

6. 62 IAC 1762.15 Exploration on Lands Designated as Unsuitable for Surface Coal Mining Operations

At Section 1762.15, Illinois proposes to change its reference from ''this Part'' to a reference to ''62 Ill. Adm. Code 1761 through 1764'' and to change its reference from ''this Part, any approved State or Federal program, and other applicable requirements'' to a reference to ''62 Ill. Adm. Code 1700 through 1850 and other applicable requirements.''

7. 62 IAC 1772.12 Permit Requirements for Exploration Removing More Than 250 Tons of Coal

At subsection (b)(14), Illinois proposes to correct a typographical error by changing its reference from ''62 Ill. Adm. Code 176.11'' to a reference to ''62 Ill. Adm. Code 1761.11.''

8. 62 IAC 1773.15 Review of Permit Applications

At the introductory paragraph of subsection (c)(3), Illinois proposes to remove the language ''or the proposed shadow area for a planned subsidence operation'' to make it consistent with the counterpart Federal regulation. The revised subsection reads as follows:

(3) The proposed permit area is:

(A) Not within an area under study or administrative proceedings under a petition, filed pursuant to 62 Ill. Adm. Code 1764, to have an area designated as unsuitable for surface coal mining operations, unless the applicant demonstrates that before January 4, 1977, he has made substantial legal and financial commitments in relation to the operation covered by the permit application; or

(B) Not within an area designated as unsuitable for mining pursuant to 62 Ill. Adm. Code 1762 and 1764 or within an area subject to the prohibitions of 62 Ill. Adm. Code 1761.11.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Indianapolis Area Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: Docket No. IL–104–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Indianapolis Area Office at (317) 226–6700.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their 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 review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t. on February 23, 2005. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

In this rule, the State is adopting valid existing rights standards that are similar to the standards in the Federal definition at 30 CFR 761.5. Therefore, this rule has the same takings implications as the Federal valid existing rights rule. The takings implications assessment for the Federal valid existing rights rule appears in part XXIX.E. of the preamble to that rule. See 64 FR 70766, 70822–27, December 17, 1999. The revisions made at the initiative of the State that do not have Federal counterparts have also been reviewed and a determination made that they do not have takings implications. This determination is based upon the fact that the provisions are administrative and procedural or editorial in nature and are not expected to have a substantive effect on the regulated industry.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the

actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Illinois program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Illinois program has no effect on federally-recognized Indian tribes.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that a portion of the provisions in this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because they are based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this part of the rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations. The Department of the Interior also certifies that the provisions in this rule that are not based upon counterpart Federal regulations will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This determination is based upon the fact that the provisions are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that a portion of the State provisions are based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule. For the portion of the State provisions that is not based upon counterpart Federal regulations, this determination is based upon the fact that the State provisions are administrative and procedural or editorial in nature and are not expected to have a substantive effect on the regulated industry.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that a portion of the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate. For the portion of the State provisions that is not based upon counterpart Federal regulations, this determination is based upon the fact that the State provisions are administrative and procedural or editorial in nature and are not expected to have a substantive effect on the regulated industry.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 13, 2005.

Charles E. Sandberg,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 05–2409 Filed 2–7–05; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

[Docket No. IA–014–FOR]

Iowa Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Iowa regulatory program (Iowa program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Iowa proposes revisions to its April 1999 revegetation success guidelines titled, ''Revegetation Success Standards and Statistically Valid Sampling Techniques.'' Iowa intends to revise its program in response to required program amendments.

This document gives the times and locations that the Iowa program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., c.s.t., March 10, 2005. If requested, we will hold a public hearing on the amendment on March 7, 2005. We will accept requests to speak at a hearing until 4 p.m., c.s.t. on February 23, 2005.

ADDRESSES: You may submit comments, identified by Docket No. IA–014–FOR, by any of the following methods:

- E-mail: *MCR_AMEND@osmre.gov.* Include Docket No. IA–014–FOR in the subject line of the message.
- Mail/Hand Delivery: Andrew R. Gilmore, Chief, Alton Field Division, Office of Surface Mining Reclamation and Enforcement, 501 Belle Street, Alton, Illinois 62002.
- Fax: (618) 463–6470.
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Iowa program, this amendment, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Alton Field Division.

Andrew R. Gilmore, Chief, Alton Field Division, Office of Surface Mining Reclamation and Enforcement, 501 Belle Street, Alton, Illinois 62002, telephone: (618) 463–6460, e-mail: *MCR_AMEND@osmre.gov.*

In addition, you may review a copy of the amendment during regular business hours at the following location: Iowa Department of Agriculture and Land Stewardship, Division of Soil Conservation, Henry A. Wallace Building, Des Moines, Iowa 50319, telephone: (515) 281–6147.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Chief, Alton Field Division. Telephone: (618) 463–6460. E-mail: *MCR_AMEND@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Iowa Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Iowa Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Iowa program effective April 10, 1981. You can find background information on the Iowa program, including the Secretary's findings, the disposition of comments, and the conditions of approval, in the January 21, 1981, **Federal Register** (46 FR 5885). You can also find later actions concerning the Iowa program and program amendments at 30 CFR 915.10, 915.15, and 915.16.

II. Description of the Proposed Amendment

By letter dated December 27, 2004 (Administrative Record No. IA–449), Iowa sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Iowa sent the amendment in response to required program amendments codified at 30 CFR 915.16(a) and (c). Below is a summary of the changes proposed by Iowa. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES.**

The required program amendment codified at 30 CFR 915.16(a) calls for Iowa to submit for our approval evidence that the U.S. Natural Resources Conservation Service concurs with its provisions to allow the use of reference areas for determining success of productivity on prime farmland as proposed at Section III., Part F and Section IV., Part A.2 of its revegetation success guidelines. At 30 CFR 915.16(c), Iowa is required to either remove Section IV., Part G from its revegetation success guidelines or submit for our approval evidence that the U.S. Natural Resources Conservation Service concurs with the provisions in Part G. Part G, pertaining to control areas, contains the requirements and methods for making climate-based adjustments to the prime farmland average yields shown in the County Soil Map Unit Yield Data tables.

In response to the above two required program amendments, Iowa proposes to amend Section III., Part F and Section IV., Parts A and G of its April 1999 revegetation success guidelines titled, ''Revegetation Success Standards and Statistically Valid Sampling Techniques,'' by removing all text related to prime farmland reference areas and all text related to control area adjustments of prime farmland and revegetation success standards.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are

received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Alton Field Division may not be logged in.

Electronic Comments

Please submit e-mail comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: Docket No. IA–014–FOR'' and your name and return address in your e-mail message. If you do not receive a confirmation that we have received your e-mail message, contact the Alton Field Division at (618) 463–6460.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their 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 review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.s.t. on February 23, 2005. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Iowa program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Iowa program has no effect on federally-recognized Indian tribes.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 915

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 14, 2005.

Charles E. Sandberg,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 05–2410 Filed 2–7–05; 8:45 am]

BILLING CODE 4310–05–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 050125017–5017–01; I.D. 011905E]

RIN 0648–AR57

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery

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

ACTION: Proposed 2005 specifications for the Atlantic bluefish fishery; request for comments.

SUMMARY: NMFS proposes 2005 specifications for the Atlantic bluefish fishery, including state-by-state commercial quotas, a recreational harvest limit, and recreational possession limits for Atlantic bluefish off the East Coast of the United States. The intent of the specifications is to conserve and manage the bluefish resource and provide for sustainable fisheries.

DATES: Public comments must be received no later than 5 p.m., Eastern Standard Time, on February 23, 2005.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment (EA), Initial Regulatory Flexibility Analysis (IRFA), and the Essential Fish Habitat Assessment (EFHA) are available from: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. The EA, IRFA, and EFHA are accessible via the Internet at *http://www.nero.noaa.gov*.

Comments on the proposed specifications should be sent to: Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. Please mark the envelope, ''Comments 2005 Bluefish Specifications.'' Comments also may be sent via facsimile (fax) to 978–281–9135. Comments on the specifications may be submitted by e-mail. The mailbox address for providing e-mail comments is *2005_Bluefish_Specs@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: ''Comments–2005 Bluefish Specifications.'' Comments may also be submitted electronically through the Federal e-Rulemaking portal: *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Don Frei, Fishery Management Specialist, (978) 281–9221, e-mail at *Don.Frei@noaa.gov*, fax at (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations implementing the Atlantic Bluefish Fishery Management Plan (FMP) prepared by the Mid-Atlantic Fishery Management Council (Council) appear at 50 CFR part 648, subparts A and J. Regulations requiring annual specifications are found at 648.160. The FMP requires that the Council recommend, on an annual basis, a level of total allowable catch (TAC) consistent with the rebuilding program in the FMP. An estimate of annual discards is deducted from the TAC to calculate the total allowable landings (TAL) that can be made during the year by the commercial and recreational fishing sectors combined. The TAL is comprised of a commercial quota and a recreational harvest limit. The FMP rebuilding program requires the TAC for any given year to be set based either on the fishing mortality rate (F) resulting from the stock rebuilding schedule specified in the FMP, or the estimated F in the most recent fishing year, whichever is lower.

The FMP further requires 17 percent of the TAL to be allocated to the commercial fishery as a quota, with the remaining 83 percent allocated as a recreational harvest limit, with the stipulation that, if 17 percent of the TAL is less than 10.5 million lb (4.8 million kg) and the recreational fishery is not projected to land its harvest limit for the upcoming year, the commercial fishery may be allocated up to 10.5 million lb (4.8 million kg) as its quota. The combination of the projected recreational landings and the commercial quota may not exceed the TAL.

In addition, the FMP allows the Council and NMFS to allocate up to 3 percent of the TAL as a Research Set-Aside (RSA), to support fishery research. This RSA is deducted proportionally from the amounts allocated to the commercial quota and recreational harvest limit.

The Council's recommendations must include supporting documentation, as

appropriate, concerning the environmental, economic, and social impacts of the recommendations. NMFS is responsible for reviewing these recommendations to assure they achieve the FMP objectives, and may modify them if they do not. NMFS then publishes proposed specifications in the **Federal Register**. After considering public comment, NMFS will publish final specifications in the **Federal Register**.

Proposed 2005 TAL

On August 17, 2004, the Council recommended specifications for the 2005 Atlantic bluefish fishery. The Council submitted the documents supporting its recommendations on August 20, 2004, with a final revision to those documents submitted on November 12, 2004. NMFS has reviewed the Council's recommendations and has found they comply with the FMP objectives. NMFS is proposing to implement the Council's recommended specifications.

For the 2005 fishing year, the stock rebuilding program in the FMP restricts F to 0.31, or the most recent estimate of F, whichever is lower. However, in June 2004, the Northeast Fisheries Science Center Stock Assessment Workshop (SAW–39) reviewed an updated stock assessment for bluefish and rejected it because it found that it was inappropriate for use as the basis of the management measures. SAW–39 concluded that input data negatively influenced the model used, and there was no concrete evidence that the stock was recovering. The technical review noted the need for a recreational catch rate abundance index, and better information about discard rates and mortality. SAW–39 advised that, because the assessment was rejected and the status of the stock unknown, the total allowable landings specifications should be maintained at current levels. The Council's Monitoring Committee and the Council concurred with this advice, and recommended that the 2005 TAC should be the same as that in 2004, 34.215 million lb (15.519 million kg). The TAL is calculated by deducting an estimate of 2005 discards, estimated at 3.362 million lb (1.542 million kg), from the TAC; therefore, the TAL for 2005 would be 30.853 million lb (13.994 million kg). Due to the updated discard estimate, the TAL proposed for 2005 would be slightly lower than that established in 2004. As discussed below, the TAL is further allocated to a commercial quota, recreational harvest limit, and RSA.

Proposed Commercial Quota and Recreational Harvest Limit

If the TAL for the 2005 fishery were allocated based on the percentages specified in the FMP, the commercial quota would be 5.245 million lb (2.379 million kg), and the recreational harvest limit would be 25.608 million lb (11.615 million kg). However, recreational landings for the last several years have been much lower than the recreational allocation for 2005, ranging between 8.3 and 15.5 million lb (3.74 and 7.05 million kg). Because there is no indication that the recreational fishery will increase landings to 25.608 million lb (11.615 million kg) in 2005, the FMP allows the specification of a commercial quota of up to 10.5 million lb (4.76 million kg). Therefore, consistent with the FMP and regulations governing the bluefish fishery, the Council recommended, and NMFS proposes, to transfer 5.254 million lb (2.383 million kg) from the initial recreational allocation of 25.608 million lb (11.615 million kg), resulting in 20.353 million lb (9.232 million kg) for a 2005 proposed recreational harvest limit and 10.5 million lb (4.76 million kg) for a proposed commercial quota. These allocations were also recommended by the Atlantic States Marine Fisheries Commission for implementation by the states for the fisheries within state waters.

RSA

A Request for proposals was published to solicit research proposals to utilize RSA in 2005 based on research priorities identified by the Council (March 9, 2004; 69 FR 10990). One research project that would utilize bluefish RSA has been approved by the Northeast Regional Administrator and forwarded to the NOAA Grants Office; therefore, a 297,750 lb (135,057 kg) RSA is also proposed. Consistent with the allocation of the bluefish RSA, the proposed commercial quota for 2005 would be reduced to 10, 398 million lb (4.716 million kg) and the proposed recreational harvest limit is reduced to 20,157 million lb (9,143 million kg).

Proposed Recreational Possession Limit

The Council recommends, and NMFS proposes, to maintain the current recreational possession limit of 15 fish per person to achieve the recreational harvest limit.

Proposed State Commercial Allocations

Proposed state commercial allocations for the recommended 2005 commercial quota are shown in the table below, based on the percentages specified in the FMP. The table shows the allocations both before and after the deduction made to reflect the proposed RSA allocation.

State	% of Quota	2005 Commercial Quota (lb)	2005 Commercial Quota (kg)	2005 Commercial Quota (lb)	2005 Commercial Quota\(kg)
				With Research Set-Aside	With Research Set-Aside
ME	0.6685	70,193	31,839	69,515	31,531
NH	0.4145	43,523	19,742	43,102	19,551
MA	6.7167	705,254	319,898	698,448	328,358
RI	6.8081	714,851	324,251	707,952	321,122
CT	1.2663	132,962	60,311	131,678	59,728
NY	10.3851	1,090,436	494,613	1,079,912	489,840
NJ	14.8162	1,555,701	705,654	1,540,688	698,844
DE	1.8782	197,211	89,453	195,308	88,590
MD	3.0018	315,189	142,967	312,147	141,588
VA	11.8795	1,247,348	565,788	1,235,310	560,327
NC	32.0608	3,366,384	1,526,966	3,333,897	1,512,230
SC	0.0352	3,696	1,676	3,660	1,650
GA	0.0095	998	453	988	448
FL	10.0597	1,056,269	479,116	1,046,075	474,492
Total	100.0000	10,500,000	4,762,720	10,398,671	4,731,822

Classification

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared an Initial Regulatory Flexibility Analysis (IRFA) that describes the impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for the action are provided in the preamble of this proposed rule, and in the IRFA. A summary of the IRFA follows.

All vessels affected by this rulemaking have gross receipts less than $3.5 million and are considered small entities under the Regulatory Flexibility Act. Since there are no large entities participating in this fishery, there are no disproportionate effects on small versus large entities. Since costs are not readily available, vessel profitability cannot be determined directly; therefore, changes in gross revenues were used as a proxy for profitability.

The participants in the commercial sector were defined using two sets of data. First, the reports of NMFS-permitted bluefish dealers were used to identify any vessel that reported having landed one or more pounds of bluefish during calendar year 2003 (the last year for which there is complete data). These dealer reports identify 853 vessels that landed bluefish in states from Maine to North Carolina. However, this database does not provide information about fishery participation in the South Atlantic. To identify those commercial bluefish vessels, South Atlantic Trip Ticket reports were used to identify 871 vessels landed bluefish in North Carolina and 413 vessels that landed bluefish on Florida's east coast. Because bluefish landings in South Carolina and Georgia represented less than 1/10 of 1 percent of total landings, it was assumed that there are no commercial vessels from those states active in this fishery. In recent years, approximately 2,063 party/charter vessels caught bluefish.

The Council analyzed three alternatives for allocating the TAL between the commercial and recreational sectors of the fishery. Consistent with SAW–39 advice to maintain harvest rates of the level of the 2004 fishing year, all of the alternatives were based on an overall TAL of 30.853 million lb (13.994 million kg) and included an allocation for RSA of 297,750 lb (135,057 kg). The alternatives differed only in the manner in which the TAL was allocated between the commercial and recreational sectors. The recommended alternative would allocate 10.398 million lb (4.716 million kg) to the commercial sector and 20.157 million lb (9.14 million kg) to the recreational sector. Alternative 2 would have allocated 5.245 million lb (2.379 million kg) to the commercial sector and 25.608 million lb (11.615 million kg) to the recreational sector, reflecting the allocations derived from the 17–percent and 83–percent initial FMP allocation to the commercial and recreational sectors respectively. Alternative 3 would have allocated 9.583 million lb (4.346 million kg) to the commercial sector and 21.270 million lb (9.554 million kg) to the recreational sector, reflecting the commercial allocation made for 1995–2001.

For the recreational sector of the fishery, there were no negative revenue impacts projected to occur with any of the alternatives because the recreational harvest limits would be well above the level of recreational landings in recent years. The lowest recreational harvest limit considered is the recommended level of 20.157 million lb (9.14 kg), and it exceeds the recreational landings in 2003 by 44 percent. Given recent trends in bluefish recreational landings, the analysis concludes that the landings in 2005 are expected to be substantially lower than the proposed recreational harvest limit.

For the commercial sector, the recommended coastwide quota is approximately 44 percent higher than 2003 commercial landings. Impacts on individual commercial vessels were assessed by conducting a threshold analysis using the dealer reports for the 853 vessels that landed bluefish from Maine through North Carolina. The analysis projected that there would be no revenue change for 548 of the 853 vessels, while 255 vessels could incur slight revenue losses of less than 5 percent. Another 50 vessels could incur revenue losses of between 5 percent and 39 percent, with the majority of these vessels identifying home ports in New York. Decreases in New York revenue are associated with the 2005 commercial quota allocated to New York being lower than 2003 landings from that state. The analysis also noted that the provision that allows commercial quota to be transferred from one state to another is likely to result in transfers of quota to New York from other states, thus eliminating the negative revenue impacts. While not assured, such transfers have been made annually in recent years, including 2003 and 2004.

The impacts of the recommended alternative on commercial vessels in the South Atlantic were assessed using trip ticket data. The analysis concludes that these impacts would be minimal, with an average revenue loss for vessels that landed in North Carolina of less than 1 percent, and no projected revenue losses for vessels that landed in Florida.

The analysis of Alternative 2 concluded that, for the commercial sector, there would be a 28–percent decrease in total potential commercial landings in 2005 compared to 2003 landings. The analysis of impacts on individual commercial vessels projected that there would be no revenue change for 300 of the 853 vessels that landed bluefish in 2003, while 460 could incur slight revenue losses (less than 5 percent). Another 67 could incur revenue losses between 5 percent and 39 percent, while 26 could incur revenue losses of greater than 39 percent. Nearly all of the vessels projected to incur revenue losses of greater than 5 percent had home ports in New York, New Jersey, or North Carolina. Again, the commercial quota transfer provision could be expected to moderate some or all of these impacts.

The impacts on commercial vessels in the South Atlantic were assessed using trip ticket data. The analysis concludes that these impacts would result in revenue reductions of approximately 6.5 percent for vessels that landed in North Carolina, and no projected revenue losses for vessels that landed in Florida.

The analysis of Alternative 3 concluded that, for the commercial sector, there would be a 31–percent decrease in total potential commercial landings in 2005 compared to 2003. The analysis of impacts on individual commercial vessels projected that there would be no revenue change for 548 of the 853 vessels that landed bluefish in 2003, while 244 could incur slight revenue losses (less than 5 percent). Another 61 could incur revenue losses between 5 percent and 39 percent. The vessels projected to incur revenue losses greater of than 5 percent had home ports in New York and North Carolina. Again, the commercial quota transfer provision could be expected to moderate some or all of these impacts.

The impacts on commercial vessels in the South Atlantic were assessed using trip ticket data. The analysis concludes that these impacts would result in revenue reductions of approximately 1.5 percent for vessels landing in North Carolina and that there would be no revenue reductions for vessels landing in Florida.

The Council also analyzed the impacts on revenues of the proposed RSA amount and found that the social and economic impacts are minimal. Assuming that the full RSA of 297,750 lb (135,057 kg) is landed and sold to

support the proposed research project (a supplemental finfish survey in the Mid-Atlantic) then all of the participants in the fishery would benefit from the anticipated improvements in the data underlying the stock assessments.

Because the recommended overall commercial quota and recreational harvest limit are both higher than 2003 landings, no overall negative impacts are expected.

Dated: February 2, 2005.

Rebecca Lent,

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

[FR Doc. 05–2442 Filed 2–7–05; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 70, No. 25

Tuesday, February 8, 2005

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

DEPARTMENT OF AGRICULTURE

Forest Service

Black Hills National Forest Advisory Board Public Meeting Cancellation Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting cancellation.

SUMMARY: The Black Hills National Forest Advisory Board (NFAB) has cancelled its February 16, 2005 meeting because of delays in the Board's re-chartering process. The next scheduled meeting is Wednesday, March 16, 2005, as previously announced, subject to successful renewal of the Board's charter.

FOR FURTHER INFORMATION CONTACT: Frank Carroll, Black Hills National Forest, 25041 North Highway 16, Custer, SD 57730. (605) 673–9200.

Dated: February 2, 2005.

Brad Exton,

Acting Forest Supervisor.

[FR Doc. 05–2377 Filed 2–7–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[05–AZ–C]

Opportunity To Comment on the Applicant for the Southwest Arizona Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (USDA).

ACTION: Notice.

SUMMARY: GIPSA requests comments on the applicant for designation to provide official services in Southwest Arizona.

DATES: Comments must be postmarked or electronically dated on or before March 10, 2005.

ADDRESSES: We invite you to submit applications and comments on this notice. You may submit applications and comments by any of the following methods:

- Hand Delivery or Courier: Deliver to Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250.
- Fax: Send by facsimile transmission to (202) 690–2755, attention: Janet M. Hart.
- E-mail: Send via electronic mail to *Janet.M.Hart@usda.gov.*
- Mail: Send hardcopy to Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, STOP 3604, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

Read Applications and Comments: All applications and comments will be available for public inspection at the office above during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, at 202–720–8525, e-mail *Janet.M.Hart@usda.gov.*

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the December 8, 2004, **Federal Register** (69 FR 70993) GIPSA asked for applicants for Maricopa, Pinal, Santa Cruz, and Yuma Counties, Arizona.

There was one applicant for the Southwest Arizona area. Richard Dan Prince, proposing to do business as Farwell Commodity and Grain Service, Inc., applied for designation in the entire area named in the December 8, 2004, **Federal Register.**

GIPSA is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of the applicants. All comments must be submitted to the Compliance Division at the above address. Comments and other available information will be considered in making a final decision. GIPSA will publish notice of the final decision in the **Federal Register,** and GIPSA will send the applicants written notification of the decision.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. *et seq.*).

Dated: February 3, 2005.

David R. Shipman,

Deputy Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 05–2386 Filed 2–7–05; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[05–TX–C]

Opportunity To Comment on the Applicants for the South Texas Area

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: GIPSA requests comments on the applicants for designation to provide official services in the unassigned areas of South Texas.

DATES: Comments must be postmarked or electronically dated on or before March 10, 2005.

ADDRESSES: We invite you to submit comments on the applicants by any of the following methods:

- Hand Delivery or Courier: Deliver to Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250.
- Fax: Send by facsimile transmission to (202) 690–2755, attention: Janet M. Hart.
- E-mail: Send via electronic mail to *Janet.M.Hart@usda.gov*.
- Mail: Send hardcopy to Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, STOP 3604, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

Read Comments: All comments will be available for public inspection at the office above during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525, e-mail *Janet.M.Hart@usda.gov*.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866

and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the December 8, 2004, **Federal Register** (69 FR 70994), GIPSA asked persons interested in providing official services in the South Texas area to submit an application for designation.

There were four applicants for the South Texas area: Plainview Grain Inspection and Weighing Service, Inc. (Plainview), and D. R. Schaal Agency, Inc., (Schaal) both currently designated official agencies; a company proposing to do business as Global Grain Inspection Services, Inc., (Global) with the parent company of BSI Inspectorate America Corporation, and Tyrone Martin, Sr., proposing to do business as Gulf South Regional Grain Service, LLC, (Gulf South). Plainview, Schaal, Global, and Gulf South applied for designation to provide official services in the entire area named in the December 8, 2004, **Federal Register**.

GIPSA is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of the applicants. All comments must be submitted to the Compliance Division at the above address. Comments and other available information will be considered in making a final decision. GIPSA will publish notice of the final decision in the **Federal Register**, and GIPSA will send the applicants written notification of the decision.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: February 3, 2005.

David R. Shipman,

Deputy Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 05–2387 Filed 2–7–05; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: U.S. Census Bureau.

Title: 2004 Panel of the Survey of Income and Program Participation, Wave 5 Topical Modules.

Form Number(s): SIPP 24505(L) Director's Letter; SIPP/CAPI Automated Instrument; SIPP 24003 Reminder Card.

Agency Approval Number: 0607–0905.

Type of Request: Revision of a currently approved collection.

Burden: 148,028 hours.

Number of Respondents: 97,650.

Avg Hours Per Response: 30 Minutes.

Needs and Uses: The U.S. Census Bureau requests authorization from the Office of Management and Budget (OMB) to conduct the Wave 5 topical module interview for the 2004 Panel of the Survey of Income and Program Participation (SIPP). We are also requesting approval for a few replacement questions in the reinterview instrument. The core SIPP and reinterview instruments were cleared under Authorization No. 0607–0905.

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years, with each panel having durations of 3 to 4 years. The 2004 Panel is scheduled for four years and will include twelve waves of interviewing. All household members 15 years old or over are interviewed a total of twelve times (twelve waves), at 4-month intervals, making the SIPP a longitudinal survey.

The survey is molded around a central ''core'' of labor force and income questions that remain fixed throughout the life of a panel. The core is supplemented with questions designed to answer specific needs. These supplemental questions are included with the core and are referred to as ''topical modules.'' The topical modules for the 2004 Panel Wave 5 are School Enrollment and Financing, Child Support Agreements, Support for Non-household Members, Functional Limitations and Disability for Adults and Children, Employer Provided Health Benefits, and Adult Well-being. The Child Support Agreements, Support for Non-household Members, Functional Limitations and Disability for Adults and Children, and Adult Well-being topical modules were previously conducted in the 2001 Panel Wave 8 instrument. The School Enrollment and Financing and Employer Provided Health Benefits topical modules were previously conducted in the 2001 Panel Wave 5 instrument. 2004 Panel Wave 5 interviews will be conducted from June 2005 through September 2005.

Data provided by the SIPP are being used by economic policymakers, the Congress, state and local governments, and Federal agencies that administer social welfare or transfer payment programs, such as the Department of Health and Human Services and the Department of Agriculture. The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single and unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983, permitting levels of economic well-being and changes in these levels to be measured over time. Monetary incentives to encourage non-respondents to participate is planned for all waves of the 2004 SIPP Panel.

Affected Public: Individuals or households.

Frequency: Every 4 months.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

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

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: February 2, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–2327 Filed 2–7–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

2006 Census Test Group Quarters Validation Operation

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 11, 2005.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Annetta C. Smith, U.S. Census Bureau, Building 2, Room 2102, Washington, DC 20233–9200, Telephone number (301) 763–1348.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau must provide everyone in the United States—including persons who do not live in conventional housing units—the opportunity to be counted in a census. In Census 2000, we implemented a set of procedures to enumerate persons who live or stay in group quarters (GQs—*see* Definition of Terms) such as nursing homes, college dormitories, jails, and shelters. In order to count these persons, we developed a list of GQs—living quarters other than conventional housing units.

Prior to the Census 2000 enumeration of persons living in group quarters, the Census Bureau conducted the Special Place (*see* Definition of Terms) Facility Questionnaire operation to develop an inventory of special place/group quarters facilities. This operation was designed to identify, verify, classify, and obtain pertinent enumeration information about every group quarters.

As a result of lessons learned from Census 2000, the Census Bureau implemented the Group Quarters Validation (GQV) operation in 2004 in order to develop methodologies that would improve the enumeration of the GQ population in the 2010 Census. This operation replaced the Special Place Facility Questionnaire. The 2004 GQV operation was planned to develop new procedures to verify and update the existing Census 2000 GQ inventory as corrected by the Count Question Resolution (*see* Definition of Terms) program. In addition to verifying and updating the Census 2000 inventory, the 2004 GQV operation was intended to properly classify places with housing units that were potentially difficult to classify or that required special procedures (*e.g.*, hotels/motels and assisted living facilities).

As part of ongoing planning for the 2010 Census, the Census Bureau now plans to conduct the 2006 Census Test GQV operation in order to incorporate lessons learned from the 2004 GQV operation and focus group research with those learned from Census 2000. Among the improvements to the program that we plan to implement in the 2006 Census Test GQV operation are:

- Testing revised definitions that are intended to improve the classification of group quarters,
- Simplifying the questionnaire skip patterns, and
- Enumerating pre-identified group homes as GQs rather than as HU as was done in the 2004 GQV operation.

The 2006 GQV operation, which supports the Census Bureau's strategic goal of developing methodologies for compiling a complete and accurate Master Address File for the 2010 Census, is designed to test improved procedures to verify and classify addresses identified as other living quarters (*see* Definition of Terms) during the 2006 Address Canvassing (*see* Definition of Terms) operation. Addresses will be classified as a GQ, a HU, or not a living quarter during Address Canvassing. If the address is a GQ, the 2006 Other Living Quarters Validation questionnaire is designed to enable the lister to label it with the correct type code, (*e.g,* as a college residence hall or skilled nursing unit).

In order to achieve its goal of developing procedures for improving the enumeration of the GQ population, the 2006 GQV operation plans to evaluate the effect of the following on address list development and GQ classification:

- Using administrative records to obtain addresses for selected types of GQs (*e.g.*, group homes) in order to update the Master Address File prior to Address Canvassing.
- Using Address Canvassing in conjunction with GQV to distinguish between HUs and GQs in order to update the GQ address list. This is part of our ongoing effort in the development and implementation of an integrated approach for updating the list of living quarters during Address Canvassing and other living quarters operations.
- Incorporating the following revisions in the Other Living Quarters Validation questionnaire: (1) Improving the content and flow, (2) adding a ''length of stay question,'' and (3) incorporating GQ definitions that are being tested as part of the 2006 Census Test.

There are two test sites for the 2006 Census Test GQV operation—selected census tracts in Travis County, Texas, and the Cheyenne River Reservation, South Dakota. The test will be conducted out of the Austin Local Census Office in Texas, and the Cheyenne River Census Field Office on the Cheyenne River Reservation. The planned dates for the 2006 GQV operation are October 31, 2005 through November 30, 2005. The 2006 GQV operation must be conducted late in 2005 because GQV data will be used in the Advance Visit operation that will be conducted early in 2006 (prior to the 2006 Census Test).

II. Method of Collection

The 2006 GQV universe for the Travis County, Texas, and the Cheyenne River Reservation, South Dakota, which will be validated and type-coded using the 2006 Other Living Quarters Validation questionnaire, will consist primarily of other living quarters from the 2006 Address Canvassing operation. In addition to these other living quarters, the universe also will include GQs from Census 2000, administrative records, and the Demographic Areas Address Listing (*see* Definition of Terms) that were not identified as other living quarters during the 2006 Address Canvassing operation.

During Address Canvassing, the field staff will update and verify the addresses for the Texas and South Dakota sites (both HUs and other living quarters). The canvassers will code addresses as other living quarters if they have living quarters, or if they have the potential of having living quarters and do not meet the definition of a HU. The addresses for these other living quarters will then be merged with adds from administrative records and the Demographic Areas Address Listing GQ adds that were not identified during Address Canvassing to create the universe of other living quarters for the test areas.

A lister for the 2006 GQV operation will visit each of these addresses and conduct an interview using the paper 2006 Other Living Quarters Validation questionnaire. The lister will ask a series of questions that are intended to validate and classify the type of living quarters at the other living quarters address. If the address is determined to be a GQ, the lister will interview the respondent to verify, classify, and

obtain other pertinent information about the GQ. The lister will attempt to verify and/or collect information including the basic street address, contact name, telephone number, maximum capacity, GQ type code, and the full name of the facility. If the address is determined to be a housing unit or not a living quarter, the lister will record the applicable action code and end the interview.

Completed GQV questionnaires will be sent to the Census Bureau National Processing Center in Jeffersonville, Indiana for data capture. The data will be unduplicated based on address information collected using the 2006 Other Living Quarters Validation questionnaires, and information for all valid GQs identified during the 2006 GQV operation will be processed for use in the 2006 Advance Visit operation, the 2006 Service-Based Enumeration operation, and the 2006 Group Quarters Enumeration operation.

Approximately 10 percent of the addresses from the 2006 GQV universe will be randomly selected for re-interview in order to verify the outcomes of the original interviews. This quality control procedure will be conducted on a flow basis throughout the operation.

Definition of Terms

Address Canvassing—A data collection operation designed to support the Census Bureau's efforts to compile the most accurate and comprehensive residential (housing units and group quarters) address list possible. For 2006, listers will verify, update, add, and delete address records in each census block within the Assignment Area, while also updating map features on the electronic map where Global Positioning System (GPS) is available. They also will capture coordinates for each living quarters via GPS or a manual method when GPS is not available, link duplicate addresses when they identify them and determining if a living quarters should be coded as another living quarters for further review in the GQV operation.

Count Question Resolution—A process by which state, local, and tribal government officials could ask the Census Bureau to verify the accuracy of the legal boundaries used for Census 2000, the allocation of living quarters and their residents in relation to those boundaries, and the count of people recorded by the Census Bureau for specific living quarters.

Demographic Areas Address Listing—DAAL is a post-Census 2000 program designed to update the sample universe of housing units and group quarters for various demographic surveys. DAAL also is intended to update the inventory of housing units and features for selected areas of the country in order to improve the coverage and completeness of the MAF in preparation for the ACS sample selection.

Group Quarters (GQs)—Group quarters are places where people can live or stay that are normally owned or managed by an entity or organization providing housing and/or services for the residents. These services may include custodial or medical care, as well as other types of assistance, and residency is commonly restricted to those receiving these services. People living in them are usually not related to each other.

Group quarters include such places as residential treatment centers, college residence halls, military barracks, skilled nursing facilities, correctional facilities, group homes, juvenile facilities dormitories, workers' dormitories, and facilities for people experiencing homelessness.

Housing Unit—A housing unit is a living quarters in which the occupants live separately from any other individuals in the building and have direct access to their living quarters from outside the building or through a common hall. Housing units are usually houses, apartments, mobile homes, groups of rooms or single rooms that are occupied as separate living quarters. They are residences for single individuals, groups of individuals, or families who live together. Although housing units may be vacant or occupied, non-traditional living quarters such as boats, RVs, and tents are considered to be housing units ONLY if someone is living in them and they are either the occupant's usual residence or the occupant has no usual residence. These non-traditional living arrangements are not considered to be housing units if they are vacant.

Other Living Quarters—Any address that does not meet the definition of a HU and has living quarters or has the potential of having living quarters. Other living quarters include correctional facilities, college and university housing, religious living quarters, dormitories for migrant workers, assisted living facilities, juvenile facilities, skilled nursing facilities, and emergency shelters for people experiencing homelessness.

Special Places—A facility containing one or more group quarters where people live or stay, such as a college or university, nursing home, hospital, prison, hotel, migrant or seasonal farm worker camp, or military installation or ship. While a special place usually consists of one or more group quarters, and may contain embedded or free-standing housing units, it may consist entirely of housing units (*e.g.*, a campground that has only trailer, RV, and/or tent sites). Establishments that are administratively responsible for one or more Group Quarters. In some cases, the Special Place and the Group Quarters are one and the same.

III. Data

OMB Number: None.

Form Number: DD–351(GQV).

Type of Review: Regular.

Affected Public: Individuals, businesses or other for-profit institutions and small businesses or organizations.

Estimated Number of Respondents: 700 GQs (Travis County, Texas) and 20 GQs (Cheyenne River Reservation, South Dakota) for the 2006 GQV operation. 72 GQs for the Reinterview operation.

Estimated Time Per Response: 15 minutes.

Estimated Total Annual Burden Hours: 180 hours for GQV. 18 hours for Reinterview.

Estimated Total Annual Cost: There is no cost to the respondents except for their time to respond.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C. 141 & 193.

IV. Request for Comments

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

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

Dated: February 2, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–2329 Filed 2–7–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1365]

Approval for Expansion of Manufacturing Authority Within Subzone 193A Cardinal Health 409, Inc., Facilities (Soft Gelatin Capsules/ Pharmaceutical and Nutritional Products) Pinellas County, FL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Pinellas County Board of County Commissioners, grantee of FTZ 193A, has requested authority to expand the scope of manufacturing activity (pharmaceutical and nutritional products) under zone procedures within Subzone 193A at the Cardinal Health 409, Inc., facilities in Pinellas County, Florida (FTZ Docket 3–2004, filed 2/10/ 2004);

Whereas, notice inviting public comment has been given in the **Federal Register** (69 FR 7723, 2/19/2004);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand the scope of authority under zone procedures within Subzone 193A on behalf of Cardinal Health 409, Inc., is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28

Signed at Washington, DC, this 27th day of January 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–2434 Filed 2–7–05; 8:45 am]

BILLING CODE 3510–DG–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1364]

Expansion of Foreign-Trade Zone 29 Louisville, KY

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Louisville and Jefferson County Riverport Authority, grantee of Foreign-Trade Zone 29, submitted an application to the Board for authority to expand FTZ 29—Site 4 to include an additional parcel at the Louisville Metro Commerce Center in Louisville, Kentucky, within the Louisville Customs port of entry (FTZ Docket 13–2004; filed 3/29/04);

Whereas, notice inviting public comment was given in the **Federal Register** (69 FR 18520, 4/8/04) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 29—Site 4 is approved, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the Board's standard 2,000-acre activation limit for the overall zone project.

Signed at Washington, DC, this 27th day of January 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–2433 Filed 2–7–05; 8:45 am]

BILLING CODE 3510–DG–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1367]

Approval for Expanded Manufacturing Authority (Motor Vehicles); Foreign-Trade Subzone 158D Nissan North America, Inc., Canton, MS

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u)(the Act), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Vicksburg-Jackson Foreign-Trade Zone, Inc., grantee of FTZ 158, has requested authority under Section 400.32(b)(1) of the Board's regulations, on behalf of Nissan North America, Inc. (NNA), operator of Subzone 158D at the NNA motor vehicle manufacturing plant in Canton, Mississippi, requesting an expansion of the scope of manufacturing authority to include new manufacturing capacity under FTZ procedures (Docket 56–2003, filed 10–29–2003);

Whereas, pursuant to 15 CFR 400.32(b)(1), the Commerce Department's Assistant Secretary for Import Administration has the authority to act for the Board in making such decisions on new manufacturing/ processing activity under certain circumstances, including situations where the proposed activity is the same, in terms of products involved, to activity recently approved by the Board (§ 400.32(b)(1)(i)); and,

Whereas, the FTZ Staff has reviewed the proposal, taking into account the criteria of Section 400.31, and the Executive Secretary has recommended approval;

Now, therefore, the Assistant Secretary for Import Administration, acting for the Board pursuant to Section 400.32(b)(1), concurs in the recommendation and hereby approves the request subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 27th day of January 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–2436 Filed 2–7–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1366]

Reorganization and Expansion of Foreign-Trade Zone 183 and Subzone 183A (Dell Computer Corporation) Austin, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign Trade Zone of Central Texas, Inc., grantee of Foreign-Trade Zone 183, submitted an application to the Board for authority to reorganize and expand FTZ 183 and reduce zone space at Subzone 183A

(Dell Computer Corporation) in Austin, Texas, within and adjacent to the Austin Customs port of entry (FTZ Docket 18–2004; filed 5/5/04);

Whereas, notice inviting public comment was given in the **Federal Register** (69 FR 26358, 5/12/04) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize and expand FTZ 183 and reduce zone space at SZ 183A is approved, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project.

Signed at Washington, DC, this 27th day of January 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–2435 Filed 2–7–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 7–2005]

Proposed Foreign-Trade Zone—Brattleboro, VT Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Brattleboro Foreign Trade Zone LLC, a Vermont limited liability corporation, to establish a general-purpose foreign-trade zone at sites in Brattleboro, Vermont, adjacent to the Springfield, Massachusetts, Customs port of entry. The FTZ application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 31, 2005. The applicant is authorized to make the proposal under Vermont Statutes Annotated, Title 9, Chapter 111, Sections 4121–4122.

The proposed zone would be the second general-purpose zone in the Springfield, Massachusetts, Customs, port of entry area. The existing zone is FTZ 201, Holyoke, Massachusetts (Grantee: Holyoke Economic Development and Industrial Corporation, Board Order 684, 59 FR 33254, 6/16/93).

The proposed zone would consist of 18 sites covering 333 acres in the Brattleboro, Vermont area: *Site 1* (8 acres)—the DeWitt Beverage Inc. facility, 1568 Putney Road, Brattleboro; *Site 2* (5 acres)—the Leader Distribution Systems, Inc. complex, 1566 Putney Road, Brattleboro; *Site 3* (4 acres)—the Farmstead Realty LLC complex, 222–226 Old Ferry Road, Brattleboro; *Site 4* (64 acres) C&S Wholesale Grocers, Inc. facility, 47 Old Ferry Road, Brattleboro; *Site 5* (18 acres)—Brattleboro Development Credit Corporation Business Park, 22 Browne Court, Brattleboro; *Site 6* (11 acres)—World Learning, Inc. complex, #1 Kipling Road, Brattleboro; *Site 7* (4 acres)—Town Crier building, 16 Town Crier Drive, Brattleboro; *Site 8* (61 acres)—VT Collateral Holdings, LLC complex, 90 Technology Drive, Brattleboro; *Site 9* (.89 acres, 14,600 sq. ft.)—Rollerdrome LLC, 464 Putney Road, Brattleboro; *Site 10* (.24 acres, 30,000 sq. ft.)—Midtown Mall building, 22–28 High Street, Brattleboro; *Site 11* (.12 acres, 19,764 sq. ft.) Worden Properties complex, 106–110 Main St., Brattleboro; *Site 12* (.31 acres, 13,229 sq. ft.)—Baker Realty Exchange building, 79–93 Main Street, Brattleboro; *Site 13* (.08 acres, 3,060 sq. ft.)—Emerson's Realty warehouse, 52 Elliott Street, Brattleboro; *Site 14* (3 acres)—Estey Organ Factory complex, 96–130 Birge Street, Brattleboro; *Site 15* (11 acres)—Cotton Mill, 76 Cotton Mill Hill, Brattleboro; *Site 16* (2 acres)—Fischbach Industrial Building, 112 Mercury Drive, Brattleboro; *Site 17* (7 acres)—Famolare Inc. industrial lot, 350 John Seitz Drive, Brattleboro; *Site 18* (133 acres, 7 parcels)—Delta Industries LLC, Delta Business campus, 21 Omega Drive, Brattleboro. The sites are owned by a number of public and private corporations.

The application indicates a need for zone services in the Brattleboro, Vermont, area. Several firms have indicated an interest in using zone procedures for warehousing/distribution activities for products such as baskets, robotic assembly parts and clothing. Specific manufacturing requests are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on March 3rd, at 2 p.m., at the Vermont Agricultural Business Education Center (VABEC), Community Room, 11 University Way, Brattleboro, Vermont 05301.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions via Express/Package Delivery Service: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Avenue NW., Washington, DC 20230.

The closing period for their receipt is April 11, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 25, 2005).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and Assessor's Office, Brattleboro Town Hall, 230 Main Street, Brattleboro, Vermont.

Dated: February 1, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–2432 Filed 2–7–05; 8:45 am]

BILLING CODE 3510–DG–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Competitive Enhancement Needs Assessment Survey Program

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 11, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, DOC Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 or via Internet at *DHynek@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Pat Heinig, BIS ICB Liaison, (202) 482–4848, Department of Commerce, Room 6716, 14th & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Defense Production Act of 1950, as amended, and Executive Order 12919, authorizes the Secretary of Commerce to assess the capabilities of the defense industrial base to support the national defense and to develop policy alternatives to improve the international competitiveness of specific domestic industries and their abilities to meet defense program needs. The information collected from voluntary surveys will be used to assist small and medium-sized firms in defense transition and in gaining access to advanced technologies and manufacturing processes available from Federal Laboratories. The goal is to improve regions of the country adversely by cutbacks in defense spending and military base closures.

II. Method of Collection

Survey.

III. Data

OMB Number: 0694–0083.

Form Number: None.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 3,000.

Estimated Time Per Response: 30 minutes per response.

Estimated Total Annual Burden Hours: 1,500.

Estimated Total Annual Cost: No start-up capital expenditures.

IV. Request for Comments

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

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

Dated: February 2, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–2328 Filed 2–7–05; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–806]

Notice of Final Results of Antidumping Duty Administrative Review: Individually Quick Frozen Red Raspberries From Chile

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

SUMMARY: On August 6, 2004, the Department of Commerce (''the Department'') published the preliminary results of the administrative review of the antidumping duty order on individually quick frozen red raspberries from Chile. We gave interested parties an opportunity to comment on the preliminary results and have made certain changes for the final results. We find that certain companies reviewed sold individually quick frozen red raspberries from Chile in the United States below normal value during the period December 31, 2001, through June 30, 2003.

DATES: *Effective Date:* February 8, 2005.

FOR FURTHER INFORMATION CONTACT: Yasmin Bordas or Cole Kyle, Office 1, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–3813 and (202) 482–1503, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 2004, the Department published the *Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Individually Quick Frozen Red Raspberries From Chile,* 69 FR 47869 (August 6, 2004) (''*Preliminary Results*'') in the **Federal Register**.

On September 7, 2004, we received case briefs from The Pacific Northwest Berry Association and each of its individual members, Curt Maberry Farm, Enfield Farms, Inc., Maberry Packing, and Rader Farms, Inc. (collectively, ''petitioners''), and Fruticola Olmue, S.A. (''Olmue'').

On September 17, 2004, we received rebuttal briefs from the petitioners, Olmue, H.J. Uren & Sons and Uren Chile S.A. (''Uren''), and Santiago Comercio Exterior Exportaciones Limitada (''SANCO'').

On October 28, 2004, we rejected Olmue's rebuttal brief because it contained new factual information. Olmue filed a revised rebuttal brief on November 1, 2004, redacting the new factual information submitted in the original rebuttal brief.

Scope of the Order

The products covered by this order are imports of individually quick frozen (''IQF'') whole or broken red raspberries from Chile, with or without the addition of sugar or syrup, regardless of variety, grade, size or horticulture method (*e.g.*, organic or not), the size of the container in which packed, or the method of packing. The scope of the order excludes fresh red raspberries and block frozen red raspberries (*i.e.*, puree, straight pack, juice stock, and juice concentrate).

The merchandise subject to this order is currently classifiable under 0811.20.2020 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 merchandise under the order is dispositive.

Period of Review

The period of review (''POR'') is December 31, 2001, through June 30, 2003.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the February 2, 2005 *Issues and Decision Memorandum for the First Antidumping Duty Administrative Review of Individually Quick Frozen Red Raspberries from Chile* (''*Decision Memorandum*''), which

is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. 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 Department's Central Records Unit, Room B–099 of the main Department building (''CRU''). In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/index.html*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Facts Otherwise Available

For the final results, the Department continues to find that Uren's largest supplier, which, as a producer of subject merchandise, is an interested party in this proceeding, did not act to the best of its ability by failing to provide cost of production information requested by the Department. Thus, the Department continues to find that the use of adverse facts available is warranted under section 776 of the Tariff Act of 1930, as amended effective January 1, 1995 (''the Act''), by the Uruguay Round Agreements Act (''URAA''). *See Preliminary Results* at 69 FR 47869, 47871–47873 and *Decision Memorandum* at Comment 3.

Fair Value Comparisons

To determine whether sales of IQF red raspberries from Chile to the United States were made at less than normal value, we compared export price (''EP'') to the normal value (''NV''). Our calculations followed the methodologies described in the preliminary results, except as noted below, and in the final results calculation memoranda cited below, which are on file in the CRU.

Export Price

We used EP as defined in section 772(a) of the Act. We calculated EP for Uren and SANCO based on the same methodologies described in the preliminary results. *See* ''Uren Chile, S.A. Final Results Calculation Memorandum,'' dated February 2, 2005, (''*Uren Calculation Memorandum*'') and ''Santiago Comercio Exterior Exportaciones Limitada Calculation Memorandum,'' dated February 2, 2005, (''*SANCO Calculation Memorandum*''). For Olmue, we calculated EP based on the same methodologies described in the preliminary results, with the exception of using a revised calculation of U.S. credit expenses. *See* ''Fruticola Olmue, S.A. Final Results Calculation Memorandum,'' dated February 2, 2005, (''*Olmue Calculation Memorandum*'').

Normal Value

A. Cost of Production

1. Calculation of Cost of Production

We calculated the cost of production (''COP'') in accordance with section 773(b)(3) of the Act. For SANCO and Olmue, we calculated the COP using the same methodologies described in the preliminary results. *See SANCO Calculation Memorandum*; *see also Olmue Calculation Memorandum*. For Uren, we calculated the COP using the same methodologies described in the preliminary results, with the exception of using a revised general and administrative expenses ratio. *See Decision Memorandum* at Comment 5; *see also Uren Calculation Memorandum*.

a. Test of Comparison Market Prices

We tested whether comparison market sales of the foreign like product were made at prices below the COP in accordance with section 773(b) of the Act, using the same methodologies described in the preliminary results.

b. Results of the COP Test

Pursuant to section 773(b)(1) of the Act, where less than 20 percent of a respondent's sales of a given product during the POR were at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we determine that the below-cost sales represent ''substantial quantities'' within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for Olmue, SANCO and Uren, for certain specific products, more than 20 percent of the comparison market sales were at prices less than the COP and, thus, the below-cost sales were made within an extended period of time in substantial quantities. In addition, these sales were made at prices that did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

For U.S. sales of subject merchandise for which there were no comparable comparison market sales in the ordinary course of trade (*e.g.*, sales that passed the cost test), we compared those sales to constructed value (''CV''), in accordance with section 773(a)(4) of the Act.

B. Calculation of Constructed Value

We calculated CV in accordance with sections 773(e)(1) and (e)(2)(A) of the Act. We used the same methodologies described in the preliminary results. Where appropriate, we made the same adjustments to the CV costs as described in the ''Calculation of COP'' section of this notice.

C. Level of Trade

We continue to find that one level of trade (''LOT'') exists in the comparison and U.S. markets for Olmue and SANCO. For Uren, we continue to find that two LOTs exist in the comparison market and that one LOT exists in the U.S. market. *See Decision Memorandum* at Comment 4. Therefore, for the final results, we have continued to match Uren's U.S. sales with its comparison market sales at the same LOT, where possible, in accordance with section 773(a)(7)(A) of the Act. In comparing EP sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act.

D. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on comparison market prices in accordance with section 773(a)(6) of the Act and 19 CFR 351.410 and 411 (2003). For SANCO and Olmue, we used the same methodologies described in the preliminary results. For Uren, we used the same methodologies described in the preliminary results, with the exception of using a we recalculated Uren'sindirect selling expenses ratio. *See Decision Memorandum* at Comment 5; *see also Uren Calculation Memorandum*.

E. Calculation of Normal Value Based on Constructed Value

We calculated NV based on CV using the same methodologies described in the preliminary results, in accordance with sections 773(a) of the Act and 19 CFR 351.410.

Final Results of the Review

For the firms listed below, we find that the following percentage margins exist for the period December 31, 2001, through June 30, 2003:

Exporter/manufacturer	Weighted-average margin percentage
Fruticola Olmue, S.A.	1.23
Santiago Comercio Exterior Exportaciones, Ltda.	0.25 (*de minimis*)
Uren Chile, S.A.	13.41

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated importer (or customer)-specific assessment rates for merchandise subject to this review. To determine whether the duty assessment rates were *de minimis* (*i.e.*, at or below 0.5 percent), in accordance with the requirement set forth in 19 CFR 351.106(C)(2), for each respondent we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the entered value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis* and the respondent has reported reliable entered values, we will apply the assessment rate to the entered value of the importer's/customer's entries during the review period. Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis* and we did not have entered values, we calculated a per-unit assessment rate by aggregating the dumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer).

The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be those established above in the ''Final Results of the Review'' section of this notice, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) if the exporter is not a firm covered in this review, but was covered in a previous review, or the original investigation, 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, a previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers and/or exporters shall continue to be 6.33 percent, the ''all others'' rate made effective by the less-than-fair-value investigation. *See* 67 FR 45460 (July 9, 2002).

These 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 final reminder to importers of their responsibility under 19 CFR 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.

Notification Regarding APOs

This notice also serves as the only reminder to parties subject to the administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: February 2, 2005.

Barbara E. Tillman,

Acting Assistant Secretary for Import Administration.

List of Comments in the Issues and Decision Memorandum

General Comments

Comment 1: Calculation of Cost of Production

Comments Relating to Uren Chile, S.A.

Comment 2: Grower and Processor Affiliation
Comment 3: Application of Adverse Facts Available for Cost of Production
Comment 4: Level of Trade
Comment 5: Calculation of LOT Adjustment
Comment 6: Calculation of General and Administrative Expenses
Comment 7: Calculation of Financial Expense Ratio

Comments Relating to Fruticola Olmue, S.A.

Comment 8: Valuation of Olmue's Fresh Raspberries
Comment 9: Calculation of Financial Expense Ratio
Comment 10: Calculation of U.S. Credit Expense
Comment 11: Treatment of Unpaid Shipments
Comment 12: Start-up Adjustment
Comment 13: Treatment of Sales Made Above Normal Value

[FR Doc. E5–515 Filed 2–7–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–822]

Certain Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of the Full Sunset Review of Antidumping Duty Order

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

SUMMARY: On November 17, 2004, the Department of Commerce (''the Department'') published a notice of preliminary results of the full sunset review of the antidumping duty order on certain stainless steel sheet and strip in coils (''SSSS'') from Mexico pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). We provided interested parties an opportunity to comment on our preliminary results. We received case and rebuttal briefs from domestic and respondent interested parties. No hearing was requested by parties. As a result of this review, the Department finds that revocation of this order would be likely to lead to continuation or recurrence of dumping.

EFFECTIVE DATE: February 8, 2005.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC , 20230; telephone: 202–482–5050.

SUPPLEMENTARY INFORMATION:

Scope of the Order

See Appendix 1

Background

On November 17, 2004, the Department of Commerce (the ''Department'') published in the **Federal Register** a notice of preliminary results of the full sunset review of the antidumping duty order on SSSS from Mexico, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See Certain Stainless Steel Sheet and Strip in Coils from Mexico; Preliminary Results of the Sunset Review of Antidumping Duty Order*, 69 FR 67309 (November 17, 2004) (''Preliminary Results''). In our preliminary results, we determined that revocation of the order would likely result in continuation or recurrence of dumping with a margin of 30.85 percent for Mexinox S.A. de C.V. and ''all others'' the margin determined in the original investigation.

On January 3, 2005, respondent, ThyssenKrupp Mexinox S.A. de C.V. and Mexinox USA, Inc. (collectively ''Mexinox''), submitted its case brief in response to the Department's preliminary results. On January 7, 2005, Allegheny Ludlum Corporation, North American Stainless, Local 3303 United Auto Workers, the United Steelworkers of America, AFL–CIO/CLC, and the Zanesville Armco Independent Organization, Inc., (collectively ''domestic interested parties'') submitted rebuttal comments. No hearing was requested by parties.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this sunset review are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Ronald K. Lorentzen, Office of Policy, Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated January 27, 2005, which is hereby adopted and incorporated by reference into this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. 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 Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import__admin/records/frn/ under the heading ''Mexico.'' The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on SSSS from Mexico would be likely to lead to continuation or recurrence of dumping at the following weighted–average margins:

Manufacturer/Exporter	Margin (percent)
Mexinox	30.85
All Others	30.85

This five–year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act. This notice serves as the only reminder to parties subject to

administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

APPENDIX 1

STAINLESS STEEL AND SHEET AND STRIP IN COILS FROM MEXICO.

SCOPE OF THE ORDER (A-201-822)

For purposes of this sunset review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this review is classified in the Harmonized Tariff Schedule of the United States (''HTS'') at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81, 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this review are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (i.e., flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades.[1]

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of this review. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35

[1] See Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this review. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this review. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.''[2]

Certain electrical resistance alloy steel is also excluded from the scope of this review. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (''ASTM'') specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.''[3]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this review. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (''UNS'') as S45500- grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.''[4]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this review. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives).[5] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420-J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''.[6]

Dated: January 27, 2005.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–514 Filed 2–7–05; 8:45 am]

BILLING CODE 3510–DS–S

[2] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[3] ''Gilphy 36'' is a trademark of Imphy, S.A.

[4] ''Durphynox 17'' is a trademark of Imphy, S.A.

[5] This list of uses is illustrative and provided for descriptive purposes only.

[6] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 041220354–5020–02]

Small Grant Programs, Precision Measurement Grants Program, Summer Undergraduate Research Fellowship (SURF) Programs; Amendment

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice; amendment.

SUMMARY: The National Institute of Standards and Technology (NIST) published a document in the **Federal Register** on January 5, 2005, announcing the availability of funds for Small Grants Programs. On December 27, 2004, NIST published two documents in the **Federal Register,** one announcing the availability of funds for the Summer

Undergraduate Research Fellowships (SURF) Programs, and the other announcing the availability of funds for the Precision Measurement Grants Program. This document amends the Supplementary Information for each notice to update the citation to the Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements printed in the notices.

FOR FURTHER INFORMATION CONTACT: For complete information about these programs and instructions for applying by paper or electronically, read the Federal Funding Opportunity (FFO) Notices at *http://www.grants.gov.* A paper copy of the FFO notices may be obtained by calling (301) 975–6328.

Grants Administration questions about these programs should be addressed to: Grants and Agreements Management Division, National Institute of Standards and Technology; 100 Bureau Drive, Stop 3580, Gaithersburg, MD 20899–3580; Tel: (301) 975–6328. For assistance with using Grants.gov contact *support@grants.gov*.

For the Precision Measurement Grants Program, technical questions should be addressed to: Dr. Peter J. Mohr, Manager, NIST Precision Measurement Grants Program, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8420, Gaithersburg, MD 20899–8420, Tel: (301) 975–3217, e-mail: *mohr@nist.gov.*

For the SURF Gaithersburg Programs, program questions should be addressed to Ms. Anita Sweigert, Administrative Coordinator, 100 Bureau Drive, Stop 8400, Gaithersburg, MD 20899–8400, Tel: (301) 975–4200, e-mail: *anita.sweigert@nist.gov.*

For the SURF Boulder Programs, program questions should be addressed to Ms. Phyllis Wright, Administrative Coordinator, National Institute of Standards and Technology, 325 Broadway, Mail Stop 104, Boulder, CO 80305–3328, Tel: (303) 497–3244, e-mail: *pkwright@boulder.nist.gov.*

For the EEEL Grants Program, program questions should be addressed to Sheilda Bryner, Electronics and Electrical Engineering Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8100, Gaithersburg, MD 20899–8100, Tel: (301) 975–2220, Fax: (301) 975–4091.

For the MEL Grants Program, program questions should be addressed to Mrs. Mary Lou Norris, Manufacturing Engineering Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8200, Gaithersburg, MD 20899–8200, Tel: (301) 975–3400, e-mail: *mnorris@nist.gov.*

For the CSTL Grants Program, program questions should be addressed to Dr. William F. Koch, Chemical Science and Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8300, Gaithersburg, MD 20899–8300, Tel (301) 975–8301, e-mail: *william.koch@nist.gov.*

For the PL Grants Program, program questions should be addressed to Ms. Anita Sweigert, Physics Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8400, Gaithersburg, MD 20899–8400, Tel (301) 975–4200, e-mail: *anita.sweigert@nist.gov.*

For the MSEL Grants Program, program questions should be addressed to Dr. Stephen W. Freiman, Materials Science and Engineering Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8500, Gaithersburg, MD 20899–8500, Tel: (301) 975–5658, e-mail: *stephen.freiman@nist.gov.*

For the Building Research Grants and Cooperative Agreements Program, program questions should be addressed to Karen Perry, Building and Fire Research Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8602, Gaithersburg, MD 20899–8602, Tel.: (301) 975–5910, Fax: (301) 975–4032.

For the Fire Research Grants Program, program questions should be addressed to Ms. Wanda Duffin-Ricks, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8660, Gaithersburg, MD 20899–8660, Tel: (301) 975–6863, e-mail: *wanda.duffin@nist.gov*.

SUPPLEMENTARY INFORMATION: The National Institute of Standards and Technology (NIST) recently published notices in the **Federal Register** announcing the availability of funds for Small Grants Programs (January 5, 2005), the Summer Undergraduate Research Fellowships (SURF) Programs (December 27, 2004), and for the Precision Measurement Grants Program (December 27, 2004). This document amends each of these announcements by updating the citation to the Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements printed in the Supplementary Information section of each notice. The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389) is applicable to the three notices mentioned above. On the form SF–424, the applicant's 9-digit Dun and Bradstreet Data Universal Numbering System (DUNS) number must be entered in the Applicant Identifier block.

Classification

It has been determined that this rule is not significant for purposes of E.O. 12866.

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

Dated: February 3, 2005.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 05–2412 Filed 2–7–05; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 021127288–2288–01]

Announcing Approval of Withdrawal of Seventeen (17) Federal Information Processing Standards (FIPS) Publications

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce that the Secretary of Commerce has approved the withdrawal of seventeen (17) Federal Information Processing Standards (FIPS) Publications.

These FIPS are being withdrawn because they are obsolete, or have not been updated to adopt current voluntary industry standards, current federal data standards, or current good practices for information security. This situation preserves obsolete standards for agency use.

Some of these FIPS adopt voluntary industry standards. Federal agencies and departments are directed by the National Technology Transfer and Advancement Act of 1995 (Public Law 104–113) to use technical standards that are developed in voluntary consensus standards bodies. Consequently, FIPS

that duplicate voluntary industry standards are no longer needed.

Some of these FIPS adopt data standards that are developed and used by other Federal government agencies. These FIPS have not been updated to reflect changes and modifications that have been made to the data representations. The remaining FIPS provide advisory guidance to Federal agencies on information security issues. This advisory guidance, which is not compulsory and binding, has been updated by NIST and issued in more recent recommendations and publications.

EFFECTIVE DATE: This withdrawal is effective February 8, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley M. Radack, telephone (301) 975–2833, National Institute of Standards and Technology, Gaithersburg, MD 20899.

SUPPLEMENTARY INFORMATION: A notice was published in the **Federal Register** (Volume 68, Number 42, pages 10204–10205), proposing the withdrawal of seventeen Federal Information Processing Standards (FIPS) Publications. The **Federal Register** notice solicited comments from the public, academic and research communities, manufacturers, voluntary standards organizations, and Federal, state, and local government organizations. In addition to being published in the **Federal Register**, the notice was posted on the NIST Web pages; information was provided about the submission of electronic comments.

Comments and questions were received from two private sector organizations or individuals, and from two federal government organizations. The comments dealt with the data representations in FIPS 55–3, Codes for Named Populated Places, Primary County Divisions, and Other Locational Entities of the United States, Puerto Rico, and the Outlying Areas, and in FIPS 95–2, Codes for the Identification of Federal and Federally Assisted Organizations. These data representations will continue to be maintained by the responsible agencies when the FIPS are withdrawn, and NIST will continue to maintain links from its Web pages to the appropriate agency Web pages that provide the data representations.

NIST recommended that the Secretary approve the withdrawal of the seventeen FIPS Publications, and prepared a detailed justification document for the Secretary's review in support of that recommendation.

Following is an analysis of the comments received.

Comment: FIPS 95–2, Codes for the Identification of Federal and Federally Assisted Organizations is an extremely important document that is vital for government wide and industry wide information sharing and data organization. It is true that the document has not been updated recently, but the coding standards are still the best structure available for organizing and presenting government information by entity. There is no commercial equivalent for this data standard.

It is vital not only for industry, but also to facilitate information sharing and collaboration among government organizations that is essential to support homeland security. FIPS 95–2 should be updated and kept current, or an equivalent system be implemented, especially in this time of government restructuring and reorganization.

Response: The data representations for Federal organizations that are available on NIST's web pages have not been updated since 1999. This database of data representations for Federal organizations is maintained by the Bureau of the Census, and will continue to be available to government and private sector organizations that need to use it. NIST will maintain a link from the entry to the withdrawn FIPS 95–2 to the Bureau of the Census Web pages.

Comment: Could you provide a reference to voluntary industry standards that have replaced FIPS 55–3, Codes for Named Populated Places, Primary County Divisions, and Other Locational Entities of the United States, Puerto Rico, and the Outlying Areas, and FIPS 95–2, Codes for the Identification of Federal and Federally Assisted Organizations.

Response: FIPS 55 and FIPS 95 currently provide data representations that are issued and maintained by Federal government agencies, but not by NIST.

FIPS 55 implements the provisions of ANSI X3.47–1993, and contains codes for named populated places, primary county divisions, and other locational entities of the U.S. and areas under the jurisdiction of the U.S. It also includes representations for federal government information such as postal codes, General Services Administration codes, and Bureau of the Census data. The maintenance of FIPS 55 is the responsibility of the U.S. Geological Survey (USGS).

FIPS 95 provides data representations for Federal and Federally assisted organizations, and is maintained by the Bureau of the Census with input from the General Services Administration and the Department of Defense.

Both sets of data representations will continue to be issued and maintained by the responsible agencies when the FIPS are withdrawn. NIST plans to have links from its Web pages to the appropriate agency Web pages that provide the data representations. In addition, NIST is investigating the possibility of a voluntary industry standards committee accepting the standard data representations and assigning registration authority for the data representations to the agencies that are currently issuing and maintaining them.

This notice provides the FIPS publication number, title, and the technical specifications number for each of the seventeen FIPS Publications being withdrawn:

FIPS 8–6, Metropolitan Areas (Including MSAs, CMSAs, PMSAs, and NECMAs).

FIPS 9–1, Congressional Districts of the U.S.

FIPS 31, Guidelines for Automatic Data Processing Physical Security and Risk Management.

FIPS 48, Guidelines on Evaluation of Techniques for Automated Personal Identification.

FIPS 55–3, Codes for Named Populated Places, Primary County Divisions, and Other Locational Entities of the United States, Puerto Rico, and the Outlying Areas.

FIPS 66, Standard Industrial Classification (SIC) Codes.

FIPS 73, Guidelines for Security of Computer Applications.

FIPS 83, Guideline on User Authentication Techniques for Computer Network Access Control.

FIPS 87, Guidelines for ADP Contingency Planning.

FIPS 92, Guideline for Standard Occupational Classification (SOC) Codes.

FIPS 95–2, Codes for the Identification of Federal and Federally Assisted Organizations.

FIPS 102, Guideline for Computer Security Certification and Accreditation.

FIPS 112, Password Usage.

FIPS 127–2, Database Language SQL (ANSI X3.135–1992).

FIPS 159, Detail Specification for 62.5-um Core Diameter/125-um Cladding Diameter Class 1A Multimode, Graded-index Optical Waveguide Fibers.

FIPS 171, Key Management Using ANSI X9.17.

FIPS 173–1, Spatial Data Transfer Standard.

Withdrawal means that the FIPS will no longer be part of a subscription series that is provided by the National

Technical Information Service, and that NIST will no longer be able to support the standards by answering implementation questions or updating the FIPS when the voluntary industry standards are revised. NIST will continue to provide relevant information on standards and guidelines by means of electronic dissemination methods, and will keep references to the withdrawn FIPS on its FIPS Web pages.

Authority: Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 5131 of the Information Technology Management Reform Act of 1996 (Pub. L. 104–106), the Federal Information Security Management Act of 2002 (Pub. L. 107–347), and Appendix III to Office of Management and Budget Circular A–130.

Executive Order 12866: This notice has been determined to be not significant under Executive Order 12866.

Dated: February 2, 2005.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 05–2414 Filed 2–7–05; 8:45 am]

BILLING CODE 3510–CN–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

International Code Council: The Update Process for the International Codes

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of public hearings on U.S. Model Codes.

SUMMARY: The International Code Council (ICC), under whose auspices the International Codes (''I-Codes'') are developed, maintains a process for updating these model codes based on receipt of proposals from interested individuals and organizations. The ICC's 14 separately published codes are comprehensively updated and re-published every three years with a Supplement published between each edition. The most current versions of the I-Codes are the 2003 Editions and 2004 Supplements.

Each structured 18-month code development cycle includes two separate public sessions, both open to public participation and observation. The first of the two sessions is the Code Development Hearing during which balanced committees initially review, discuss and vote on an opinion on each proposal for change to the model codes. Attendees to this hearing are eligible to raise objection to and call for a vote of the ICC members assembled regarding the committee's opinion. The results of the Code Development Hearing are made available for public review and comment prior to the second public session. Public comments received by the ICC are published and distributed for public review. At the second session, entitled the Final Action Hearing, public comments are reviewed and discussed and final voting is conducted to determine which proposals are adopted into the I-Codes.

The purpose of this notice is to invite the public participation in the Code Development Hearing. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of ICC is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the codes or standards referenced in the notice.

Session Dates: The Code Development Hearings of the 2004/2005 Code Development Cycle will occur on February 22–March 4, 2005, at the Millennium Hotel, Cincinnati, Ohio. This will be followed by the Final Action Hearings scheduled for September–October 1, 2005, at the COBO Center in Detroit, Michigan.

Proposed changes approved during this cycle, in addition to changes published in the 2004 Supplement, will constitute the 2006 Edition of the International Codes.

The agenda for the hearing as well as updates to the schedule are also posted on the ICC Web site at: *http://www.iccsafe.org.*

FOR FURTHER INFORMATION CONTACT: Mike Pfeiffer, PE, Vice President, Codes and Standards Development at ICC's Chicago District Office, 4051 West Flossmoor Road, Country Club Hills, Illinois 60478; Telephone 708–799–2300, Extension 4338; e-mail mpfeiffer@iccsafe.org.

SUPPLEMENTARY INFORMATION:

Background

The ICC produces a family of Codes and Standards that are comprehensive, coordinated and are widely used across the country in the regulation of the built environment. Local, state and federal agencies use these codes and standards as the basis for developing regulations concerning new and existing construction.

The ICC code development process is initiated when proposals from interested persons—supported by written data, views, or arguments—are solicited, received and then published in the Proposed Changes document. This document is distributed a minimum of 30 days in advance of the Code Development Hearings and serves as the agenda for that session.

At the Code Development Hearing the ICC Code Development Committee for each code or subject area of the code considers testimony and takes action on each proposal (Approval, Disapproval, or Approval as Modified). Following the Code Development Hearing results are published in a report entitled the Report of the Public Hearing, which identifies the disposition of each proposal and the reason for the committee's action. Any person wishing to comment on the committee's action may do so in the public comment period following the first hearing. Comments received are published and distributed in a document called the Final Action Agenda which serves as the agenda for the second hearing. Proposals which are approved by a vote of the Governmental Members of ICC at the second hearing (Final Action Hearing) are incorporated in either the Supplement or Edition, as applicable, with the next 18-month cycle starting with the submittal deadline for proposals.

Proponents of proposals automatically receive a copy of all documents (Proposed Changes, Report of the Public Hearing and Final Action Agenda). Interested parties may also request a copy, free of charge, by downloading the ''return coupon'' from the ICC Web site at *http://www.iccsafe.org* and sending it in as directed.

The International Codes consist of the following:

International Building Code;

ICC Electrical Code;

International Energy Conservation Code;

International Existing Building Code;

International Fire Code;

International Fuel Gas Code;

International Mechanical Code;

ICC Performance Code for Buildings and Facilities;

International Plumbing Code;

International Private Sewage Disposal Code;

International Property Maintenance Code;

International Residential Code;

International Urban-Wildland Interface Code; and

International Zoning Code.

Dated: February 3, 2005.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 05–2413 Filed 2–7–05; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122304A]

Taking of Marine Mammals Incidental to Specified Activities; On-ice Seismic Operations in the Beaufort Sea

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

ACTION: Notice of receipt of application and proposed incidental take authorization; request for comments.

SUMMARY: NMFS has received an application from ConocoPhillips Alaska (CPA) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to conducting on-ice vibroseis seismic operations from Milne Point to the eastern channel of the Colville River in the U.S. Beaufort Sea to a distance offshore of 2.3 nautical miles (nm)(4.3 kilometers (km)). Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to CPA to incidentally take, by harassment, small numbers of two species of pinnipeds for a limited period of time within the next year.

DATES: Comments and information must be received no later than March 10, 2005.

ADDRESSES: Comments on the application should be addressed to Steve Leathery, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning one of the contacts listed here. The mailbox address for providing email comments is *PR1.122304A@noaa.gov*. Please include in the subject line of the e-mail comment the following document identifier: 122304A. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size. A copy of the application containing a list of the references used in this document may be obtained by writing to this address or by telephoning the first contact person listed here and is also available at: *http://www.nmfs.noaa.gov/prot_res/PR2/Small_Take/smalltake_info.htm#applications*.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of Protected Resources, NMFS, (301) 713–2289, ext 128 or Brad Smith, Alaska Region, NMFS, (907) 271–5006.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except for certain categories of activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On November 26, 2004, NMFS received an application from CPA for the taking, by harassment, of two species of marine mammals incidental to conducting an on-ice seismic survey program. The seismic operations will be conducted from Milne Point to the eastern channel of the Colville River in the Alaskan Beaufort Sea to a distance offshore of 2.3 nm (4.3 km), an area encompasing approximately 51 mi2 (132.1 km^2). Water depths in most (greater than 95 percent) of the planned survey area are less than 10 ft (3 m).

The purpose of the project is to gather information about the subsurface of the earth by measuring acoustic waves, which are generated on or near the surface. The acoustic waves reflect at boundaries in the earth that are characterized by acoustic impedance contrasts.

Description of the Activity

The seismic surveys use the ''reflection'' method of data acquisition. Seismic exploration uses a controlled energy source to generate acoustic waves that travel through the earth, including sea ice and water, as well as sub-sea geologic formations, and then uses ground sensors to record the reflected energy transmitted back to the surface. When acoustic energy is generated, compression and shear waves form and travel in and on the earth. The compression and shear waves are affected by the geological formations of the earth as they travel in it and may be reflected, refracted, diffracted or transmitted when they reach a boundary represented by an acoustic impedance contrast. Vibroseis seismic operations use large trucks with vibrators that systematically put variable frequency energy into the earth. At least 1.2 m (4 ft) of sea ice is required to support the various equipment and vehicles used to transport seismic equipment offshore for exploration activities. These ice conditions generally exist from 1 January until 31 May in the Beaufort Sea. Several vehicles are normally associated with a typical vibroseis operation. One or two vehicles with survey crews move ahead of the operation and mark the energy input points. Crews with wheeled vehicles often require trail clearance with bulldozers for adequate access to and within the site. Crews with tracked vehicles are typically limited by heavy snow cover and may require trail clearance beforehand.

With the vibroseis technique, activity on the surveyed seismic line begins with the placement of sensors. All sensors are connected to the recording vehicle by multi-pair cable sections. The vibrators move to the beginning of the line and begin recording data. The vibrators begin vibrating in synchrony via a simultaneous radio signal to all vehicles. In a typical survey, each

vibrator will vibrate four times at each location. The entire formation of vibrators subsequently moves forward to the next energy input point (e.g. 67 m, or 220 ft, in most applications) and repeats the process. In a typical 16- to 18–hour day, a surveys will complete 6–16 km (4 to 10 linear miles) in 2–dimensional seismic operations and 24 to 64 km (15 to 40 linear miles) in a 3–dimensional seismic operation.

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Beaufort Sea ecosystem can be found in several documents (Corps of Engineers, 1999; NMFS, 1999; Minerals Management Service (MMS), 1992, 1996, 2001). A detailed description of the seismic survey activities and its associated marine mammals can be found in the CPA application and a number of documents referenced in the CPA application (see **ADDRESSES**), and is not repeated here. Two marine mammal species are known to occur within the proposed study area and are included in this application: the ringed seal (*Phoca hispida*) and the bearded seal (*Erignathus barbatus*).

Ringed seals are year-round residents in the Beaufort Sea. The worldwide population is estimated to be between 6 and 7 million seals (Stirling and Calvert 1979). The Alaska stock of the Bering-Chukchi-Beaufort area is estimated at 1 to 1.5 (Frost 1985) or 3.3 to 3.6 million seals (Frost *et al.* 1988). Although there are no recent population estimates in the Beaufort Sea, Bengston *et al.* (2000) estimated ringed seal abundance from Barrow south to Shismaref in a portion of the Chukchi Sea to be 245,048 animals from aerial surveys flow in 1999. The NMFS 2003 Stock Assessment Report (Anglis *et al.*, 2001) states that there are at least that many ringed seals in the Beaufort Sea. Frost *et al.* (1999) reported that observed densities within the area of industrial activity along the Beaufort Sea coast were generally similar between 1985–87 and 1996–98, suggesting that the regional population has been relatively stable during this 13–year period of industrial activity.

During winter and spring, ringed seals inhabit landfast ice and offshore pack ice. Seal densities are highest on stable landfast ice but significant numbers of ringed seals also occur in pack ice (Wiig *et al.*, 1999). Seals congregate at holes and along cracks or deformations in the ice (Frost *et al.*, 1999). Breathing holes are established in landfast ice as the ice forms in autumn and maintained by seals throughout winter. Adult ringed seals maintain an average of 3.4 holes per seal (Hammill and Smith, 1989). Some holes may be abandoned as winter advances in order for seals to probably conserve energy by maintaining fewer holes (Brueggeman and Grialou, 2001). As snow accumulates, ringed seals excavate lairs in snowdrifts surrounding their breathing holes, which they use for resting and for the birth and nursing of their single pups in late March to May (McLaren, 1958; Smith and Stirling, 1975; Kelly and Quakenbush, 1990). Pups have been observed to enter the water, dive to over 10 m (33 ft), and return to the lair as early as 10 days after birth (Brendan Kelly, pers comm to CPA, June 2002), suggesting pups can survive the cold water temperatures at a very early age. Mating occurs in late April and May. From mid- May through July, ringed seals haul out in the open air at holes and along cracks to bask in the sun and molt. Most on-ice seismic activity occurs from late January through May.

The seasonal distribution of ringed seals in the Beaufort Sea is affected by a number of factors but a consistent pattern of seal use has been documented since aerial survey monitoring began over 20 years ago. Seal densities have historically been substantially lower in the western than the eastern part of the Beaufort Sea (Burns and Kelly, 1982; Kelly, 1988). Frost *et al.* (1999) reported consistently lower ringed seal densities in the western versus eastern sectors they surveyed in the Beaufort Sea during 1996, 1997, and 1998. The relatively low densities appear to be related to shallow water depths in much of the area occurring between the shore and the barrier islands. This area of historically low ringed seal density is the focus of much of the recent on-ice seismic surveys.

The bearded seal inhabits the Bering, Chukchi, and Beaufort seas (Burns and Frost, 1979). There are no reliable estimates for bearded seals in the Beaufort Sea or in the activity area (Angliss *et al.*, 2001), but numbers are considerably higher in the Bering and Chukchi seas, particularly during winter and early spring. Early estimates of bearded seals in the Bering and Chukchi seas range from 250,000 to 300,000 (Popov, 1976; Burns, 1981). Based on the available data there is no evidence of a decline in the bearded seal population. Bearded seals are generally associated with pack ice and only rarely use shorefast ice (Burns and Harbo, 1972). Bearded seals occasionally have been observed maintaining breathing holes in annual ice and even hauling out from holes used by ringed seals (Mansfield, 1967; Stirling and Smith, 1977). However, since bearded seals are normally found in broken ice that is unstable for on-ice seismic operation, bearded seals will be rarely encountered during seismic operations.

Additional information on these species is available at: *http://www.nmfs.noaa.gov/prot__res/PR2/Stock__Assessment__Program/sars.html*.

Potential Effects on Marine Mammals

Incidental take is anticipated to result from short-term disturbances by noise and physical activity associated with on-ice seismic operations. These operations have the potential to disturb and temporarily displace some seals. Pup mortality could occur if any of these animals were nursing and displacement was protracted. However, it is unlikely that a nursing female would abandon her pup given the normal levels of disturbance from the proposed activities, potential predators, and the typical movement patterns of ringed sea pups among different holes. Seals also use as many as four lairs spaced as far as 3437 m (11276 ft) apart. In addition, seals have multiple breathing holes. Pups may use more holes than adults, but the holes are generally closer together. This indicates that adult seals and pups can move away from seismic activities, particularly since the seismic equipment does not remain in any specific area for a prolonged time. Given those considerations, combined with the small proportion of the population potentially disturbed by the proposed activity, impacts are expected to be negligible for the ringed and bearded seal populations.

Not taking into account water depth (i.e., most of the activity area is marginal seal habitat, with over 95 percent of the area less than 3 m (9.8 ft) deep), the estimated number of ringed seals potentially within the 51–mi^2 (132.1 km^2) vibroseis activity area is less than 230 animals. This estimate is based on a density of 1.73 seals per km^2, which was derived from the most current aerial surveys of the region. Frost and Lowry (1999) reported an observed density of 0.61 ringed seals per km^2 on the fast ice from aerial surveys conducted in spring 1997 of an area (Sector B2) overlapping the activity area, which is in the range of densities (0.28–0.66) reported for the Northstar development from 1997 to 2001 (Moulton *et al.*, 2001). This value (0.61) was adjusted to account for seals hauled out but not sighted by observers (x 1.22, based on Frost *et al.* (1988)) and seals not hauled out during the surveys (x 2.33, based on Kelly and Quakenbush (1990)) to obtain the 1.73 seal per km^2. This estimate covered an area from the

coast to about 2–20 miles beyond the activity area; and it assumed that habitat conditions were uniform and, therefore, it was not adjusted for water depth. Since a high proportion (greater than 95 percent) of the activity area is within water less than 3 m (9.8 ft) deep, which Moulton *et al.* (2001) reported for Northstar supported about five times fewer seals (0.12 –0.13 seals/km^2) than was reported by Frost and Lowry (i.e., 0.61), the actual number of ringed seals is estimated to be about 25 percent of the 230 seals or 58 seals.

In the winter, bearded seals are restricted to cracks, broken ice, and other openings in the ice. On-ice seismic operations avoid those areas for safety reasons. Therefore, any exposure of bearded seals to on-ice seismic operations would be limited to distant and transient exposure. Bearded seals exposed to a distant on-ice seismic operation might dive into the water. An indication of their low numbers is provided by the results of aerial surveys conducted east of the activity area near the Northstar and Liberty project sites. Three to 18 bearded seals were observed in these areas compared to 1,911 to 2,251 ringed seals in the spring (May/June) of 1999 through 2001 (Moulton *et al.*, 2001; Moulton and Elliott, 2000; and Moulton *et al.*, 2000). Similarly only small numbers of bearded seals would be expected to occur in the activity area, where habitat is even less favorable because of the high proportion of shallow water area.

Consequently, no significant effects on individual bearded seals or their population are expected, and the number of individuals that might be temporarily disturbed would be very low.

Potential Effects on Subsistence

Residents of the village of Nuiqsut are the primary subsistence users in the activity area. The subsistence harvest during winter and spring is primarily ringed seals, but during the open-water period both ringed and bearded seals are taken. Nuiqsut hunters may hunt year round; however, most of the harvest has been in open water instead of the more difficult hunting of seals at holes and lairs (McLaren, 1958; Nelson, 1969). The most important area for Nuiqsut hunters is off the Colville River Delta, between Fish Creek and Pingok Island, which corresponds to approximately the eastern half to the activity area. Seal hunting occurs in this area by snow machine before spring break-up and by boat during summer. Subsistence patterns may be reflected through the harvest data collected in 1992, when Nuiqsut hunters harvested 22 of 24 ringed seals and all 16 bearded seals during the open water season from July to October (Fuller and George, 1997). Harvest data for 1994 and 1995 show 17 of 23 ringed seals were taken from June to August, while there was no record of bearded seals being harvested during these years (Brower and Opie, 1997). Only a small number of ringed seals was harvested during the winter to early spring period, which corresponds to the time of the proposed on-ice seismic operations.

Based on harvest patterns and other factors, on-ice seismic operations in the activity area are not expected to have an unmitigable adverse impact on subsistence uses of ringed and bearded seals because:

(1) Operations would end before the spring ice breakup, after which subsistence hunters harvest most of their seals.

(2) Operations would temporarily displace relatively few seals, since most of the habitat in the activity area is marginal to poor and supports relatively low densities of seals during winter. Displaced seals would likely move a short distance and remain in the area for potential harvest by native hunters (Frost and Lowry, 1988; Kelly *et al.*, 1988).

(3) The area where seismic operations would be conducted is small compared to the large Beaufort Sea subsistence hunting area associated with the extremely wide distribution of ringed seals.

(4) To the maximum extent practicable, offshore vibroseis activities in Harrison Bay would progress in a westward direction and from deeper water shoreward to minimize disturbance to any subsistence hunting that may occur during seismic operations. If subsistence hunting occurred during winter, it would primarily be in the eastern half of Harrison Bay.

In order to ensure the least practicable adverse impact on the species and the subsistence use of ringed seals, all activities will be conducted as far as practicable from any observed ringed seal structure, and crews will be required to avoid hunters and the locations of any seals being hunted in the activity area, whenever possible. Finally, the applicant will consult with subsistence hunters of Nuiqsut and provide the community, the North Slope Borough, and the Inupiat Community of the North Slope with information about its planned activities (timing and extent) before initiating any on-ice seismic activities.

Mitigation and Monitoring

The following mitigation measures are proposed for the subject surveys: (1) All activities will be conducted as far as practicable from any observed ringed or bearded seal lair and no energy source will be placed over a ringed or bearded seal lair; (2) only vibrator-type energy-source equipment shown to have similar or lesser effects will be used; and (3) CPA will provide training for the seismic crews so they can recognize potential areas of ringed seal lairs and adjust the seismic operations accordingly.

Ringed seal pupping occurs in ice lairs from late March to mid-to-late April (Smith and Hammill, 1981). Prior to commencing on-ice seismic surveys in mid-March, a survey using experienced field personnel and trained dogs will be conducted along the planned on-ice seismic transmission routes in areas where water depths exceed 3 m (9.8 ft) to identify and determine the status of potential seal structures along the planned on-ice transit routes. The seal structure survey will be conducted before selection of precise transit routes to ensure that seals, particularly pups, are not injured by equipment. The locations of all seal structures will be recorded by Global Positioning System (GPS), staked, and flagged with surveyor's tape. Surveys will be conducted 150 m (492 ft) to each side of the transit routes. Actual width of route may vary depending on wind speed and direction, which strongly influence the efficiency and effectiveness of dogs locating seal structures. Few, if any, seals inhabit ice-covered waters shallower than 3 m (9.8 ft) due to water freezing to the bottom or poor prey availability caused by the limited amount of ice-free water.

The level of take, while anticipated to be negligible, will be assessed by conducting a second seal structure survey shortly after the end of the seismic surveys. A single on-ice survey will be conducted by biologists on snow machines using a GPS to relocate and determine the status of seal structures located during the initial survey. The status (active vs. inactive) of each structure will be determined to assess the level of incidental take by seismic operations. The number of active seal structures abandoned between the initial survey and the final survey will be the basis for enumerating harassment takes. If dogs are not available for the initial survey, takings will be determined by using observed densities of seals on ice reported by Moulton *et al.* (200I) for the Northstar development, which is approximately 24 nm (46 km)

from the eastern edge of the proposed activity area.

CPA will also continue to work with NMFS, other Federal agencies, the State of Alaska, Native communities of Barrow and Nuiqsut, and the Inupiat Community of the Arctic Slope (ICAS) to assess measures to further minimize any impact from seismic activity. A Plan of Cooperation will be developed between CPA and Nuiqsut to ensure that seismic activities do not interfere with subsistence harvest of ringed or bearded seals.

In the event that seismic surveys can be completed in that portion of the activity area with water depths greater than or equal to 3 m (9.8 ft) before mid-March, no field surveys would be conducted of seal structures. Under this scenario, surveys would be completed before pups are born and disturbance would be negligible. Therefore, take estimates would be determined for only that portion of the activity area exposed to seismic surveys after mid-March, which would be in water depths of 3 m (9.8 ft) or less. Take for this area would be estimated by using the observed density (13/100 km^2) reported by Moulton *et al.* (2001) for water depths between 0 to 3 m (0 to 9.8 ft) in the Northstar project area, which is the only source of a density estimate stratified by water depth for the Beaufort Sea. This would be an overestimation requiring a substantial downward adjustment to reflect the actual take of seals using lairs, since few if any of the structures in these water depths would be used for birthing, and Moulton *et al.* (2001) estimate includes all seals.

This monitoring program was reviewed at the fall 2002 on-ice meeting sponsored by NMFS' National Marine Mammal Laboratory in Seattle and found acceptable.

Reporting

An annual report must be submitted to NMFS within 90 days of completing the year's activities.

Endangered Species Act (ESA)

NMFS has determined that no species listed as threatened or endangered under the ESA will be affected by issuing an incidental harassment authorization under section 101(a)(5)(D) of the MMPA to CPA for this on-ice seismic survey.

National Environmental Policy Act (NEPA)

The information provided in Environmental Assessments (EAs) prepared in 1993 and 1998 for winter seismic activities led NOAA to conclude that implementation of either the preferred alternative or other alternatives identified in the EA would not have a significant impact on the human environment. Therefore, an Environmental Impact Statement was not prepared. The proposed action discussed in this document is not substantially different from the 1992 and 1998 actions, and a reference search has indicated that no significant new scientific information or analyses have been developed in the past several years that would warrant new NEPA documentation. Accordingly, this action is categorically excluded from further review under NOAA Administrative Order 216–6.

Preliminary Conclusions

The anticipated impact of winter seismic activities on the species or stock of ringed and bearded seals is expected to be negligible for the following reasons:

(1) The activity area supports a small proportion (≤1 percent) of the ringed and bearded seal populations in the Beaufort Sea.

(2) Most of the winter-run seismic lines will be on ice over shallow water where ringed seals are absent or present in very low abundance. Over 90 percent of the activity area is near shore and/or in water less than 3 m (9.8 ft) deep, which is generally considered poor seal habitat. Moulton *et al.* (2001) reported that only 6 percent of 660 ringed seals observed on ice in the Northstar project area were in water between 0 to 3 m (0 to 9.8 ft) deep.

(3) For reasons of safety and because of normal operational constraints, seismic operators will avoid moderate and large pressure ridges, where seal and pupping lairs are likely to be most numerous.

(4) Many of the on-ice seismic lines and connecting ice roads will be laid out and explored during January and February, when many ringed seals are still transient, and considerably before the spring pupping season.

(5) The sounds from energy produced by vibrators used during on-ice seismic programs typically are at frequencies well below those used by ringed seals to communicate (1000 Hz). Thus, ringed seal hearing is not likely to be very good at those frequencies and seismic sounds are not likely to have strong masking effects on ringed seal calls. This effect is further moderated by the quiet intervals between seismic energy transmissions.

(6) There has been no major displacement of seals away from on-ice seismic operations (Frost and Lowry, 1988). Further confirmation of this lack of major response to industrial activity is illustrated by the fact that there has been no major displacement of seals near the Northstar Project. Studies at Northstar have shown a continued presence of ringed seals throughout winter and creation of new seal structures (Williams *et al.*, 2001).

(7) Although seals may abandon structures near seismic activity, studies have not demonstrated a cause and effect relationship between abandonment and seismic activity or biologically significant impact on ringed seals. Studies by Williams *et al.* (2001), Kelley *et al.* (1986, 1988) and Kelly and Quakenbush (1990) have shown that abandonment of holes and lairs and establishment or re-occupancy of new ones is an ongoing natural occurrence, with or without human presence. Link et al. (1999) compared ringed seal densities between areas with and without vibroseis activity and found densities were highly variable within each area and inconsistent between areas (densities were lower for 5 days, equal for 1 day, and higher for 1 day in vibroseis area), suggesting other factors beyond the seismic activity likely influenced seal use patterns. Consequently, a wide variety of natural factors influence patterns of seal use including time of day, weather, season, ice deformation, ice thickness, accumulation of snow, food availability and predators as well as ring seal behavior and population dynamics.

In winter, bearded seals are restricted to cracks, broken ice, and other openings in the ice. On-ice seismic operations avoid those areas for safety reasons. Therefore, any exposure of bearded seals to on-ice seismic operations would be limited to distant and transient exposure. Bearded seals exposed to a distant on-ice seismic operation might dive into the water. Consequently, no significant effects on individual bearded seals or their population are expected, and the number of individuals that might be temporarily disturbed would be very low.

As a result, CPA believes the effects of on-ice seismic are expected to be limited to short-term and localized behavioral changes involving relatively small numbers of seals. NMFS has preliminarily determined, based on information in the application and supporting documents, that these changes in behavior will have no more than a negligible impact on the affected species or stocks of ringed and bearded seals. Also, the potential effects of the proposed on-ice seismic operations during 2005 are unlikely to result in more than small numbers of seals being affected and will not have an

unmitigable adverse impact on subsistence uses of these two species.

Proposed Authorization

NMFS proposes to issue an IHA to CPA for conducting seismic surveys from Milne Point to the eastern channel of the Colville River in the U.S. Beaufort Sea, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of small numbers of marine mammals; would have no more than a negligible impact on the affected marine mammal stocks; and would not have an unmitigable adverse impact on the availability of species or stocks for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this request (see **ADDRESSES**).

Dated: February 2, 2005≤

Laurie K. Allen,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–2443 Filed 2–7–05; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

In the Matter of the New York Mercantile Exchange, Inc. Petition To Extend Interpretation Pursuant to Section 1a(12)(C) of the Commodity Exchange Act

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: On February 4, 2003, in response to a petition from the New York Mercantile Exchange, Inc. (''NYMEX'' or ''Exchange'') the Commodity Futures Trading Commission (''Commission''), issued an order [1] pursuant to Section 1a(12)(C) of the Commodity Exchange Act (''Act''). The order provides that, subject to certain conditions, Exchange floor brokers and floor traders (collectively referred to hereafter as ''floor members'') who are registered with the Commission, when acting in a proprietary trading capacity, shall be deemed to be ''eligible contract participants'' as that term is defined in Section 1a(12) of the Act. The order (hereafter the ''original order'' or the ''ECP Order'') is effective for a two-year period and thus will expire on February 4, 2005.

On January 19, 2005, the Exchange petitioned the Commission to extend the original order for a further one-year period. Based on a review of all the relevant facts and circumstances, including its review of a report required as a condition of the original order, detailing the experiences of the Exchange, its floor members and its clearing members under that order, the Commission has determined to grant the Exchange's petition.

Accordingly, subject to certain conditions as set forth in this order, NYMEX floor members, when acting for their own accounts, are permitted to continue to enter into certain specified over-the-counter (''OTC'') transactions in exempt commodities pursuant to Section 2(h)(1) of the Act. In order to participate, the floor member must have its OTC trades guaranteed by, and cleared at NYMEX by, an Exchange clearing member that is registered with the Commission as a futures commission merchant (''FCM'') and that meets certain minimum working capital requirements. This order is effective for a one-year period commencing on the expiration date of the original order.

DATES: This order is effective on February 4, 2005.

FOR FURTHER INFORMATION CONTACT: Donald H Heitman, Senior Special Counsel, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581. Telephone: 202–418–5041. E-mail: *dheitman@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Section 1a(12) of the Act, as amended by the Commodity Futures Modernization Act of 2000 (''CFMA''), Public Law 106–554, which was signed into law on December 21, 2000, defines the term ''eligible contract participant'' (''ECP'') by listing those entities and individuals considered to be ECPs.[2] Under Sections 2(d)(1), 2(g), and 2(h)(1) of the Act, OTC transactions [3] entered into by ECPs in an ''excluded commodity'' or an ''exempt commodity,'' as those terms are defined by the Act,[4] are exempt from all but certain requirements of the Act.[5] Floor brokers and floor traders are explicitly included in the ECP definition only to the extent that the floor broker or floor trader acts ''in connection with any transaction that takes place on or through the facilities of a registered entity or an exempt board of trade, or any affiliate thereof, on which such person regularly trades.'' [6]

The Act, however, gives the Commission discretion to expand the ECP category as it deems appropriate. Specifically, Section 1a(12)(C) provides that the list of entities defined as ECPs shall include ''any other person that the Commission determines to be eligible in light of the financial or other qualifications of the person.''

II. The Original NYMEX Petition

A. Introduction

By letter dated May 23, 2002, NYMEX submitted a petition seeking a Commission interpretation pursuant to

[1] 68 FR 5621 (February 4, 2003).

[2] Included generally in Section 1a(12) as ECPs are: financial institutions; insurance companies and investment companies subject to regulation; commodity pools and employee benefit plans subject to regulation and asset requirements; other entities subject to asset requirements or whose obligations are guaranteed by an ECP that meets a net worth requirement; governmental entities; brokers, dealers, and FCMs subject to regulation and organized as other than natural persons or proprietorships; brokers, dealers, and FCMs subject to regulation and organized as natural persons or proprietorships subject to total asset requirements or whose obligations are guaranteed by an ECP that meets a net worth requirement; floor brokers or floor traders subject to regulation in connection with transactions that take place on or through the facilities of a registered entity or an exempt board of trade; individuals subject to total asset requirements; an investment adviser or commodity trading advisor acting as an investment manager or fiduciary for another ECP; and any other person that the Commission deems eligible in light of the financial or other qualifications of the person.

[3] For these purposes, OTC transactions are transactions that are not executed on a trading facility. As defined in Section 1a(33)(A) of the Act, the term ''trading facility'' generally means ''a person or group of persons that constitutes, maintains, or provides a physical or electronic facility or system in which multiple participants have the ability to execute or trade agreements, contracts, or transactions by accepting bids and offers made by other participants that are open to multiple participants in the facility or system.''

[4] Section 1a(14) defines the term ''exempt commodity'' to mean a commodity that is not an excluded commodity or an agricultural commodity. Section 1a(13) defines the term ''excluded commodity'' to mean, among other things, an interest rate, exchange rate, currency, credit risk or measure, debt instrument, measure of inflation, or other macroeconomic index or measure. Although the term ''agricultural commodity'' is not defined in the Act, Section 1a(4) enumerates a non-exclusive list of several agricultural-based commodities and products. The broadest types of commodities that fall into the exempt category are energy and metals products.

[5] OTC transactions in excluded commodities entered into by ECPs pursuant to Section 2(d)(1) are generally not subject to any provision of the Act. OTC transactions in exempt or excluded commodities that are individually negotiated by ECPs pursuant to Section 2(g) are also generally not subject to any provision of the Act. OTC transactions in exempt commodities entered into by ECPs pursuant to Section 2(h)(1) are generally not subject to any provision of the Act other than antimanipulation provisions and anti-fraud provisions in certain situations.

[6] Section 1a(12)(A)(x) of the Act.

Section 1a(12)(C) of the Act. Specifically, NYMEX, acting on behalf of Exchange floor members and member clearing firms, requested that the Commission make a determination pursuant to Section 1a(12)(C) of the Act that floor members, when acting in a proprietary capacity, may enter into certain specified OTC transactions in exempt commodities pursuant to Section 2(h)(1) of the Act if such floor members have obtained a financial guarantee for such transactions from an Exchange clearing member that is registered with the Commission as an FCM.[7] NYMEX suggested that the permissible OTC transactions be limited to trading in a commodity that either (1) is listed only for clearing at the Exchange,[8] or (2) is listed for trading and clearing at the Exchange and where Exchange rules provide for the exchange of futures for swaps (''EFS'') in that contract.[9] NYMEX further proposed that such transactions would be subject to additional conditions and restrictions detailed in the petition and described below.[10]

B. Arguments in Support of the Original Petition

In its original petition, NYMEX offered supporting arguments based on both public interest considerations and a detailed analysis of the Act's ECP definition. Those arguments are fully described in the **Federal Register** notice implementing the original 2003 order.[11]

C. Trading Restrictions and Exchange Oversight

In its original petition, NYMEX represented that it would have appropriate compliance systems in place to monitor OTC trading by Exchange floor members.[12] NYMEX also suggested that, consistent with the standards already applicable to floor members with respect to their trading on the Exchange, the Commission should provide that floor members' transactions in the permissible contracts that are not executed on a trading facility be executed only pursuant to the Section 2(h)(1) exemption. As indicated above, all Section 2(h)(1) transactions would be subject to the Act's antimanipulation provisions and, in certain situations, its antifraud provisions.[13] Finally, the Exchange represented that it would agree, as a condition for its members participating in the OTC markets, to limit OTC trading by floor members such that the counterparties to their trades must not be other floor members for contracts that are listed for trading on the Exchange. Thus, for example, floor members could not be counterparties in connection with an OTC natural gas swap to be exchanged for a futures position in the NYMEX Natural Gas Futures contract. NYMEX floor members could be counterparties in connection with a Chicago Basis swap that is subsequently cleared at NYMEX through EFS procedures because that contract is listed only for clearing at the Exchange.

D. The Commission's Conclusion Regarding the Original Petition

After consideration of the original NYMEX petition, the Commission determined that NYMEX floor members, subject to certain conditions and for a two-year period commencing on the date of publication of the order in the **Federal Register**, would be eligible to be ECPs as that term is defined in Section 1a(12) of the Act.[14] The floor members were required to meet the financial qualifications of an ECP by having a financial guarantee for the OTC transactions from a NYMEX clearing member that is registered as an FCM and that meets certain minimum working capital requirements.

The Commission noted that the execution and clearing of such transactions has financial implications for the clearing system.[15] Thus, the Commission added certain safeguards to the original order to limit the possibility of a trader entering into OTC transactions that could create financial difficulty for the guarantor FCM, the clearing entity or other clearing firms. First, the guarantor FCM must clear, at NYMEX, every OTC transaction for which it provides such a guarantee. Second, in order to assure that the guarantor FCM is adequately capitalized, the guarantor FCM must have and maintain at all times minimum working capital[16] of at least $20 million.[17]

The Commission determined to make the original order effective for a two-year period in order to provide the opportunity to evaluate the impact of the OTC trading on both the OTC market and on NYMEX. Thus, the Commission required that NYMEX submit a report reviewing its experiences and the experiences of its floor members and clearing members with respect to OTC trading, including: The levels of OTC trading and related clearing activity; the number of floor members and clearing members who participated in these activities; and an evaluation of whether the Commission should extend this Order and, if so, whether any modifications should be made thereto. This report was to address

[7] To qualify for the Section 2(h)(1) exemption, the transaction must: (1) Be in an exempt commodity, (2) be entered into by ECPs, and (3) not be entered into on a trading facility.

[8] By letter dated May 24, 2002, NYMEX filed rule changes implementing an initiative to provide clearing services for specified energy contracts executed in the OTC markets. NYMEX certified that the rules comply with the Act and the Commission's regulations. Under the provision, NYMEX initially listed 25 contracts that are entered into OTC and accepted for clearing by NYMEX, but are not listed for trading on the Exchange. In connection with the NYMEX initiative, on May 30, 2002, the Commission issued an order pursuant to Section 4d of the Act. The order provides that, subject to certain terms and conditions, the NYMEX Clearinghouse and FCMs clearing through the NYMEX Clearinghouse may commingle customer funds used to margin, secure, or guarantee transactions in futures contracts executed in the OTC markets and cleared by the NYMEX Clearinghouse with other funds held in segregated accounts maintained in accordance with Section 4d of the Act and Commission Regulations thereunder.

[9] EFS transactions are permitted at the Exchange pursuant to NYMEX Rule 6.21A, ''Exchange of Futures for, or in Connection with, Swap Transactions.'' The swap component of the transaction must involve the commodity underlying a related NYMEX futures contract, or a derivative, byproduct, or related product of such a commodity. In furtherance of its effort to permit OTC clearing at the Exchange, NYMEX amended the rule to include as eligible EFS transactions ''any contract executed off the Exchange that the Exchange has designated as eligible for clearing at the Exchange.'' The Division notes that, subsequent to the Commission's ECP Order responding to the Exchange's original petition, NYMEX listed on its ClearPort(sm) Trading venue a significant number of futures contracts modeled after OTC energy swap agreements. While these futures contracts are competitively traded on the ClearPort(sm) Trading market, the vast majority of positions in these contracts are established via EFS transactions that are executed non-competitively away from the Exchange and then submitted to NYMEX via its ClearPort(sm) Clearing service.

[10] NYMEX also suggested a further limitation on floor members' permissible transactions by not permitting any OTC transactions in electricity commodities.

[11] 68 FR 5621 (February 4, 2003).

[12] *Id.*

[13] *See supra* note 5.

[14] A NYMEX floor member who is determined to be an ECP based upon compliance with the provisions set forth in the Commission's original order is an ECP only for the purpose of entering into transactions executed pursuant to Section 2(h)(1) of the Act and as described in the order.

[15] The Commission noted that the guarantor FCM could restrict or otherwise condition the trading for which the guarantee is provided. The guarantor could, for instance, limit trading to certain commodities, place financial limits on overall or daily positions, or restrict trading by number or size of acceptable transactions.

[16] For the purposes of an FCM clearing member, NYMEX Rule 9.21 defines ''working capital'' to mean ''adjusted net capital'' as defined by CFTC Regulation 1.17.

[17] The original order provided a sliding scale for the two-year duration of the original order whereby a clearing member was required to have minimum working capital of $5 million during the first 12 months, $10 million during the thirteenth through eighteenth months, and $20 million thereafter. The final $20 million requirement is carried over into this order.

the first eighteen months of the two-year period, and was to be submitted to the Commission no later than 30 days after the conclusion of that eighteen month period (*i.e.*, by September 4, 2004). In fact, the report was incorporated into the Exchange's January 19, 2005 petition to extend the relief granted in the original petition and thus was not filed within the timeline set out in the original order. Nevertheless, the Commission has determined to accept this report and not to impose any sanctions on the Exchange for the late filing of the report.

III. The Petition to Extend the Relief

A. The Exchange Report

The Exchange's petition to extend the relief granted in the original order includes the required report concerning the experiences of the Exchange, its floor members and clearing members under the original order. At the outset, the report states that the Exchange adopted two new rules in connection with the original order, Rules 6.21F (''Participation by NYMEX Floor Members in Special Program for Over-the-Counter Trading with FCM Guarantee'') and Rule 9.41 (''Special Capital Provisions for Clearing Members Guaranteeing and Clearing OTC Contracts Executed by NYMEX Floor Members''). The Exchange notes that, if the Commission grants its request for an extension, it will certify to the Commission rule amendments to conform these rules to the terms of the Commission's extension.

With respect to compliance oversight, the Exchange reports that, under Rule 6.21F, floor members are required to notify the Exchange Compliance Department prior to any participation in the program authorized by the ECP Order, and to submit all executed OTC transactions to the Exchange for clearing. Beginning April 1, 2004, the Exchange also required that notification to include a specially tailored guarantee form prepared by Exchange staff. In addition, the Exchange employs a special trade type indicator to allow it to identify EFS transactions. Thus, Exchange Compliance staff is able to identify which floor members are participating in the program under the ECP Order and whether they are complying with the notification and other requirements. Currently, none of the floor members trading pursuant to the ECP Order execute orders for customers in their floor member capacities. Therefore, they would not be in a position to take advantage of customer order information when trading in a proprietary capacity under the ECP Order. In addition, the minimal amount of trading done under the ECP Order has been regularly reviewed by the Exchange's Compliance Market Surveillance staff. In addition, Compliance Market Surveillance staff monitors for the condition of the ECP Order that prohibits floor members participating in this program from engaging in EFS transactions with each other. Compliance staff monitors for compliance with this restriction by reviewing the trading activity of participating floor members to check for trades involving a CTI 1 vs. CTI 1 transaction.

With respect to actual floor member participation in the program, the Exchange notes that it has been ''relatively slight to date.'' Only 12 floor members participated in the program overall and only seven were participating at the time the extension request was filed. With respect to volume, the Exchange reports that the floor members participating in the program, during the period from March 11, 2003 through January 7, 2005, participated in cleared transactions totaling 82,855 lots on the buy side and 79,740 lots on the sell side. In general, this EFS activity was concentrated in the smaller cash-settled natural gas or natural gas basis futures contracts listed in the NYMEX ClearPort(sm) Clearing System.

By comparison, the single day volume for November 4, 2004, the busiest day experienced by NYMEX's ClearPort(sm) Clearing services during that same period was 147,153 lots. The same press release announcing that volume record noted that total 2004 cleared volume for OTC transactions, as of that date, was 10,858,906 lots. Thus, the contribution by floor members participating in the program under the Commission's ECP Order ''has been relatively modest.''

The Exchange attributed this limited participation to a number of possible factors. The Exchange noted that, over recent months, noticeable price volatility in NYMEX's core floor-traded products has provided ample trading opportunities on the Exchange's trading floors in futures products, making it less necessary for professional futures traders to look to OTC markets for trading opportunities. Also, at present, the Exchange permits EFS transactions in natural gas futures, but not crude oil, heating oil or unleaded gasoline futures, thus making the program of interest primarily only to those floor members who already regularly trade in natural gas futures. In addition, many floor traders focus on trading in the front contract month, or the first few listed months of a contract, whereas the OTC natural gas market emphasizes longer trading periods, such as quarterly or seasonal strip trading, so that a floor trader actively engaging in OTC natural gas trading would likely need to retain an additional clerk to manage the OTC activity. Finally, the requirement that the clearing FCM guaranteeing a floor member's trades under the program must maintain working capital of $20 million has restricted the number of clearing members able to participate in the program and effectively narrowed the pool of floor members willing to participate in the program, since it is difficult (though not impossible) for a floor member to use his or her regular clearing FCM for regular futures trading and another for OTC trades under this program.

B. The Extension Request

The Exchange notes that its original petition, and the Commission's original ECP Order, were based on an approach whereby an OTC energy swap would be converted, via an EFS transaction, to a futures position maintained at the Exchange's clearinghouse. Recently, however, the Exchange has begun preparation of a draft filing to register with the Commission a derivatives transaction execution facility (DTEF). As a part of that filing, the Exchange plans to request that a large number of the products currently listed on the NYMEX ClearPort(sm) Trading product slate be shifted from the DCM to the DTEF regulatory tier. As part of that same filing, the Exchange staff anticipates revisiting the manner in which off-exchange energy transactions are submitted to the Exchange for participation in the ClearPort(sm) Clearing Service. Any such revision would require corresponding revisions in the Commission's ECP Order. Therefore, the Exchange suggests that any substantive changes to the terms of the order, including the possibility of making the order permanent, should be considered in the context of the DTEF filing. In the meantime, the Exchange requests that the existing ECP Order be extended for an additional term of one year. The Exchange notes that the policy arguments in favor of the program under the original ECP Order, summarized in the **Federal Register** notice publishing the order,[18] ''remain valid and also support the continuation of this program.''

IV. Conclusion

Accordingly, the Commission has determined, consistent with the NYMEX petition of January 19, 2005, that it is

[18] 68 FR 5621 (February 4, 2003).

appropriate to issue an order pursuant to Section 1a(12)(C) of the Act extending the relief granted in its original February 4, 2003 order whereby, subject to certain conditions and for a further one-year period commencing on February 4, 2005, NYMEX floor brokers and floor traders are included within the definition of ECPs who can enter into OTC transactions pursuant to Section 2(h)(1) of the Act. Although this order applies only to NYMEX and NYMEX members, the Commission would welcome, in response to a petition so requesting, providing substantially similar relief to other designated contract markets and members of designated contract markets.

V. Cost Benefit Analysis

Section 15 of the Act, as amended by Section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation or order under the Act. By its terms, Section 15 does not require the Commission to quantify the costs and benefits of its action or to determine whether the benefits of the action outweigh its costs. Rather, Section 15 simply requires the Commission to ''consider the costs and benefits'' of the subject rule or order.

Section 15(a) further specifies that the costs and benefits of the proposed rule or order shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular rule or order is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act. The Commission undertook a detailed costs-benefits analysis in considering the original order.[19] Actual experience under that order has been consistent with the Commission's analysis.

By extending the essential provisions of the original 2003 order, this order is intended to reduce regulatory barriers by continuing to permit NYMEX members registered with the Commission as floor brokers or floor traders, when acting in a proprietary capacity, to enter into OTC transactions in exempt commodities pursuant to Section 2(h)(1) of the Act if such floor members have obtained a financial guarantee for such transactions from an Exchange clearing member that is registered with the Commission as an FCM. The Commission has considered the costs and benefits of this order in light of the specific provisions of Section 15(a) of the Act.

VI. Order

Upon due consideration, and pursuant to its authority under Section 1a(12)(C) of the Act, the Commission hereby determines that a NYMEX member who is registered with the Commission as a floor broker or a floor trader, when acting in a proprietary trading capacity, shall continue to be deemed to be an eligible contract participant and may continue to enter into Exchange-specified OTC contracts, agreements or transactions in an exempt commodity under the following conditions:

1. This Order is effective for one year, commencing on February 4, 2005.

2. The contracts, agreements or transactions must be executed pursuant to Section 2(h)(1) of the Act.

3. The floor broker or floor trader must have obtained a financial guarantee for the contracts, agreements or transactions from a NYMEX clearing member that:

(a) Is registered with the Commission as an FCM; and,

(b) Clears the OTC contracts, agreements or transactions thus guaranteed.

4. Permissible contracts, agreements or transactions must be limited to trading in a commodity that either:

(a) Is listed only for clearing at NYMEX or

(b) Is listed for trading and clearing at NYMEX and NYMEX's rules provide for exchanges of futures for swaps in that contract, and each OTC contract, agreement or transaction executed pursuant to the order must be cleared at NYMEX.

5. The floor broker or floor trader may not enter into OTC contracts, agreements or transactions with another floor broker or floor trader as the counterparty for contracts that are listed for trading on the Exchange.

6. NYMEX must have appropriate compliance systems in place to monitor the OTC contracts, agreements or transactions of its floor brokers and floor traders.

7. Clearing members that guarantee and clear OTC contracts, agreements or transactions pursuant to this order must have and maintain at all times minimum working capital of at least $20 million. A clearing member must compute its working capital in accordance with exchange rules and generally accepted accounting principles consistently applied.

8. In the event NYMEX requests a further modification or extension of the ECP Order, the request shall include a report to the Commission reviewing the experiences of the Exchange and its floor members and clearing members under the Order. The report shall include information on the levels of OTC trading and related clearing activity, the number of floor members and clearing members participating in the activity, and the Exchange's reasons supporting the further modification or extension of the Order.

This order is based upon the representations made and supporting material provided to the Commission by NYMEX. Any material changes or omissions in the facts and circumstances pursuant to which this order is granted might require the Commission to reconsider its finding that the provisions set forth herein are appropriate. Further, if experience demonstrates that the continued effectiveness of this order would be contrary to the public interest, the Commission may condition, modify, suspend, terminate or otherwise restrict the provisions of this order, as appropriate, on its own motion.

Issued in Washington, DC on February 2, 2005 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–2368 Filed 2–7–05; 8:45 am]

BILLING CODE 6351–01–U

[19] *See* 68 FR 5621 at 5624–25 (February 4, 2003).

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act; Notice of Closed Meeting

AGENCY: Corporation for National and Community Service.

ACTION: Notice of closed meeting of the Board of Directors.

SUMMARY: On Thursday, February 3, 2005, a majority of the Board of Directors (Board) of the Corporation for National and Community Service (Corporation) voted, pursuant to 45 CFR 2505.4, to close public observation for a meeting on February 7, 2005. The meeting to be closed involves discussions of the draft AmeriCorps rulemaking proposal the Corporation plans to submit to the Office of Management and Budget rulemaking docket. The vote followed a determination, in accordance with the

Government in the Sunshine Act and the Corporation's regulations, that Board business required this discussion without the delay that would be necessary to make a public announcement at least one week before the meeting, in accordance with 45 CFR 2505.6. In accordance with 45 CFR 2505.5(e), the Corporation's General Counsel has certified that, in his opinion, the meeting to be closed could properly be closed to public observation on the grounds that disclosing the information to be discussed to the public prematurely would significantly frustrate implementation of a proposed agency action, pursuant to 45 CFR 2505.4(h)(i). The Board accepted that determination in voting to close the meeting.

As provided in 45 CFR 2505.5(c), the members of the Board voting in favor of closing the meeting were: Stephen Goldsmith; Dorothy Johnson; Donna Williams; Cynthia Burleson; Henry Lozano; Leona White Hat; and William Schambra.

The Corporation expects the following Corporation for National and Community staff to attend the closed meeting: David Eisner, Chief Executive Officer; Andrew Klein, Acting Chief Financial Officer; Amy Mack, Chief of Staff; Frank Trinity, General Counsel; Rosie Mauk, Director of AmeriCorps; Kathy Ott, Director of Government Relations; Robert Grimm, Director of Research and Policy Development; Nicola Goren, Associate General Counsel; Susannah Washburn, Senior Advisor to the CEO; Carol Bates, Acting Inspector General; and Vincent Mulloy, Counsel to the Inspector General. In addition, the Corporation expects the following members of the Board of Directors to attend: Stephen Goldsmith (Chair); Dorothy Johnson; Donna Williams; Cynthia Burleson; Carol Kinsley; Henry Lozano; William Schambra; Mimi Mager; Mark Gearan; Jacob Lew; Leona White Hat, as well as Alan Solomont, immediate past Chair of the Board's rulemaking committee, and Juanita Doty, immediate past chair of the Board's communications committee.

FOR FUTHER INFORMATION CONTACT: For further information, contact Frank Trinity, General Counsel, at (202) 606–5000 ext. 256.

Dated: February 3, 2005.

Frank R. Trinity,

General Counsel.

[FR Doc. 05–2496 Filed 2–4–05; 11:43 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs.

ACTION: Notice.

In accordance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed extension of 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received April 11, 2005.

ADDRESSES: Written comments and recommendations on the information collection should be sent to TRICARE Management Activity—Aurora, Office of Program Requirement, 16401 E. Centretech Parkway, ATTN: Graham Kolb, Aurora, CO 80011–9043.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection, please write to the above address or call TRICARE Management Activity, Office of Program Requirements at (303) 676–3580.

Title Associated With Form, and OMB Number: Health Insurance Claim Form, UB 92, OMB Number 0720–0013.

Needs and Uses: The information collection requirement is necessary for a medical institution to claim benefits under the Defense health Program, TRICARE, which includes the Civilian Health and Medical Program for the Uniform Services (CHAMPUS). The information collected will be used by TRICARE/CHAMPUS to determine beneficiary eligibility, other health insurance liability, certification that the beneficiary received the care, and that the provider is authorized to receive TRICARE/CHAMPUS payments. The form will be used by TRICARE/CHAMPUS and it's contractors to determine the amount of benefits to be paid to TRICARE/CHAMPUS institutional providers.

Affected Public: Business or other for-profit; not-for-profit institutions.

Annual Burden Hours: 525,000.

Number of Respondents: 2,100,000 annually.

Responses Per Respondent: 1.

Average Burden Per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This collection instrument is for use by medical institutions filing for reimbursement with the Defense Health Program, TRICARE, which includes the Civilian Health and Medical Program of the Uniformed Services (TRICARE/CHAMPUS). TRICARE/CHAMPUS is a health benefits entitlement program for the dependent of active duty members of the Uniformed Service, and deceased sponsors, retirees and their dependents, dependents of department of transportation (Coast Guard) sponsors, and certain North Atlantic treaty Organization, National Oceanic and Atmospheric Administration, and Public Health Service eligible beneficiaries. Use of the UB–92 (also known as the HCFA 1450) continues TRICARE/CHAMPUS commitments to use the national standard claim form for reimbursement of medical services/supplies provided by institutional providers.

Dated: January 31, 2005.

Patricia L. Topplings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–2381 Filed 2–7–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: DoD, Office of the Assistant Secretary of Defense for Health Affairs.

ACTION: Notice.

In accordance with section 3506(c)(2)(A) of the Paperwork Reduction act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the new 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received April 11, 2005.

ADDRESSES: Written comments and recommendations on the information collection should be sent to Office of the Assistant Secretary of Defense (Health Affairs) TRICARE Management Activity, Skyline Five, Suite 810, 5111 Leesburg Pike, Falls Church, Virginia 22041–3206, Attn: Ms. Gita Uppal.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection, please write to the above address or call Ms. Uppal, Office of the Assistant Secretary of Defense (Health Affairs), TRICARE Management Activity at (703) 681–0039.

Title; Associated Form; and OMB Number: TRICARE Plus Enrollment Application, DD Form 2853 and TRICARE Plus Disenrollment Request, DD Form 2854; OMB Number 0720–0028.

Needs and Uses: These collected instruments serve as an application for enrollment and disenrollment in the Department of Defense's TRICARE Plus Health Plan established in accordance with Title 10 U.S.C. sections 1099 (which calls for a healthcare enrollment system) and 1086 (which authorizes TRICARE eligibility of Medicare Eligible Persons and has resulted in the development of a new enrollment option called TRICARE Plus) and the Assistant Secretary of Defense for Health Affairs Policy Memorandum to Establish the TRICARE Plus Program, June 22, 2001. The information collected hereby provides the TRICARE contractors with necessary data to determine beneficiary eligibility and to identify the selection of a health care option.

Affected Public: Individuals or household.

Annual Burden Hours: 2,933.

Number of Respondents: 25,065

Responses Per Respondent: 1.

Average Burden Per Response: 7 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Collection

The Department of Defense established TRICARE Plus as an enrollment option for persons who are eligible for care in Military Treatment Facilities (MTF) and not enrolled in TRICARE Prime. TRICARE Plus provides an opportunity to enroll with a primary care provider at a specific MTF, to the extent capacity exists. This is a way to facilitate primary care appointments at an MTF when needed. TRICARE Plus enrollment will help MTFs maintain an adequate clinical case mix for Graduate Medical Education programs and support readiness-related medical skills sustainment activities. In order to carry out this program, it is necessary that certain beneficiaries electing to enroll/disenroll in TRICARE Plus complete an enrollment application/disenrollment request. Completion of the enrollment forms is an essential element of the TRICARE program. There is no lock-in and no enrollment fee for TRICARE Plus.

Dated: January 19, 2005.

Patricia Toppings,

Alternative OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 05–2382 Filed 2–7–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

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

DATES: Consideration will be given to all comments received by March 10, 2005.

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS), Part 239, Acquisition of Information Technology, and associated clauses at DFARS 252.39–7000 and 252.239–7006; OMB Control Number 0704–0341.

Type of Request: Extension.

Number of Respondents: 424.

Responses Per Respondent: Approximately 4.

Annual Responses: 1,571.

Average Burden Per Response: 1 hour (average).

Annual Burden Hours: 1,428.

Needs and Uses: This requirement provides for the collection of information from contractors regarding security of information technology; tariffs pertaining to telecommunications services; and proposals from common carriers to perform special construction under contracts for telecommunications services. Contracting officers and other DoD personnel use the information to ensure that information systems are protected; to participate in the establishment of tariffs for telecommunications services; and to establish reasonable prices for special construction by common carriers.

Affected Public: Business or other for-profit and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Lewis Oleinick.

Written comments and recommendations on the proposed information collection should be sent to Mr. Oleinick at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings, WHS/ESCD/Information Management Division, 1225 South Clark Street, Suite 504, Arlington, VA 22202–4326.

Dated: January 31, 2005.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–2383 Filed 2–7–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission of OMB Review; Comment Request

ACTION: Notice.

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

DATES: Consideration will be given to all comments received by March 10, 2005.

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS), part 236, Construction and Architect-Engineer Contracts, and associated clauses at 252.236; OMB Control Number 0704–0255.

Type of Request: Extension.

Number of Respondents: 3,117.

Responses Per Respondent: Approximately 1.

Annual Responses: 3,152.

Average Burden Per Response: 101 hours.

Annual Burden Hours: 318,295.

Needs and Uses: DoD contracting officers need this information to evaluate contractor proposals for contract modifications; to determine that a contractor has removed obstructions to navigation; to review contractor requests for payment for mobilization and preparatory work; to determine reasonableness of costs allocated to mobilization and demobilization; and to determine eligibility for the 20 percent evaluation preference for United States firms in the award of some overseas construction contracts.

Affected Public: Business or other for-profit and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Lewis Oleinick.

Written comments and recommendations on the proposed information collection should be sent to Mr. Oleinick at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings, WHS/ESCD/Information Management Division, 1225 South Clark Street, Suite 504, Arlington, VA 22202–4326.

Dated: January 31, 2005.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–2384 Filed 2–7–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

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

DATES: Consideration will be given to all comments received March 10, 2005.

Title, Form, and OMB Number: Medical Information Questionnaire; DSS Form FL 14a; OMB Control Number 0704–0206.

Type of Request: Extension.

Number of Respondents: 11,700.

Responses Per Respondent: 1.

Annual Responses: 11,700.

Average Burden Per Response: 0.6 hours.

Annual Burden Hours: 7,020.

Needs and Uses: The specific objective of a personnel security investigation is to elicit information concerning the loyalty, character, and reliability of the individual being investigated so that the DoD adjudicator may determine if it is clearly consistent with the interests of national security to grant the individual access to classified information (or to continue such access), or to place the individual (or retain them) in a sensitive national security position. Adjudicative determinations are made in accordance with DoD 5200.2–R, ''DoD Personnel Security Program,'' which requires the DoD adjudicator to consider both potentially disqualifying information and mitigating information when there is an indication that the individual has a history of mental or nervous disorder; use or abuse of prescribed or illegal drugs, such as marijuana, narcotics or barbiturates; or abuse or excessive use of alcohol. Much of the appropriate information which the adjudicator must consider can only be obtained from physicians who have treated the individual. Obtaining such information provides the adjudicator with a complex picture of the individual. Without it, the adjudicator may not be able to make a determination as to whether or not the individual should be granted access to classified information.

Affected Public: Individual or households and business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Lewis Oleinick.

Written comments and recommendations on the proposed information collection should be sent to Mr. Oleinick at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings, WHS/ESCD/Information Management Division, 1225 South Clark Street, Suite 504, Arlington, VA 22202–4326.

Dated: January 31, 2005.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–2385 Filed 2–7–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 11, 2005.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility,

and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 2, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of the Chief Financial Officer

Type of Review: Extension.

Title: Generic Application Package for Discretionary Grant Programs.

Frequency: Annually.

Affected Public: Individuals or household; businesses or other for-profit; not-for-profit institutions; State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 12,464.

Burden Hours: 304,806.

Abstract: This is a generic application package using ED standard forms and instructions, OMB Standard forms and Instructions and EDGAR and statutory criteria. The purpose is to provide a common and easily recognizable format for applicants when applying under discretionary grant programs.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2665. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E5–497 Filed 2–7–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools; Overview Information Grant Competition To Prevent High-Risk Drinking or Violent Behavior Among College Students; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.184H.

Dates: Applications Available: February 8, 2005. Deadline for Transmittal of Applications: March 25, 2005. Deadline for Intergovernmental Review: May 24, 2005.

Eligible Applicants: Institutions of higher education (IHEs), consortia thereof, public and private nonprofit organizations, including faith-based organizations, and individuals.

Estimated Available Funds: $2,500,000. Contingent upon the availability of funds, we may make additional awards in FY 2006 and subsequent years from the list of nonfunded applications from this competition.

Estimated Number of Awards: 20.

Estimated Range of Awards: $100,000—$150,000.

Estimated Average Size of Awards: $125,000.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months. Projects will be funded for one year with an option for an additional year, contingent upon substantial progress by the grantee and the availability of funds.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Grant Competition to Prevent High-Risk Drinking or Violent Behavior Among College Students provides awards to develop or enhance, implement, and evaluate campus- and/or community-based strategies to prevent high-risk drinking or violent behavior among college students.

Priorities: These priorities are from the notice of final priorities and selection criteria for this program, published in the **Federal Register** on December 27, 2000 (65 FR 82224–82226), and a correction notice published in the **Federal Register** on January 10, 2001 (66 FR 1963) (collectively, the Notice of Final Priorities and Selection Criteria).

Absolute Priorities: For FY 2005 and any subsequent year in which we make awards on the basis of the funding slate from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet either of the absolute priorities.

These priorities are:

Absolute Priority One—Develop or Enhance, Implement, and Evaluate Campus- and/or Community-Based Strategies To Prevent High-Risk Drinking Among College Students

Under this priority, applicants are required to:

(1) Identify a specific student population to be served by the grant and provide a justification for its selection;

(2) Provide evidence that a needs assessment has been conducted on campus to document prevalence rates related to high-risk drinking by the population selected;

(3) Set measurable goals and objectives for the proposed project and provide a description of how progress toward achieving goals will be measured annually;

(4) Design and implement prevention strategies, using student input and participation, that research has shown to be effective in preventing high-risk drinking by the target population;

(5) Use a qualified evaluator to design and implement an evaluation of the project using outcomes-based (summative) performance indicators related to behavioral change and process (formative) measures that assess and document the strategies used; and

(6) Demonstrate the ability to start the project within 60 days after receiving federal funding in order to maximize the time available to show impact within the grant period.

Absolute Priority Two—Develop or Enhance, Implement, and Evaluate Campus- and/or Community-Based Strategies To Prevent Violent Behavior Among College Students

Under this priority, applicants are required to:

(1) Identify a specific student population to be served by the grant and provide a justification for its selection;

(2) Provide evidence that a needs assessment has been conducted on campus to document prevalence rates related to violent behavior;

(3) Set measurable goals and objectives for the proposed project and provide a description of how progress toward achieving goals will be measured annually;

(4) Design and implement prevention strategies, using student input and participation, that research has shown to be effective in preventing violent behavior among college students;

(5) Use a qualified evaluator to design and implement an evaluation of the

project using outcomes-based (summative) performance indicators related to behavioral change and process (formative) measures that assess and document the strategies used; and

(6) Demonstrate the ability to start the project within 60 days after receiving federal funding in order to maximize the time available to show impact within the grant period.

Program Authority: 20 U.S.C. 7131.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99; and (b) the Notice of Final Priority and Selection Criteria.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $2,500,000. Contingent upon the availability of funds, we may make additional awards in FY 2006 and subsequent years from the list of nonfunded applications from this competition.

Estimated Range of Awards: $100,000–$150,000.

Estimated Average Size of Awards: $125,000.

Estimated Number of Awards: 20.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months. Projects will be funded for one year with an option for one additional year, contingent upon substantial progress by the grantee and the availability of funds.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education (IHEs), consortia thereof, public and private nonprofit organizations, including faith-based organizations, and individuals.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

IV. Application Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll-free): (877) 433–7827. Fax: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): (877) 576–7734.

You also may contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

You also may access the electronic version of the application at the following Web site: *http://www.ed.gov/programs/dvphighrisk/index.html*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.184H.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The program narrative section should not exceed 25 double-spaced pages using a standard font no smaller than 12-point, with 1-inch margins (top, bottom, left, and right). The narrative should follow the format and sequence of the selection criteria.

3. *Submission Dates and Times: Applications Available:* February 8, 2005. *Deadline for Transmittal of Applications:* March 25, 2005.

Applications for grants under this competition must be submitted electronically using the Electronic Grant Application System (e-Application) available through the Department's e-Grants system. For information (including dates and times) about how to submit your application electronically or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: May 24, 2005.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR Part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically, unless you request a waiver of this requirement in accordance with the instructions in this section.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

a. *Electronic Submission of Applications.* Applications for grants under the Grant Competition to Prevent High-Risk Drinking or Violent Behavior Among College Students-CFDA Number 84.184H must be submitted electronically using e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov*.

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this competition after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget

Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• Any narrative sections of your application should be attached as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgement that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the ED 424 to the Application Control Center after following these steps:

(1) Print ED 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of the Department's e-Application system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the e-Application system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Department's e-Application system; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Richard Lucey, Jr., U.S. Department of Education, 400 Maryland Avenue, SW., room 3E335, Washington, DC 20202–6450. FAX: (202) 260–7767.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.* If you qualify for any exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.184H), 400 Maryland Avenue, SW., Washington, DC 20202–4260;

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.184H), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.* If you qualify for an exception to electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.184H), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business

days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are in the application package.

2. *Review and Selection Process:* An additional factor we may consider in selecting an application for an award is the geographic distribution of the projects, in addition to the rank order of applicants.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* If funded, you are expected to collect data on the key GPRA performance measures for this program and report those data to the Department in your annual performance report and final performance report. At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118. We also may require more frequent performance reports in accordance with 34 CFR 75.720(c).

4. *Performance Measures:* We have identified the following key GPRA performance measures for assessing the effectiveness of this program at the end of these 2-year grants: (1) The percentage of grantees that achieve a 5 percent decrease in high-risk drinking among students served by the project (Absolute Priority One) and (2) the percentage of grantees that achieve a 5 percent decrease in violent behavior among students served by the project (Absolute Priority Two).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Richard Lucey, Jr., U.S. Department of Education, 400 Maryland Avenue, SW., room 3E335, Washington, DC 20202–6450. Telephone: (202) 205–5471 or by e-mail: *richard.lucey@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at (800) 877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at (888) 293–6498; or in the Washington, DC, area at (202) 512–1530.

You may also view this document in text or PDF at the following site: *http://www.ed.gov/programs/dvphighrisk/applicant.html.*

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: February 3, 2005.

Deborah A. Price,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. E5–513 Filed 2–7–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–164–000]

Equitrans, L.P.; Notice of Tariff Filing

February 1, 2005.

Take notice that on January 28, 2005, Equitrans, L.P. (Equitrans) tendered for filing, as part of its FERC Gas Tariff, Original Volume No. 1, revised tariff sheets listed in Appendix A to the filing, to become effective on March 1, 2005.

Equitrans states that this filing is made to effectuate a consolidates system-wide gathering charge for its system, including conforming changes to Equitrans' tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–498 Filed 2–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–60–000]

Equitrans, L.P.; Notice of Application

February 1, 2005.

Take notice that on January 27, 2004, Equitrans, L.P. (Equitrans) tendered for filing, in Docket No. CP05–60–000 a request pursuant to section 7(b) of the Natural Gas Act for authorization and approval to abandon individually certificated, natural gas storage services for PSEG Energy Resources & Trade, LLC (PSEG) and Equitable Gas Company.

Equitrans states that PSEG and Equitable Gas Company have expressed their intention to terminate the subject contracts by serving written notices of termination notices on the company and that no facilities are proposed to be abandoned as part of this application.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Intervention and Protest Date: 5 p.m. eastern time on February 16, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–501 Filed 2–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–162–000]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Tariff Filing

February 1, 2005.

Take notice that on January 28, 2005, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing to become part of its FERC Gas Tariff, Fourth Revised Volume Nos. 1–A and 1–B, certain tariff sheets, to be effective March 1, 2005.

KMIGT states that a copy of this filing has been served upon all of its customers and affected state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–507 Filed 2–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12449–000—WI]

Neshkoro Power Associates, LLC; Notice of Availability of Environmental Assessment

February 1, 2005.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed the application for an original license for the Big Falls Milldam Hydroelectric Project, located on the North Branch Little Wolf River, in Waupaca County, Wisconsin, and has prepared an Environmental Assessment (EA). In the EA, Commission staff analyze the potential environmental effects of licensing the project and conclude that issuing an original license for the project, with appropriate environmental measures, would not constitute a major Federal action that would significantly affect the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA 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, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

Any comments should be filed within 30 days from the issuance date of this notice, and should be addressed to the

Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please affix ''Big Falls Milldam Project No. 12449'' to all comments. Comments may be filed electronically via Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. For further information, contact Timothy Konnert at (202) 502–6359 or by e-mail at *timothy.konnert@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E5–502 Filed 2–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–55–000]

Northern Natural Gas Company; Notice of Application

February 1, 2005.

Take notice that on January 25, 2005, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP05–55–000 an application pursuant to section 7 of the Natural Gas Act (NGA) for authorization to construct, own and operate two additional withdrawal storage wells, associated wellhead measurement facilities, pipeline facilities, and a compressor unit, with appurtenances at Northern's Cunningham Storage Field, located in Pratt and Kingman Counties, Kansas, all as more fully set forth in the application.

This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Any questions concerning this request may be directed to Michael Loeffler, Director of Certificates for Northern, 1111 South 103rd Street, Omaha, Nebraska 68124, or call (402 398–7103 or Bret Fritch, Senior Regulatory Analyst, at (402) 398–7140.

Northern states that the construction and operation of the proposed facilities would enable Northern to control and recapture storage gas that is moving away from the storage field. Northern states further that the new wells would have the capability of withdrawing gas even when the storage field is not in service. Northern notes that by utilizing the new compressor, Northern would be able to withdraw from the new withdrawal wells independently of the main storage field. Northern contends that this would allow Northern to be more effective in controlling the migration gas.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under the ''e-filing'' link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: February 22, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–500 Filed 2–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–163–000]

Paiute Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

February 1, 2005.

Take notice that on January 28, 2005, Paiute Pipeline Company (Paiute) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the revised tariff sheets listed on Appendix A of the filing, to become effective March 1, 2005.

Paiute states that its proposed tariff sheets are submitted to revise its statement of rates tariff sheet and to conform its LNG storage services to the requirements of part 284 of the Commission's regulations.

Paiute further states that it has served copies of its filing on all affected customers and all interested state regulatory commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or

protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–508 Filed 2–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–161–000]

Texas Gas Transmission, LLC; Notice of Annual Cash-Out Report

February 1, 2005.

Take notice that on January 26, 2005, Texas Gas Transmission, LLC (Texas Gas) tendered for filing a report, which compares its cash-out revenues with its cash-out costs incurred for the annual billing period November 1, 2003, through October 31, 2004, in accordance with its tariff. Texas Gas states that there is no rate impact to customers as a result of this filing.

Texas Gas states that copies of this filing have been served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Intervention and Protest Date: 5 p.m. eastern time on February 9, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–506 Filed 2–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–510–005, et al.]

Delta Energy Center, LLC, et al.; Electric Rate and Corporate Filings

February 1, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Delta Energy Center, LLC

[Docket No. ER03–510–005]

Take notice that on January 27, 2005, Delta Energy Center, LLC (Delta) submitted a substitute revised rate schedule sheet to Delta Energy Center, LLC Rate Schedule FERC No. 2 to modify the effective date of the rate change proposed in Delta's December 30, 2004, filing in Docket No. ER03–510–004.

Delta states that copies of the filing were served upon the official service list for this proceeding.

Comment Date: 5 p.m. eastern time on February 8, 2005.

2. Midwest Independent Transmission System Operator, Inc.; American Transmission Company LLC

[Docket No. ER04–1160–002]

Take notice that on January 28, 2005, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and American Transmission Company, LLC (collectively, Applicants) submitted additional information to their August 30, 2004, filing regarding proposed changes to the liability limitation provisions in the Midwest ISO's Open Access Transmission Tariff. Applicants state that the additional information was filed in response to the Commission's January 21, 2005, deficiency letter.

The Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO members, member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all states commissions within the region. In addition, Midwest ISO states that the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org.* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO indicates that it will provide hard copies to any interested parties upon request.

Comment Date: 5 p.m. eastern time on February 7, 2005.

3. Midwest Independent Transmission System Operator, Inc., Public Utilities With Grandfathered Agreements in the Midwest ISO Region, Midwest Independent Transmission System Operator, Inc., Midwest Independent Transmission System Operator, Inc., Midwest Independent Transmission System Operator, Inc.

[Docket Nos. ER04–691–021, EL04–104–020, ER03–1312–006, ER02–2595–008, and ER04–375–018]

Take notice that on January 28, 2005, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted a filing informing the Commission of changes in planned market implementation dates and a motion for leave to change the effective dates of certain portions of its open access transmission and energy markets tariff to be consistent with an April 1, 2005, initiation of financially binding real-time market operations.

The Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO members, member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all states commissions within the region. In addition, Midwest ISO states that the filing has been electronically posted on the Midwest ISO's website at *http://www.midwestiso.org.* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO indicates that it will provide hard copies to any interested parties upon request.

Comment Date: 5 p.m. eastern time on February 8, 2005.

4. PJM Interconnection, L.L.C.

[Docket No. ER05–120–001]

Take notice that on January 27, 2005, PJM Interconnection, L.L.C. (PJM) submitted a compliance filing pursuant to the Commission's order issued December 28, 2004, in *PJM Interconnection, L.L.C.,* 109 FERC ¶ 61,366 (2004).

PJM states that copies of this filing have been served on all PJM members and the utility regulatory commissions in the PJM region.

Comment Date: 5 p.m. eastern time on February 17, 2005.

5. Xcel Energy Services Inc.

[Docket No. ER05–499–000]

Take notice that on January 27, 2005, Xcel Energy Services Inc. (XES) tendered for filing an the amended agreement for interconnection service between Southwestern Public Service Company and Llano Estacado Wind, LP. XES requests an effective date of December 19, 2001.

Comment Date: 5 p.m. eastern time on February 17, 2005.

6. New England Power Company

[Docket No. ER05–500–000]

Take notice that on January 27, 2005, New England Power Company (NEP) submitted for filing Second Revised Service Agreement No. 214 between NEP and Lake Road Generating Company, L.P. under NEP's open access transmission tariff, New England Power Company, FERC Electric Tariff, Second Revised Volume No. 9.

Comment Date: 5 p.m. eastern time on February 17, 2005.

7. Goose Haven Energy Center, LLC

[Docket No. ER05–501–000]

Take notice that on January 27, 2005, Goose Haven Energy Center, LLC (Goose Haven) submitted a revised rate schedule sheet for the Reliability Must-Run Service Agreement between Goose Haven and the California Independent System Operator Corporation.

Goose Haven states that copies of the filing were served upon the California Independent System Operator Corporation, the California Public Utilities Commission, the California Electricity Oversight Board and Pacific Gas and Electric Company.

Comment Date: 5 p.m. eastern time on February 17, 2005.

8. Creed Energy Center, LLC

[Docket No. ER05–502–000]

Take notice that on January 27, 2005, Creed Energy Center, LLC (Creed) submitted a revised rate schedule sheet for the Reliability Must-Run Service Agreement between Creed and the California Independent System Operator Corporation.

Creed states that copies of the filing were served upon the California Independent System Operator Corporation, the California Public Utilities Commission, the California Electricity Oversight Board and Pacific Gas and Electric Company.

Comment Date: 5 p.m. eastern time on February 17, 2005.

9. Los Esteros Critical Energy Facility, LLC

[Docket No. ER05–503–000]

Take notice that on January 27, 2005, Los Esteros Critical Energy Facility, LLC (LECEF) submitted a revised rate schedule sheet for the Reliability Must-Run Service Agreement between LECEF and the California Independent System Operator Corporation.

LECEF states that copies of the filing were served upon the California Independent System Operator Corporation, the California Public Utilities Commission, the California Electricity Oversight Board and Pacific Gas and Electric Company.

Comment Date: 5 p.m. eastern time on February 17, 2005.

10. Gilroy Energy Center, LLC

[Docket No. ER05–504–000]

Take notice that on January 27, 2005, Gilroy Energy Center, LLC (Gilroy) submitted a revised rate schedule sheet for the Reliability Must-Run Service Agreement between Gilroy and the California Independent System Operator Corporation.

Gilroy states that copies of the filing were served upon the California Independent System Operator Corporation, the California Public Utilities Commission, the California Electricity Oversight Board and Pacific Gas and Electric Company.

Comment Date: 5 p.m. eastern time on February 17, 2005.

11. PacifiCorp

[Docket No. ER05–505–000]

Take notice that on January 28, 2005, PacifiCorp tendered for filing a Network Integration Transmission Service Agreement between Sempra Energy Solutions (Sempra) and PacifiCorp under PacifiCorp's open access transmission tariff, FERC Electric Tariff, Fifth Revised Volume No. 11, Service Agreement No. 299.

PacifiCorp states that copies of this filing were supplied to the Public Utility Commission of Oregon, the Washington Utilities and Transportation Commission, and Sempra.

Comment Date: 5 p.m. eastern time on February 18, 2005.

12. New England Power Pool and ISO New England Inc.

[Docket No. ER05–508–000]

Take notice that on January 28, 2005, the New England Power Pool (NEPOOL) Participants Committee and ISO New England Inc. (the ISO) filed for acceptance a new Appendix H to NEPOOL Market Rule 1, and a corresponding Appendix H to section III of the ISO's Transmission, Markets and Services Tariff which includes special provisions relating to the dispatch and operation of the New England bulk power system during extreme cold weather conditions.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants and the New England state governors and regulatory commissions.

Comment Date: 5 p.m. eastern time on February 9, 2005.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 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 comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and

interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–510 Filed 2–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–40–000]

Rendezvous Gas Services, L.L.C.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Rendezvous Phase V Project and Request for Comments on Environmental Issues

February 1, 2005.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Rendezvous Phase V Project involving construction and operation of facilities by Rendezvous Gas Services, L.L.C. (Rendezvous) in Uinta and Lincoln Counties, Wyoming.[1] These facilities would consist of about 21 miles of 20-inch-diameter pipeline and appurtenant facilities. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice Rendezvous provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Rendezvous wants to provide a direct connection between a gas processing plant in Uinta County, Wyoming and Kern River Gas Transmission Company in Lincoln County, Wyoming, and to transport gas gathered by Rendezvous and its owners, Questar Gas Management Company and Mountain Gas Resources, Inc. Rendezvous seeks authority to construct and operate:

- 20.8 miles of 20-inch-diameter pipeline in Uinta and Lincoln Counties, Wyoming;
- A mainline valve at milepost 8.1 of the proposed pipeline, in Lincoln County;
- Filtering, metering, and pigging facilities at the Blacks Fork Gas Plant in Uinta County; and
- A pigging facility at the Muddy Branch Compressor Station in Lincoln County.

The general location of the project facilities is shown in Appendix 1.[2] If you are interested in obtaining detailed maps of a specific portion of the project, send in your request using the form in Appendix 3.

Land Requirements for Construction

Construction of the proposed facilities would require about 199.5 acres of land. Following construction, about 99.1 acres would be maintained as new permanent right-of-way and aboveground facility sites. The remaining 100.4 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we[3] will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Land use.
- Water resources, fisheries, and wetlands.
- Cultural resources.
- Vegetation and wildlife.
- Air quality and noise.
- Endangered and threatened species.
- Hazardous waste.
- Public safety.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

[1] Rendezvous' application was filed with the Commission under section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (maps), are available on the Commission's Web site at the ''eLibrary'' link , and all appendices, including Appendix 1, are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 4.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 3.
- Reference Docket No. CP05–40–000.
- Mail your comments so that they will be received in Washington, DC on or before March 7, 2005.

The Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.

We might mail the EA for comment. If you are interested in receiving it, please return the Information Request (Appendix 4). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's eFiling system) or 14 paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (*see* Appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities. By this notice we are also asking governmental agencies, especially those in Appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet website (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E5–499 Filed 2–7–05; 8:45 am]

BILLING CODE 6717–01–P

[4] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2194–020]

FPL Energy Maine Hydro LLC; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

February 1, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New major license.

b. *Project No.:* P–2194–020.

c. *Date Filed:* June 30, 2003.

d. *Applicant:* FPL Energy Maine Hydro LLC.

e. *Name of Project:* Bar Mills Hydroelectric Project.

f. *Location:* Located on the Saco River in the towns of Buxton and Hollis, York County, Maine. This project does not use federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Frank Dunlap, FPL Energy Maine Hydro LLC, 160 Capitol Street, Augusta, ME 04330, (207) 623–8417.

i. *FERC Contact:* Jack Hannula, (202) 502–8917, *john.hannula@ferc.gov*.

j. *Deadline for Filing Comments, Recommendations, Terms and Conditions, and Prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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 whose name appears on 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.

Comments and recommendations may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''eFiling'' link.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. The Bar Mills Hydroelectric Project consists of the following existing facilities: (1) A 400-foot-long by 25-foot-high dam with 6.75-foot-high flashboards, a 90- to 200-foot-wide by 725-foot-long power canal; (2) a 5.3-mile-long impoundment, which has a surface area of 263 acres at the normal full pond elevation of 148.5 feet above mean sea level; (3) a powerhouse containing two generating units with total installed generating capacity of 4.5 megawatts (MW); and (4), appurtenant facilities. The dam and existing project facilities are owned by FPL Energy Maine Hydro LLC.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''elibrary link''. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

All filings must: (1) Bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS'', ''TERMS AND CONDITIONS'', or ''PRESCRIPTIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions, or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedures Schedule:* The Commission staff proposes to issue an Environmental Assessment (EA) rather than issuing a draft and final EA. Staff intends to allow at least 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the license application. The application will be processed according to the following schedule, but revisions to the schedule may be made as appropriate:

Issue Notice of Availability of EA: May 15, 2005.

Ready for Commission Decision on the Application: June 30, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–503 Filed 2–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2194–020]

FPL Energy Maine Hydro LLC; Notice Soliciting Scoping Comments

February 1, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New major license.

b. *Project No.:* P–2194–020.

c. *Date Filed:* June 30, 2003.

d. *Applicant:* FPL Energy Maine Hydro LLC.

e. *Name of Project:* Bar Mills Hydroelectric Project.

f. *Location:* On the Saco River in the towns of Buxton and Hollis, York County, Maine. The project does not affect any Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Frank Dunlap, FPL Energy Maine Hydro LLC, 160 Capitol Street, Augusta, ME 04330, (207) 623–8417.

i. *FERC Contact:* Jack Hannula, (202) 502–8917, john.hannula@ferc.gov.

j. *Deadline for Filing Scoping Comments:* March 4, 2005.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on 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.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application is not ready for environmental analysis at this time.

l. The project is located on the Saco River in the towns of Buxton and Hollis, York County, Maine. The project lies about 19 river miles upstream from the river mouth at Camp Ellis, Maine. The Bar Mills Project consists of two generating units with an installed capacity of 4.5 megawatts (MW), a hydraulic capacity of 3,120 cubic feet per second (cfs), and generates about 18,850 megawatt-hours (MWh) of energy annually. The project operates essentially in a cycling mode with moderate fluctuations of the impoundment up to 2 feet of the normal full pond elevation. The project does not occupy any federal lands.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. You may also register online at *http://www.ferc.gov.esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. *Scoping Process.* The Commission staff intends to prepare an Environmental Assessment (EA) for the Bar Mills Hydroelectric Project in

accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Commission staff does not propose to conduct any on-site scoping meetings at this time. Instead, we will solicit comments, recommendations, information, and alternatives in the Scoping Document (SD).

Copies of the SD outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list. Copies of the SD may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or for TTY, (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–504 Filed 2–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7321–018]

Erie Boulevard Hydropower, L.P.; Notice of Scoping and Soliciting Scoping Comments

February 1, 2005.

a. *Type of Application:* Subsequent license.

b. *Project No.:* 7321–018.

c. *Date Filed:* November 26, 2004.

d. *Applicant:* Erie Boulevard Hydropower, L.P.

e. *Name of Project:* Macomb Project.

f. *Location:* On the Salmon River in Franklin County, New York. This project does not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Jerry L. Sabattis, Erie Boulevard Hydropower, L.P., 225 Greenfield Parkway, Suite 201, Liverpool, NY 13088, (315) 413–2787.

i. *FERC Contact:* John Smith, telephone (202) 502–8972, e-mail *john.smith@ferc.gov.*

j. *Deadline for Filing Scoping Comments:* March 2, 2005.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''Filing'' link.

k. The existing Macomb Project consists of: (1) A 106-foot-long, 32-foot-high concrete gravity overflow-type dam having a spillway crest elevation of 570.7 feet above mean sea level; (2) a 38-foot-long, 25-foot-high intake structure along each bank; (3) a 6-foot-diameter, 60-foot-long, riveted-steel, gated waste tube along each bank; (4) a 14-acre reservoir with a net storage capacity of 14 acre-feet at the spillway crest elevation; (5) a 6.5-foot-diameter, 60-foot-long, riveted-steel, concrete-encased, gated pipeline along the left (south) bank; (6) a powerhouse containing one 1,000-kilowatt horizontal Francis turbine; (7) a 370-foot-long, 34.5-kilovolt transmission line; and (8) appurtenant facilities. The applicant estimates that the total average annual generation would be 5,660 megawatthours.

l. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link—select ''Docket #'' and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

m. *Scoping Process.* Scoping is intended to advise all parties regarding the proposed scope of the environmental analysis and to seek additional information pertinent to this analysis. The Commission staff intends to prepare an environmental assessment (EA) on the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

At this time, the Commission staff does not propose to conduct any formal public or agency meetings or an on-site visit. Instead we will solicit comments, recommendations, information, and alternatives by conducting paper scoping through issuing this scoping document.

Copies of the scoping document outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list. Copies of the scoping document are available for review at the Commission or may 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, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (806) 208–3676, or for TTY, contact (202) 502–8659.

As part of scoping, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from comments all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis. Consequently, interested entities are requested to file with the Commission any data and information concerning environmental resources and land uses in the project area and the subject project's impacts to the aforementioned.

n. The revised schedule for processing the Macomb Project license application is:

Major milestone	Target date
Notice of application is ready for environmental analysis.	April 2005.
Notice of the availability of the EA.	October 2005.
Ready for Commission's decision on the application.	November 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–505 Filed 2–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD04–13–000]

Assessing the State of Wind Energy in Wholesale Electricity Markets; Initial Notice of Technical Workshop

February 1, 2005.

Take notice that the staffs of Bonneville Power Administration (BPA) and the Western Electricity Coordinating Council (WECC) will participate with the staff of the Federal Energy Regulatory Commission (FERC) at a workshop on March 16–17, 2005, in Portland, Oregon. Further logistical details, including an agenda for the workshop, will be forthcoming. The workshop is scheduled to begin at 9 a.m. and end at approximately 5 p.m. (PST) each day.

The goal of the workshop is to work with interested market participants to develop clear definitions for additional wholesale electric transmission services, *e.g.*, conditional firm transmission service, develop applicable pro forma tariff language that could be included in public utilities' open access transmission tariffs, and address attendant issues.

The workshop is open for the public to attend, and preregistration is not required. There will be no on-line registration established for this event; on-site attendees may simply register on the day of the event.

Capitol Connection offers the opportunity for remote listening of the conference via the Internet or a Phone Bridge Connection for a fee. Interested persons should make arrangements as soon as possible by visiting the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and clicking on ''FERC.'' If you have any questions contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100).

For more information about the conference, please contact Jignasa Gadani at 202–502–8608, *jignasa.gadani@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E5–509 Filed 2–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Meeting Notice

February 2, 2005.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C 552b:

AGENCY: Federal Energy Regulatory Commission.

DATE AND TIME: February 9, 2005, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda, *Note—Items listed on the agenda may be deleted without further notice.

FOR MORE INFORMATION CONTACT: Magalie R. Salas, Secretary, telephone (202) 502–8400. For a recorded listing items stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all pages relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

880TH—MEETING, FEBRUARY 9, 2005, REGULAR MEETING, 10 A.M.

Item No.	Docket No.	Company
		ADMINISTRATIVE AGENDA
A–1	AD02–1–000	Agency Administrative Matters.
A–2	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
		MARKETS, TARIFFS, AND RATES—ELECTRIC
E–1	ER02–1656–021	California Independent System Operator Corporation.
E–2	RT04–2–005	ISO New England, Inc., Bangor Hydro Electric Company Central Maine Power Company, NSTAR Electric & Gas Corporation, New England Power Company, Northeast Utilities Service Company, The United Illuminating Company and Vermont Electric Power Company.
	ER04–116–005	ISO New England, Inc., Bangor Hydro Electric Company Central Maine Power Company, NSTAR Electric & Gas Corporation, New England Power Company, Northeast Utilities Service Company, The United Illuminating Company and Vermont Electric Power Company.
	ER04–157–008	Bangor HydroElectric Company, Central Maine Power Company, NSTAR Electric & Gas Corporation, on behalf of its affiliates: Boston Edison Company, Commonwealth Electric Company, Cambridge Electric Light Company , Canal Electric Company.
		New England Power Company, Northeast Utilities Service Company on behalf of its operating company affiliates: The Connecticut Light and Power Company, Western Massachusetts Electric Company, Public Service Company of New Hampshire, Holyoke Power and Electric Company, Holyoke Water Power Company.
		The United Illuminating Company, Vermont Electric Power Company, Central Vermont Public Service Company and Green Mountain Power Corporation.
	EL01–39–005	The Consumers of New England v. New England Power Pool.
	RT04–2–006	ISO New England, Inc., Bangor Hydro Electric Company Central Maine Power Company, NSTAR Electric & Gas Corporation, New England Power Company, Northeast Utilities Service Company, The United Illuminating Company and Vermont Electric Power Company.
	RT04–2–007	ISO New England, Inc., Bangor Hydro Electric Company Central Maine Power Company, NSTAR Electric & Gas Corporation, New England Power Company, Northeast Utilities Service Company, The United Illuminating Company and Vermont Electric Power Company.
	RT04–2–008	ISO New England, Inc., Bangor Hydro Electric Company Central Maine Power Company, NSTAR Electric & Gas Corporation, New England Power Company, Northeast Utilities Service Company, The United Illuminating Company and Vermont Electric Power Company.

880TH—MEETING, FEBRUARY 9, 2005, REGULAR MEETING, 10 A.M.—Continued

Item No.	Docket No.	Company
	RT04–2–009	ISO New England, Inc., Bangor Hydro Electric Company Central Maine Power Company, NSTAR Electric & Gas Corporation, New England Power Company, Northeast Utilities Service Company, The United Illuminating Company and Vermont Electric Power Company.
	ER04–116–006	ISO New England, Inc., Bangor Hydro Electric Company Central Maine Power Company, NSTAR Electric & Gas Corporation, New England Power Company, Northeast Utilities Service Company, The United Illuminating Company and Vermont Electric Power Company.
	ER04–116–007	ISO New England, Inc., Bangor Hydro Electric Company Central Maine Power Company, NSTAR Electric & Gas Corporation, New England Power Company, Northeast Utilities Service Company, The United Illuminating Company and Vermont Electric Power Company.
	ER04–116–008	ISO New England, Inc., Bangor Hydro Electric Company Central Maine Power Company, NSTAR Electric & Gas Corporation, New England Power Company, Northeast Utilities Service Company, The United Illuminating Company and Vermont Electric Power Company.
	ER04–116–009	ISO New England, Inc., Bangor Hydro Electric Company Central Maine Power Company, NSTAR Electric & Gas Corporation, New England Power Company, Northeast Utilities Service Company, The United Illuminating Company and Vermont Electric Power Company.
	ER04–157–009	Bangor HydroElectric Company, Central Maine Power Company, NSTAR Electric & Gas Corporation, on behalf of its affiliates: Boston Edison Company, Commonwealth Electric Company, Cambridge Electric Light Company, Canal Electric Company. New England Power Company, Northeast Utilities Service Company on behalf of its operating company affiliates: The Connecticut Light and Power Company, Western Massachusetts Electric Company, Public Service Company of New Hampshire, Holyoke Power and Electric Company, Holyoke Water Power Company. The United Illuminating Company, Vermont Electric Power Company, Central Vermont Public Service Company and Green Mountain Power Corporation.
	ER04–157–010	Bangor HydroElectric Company, Central Maine Power Company, NSTAR Electric & Gas Corporation, on behalf of its affiliates: Boston Edison Company, Commonwealth Electric Company, Cambridge Electric Light Company, Canal Electric Company. New England Power Company, Northeast Utilities Service Company on behalf of its operating company affiliates: The Connecticut Light and Power Company, Western Massachusetts Electric Company, Public Service Company of New Hampshire, Holyoke Power and Electric Company, Holyoke Water Power Company. The United Illuminating Company, Vermont Electric Power Company, Central Vermont Public Service Company and Green Mountain Power Corporation.
	ER04–157–011	Bangor HydroElectric Company, Central Maine Power Company, NSTAR Electric & Gas Corporation, on behalf of its affiliates: Boston Edison Company, Commonwealth Electric Company, Cambridge Electric Light Company, Canal Electric Company. New England Power Company, Northeast Utilities Service Company on behalf of its operating company affiliates: The Connecticut Light and Power Company, Western Massachusetts Electric Company, Public Service Company of New Hampshire, Holyoke Power and Electric Company, Holyoke Water Power Company. The United Illuminating Company, Vermont Electric Power Company, Central Vermont Public Service Company and Green Mountain Power Corporation.
	EL01–39–006	The Consumers of New England v. New England Power Pool.
	EL01–39–007	The Consumers of New England v. New England Power Pool.
	EL01–39–008	The Consumers of New England v. New England Power Pool.
	EL01–39–009	The Consumers of New England v. New England Power Pool.
	ER05–361–000	New England Power Pool.
	ER05–374–000	ISO New England, Inc., Bangor Hydro Electric Company, Central Maine Power Company, NSTAR Electric & Gas Corporation, New England Power Company, Northeast Utilities Service Company, The United Illuminating Company and Vermont Electric Power Company.
	ER05–374–001	ISO New England, Inc., Bangor Hydro Electric Company Central Maine Power Company, NSTAR Electric & Gas Corporation, New England Power Company, Northeast Utilities Service Company, The United Illuminating Company and Vermont Electric Power Company.
	ER04–943–001	New York Independent System Operator Inc. and the New York Transmission Owners.
	ER05–3–001	New England Power Pool.
E–3	OMITTED.	
E–4	EL05–48–000	Neptune Regional Transmission System, LLC v. PJM Interconnection, L.L.C.
E–5	ER02–1913–005	Nevada Power Company.
E–6	RM04–14–000	Reporting Requirement for Changes in Status for Public Utilities With MarketBased Rate Authority.
E–7	ER04–1238–000	Public Service Company of New Hampshire.
	ER04–1238–001	Public Service Company of New Hampshire.
E–8	ER05–111–000	TransCanada Hydro Northeast Inc.
	ER05–111–001	TransCanada Hydro Northeast Inc.
E–9	ER05–326–000	Southwest Power Pool, Inc.
E–10	ER05–331–000	Promet Energy Partners LLC.
E–11	OMITTED.	
E–12	ER05–356–000	Entergy Services, Inc.
E–13	ER05–302–000	CalPeak Power, LLC.
	ER05–302–001	CalPeak Power, LLC.
	ER05–303–000	CalPeak Power, LLC.
	ER05–303–001	CalPeak Power, LLC.
	ER05–304–000	CalPeak Power, LLC.

880TH—MEETING, FEBRUARY 9, 2005, REGULAR MEETING, 10 A.M.—Continued

Item No.	Docket No.	Company
	ER05–304–001	CalPeak Power, LLC.
E–14	ER05–332–000	Klondike Wind Power II LLC.
E–15	ER05–343–000	Mirant Delta, LLC and Mirant Potrero, LLC.
	ER05–343–001	Mirant Delta, LLC and Mirant Potrero, LLC.
E–16	ER05–365–000	Elk River Windfarm LLC.
E–17	OMITTED.	
E–18	OMITTED.	
E–19	ER98–997–005	California Independent System Operator Corporation.
	ER98–1309–004	California Independent System Operator Corporation.
	ER02–2297–004	California Independent System Operator Corporation.
	ER02–2298–004	California Independent System Operator Corporation.
E–20	ER99–4392–002	Southwest Power Pool, Inc.
E–21	ER05–6–001	Midwest Independent Transmission System Operator, Inc.
	EL02–111–024	Midwest Independent Transmission System Operator, Inc., PJM Interconnection, L.L.C., Union Electric Company, Central Illinois Public Service Company, Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Michigan Electric Transmission Company, Dayton Power and Light Company, Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc., American Transmission Systems, Inc., Illinois Power Company, Northern Indiana Public Service Company, Virginia Electric and Power Company, IES Utilities, Inc., Interstate Power Company, Aquila, Inc. (formerly UtiliCorp United, Inc.), PSI Energy, Inc., Union Light Heat & Power Company, Dairyland Power Cooperative, Great River Energy, Hoosier Energy Rural Electric Cooperative, Indiana Municipal Power Agency, Indianapolis Power & Light Company, Louisville Gas & Electric Company, Kentucky Utilities Company, Lincoln Electric (Neb.) System, Minnesota Power, Inc. and its subsidiary Superior Water, Light & Power Company, MontanaDakota Utilities, Northwestern Wisconsin Electric Company, Otter Tail Power Company, Southern Illinois Power Cooperative, Southern Indiana Gas & Electric Cooperative, Southern Minnesota Municipal Power Agency, Sunflower Electric Power Corporation, Wabash Valley Power Association, Inc., Wolverine Power Supply Cooperative, International Transmission Company, Alliant Energy West, Xcel Energy Services, Inc., MidAmerican Energy Company, Corn Belt Power Corporation, Allegheny Electric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, UGI Utilities, Inc., Allegheny Power, Carolina Power & Light Company, Central Power & Light Company, Conectiv, Detroit Edison Company, Duke Power Company, GPU Energy, Northeast Utilities Service Company, Old Dominion Electric Cooperative, Public Service Company of Colorado, Public Service Electric & Gas Company, Public Service Company of Oklahoma, Rockland Electric Company, South Carolina Electric & Gas Company, Southwestern Electric Power Company, Cincinnati Gas & Electric Company, Missouri Public Service, WestPlains Energy, Cleco Corporation, Kansas Power & Light Company, OG+E Electric Services, Southwestern Public Service Company, Empire District Electric Company, Western Resources and Kansas Gas & Electric Co.
	EL03–212–021	Ameren Services Company on behalf of: Union Electric Company, Central Illinois Public Service Company. American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company , Kingsport Power Company, Ohio Power Company, Wheeling Power Company. Dayton Power and Light Company. Exelon Corporation on behalf of: Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc. FirstEnergy Corporation on behalf of: American Transmission Systems, Inc. Illinois Power Company and Northern Indiana Public Service Company.
	EL04–135–007	Midwest Independent Transmission System Operator, Inc., PJM Interconnection, L.L.C. Alliant Energy Corporate Services, Inc. on behalf of: Interstate Power and Light Company. Ameren Services Company on behalf of: Union Electric Company; Central Illinois Public Service Company; Central Illinois Light Company. Aquila, Inc. (formerly UtiliCorp United, Inc.), Cinergy Services, Inc., Cincinnati Gas & Electric Company, PSI Energy, Inc., Union Light Heat & Power Company, City Water, Light & Power (Springfield, IL), Dairyland Power Cooperative. FirstEnergy Corporation on behalf of: American Transmission Systems, Inc. Great River Energy, GridAmerica LLC, Illinois Power Company, Indiana Municipal Power Agency, Indianapolis Power & Light Company, International Transmission Company, Hoosier Energy Rural Electric Cooperative, Lincoln Electric (Neb.) System. LG&E Energy Corporation on behalf of: Kentucky Utilities Company; and Louisville Gas & Electric Company. Michigan Electric Transmission Company, LLC, Michigan Public Power Agency, Minnesota Power, Inc., MontanaDakota Utilities Company, Northern Indiana Public Service Company, Northwestern Wisconsin Electric Company, Otter Tail Power Company, Southern Illinois Power Cooperative, Southern Indiana Gas & Electric Cooperative, Southern Minnesota Municipal Power Agency, Superior Water, Light & Power Company, Sunflower Electric Power Corporation, Wabash Valley Power Association, Inc., Wolverine Power Supply Cooperative.

880TH—MEETING, FEBRUARY 9, 2005, REGULAR MEETING, 10 A.M.—Continued

Item No.	Docket No.	Company
		Xcel Energy Services, Inc., on behalf of: Northern States Power Company (Minnesota); and Northern States Power Company (Wisconsin); Allegheny Electric Cooperative, Inc., Allegheny Power, American Power Electric Service Corporation on behalf of: Appalachian Power Company; Columbus Southern Power Company; Indiana Michigan Power Company; Kentucky Power Company; Kingsport Power Company; Ohio Power Company; Wheeling Power Company.
		Atlantic City Electric Company, Baltimore Gas & Electric Company, Dayton Power and Light Company, Delmarva Power & Light Company, Dominion Virginia Power Company.
		Exelon Corporation on behalf of: Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc.
		Jersey Central Power & Light Company, Metropolitan Edison Company, Old Dominion Electric Cooperative, PECO Energy Company, Pennsylvania Electric Company, Public Service Electric & Gas Company, PPL Electric Company Electric Utilities Corporation, Potomac Electric Company, Rockland Electric Company and UGI Utilities, Inc.
	ER05–6–005	Midwest Independent Transmission System Operator, Inc.
	EL02–111–026	Midwest Independent Transmission System Operator, Inc., PJM Interconnection, L.L.C. Union Electric Central Illinois Public Service Company, Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company,Kentucky Power Company, Kingsport Power Company, Ohio Power Comp0any, Wheeling Power Company, Michigan Electric Transmission Company, Dayton Power and Light Company, Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc., American Transmission Systems, Inc., Illinois Power Company, Northern Indiana Public Service Company, Virginia Electric and Power Company,Interstate Power Company, Aquila, Inc. (Formerly UtiliCorp United, Inc.), PSI Energy, Inc., Union Light Heat & Power Company, Dairyland Power Cooperative, Great River Energy, Hoosier Energy Rural Electric Cooperative, Indiana Municipal Power Agency, Indianapolis Power & Light Company, Louisville Gas & Electric Company, Kentucky Utilities Company, Lincoln Electric (Neb.) System, Minnesota Power, Inc. and its subsidiary Superior Water Light & Power Company, MontanaDakota Utilities, Northwestern Wisconsin Electric Company, Otter Tail Power Company, Southern Illinois Power Cooperative, Southern Indiana Gas & Electric Cooperative, Southern Minnesota Municipal Power Agency, Sunflower Electric Power Corporation, Wabash Valley Power Association, Inc., Wolverine Power Supply Cooperative, International Transmission Company, Alliant Energy West, Xcel Energy Services, Inc., MidAmerican Energy Company, Corn Belt Power Corporation, Allegheny Electric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, PECO Energy Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, UGI Utilities, Inc., Allegheny Power, Carolina Power & Light Company, Central Power & Light Company, Conectiv, Detroit Edison Company, Duke Power Company, GPU Energy, Northeast Utilities Service Company, Old Dominion Electric Cooperative, Public Service Company of Company, Colorado, Public Service Electric & Gas Company Public Service Company of Oklahoma, Rockland Electric Company, South Carolina Electric & Gas Company, Southwestern Electric Power Company, Cincinnati Gas & Electric Company, Missouri Public Service, WestPlains Energy, Cleco Corporation, Kansas Power & Light Company, OG+E Electric Services, Southwestern Public Service Company, Empire District Electric Company, Western Resources and Kansas Gas & Electric Co.
	EL04–135–009	Midwest Independent Transmission System Operator, Inc., PJM Interconnection, L.L.C.
		Alliant Energy Corporate Services, Inc. on behalf of: Interstate Power and Light Company.
		Ameren Services Company on behalf of: Union Electric Company and Central Illinois Public Service Company, Central Illinois Light Company.
		Aquila, Inc. (formerly UtiliCorp United, Inc.) Cinergy Services, Inc., Cincinnati Gas & Electric Company, PSI Energy, Inc., Union Light Heat & Power Company, City Water, Light & Power (Springfield, IL), Dairyland Power Cooperative.
		FirstEnergy Corporation on behalf of: American Transmission Systems, Inc.
		Great River Energy, GridAmerica LLC, Illinois Power Company, Indiana Municipal Power Agency, Indianapolis Power & Light Company, International Transmission Company, Hoosier Energy Rural Electric Cooperative, Lincoln Electric (Neb.) System.
		LG&E Energy Corporation on behalf of: Kentucky Utilities Company Louisville Gas & Electric Company.
		Michigan Electric Transmission Company, LLC, Michigan Public Power Agency, Minnesota Power, Inc., MontanaDakota Utilities Company, Northern Indiana Public Service Company, Northwestern Wisconsin Electric Company, Otter Tail Power Company, Southern Illinois Power Cooperative, Southern Indiana Gas & Electric Cooperative, Southern Minnesota Municipal Power Agency, Superior Water, Light & Power Company, Sunflower Electric Power Corporation, Wabash Valley Power Association, Inc., Wolverine Power Supply Cooperative.
		Xcel Energy Services, Inc. on behalf of: Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin)
		Allegheny Electric Cooperative, Inc.
		Allegheny Power, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company.
		Atlantic City Electric Company, Baltimore Gas & Electric Company, Dayton Power and Light Company, Delmarva Power & Light Company, Dominion Virginia Power Company.
		Exelon Corporation on behalf of: Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc.

880TH—MEETING, FEBRUARY 9, 2005, REGULAR MEETING, 10 A.M.—Continued

Item No.	Docket No.	Company
		Jersey Central Power & Light Company, Metropolitan Edison Company, Old Dominion Electric Cooperative, PECO Energy Company, Pennsylvania Electric Company, Public Service Electric & Gas Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, Rockland Electric Company and UGI Utilities, Inc.
	ER05–6–007	Midwest Independent Transmission System Operator, Inc.
	EL02–111–028	Midwest Independent Transmission System Operator, Inc. PJM Interconnection, L.L.C. Union Electric Company, Central Illinois Public Service Company, Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Michigan Electric Transmission Company, Dayton Power and Light Company, Commonwealth Edison Company, Commonwealth Edison of Indiana, Inc., American Transmission Systems, Inc., Illinois Power Company, Northern Indiana Public Service Company, Virginia Electric and Power Company, IES Utilities, Inc., Interstate Power Company, Aquila, Inc. (formerly UtiliCorp United, Inc.), PSI Energy, Inc., Union Light Heat & Power Company, Dairyland Power Cooperative, Great River Energy, Hoosier Energy Rural Electric Cooperative, Indiana Municipal Power Agency, Indianapolis Power & Light Company, Louisville Gas & Electric Company, Kentucky Utilities Company, Lincoln Electric (Neb.) System, Minnesota Power, Inc. and its subsidiary Superior Water, Light & Power Company, MontanaDakota Utilities, Northwestern Wisconsin Electric Company, Otter Trail Power Company, Southern Illinois Power Cooperative, Southern Indiana Gas & Electric Cooperative, Southern Minnesota Municipal Power Agency, Sunflower Electric Power Corporation, Wabash Valley Power Associations, Inc., Volverine Power Supply Cooperative, International Transmission Company, Alliant Energy West, Xcel Energy Services, Inc., MidAmerican Energy Company, Corn Belt Power Corporation, Allegheny Electric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metroplitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, UGI Utilities, Inc., Allegheny Power, Carolina Power & Light Company, Central Power & Light Company, Conectiv, Detroit Edison Company, Duke Power Company, GPU Energy, Northeast Utilities Service Company, Old Dominion Electric Cooperative, Public Service Company of Colorado, Public Service Electric & Gas Company, Public Service Company of Oklahoma, Rockland Electric Company, South Carolina Electric & Gas Company, Southwestern Electric Power Company, Cincinnati Gas & Electric Company, Missouri Public Service, WestPlains Energy, Cleco Corporation, Kansas Power & Light Company, OG+E Electric Services, Southwestern Public Service Company, Empire District Electric Company, Western Resources and Kansas Gas & Electric Co.
	EL03–212–025	Ameren Services Company on behalf of: Union Electric Company, Central Illinois Public Service Company.
		American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company.
		Dayton Power and Light Company.
		Exelon Corporation On behalf of: Commonwealth Edison Company Commonwealth Edison Company of Indiana, Inc., FirstEnergy Corporation on behalf of: American Transmission Systems, Inc.
		Illinois Power Company and Northern Indiana Public Service Company.
	R05–6–009	Midwest Independent Transmission System Operator, Inc., PJM Interconnection, L.L.C.
		Alliant energy Corporate Services, Inc. on behalf of: Interstate Power and Light Company.
		Ameren Services Company on behalf of: Union electric Company and Central Illinois Public Service Company, Central Illinois Light Company.
		Aquila, Inc. (formerly UtiliCorp United, Inc.), Cinergy Services, Inc., Cincinnati Gas & Electric Company PSI Energy, Inc. Union Light Heat & Power Company, city Water, Light & Power (Springfield, IL), Dairyland Power Cooperative.
		FirstEnergy Corproation on behalf of: American Transmission Systems, Inc.
		Great River Energy, GridAmerica LLC, Illinois Power Company, Indiana Municipal Power Agency, Indianapolis Power & Light Company, International Transmission company, Hoosier Energy Rural Electric Cooperative, Lincoln Electric (Neb.) System.
		LG&E Energy corporation on behalf of: Kentucky utilities Company, Louisville Gas & Electric Company.
		Michigan Electric Transmission Company, LLC, Michigan Public Power Agency, Minnesota Power, Inc., MontanDakota Utilities Company, Northern Indiana Public Service Company, Northwestern Wisconsin Electric Company, Otter Tail Power Power Company, Southern Illinois Power Cooperative, Southern Indiana Gas & Electric cooperative, Southern Minnesota Municipal Power Agency, Superior Water, Light & Power Company, Sunflower Electric Power Corporation, Wabash Valley power Association, Inc., Wolverine Power Supply Cooperative.
		Xcel Energy Services, Inc. on behalf of: Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin).
		Allegheny Electric Cooperative, Inc.
		Allegheny Power, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Keentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company.
		Atlantic City Electric Company, Baltimore Gas & Electric Company, Dayton Power and Light Company, Delmarva Power & Light Company, Dominion virginia Power Company.
		Exelon corporation on behalf of: Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc.

880TH—MEETING, FEBRUARY 9, 2005, REGULAR MEETING, 10 A.M.—Continued

Item No.	Docket No.	Company
		Jersey Central Power & LIght Company, Metropolitan Edison Company, Old Dominion Electric Cooperative, PECO Energy Company, Pennsylvania Electric Company, Public Service Electric & Gas Company, PPL Electric Utilities Corporatin, Potomac Electric Power Company, Rockland Electric Company and UGI Utilities, Inc.
	EL02–111–031	Midwest Independent Transmission System Operator, Inc. PJM Interconnection, L.L.C., Union Electric Company, Central Illinois Public Service Company, Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Michigan Electric Transmission Company, Dayton Power and Light Company, Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc., American Transmission Systems, Inc., Illinois Power Company, Northern Indiana Public Service Company, Virginia Electric and Power Company, IES Utilities, Inc., Interstate Power Company, Aquila, Inc. (formerly UtiliCorp United, Inc.), PSI Energy, Inc., Union Light Heat & Power Company, Dairyland Power Cooperative, Great River Energy, Hoosier Energy Rural Electric Cooperative, Indiana Municipal Power Agency, Indianapolis Power & Light Company, Louisville Gas & Electric Company, Kentucky Utilities Company, Lincoln Electric (Neb.) System, Minnesota Power, Inc. and its subsidiary Superior Water, Light & Power Company, MontanaDakota Utilities, Northwestern Wisconsin Electric Company, Otter Tail Power Company, Southern Illinois Power Cooperative, Southern Indiana Gas & Electric Cooperative, Southern Minnesota Municipal Power Agency, Sunflower Electric Power Corporation, Wabash Valley Power Association, Inc., Wolverine Power Supply Cooperative, International Transmission Company, Alliant Energy West, Xcel Energy Services, Inc., MidAmerican Energy Company, Corn Belt Power Corporation, Allegheny Electric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, UGI Utilities, Inc., Allegheny Power, Carolina Power & Light Company, Central Power & Light Company, Conectiv, Detroit Edison Company, Duke Power Company, GPU Energy, Northeast Utilities Service Company, Old Dominion Electric Cooperative, Public Service Company of Colorado, Public Service Electric & Gas Company, Public Service Company of Oklahoma, Rockland Electric Company, South Carolina Electric & Gas Company, Southwestern Electric Power Company, Cincinnati Gas & Electric Company, Missouri Public Service, WestPlains Energy, Cleco Corporation, Kansas Power & Light Company, OG+E Electric Services, Southwestern Public Service Company, Empire District Electric Company, Western Resources and Kansas Gas & Electric Co.
	ER05–6–013	Midwest Independent Transmission System Operator, Inc.
	EL04–135–011	Midwest Independent Transmission System Operator, Inc. PJM Interconnection, L.L.C.
		Alliant Energy Corporate Services, Inc. on behalf of: Interstate Power and Light Company.
		Ameren Services Company on behalf of: Union Electric Company and Central Illinois Public Service Company, Central Illinois Light Company.
		Aquila, Inc. (formerly UtiliCorp United, Inc.) Cinergy Services, Inc., Cincinnati Gas & Electric Company PSI Energy, Inc. Union Light Heat & Power Company, City Water, Light & Power (Springfield, IL), Dairyland Power Cooperative.
		FirstEnergy Corporation on behalf of: American Transmission Systems, Inc.
		Great River Energy, GridAmerica LLC, Illinois Power Company, Indiana Municipal Power Agency, Indianapolis Power & Light Company, International Transmission Company, Hoosier Energy Rural Electric Cooperative, Lincoln Electric (Neb.) System.
		LG&E Energy Corporation on behalf of: Kentucky Utilities Company, Louisville Gas & Electric Company.
		Michigan Electric Transmission Company, LLC, Michigan Public Power Agency, Minnesota Power, Inc., MontanaDakota Utilities Company, Northern Indiana Public Service Company, Northwestern Wisconsin Electric Company, Otter Tail Power Company, Southern Illinois Power Cooperative, Southern Indian Gas & Electric Cooperative, Southern Minnesota Municipal Power Agency, Superior Water, Light & Power Company, Sunflower Electric Power Corporation, Wabash Valley Power Association, Inc., Wolverine Power Supply Cooperative.
		Xcel Energy Services, Inc. on behalf of: Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin).
		Allegheny Electric Cooperative, Inc.
		Allegheny Power, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indian Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company.
		Atlantic City Electric Company, Baltimore Gas & Electric Company, Dayton Power and Light Company, Delmarva Power & Light Company, Dominion Virginia Power Company.
		Exelon Corporation on behalf of: Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc.
		Jersey Central Power & Light Company, Metropolitan Edison Company, Old Dominion Electric Cooperative, PECO Energy Company, Pennsylvania Electric Company, Public Service Electric & Gas Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, Rockland Electric Company and UGI Utilities, Inc.
	EL04–135–015	Midwest Independent Transmission System Operator, Inc., PJM Interconnection, L.L.C.
		Alliant Energy Corporate Services, Inc. on behalf of: Interstate Power and Light Company.
		Ameren Services Company on behalf of: Union Electric Company and Central Illinois Public Service Company, Central Illinois Light Company.

880TH—MEETING, FEBRUARY 9, 2005, REGULAR MEETING, 10 A.M.—Continued

Item No.	Docket No.	Company
		Aquila, Inc. (formerly UtiliCorp United, Inc.) Cinergy Services, Inc., Cincinnati Gas & Electric Company PSI Energy, Inc. Union Light Heat & Power Company, City Water, Light & Power Company, (Springfield, IL), Dairyland Power Cooperative.
		FirstEnergy Corporation on behalf of: American Transmission Systems, Inc.
		Great River Energy, GridAmerica LLC, Illinois Power Company, Indiana Municipal Power Agency, Indianapolis Power & Light Company, International Transmission Company, Hoosier Energy Rural Electric Cooperative, Lincoln Electric (Neb.) System.
		LG&E Energy Corporation on behalf of: Kentucky Utilities Company, Louisville Gas & Electric Company.
		Michigan Electric Transmission Company, LLC, Michigan Public Power Agency, Minnesota Power, Inc., MontanaDakota Utilities Company, Northern Indian Public Service Company, Northwestern Wisconsin Electric Company, Otter Tail Power Company, Southern Illinois Power Cooperative, Southern Indiana Gas & Electric Cooperative, Southern Minnesota Municipal Power Agency, Superior Water, Light & Power Company, Sunflower Electric Power Corporation, Wabash Valley Power Association, Inc., Wolverine Power Supply Cooperative.
		Xcel Energy Services, Inc. on behalf of: Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin).
		Allegheny Electric Cooperative, Inc.
		Allegheny Power, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company.
		Atlantic City Electric Company, Baltimore Gas & Electric Company, Dayton Power and Light Company, Delmarva Power & Light Company, Dominion Virginia Power Company.
		Exelon Corporation on behalf of: Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc.
		Jersey Central Power & Light Company, Metropolitan Edison Company, Old Dominion Electric Cooperative, PECO Energy Company, Pennsylvania Electric Company, Public Service Electric & Gas Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, Rockland Electric Company and UGI Utilities, Inc.
	EL03–212–023	Ameren Services Company on behalf of: Union Electric Company, Central Illinois Public Service Company.
		American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Dayton Power and Light Company.
		Exelon Corporation on behalf of: Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc.
		FirstEnergy Corporation on behalf of: American Transmission Systems, Inc.
		Illinois Power Company and Northern Indiana Public Service Company
	EL03–212–029	Midwest Independent Transmission System Operator, Inc., PJM Interconnection, L.L.C.
		Alliant Energy Corporate Services, Inc. on behalf of: Interstate Power and Light Company.
		Ameren Services Company on behalf of: Union Electric Company and Central Illinois Public Service Company, Central Illinois Light Company.
		Aquila, Inc. (formerly UtiliCorp United, Inc.), Cinergy Services, Inc., Cincinnati Gas & Electric Company, PSI Energy, Inc. Union Light Heat & Power Company, City Water, Light & Power (Springfield, IL), Dairyland Power Cooperative.
		FirstEnergy Corporation on behalf of: American Transmission Systems, Inc.
		Great River Energy, GridAmerica LLC, Illinois Power Company, Indiana Municipal Power Agency, Indianapolis Power & Light Company, International Transmission Company, Hoosier Energy Rural Electric Cooperative, Lincoln Electric (Neb.) System
		LG&E Energy Corporation on behalf of: Kentucky Utilities Company, Louisville Gas & Electric Company.
		Michigan Electric Transmission Company, LLC, Michigan Public Power Agency, Minnesota Power, Inc., MontanaDakota Utilities Company, Northern Indiana Public Service Company, Northwestern Wisconsin Electric Company, Otter Tail Power Company, Southern Illinois Power Cooperative, Southern Indiana Gas & Electric Cooperative, Southern Minnesota Municipal Power Agency, Superior Water, Light & Power Company, Sunflower Electric Power Corporation, Wabash Valley Power Association, Inc., Wolverine Power Supply Cooperative.
		Xcel Energy Services, Inc. on behalf of: Northern States Power Company, (Minnesota) Northern States Power Company (Wisconsin).
		Allegheny Electric Cooperative, Inc.
		Allegheny Power, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company.
		Atlantic City Electric Company, Baltimore Gas & Electric Company, Dayton Power and Light Company, Delmarva Power & Light Company, Dominion Virginia Power Company.
		Exelon Corporation on behalf of: Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc.
		Jersey Central Power & Light Company, Metropolitan Edison Company, Old Dominion Electric Cooperative, PECO Energy Company, Pennsylvania Electric Company, Public Service Electric & Gas Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, Rockland Electric Company and UGI Utilities, Inc.
	EL02–111–021	Midwest Independent Transmission System Operator, Inc., PJM Interconnection, L.L.C.
		Alliant Energy Corporate Services, Inc. on behalf of: Interstate Power and Light Company.

880TH—MEETING, FEBRUARY 9, 2005, REGULAR MEETING, 10 A.M.—Continued

Item No.	Docket No.	Company
		Ameren Services Company on behalf of: Union Electric Company and Central Illinois Public Service Company, Central Illinois Light Company.
		Aquila, Inc. (formerly UtiliCorp United, Inc.), Cinergy Services, Inc., Cincinnati Gas & Electric Company PSI Energy, Inc. Union Light Heat & Power Company, City Water, Light & Power (Springfield, IL), Dairyland Power Cooperative.
		FirstEnergy Corporation on behalf of: American Transmission Systems, Inc.
		Great River Energy, GridAmerica LLC, Illinois Power Company, Indiana Muncipal Power Agency, Indianapolis Municipal Power Agency, Indianapolis Power & Light Company, International Transmision Company, Hoosier Energy Rural Electric Cooperative, Lincoln Electric (Neb.) System.
		LG&E Energy Corporation on behalf of: Kentucky Utilities Company, Louisville Gas & Electric Company, Louisville Gas & Electric Company.
		Michigan Electric Transmission Company, LLC, Michigan Public Power Agency, Minnesota Power, Inc., MontanaDakota Utilities Company, Northern Indiana Public Service Company, Northwestern Wisconsin Electric Company, Otter Tail Power Company, Southern Illinois Power Cooperative, Southern Indiana Gas & Electric Cooperative, Southern Minnesota Municipal Power Agency, Superior Water, Light & Power Company, Sunflower Electric Power Corporation, Wabash Valley Power Association, Inc., Wolverine Power Supply Cooperative.
		Xcel Energy Services, Inc. on behalf of: Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin).
		Allegheny Electric Cooperative, Inc.
		Allegheny Power, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company.
		Atlantic City electric Company, Baltimore Gas & Electric Company, Dayton Power and Light Company, Delmarva Power & Light Company, Dominion Virginia Power Company.
		Exelon Corporation on behalf of: Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc.
		Jersey Central Power & Light Company, Metropolitan Edison Company, Old Dominion Electric Cooperative, PECO Energy Company, Pennsylvania Electric Company, Public Service Electric & Gas Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, Rockland Electric Company and UGI Utilities, Inc.
	EL03–212–018	Ameren Services Company, on behalf of: Union Electric Company, Central Illinois Public Service Company.
		American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company.
		Dayton Power and Light Company.
		Exelon Corporation on behalf of: Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc.
		FirstEnergy Corporation on behalf of: American Transmission Systems, Inc.
		Illinois Power Company and Northern Indiana Public Service Company
	EL04–135–004	Midwest Independent System Operator, Inc., PJM Interconnection, L.L.C.
		Alliant Energy Corporate services, Inc. on behalf of: Interstate Power and Light Company.
		Ameren Services Company on behalf of: Union Electric Company and Central Illinois Public Service Company, Central Illinois Light Company.
		Aquila, Inc. (formerly UtiliCorp United, Inc.), Cinergy services, Inc., Cincinnati Gas & Electric company PSSI Energy, Inc. Union Light Heat & Power Company, City Water, Light & Power (Springfield, IL), Dairyland Power Cooperative.
		FirstEnergy Corporation on behalf of: American Transmission Systems, Inc.
		Great River Energy, GridAmerica LLC, Illinois Power Company, Indiana Municipal Power Agency, Indianapolis Power & Light Company, International Transmission Company, Hoosier Energy Rural Electric Cooperative, Lincoln Electric (Neb.) System.
		LG&E Energy Corporation on behalf of: Kentucky Utilities Company, Louisville Gas & Electric Company.
		Michigan Electric Transmission Company LLC, Michigan Public Power Agency, Minnesota Power, Inc., MontanaDakota Utilities company, Northern Indiana Public Service Company, Northwestern Wisconsin Electric Company, Otter Tail Power Company, Southern Illinois Power Cooperative, Southern Indiana Gas & Electric Cooperative, Southern Minnesota Municipal Power Agency, Superior Water, Light & Power Company, Sunflower Electric Power Corporation, Wabash Valley Power Association, Inc., Wolverine Power Supply Cooperative.
		Xcel Energy Services, Inc. on behalf of: Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin).
		Allegheny Electric Cooperative, Inc. Allegheny Power, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Wheeling Power Company.
		Atlantic City Electric Company, Baltimore Gas & Electric Company, Dayton Power and Light Company, Delmarva Power & Light Company, Dominion Virginia Power Company, Delmarva Power & Light Company, Dominion Virginia Power Company.
		Exelon Corporation on behalf of: Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc.

880TH—MEETING, FEBRUARY 9, 2005, REGULAR MEETING, 10 A.M.—Continued

Item No.	Docket No.	Company
		Jersey Central Power & Light Company, Metropolitan Edison Company, Old Dominion Electric Cooperative, PECO Energy Company, Pennsylvania Electric Company, Public Service Electric & Gas Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, Rockland Electric Company and UGI Utilities, Inc.
	ER05–6–002	Midwest Independent Transmission System Operator, Inc.
	EL02–111–022	Midwest Independent Transmission System Operator, Inc., PJM Interconnection, L.L.C. Union Electric Company, Central Illinois Public Service Company, Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Ohio Power Company, Wheeling Power Company, Michigan Electric Transmission Company, Dayton Power and Light Company, Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc., American Transmission Systems, Inc., Illinois Power Company, Northern Indiana Public Service Company, Virginia Electric and Power Company, IES Utilities, Inc., Interstate Power Company, Aquila, Inc. (formerly UtiliCorp United, Inc.), PSI Energy, Inc., Union Light Heat & Power Company, Dairyland Power Cooperative, Great River Energy, Hoosier Energy Rural Electric Cooperative, Indiana Municipal Power Agency, Indianapolis Power & Light Company, Louisville Gas & Electric Company, Kentucky Utilities Company, Lincoln Electric (Neb.) System, Minnesota Power, Inc. and its subsidiary Superior Water, Light & Power Company, MontanaDakota Utilities, Northwestern Wisconsin Electric Company, Otter Tail Power Company, Southern Illinois Power Cooperative, Southern Indiana Gas & Electric Cooperative, Southern Minnesota Municipal Municipal Power Agency, Sunflower Electric Power Corporation, Wabash Valley Power Association, Inc., Wolverine Power Supply Cooperative, International Transmission Company, Alliant Energy West, Xcel Energy Services, Inc., MidAmerican Energy Company, Corn Belt Power Corporation, Allegheny Electric Cooperative, Inc., atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, UGI Utilities, Inc., Allegheny Power, Carolina Power & Light Company, Central Power & Light Company, Conectiv, Detroit Edison Company, Duke Power Company, GPU Energy, Northeast Utilities Service Company, Old Dominion Electric Cooperative, Public Service Company of Colorado, Public Service Electric & Gas Company, Public Service Company of Oklahoma, Rockland Electric Company, South Carolina Electric & Gas Company, Southwestern Electric Power Company, Cincinnati Gas & Electric Company, Missouri Public Service, WestPlains Energy, Cleco Corporation, Kansas Power & Light Company, OG+E Electric Services, Southwestern Public Service Company, Empire District Electric Company, Western Resources and Kansas Gas & Electric Co.
	EL03–212–019	Ameren Services Company on behalf of: Union Electric Company, Central Illinois Public Service Company.
		American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company.
		Dayton Power and Light Company.
		Exelon Corporation on behalf of: Commonwealth Edison Company, commonwealth Edison company of Indiana, Inc.
		FirstEnergy Corporation on behalf of: American Transmission Systems, Inc.
		Illinois Power Company and Northern Indiana Public Service Company Cooperative.
	EL04–135–005	Midwest Independent Transmission System Operator, Inc., PJM Interconnection, L.L.C.
		Alliant Energy Corporate Services, Inc. on behalf of: Interstate Power and Light Company.
		American Services Company on behalf of: Union Electric Company and Central Illinois Public Service Company, Central Illinois Light Company.
		Aquila, Inc. (formerly UtiliCorp United, Inc.), Cinergy Services, Inc., Cincinnati Gas & Electric Company, PSI Energy, Inc. Union Light Heat & Power Company, City Water, Light & Power (Springfield, IL), Dairyland Power Cooperative.
		FirstEnergy Corporation on behalf of: American Transmission Systems, Inc.
		Great River Energy, GridAmerica LLC, Illinois Power Company, Indiana Municipal Power Agency, Indianapolis Power & Light Company, International Transmission Company, Hoosier Energy Rural Electric Cooperative, Lincoln Electric (Neb.) System.,
		LG&E Energy Corporation on behalf of: Kentucky Utilities Company, Louisville Gas & Electric Company.
		Michigan Electric Transmission Company, LLC, Michigan Public Power Agency, Minnesota Power, Inc., MontanaDakota Utilities Company, Northern Indiana Public Service Company, Northwestern Wisconsin Electric Company, Otter Tail Power Company, Southern Illinois Power Cooperative, Southern Indiana Gas & Electric Cooperative, Southern Minnesota Municipal Power Agency, Superior Water, Light & Power Company, Sunflower Electric Power Corporation, Wabash Valley Power Association, Inc., Wolverine Power Supply Cooperative.
		Xcel Energy Services, Inc. on behalf of: Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin).
		Allegheny Electric Cooperative, Inc.
		Allegheny Power, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company.
		Atlantic City Electric Company, Baltimore Gas & Electric Company, Dayton Power and Light Company, Delmarva Power & Light Company, Dominion Virginia Power Company.
		Exelon Corporation on behalf of: Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc.

880TH—MEETING, FEBRUARY 9, 2005, REGULAR MEETING, 10 A.M.—Continued

Item No.	Docket No.	Company
		Jersey Central Power & Light Company, Metropolitan Edison Company, Old Dominion Electric Cooperative, PECO Energy Company, Pennsylvania Electric Company, Public Service Electric & Gas Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, Rockland Electric Company and UGI Utilities, Inc.
	ER05–6–003	Midwest Independent Transmission System Operator, Inc.
	EL02–111–020	Midwest Independent Transmission System Operator, Inc., PJM Interconnection, L.L.C., Union Electric Company, Central Illinois Public Service Company, Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Michigan Electric Transmission Company, Dayton Power and Light Company, Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc., American Transmission Systems, Inc., Illinois Power Company, Northern Indiana Public Service Company, Virginia Electric and Power Company, IES Utilities, Inc., Interstate Power Company, Aquila, Inc. (formerly UtiliCorp United, Inc.), PSI Energy, Inc., Union Light Heat & Power Company, Dairyland Power Cooperative, Great River Energy, Hoosier Energy Rural Electric Cooperative, Indiana Municipal Power Agency, Indianapolis Power & Light Company, Louisville Gas & Electric Company, Kentucky Utilities Company, Lincoln Electric (Neb.) System, Minnesota Power, Inc. and its subsidiary Superior Water, Light & Power Company, MontanaDakota Utilities, Northwestern Wisconsin Electric Company, Otter Tail Power Company, Southern Illinois Power Cooperative, Southern Indiana Gas & Electric Cooperative, Southern Minnesota Municipal Power Agency, Sunflower Electric Power Corporation, Wabash Valley Power Association, Inc., Wolverine Power Supply Cooperative, International Transmission Company, Alliant Energy West, Xcel Energy Services, Inc., MidAmerican Energy Company, Corn Belt Power Corporation, Allegheny Electric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation Potomac Electric Power Company, UGI Utilities, Inc., Allegheny Power, Carolina Power & Light Company, Central Power & Light Company, Conectiv, Detroit Edison Company, Duke Power Company, GPU Energy, Northeast Utilities Service Company, Old Dominion Electric Cooperative, Public Service Company of Colorado, Public Service Electric & Gas Company, Public Service Company of Oklahoma, Rockland Electric Company, South Carolina Electric & Gas Company, Southwestern Electric Power Company, Cincinnati Gas & Electric Company, Missouri Public Service, WestPlains Energy, Cleco Corporation, Kansas Power & Light Company, OG+E Electric Services, Southwestern Public Service Company, Empire District Electric Company, Western Resources and Kansas Gas & Electric Co.
	EL03–212–017	Ameren Services Company on behalf of: Union Electric Company, Central Illinois Public Service Company.
		American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company.
		Dayton Power and Light Company.
		Exelon Corporation on behalf of: Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc.
		FirstEnergy Corporation on behalf of: American Transmission Systems, Inc.
		Illinois Power Company and Northern Indiana Public Service Company
	EL04–135–003	Midwest Independent Transmission System Operator, Inc., PJM Interconnection, L.L.C.
		Alliant Energy Corporate Services, Inc. on behalf of: Interstate Power and Light Company.
		Ameren Services Company on behalf of: Union Electric Company and Central Illinois Public Service Company Central Illinois Light Company.
		Aquila, Inc. (formerly UtiliCorp United, Inc.) Cinergy Services, Inc., Cincinnati Gas & Electric Company PSI Energy, Inc. Union Light Heat & Power Company, City Water, Light & Power (Springfield, IL), Dairyland Power Cooperative.
		FirstEnergy Corporation on behalf of: American Transmission Systems, Inc.
		Great River Energy, GridAmerica LLC, Illinois Power Company, Indiana Municipal Power Agency, Indianapolis Power & Light Company, International Transmission Company, Hoosier Energy Rural Electric Cooperative, Lincoln Electric (Neb.) System.
		LG&E Energy Corporation on behalf of: Kentucky Utilities Company, Louisville Gas & Electric Company.
		Michigan Electric Transmission Company, LLC, Michigan Public Power Agency, Minnesota Power, Inc., MontanaDakota Utilities Company, Northern Indiana Public Service Company, Northwestern Wisconsin Electric Company, Otter Tail Power Company, Southern Illinois Power Cooperative, Southern Indiana Gas & Electric Cooperative, Southern Minnesota Municipal Power Agency, Superior Water, Light & Power Company, Sunflower Electric Power Corporation, Wabash Valley Power Association, Inc., Wolverine Power Supply Cooperative.
		Xcel Energy Services, Inc. on behalf of: Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin).
		Allegheny Electric Cooperative, Inc.
		Allegheny Power, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company.
		Atlantic City Electric Company, Baltimore Gas & Electric Company, Dayton Power and Light Company, Delmarva Power & Light Company, Dominion Virginia Power Company.
		Exelon Corporation on behalf of: Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc.

880TH—MEETING, FEBRUARY 9, 2005, REGULAR MEETING, 10 A.M.—Continued

Item No.	Docket No.	Company
		Jersey Central Power & Light Company, Metropolitan Edison Company, Old Dominion Electric Cooperative, PECO Energy Company, Pennsylvania Electric Company, Public Service Electric & Gas Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, Rockland Electric Company and UGI Utilities, Inc.
	EL02–111–033	Midwest Independent Company, Transmission System Operator, Inc., PJM Interconnection, L.L.C., Union Electric Company, Central Illinois Public Service Company, Appalachian Power Company, Columbus Southern Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Michigan Electric Transmission Company, Dayton Power and Light Company, Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc., American Transmission Systems, Inc., Illinois Power Company, Northern Indiana Public Service Company, Virginia Electric and Power Company, IES Utilities, Inc., Old Dominion Electric Interstate Power Company, Aquila, Inc. Company of (formerly UtiliCorp Colorado, United, Inc.), PSI Energy, Inc., Union Light Heat & Power Company, Dairyland Power Cooperative, Great River Energy, Hoosier Rural Electric Cooperative, Indiana Municipal Power Agency, Indianapolis Power & Light Company, Louisville Gas & Electric Company, Kentucky Utilities Company, Lincoln Electric (Neb.) System, Minnesota Power, Inc. and its subsidiary Superior Water, Light & Power Company, MontanaDakota Utilities, Northwestern Wisconsin Electric Company, Otter Tail Power Company, Southern Illinois Power Cooperative, Southern Indiana Gas & Electric Cooperative, Southern Minnesota Municipal Power agency, Sunflower Electric Power Corporation, Wabash Valley Power Association, Inc., Wolverine Power Supply Cooperative, International Transmission Company, Alliant Energy West, Xcel Energy Services, Inc., MidAmerican Energy Company, Corn Belt Power Corporation, Allegheny Electric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, UGI Utilities, Inc., Allegheny Power, Carolina Power & Light Company, Central Power & Light Company, Conectiv, Detroit Edison Company, Duke Power Company, GPU Energy, Northeast Utilities Service Company, Old Dominion Electric Cooperative, Public Service Company of Colorado, Public Service Electric & Gas Company, Public Service Company of Oklahoma, Rockland Electric Company, South Carolina Electric & Gas Company, Southwestern Electric Power & Gas Company, Cincinnati Gas & Electric Company, Missouri Public Service, WestPlains Energy, Cleco Corporation, Kansas Power & Light Company, OG+E Electric Services, Southwestern Public Service Company, Empire District Electric Company, Western Resources and Kansas Gas & Electric Co.
E–22	OMITTED.	
E–23	ER02–267–002	Intercom Energy, Inc.
E–24	EL00–95–091	San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange Corporation.
	EL00–98–078	Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange Corporation
	EL00–95–119	San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange Corporation
	EL00–98–106	Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange Corporation
E–25	OMITTED.	
E–26	ER01–1870–002	PPL Southwest Generation Holdings, LLC.
	ER01–1870–003	PPL Southwest Generation Holdings, LLC.
	ER01–1870–005	PPL Southwest Generation Holdings, LLC.
E–27	ER00–2181–002	Hess Energy Inc.
	ER97–2153–014	Amerada Hess Corporation
E–28	OMITTED.	
E–29	EL05–17–000	KeySpanRavenswood, LLC v. New York Independent System Operator, Inc.
E–30	EL05–42–000	Kiowa Power Partners, LLC v. Public Service Company of Oklahoma and American Electric Power Service Corporation
	EL05–43–000	Tenaska Gateway Partners, Ltd. v. Southwestern Electric Power Company and American Electric Power Service Corporation.
E–31	OMITTED.	
E–32	OMITTED.	
E–33	EL92–33–009	Barton Village, Inc., Village of Enosburg Falls Water & Light Department, Village of Orleans and Village of Swanton Village, Vermont v. Citizens Utilities Company.
E–34	OMITTED.	
E–35	EL03–37–001	Town of Norwood, Massachusetts v. National Grid USA, New England Electric System, Massachusetts Electric Company and Narragansett Electric Light Company.
E–36	ER04–652–002	First Energy Solutions Corporation.
	ER04–652–000	First Energy Solutions Corporation.
	ER04–652–001	First Energy Solutions Corporation .
E–37	ER04–81–000	Allegheny Energy Supply Company, LLC and Monongahela Power Company.
E–38	OMITTED.	
E–39	OMITTED.	
E–40	RT04–1–005	Southwest Power Pool, Inc.
	ER04–48–005	Southwest Power Pool, Inc.

880TH—MEETING, FEBRUARY 9, 2005, REGULAR MEETING, 10 A.M.—Continued

Item No.	Docket No.	Company
E–41	ER03–851–002 Entergy Services, Inc..	
	ER03–851–001	Entergy Services, Inc.
E–42	OMITTED.	
E–43	OMITTED.	
E–44	OMITTED.	
E–45	OMITTED.	
E–46	OMITTED.	
E–47	EL04–122–001	PPL University Park, LLC v. Commonwealth Edison Company.
E–48	RT04–1–003	Southwest Power Pool, Inc.
	ER04–48–003	Southwest Power Pool, Inc. Southwest Power Pool, Inc.
E–49	ER98–997–004	California Independent System Operator Corporation.
	ER98–1309–003	California Independent System Operator Corporation.
	ER02–2297–003	California Independent System Operator Corporation.
	ER02–2298–003	California Independent System Operator Corporation.
E–50	EL00–95–121	San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange Corporation.
	EL00–98–108	Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange Corporation.
E–51	OMITTED.	
E–52	ER05–341–000	CMS Generation Michigan Power, L.L.C.
E–53	ER04–457–001 DPJM Interconnection L.L.C..	
	ER04–457–002 DPJM Interconnection L.L.C..	
	EL05–60–000	PJM Interconnection L.L.C.
E–54	ER05–71–000	Sirius Investment Management, Inc.
	ER05–71–001	Sirius Investment Management, Inc.
	ER05–71–002	Sirius Investment Management, Inc.
E–55	ER02–2397–002	Great Lakes Hydro America, LLC.
E–56	ER01–3034–005	Duke Energy Oakland, LLC.
E–57	OMITTED	
E–58	ER05–381–000	California Independent System Operator Corporation.
	EL05–18–000	City of Pasadena, California.
E–59	ER05–363–000	El Segundo Power, LLC.
E–60	ER05–373–000	Reliant Energy Etiwanda, Inc.
E–61	ER03–775–002	FortisOntario, Inc.
	ER03–775–003	FortisOntario, Inc.
	ER00–136–001	FortisUS Energy Corporation.
	ER00–136–002	FortisUS Energy Corporation.
E–62	ER04–308–000	Cabrillo Power I LLC and Cabrillo Power II LLC.
MISCELLANEOUS AGENDA		
M–1	OMITTED.	
M–2	RM04–9–000	Electronic Notification of Commission Issuances.
MARKETS, TARIFFS, AND RATES—GAS		
G–1	RP03–563–001	Northern Border Pipeline Company.
	RP03–563–002	Northern Border Pipeline Company.
	RP03–563–003	Northern Border Pipeline Company.
G–2	CP01–411–005	Calypso U.S. Pipeline, LLC.
	CP01–411–006	Calypso U.S. Pipeline, LLC.
	RP04–623–000	Calypso U.S. Pipeline, LLC.
G–3	CP99–579–003	Southern LNG Inc.
G–4	RP05–15–001	El Paso Natural Gas Company.
G–5	RP04–574–001	Florida Gas Transmission Company.
	RP04–574–000	Florida Gas Transmission Company.
G–6	PR04–9–001	Bay Gas Storage Company, Ltd.
	PR04–9–000	Bay Gas Storage Company, Ltd.
G–7	RP04–454–001	Panhandle Eastern Pipe Line Company, LP.
G–8	RP02–99–009	Shell Offshore Inc. v. Transcontinental Gas Pipe Line Corporation, Williams Gas Processing—Gulf Coast Company, L.P., and Williams Field Services.
G–9	RP04–155–000	Northern Natural Gas Company.
	RP04–155–004	Northern Natural Gas Company.
	RP03–398–011	Northern Natural Gas Company.
	RP03–398–000	Northern Natural Gas Company.

880TH—MEETING, FEBRUARY 9, 2005, REGULAR MEETING, 10 A.M.—Continued

Item No.	Docket No.	Company
	RP04–280–000	Northern Natural Gas Company.
	RP04–94–000	Northern Natural Gas Company.
G–10	OR05–2–000	State of Alaska v. BP Pipelines (Alaska) Inc., ExxonMobil Pipeline Company, ConocoPhillips Transportation Alaska, Inc., Unocal Pipeline Company and Koch Alaska Pipeline Company.
	OR05–3–000	Anadarko Petroleum Corporation v. TAPS Carriers.
	IS05–72–000	ExxonMobil Pipeline Company.
	IS05–80–000	ConocoPhillips Transportation Alaska, Inc.
	IS05–82–000	BP Pipelines (Alaska) Inc.
	IS05–96–000	Koch Alaska Pipeline Company.
	IS05–107–000	Unocal Pipeline Company.
G–11	PR97–1–003	Consumers Power Company.
G–12	TS04–53–002	Destin Pipeline Company, L.L.C.
	TS05–2–001	Energy West Development.
	TS04–280–001	Jupiter Energy Corporation.
	TS04–258–000	Nornew Energy Supply, Inc.
	TS04–7–003	ONEOK, Inc., and OkTex Pipeline Company.
	TS04–7–002	ONEOK, Inc., and OkTex Pipeline Company.
G–13	RP04–249–004	AES Ocean Express LLC.
ENERGY PROJECTS—HYDRO		
H–1	P–460–029	City of Tacoma, Washington.
H–2	P–2816–032	Vermont Electric Cooperative.
H–3	P–2493–016	Puget Sound Energy, Inc.
H–4	P–1864–019	Upper Peninsula Power Company.
H–5	P–2149–119	Public Utility District No. 1 of Douglas County, Washington.
ENERGY PROJECTS—CERTIFICATES		
C–1	RM05–1–000	Regulations Governing the Conduct of Open Seasons for Alaska Natural Gas Transmission Projects.
C–2	CP04–373–000	Texas Gas Transmission, LLC.
C–3	CP04–64–001	Trunkline Gas Company, LLC.
C–4	CP04–396–000	Transcontinental Gas Pipe Line Corporation.

Magalie R. Salas,
Secretary.

The Capitol Connection offers the opportunity for remote listening and viewing of the meeting. It is available for a fee, live over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and click on ''FERC''.

[FR Doc. 05–2479 Filed 2–3–05; 4:26 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons To Attend

February 2, 2005.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: February 9, 2005. (Within a relatively short time after the Commission's open meeting on February 9, 2005.)

PLACE: Room 3M 4A/B, 888 First Street, NE., Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Non-public investigations and inquiries, enforcement related matters, and security of regulated facilities.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 502–8400.

Chairman Wood and Commissioners Brownell, Kelliher, and Kelly voted to hold a closed meeting on February 9, 2005. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public Reference Room at 888 First Street, NW., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,
Secretary.

[FR Doc. 05–2480 Filed 2–3–05; 4:33 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

RIN: 2070–AD57

[OPP–2003–0132; FRL–7695–4]

Human Testing; Proposed Plan and Description of Review Process

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's plan to establish a comprehensive framework for making decisions about the extent to which it will consider or rely on certain types of research with human participants. Among other actions the plan provides for: Issuing proposed and final rules, and providing in this Notice a description of the Agency's case-by-case process for evaluating human studies, which is to

remain in effect until superseded by rulemaking. This Notice invites public comments on the overall plan and particularly on the current case-by-case process.

DATES: Comments must be received on or before May 9, 2005.

ADDRESSES: Submit your comments, identified by docket identification (ID) number OPP–2003–0132, by one of the following methods:

• *Agency website*: *http://www.epa.gov/edocket/*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

• *E-mail*: Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0132.

• *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0132.

• *Hand delivery*: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2003–0132. 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 number OPP–2003–0132. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the regulations.gov websites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102) (FRL–7181–7).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket/*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: William L. Jordan, Mailcode 7501C, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–305–1049; fax number: 703–308–4776; e-mail address: *jordan.william@epa.gov*.

SUPPLEMENTARY INFORMATION: This Notice is organized into five Units. Unit I. contains ''General Information'' about the applicability of this Notice, how to obtain additional information, how to submit comments in response to the request for comments, and certain other related matters. Unit II. provides background and historic information pertaining to human subject research. Unit III. describes the activities that EPA is planning to pursue to establish a framework within which it will address the broad range of issues related to the Agency's consideration of or reliance on research with human participants. Unit IV. describes the current case-by-case process that EPA will continue to follow pending completion of the rulemaking efforts described in its plan. The last unit describes procedures followed in the development of this Notice and certain statutes and Executive Orders that the public may wish to consider in preparing comments.

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of particular interest to those who conduct testing of substances regulated by EPA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET, *http://www.epa.gov/edocket/*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

C. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through EDOCKET, regulations.gov, or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD 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. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).

ii. Follow directions. The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Introduction

A. Background on Federal Standards for Conducting Human Research

Over the years, scientific research with human subjects has provided much valuable information to help characterize and control risks to public health, but its use has also raised particular ethical concerns for the welfare of the human participants in such research as well as scientific issues related to the role of such research in assessing risks. Society has responded to these concerns by defining general standards for conducting human research.

In the United States, the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research issued in 1979 *The Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research*. This document can be found on the web at *http://www.hhs.gov/ohrp/humansubjects/guidance/belmont.htm*. For many Federal agencies and departments in the United States, the principles of the Belmont Report are implemented through the Federal Policy for the Protection of Human Subjects (also known as the Common Rule). The Common Rule, which was promulgated by 15 Federal departments and agencies, including the EPA, on June 18, 1991 (56 FR 28003), applies to all research involving human subjects conducted, supported or otherwise subject to regulation by any Federal department or agency that has adopted the Common Rule and has taken appropriate administrative action to make it applicable to such research. The Common Rule as promulgated by EPA (40 CFR part 26) has applied to human subjects research conducted or supported by EPA since it was put into place in 1991.

More broadly, the international medical research community has developed and maintains ethical standards documented in the Declaration of Helsinki, first issued by the World Medical Association in 1964 and revised several times since then. The latest version of the Declaration is available at: *http://www.wma.net/e/policy/b3.htm*. These standards apply to research on matters relating to the diagnosis and treatment of human disease, and to research that adds to understanding of the causes of disease and the biological mechanisms that explain the relationships between human exposures to environmental agents and disease.

In addition, many public and private research and academic institutions and private companies, both in the United States and in other countries, including non-federal U.S. and non-U.S. governmental organizations, have their own specific policies related to the protection of human participants in research.

Much of the scientific information supporting EPA's actions is generated by researchers who are not part of or supported by a Federal agency, including a significant portion of the research with human subjects submitted to the Agency or retrieved by the Agency from published sources. Such research, referred to here as ''third-party'' research, may be governed by specific institutional policies intended to protect research participants, may fall within the scope of the Declaration of Helsinki, or might actually be covered by the Common Rule if the particular testing institution holds an assurance approved for federalwide use by the Department of Health and Human Services' (HHS) Office for Human Research Protections and the institution has voluntarily extended the applicability of the assurance to such research. In some instances, research is reported in such a manner that EPA cannot readily determine whether institutional policies are consistent with or as protective of human subjects as the Common Rule, or even the extent to which such policies or standards have been followed in the conduct of any particular study. Thus, even well-conducted third-party human studies may raise difficult questions for the Agency when it seeks to determine their acceptability for consideration. Unit IV. of this Notice contains a description of EPA's case-by-case process for review of third-party human studies.

B. Human Research Issues in EPA's Pesticide Program

Although data from human studies has contributed to assessments and decisions in most EPA programs, issues about consideration of and reliance on third-party human research studies have arisen most frequently, but not exclusively, with respect to pesticides. Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is authorized to require pesticide companies to conduct studies with human subjects, for example, to measure potential exposure to pesticide users or to workers and others who re-enter areas treated with pesticides, or to evaluate the effectiveness of pesticide products intended to repel insects and other pests from human skin. In addition, EPA sometimes encourages other research with human subjects, including tests of the potential for some pesticides--generally those designed for prolonged contact with human skin--to irritate or sensitize human skin, and tests of the metabolic fate of pesticides in the human body. These latter studies typically precede monitoring studies of agricultural workers and others to protect them from exposure to potentially dangerous levels of pesticide residues.

In addition to these kinds of research which have been required or encouraged by EPA, other kinds of studies involving human subjects intentionally exposed to pesticides have occasionally been submitted to the agency voluntarily. Among these voluntarily submitted studies have been tests involving intentional dosing of human subjects to establish a No Observed Adverse Effect Level (NOAEL) or No Observed Effect Level (NOEL) for systemic toxicity of certain pesticides to humans. (Often the researchers reported observing no treatment-related responses in test participants.) For some two decades before passage of the Food Quality Protection Act (FQPA) in 1996, submission of such studies was rare. EPA considered and relied on human NOAEL/NOEL studies in a few regulatory decisions on pesticides made prior to 1996. After passage of FQPA, submission of these types of studies to EPA's Office of Pesticide Programs increased; the Agency has received some 20 studies of this kind since 1996.

In response to concerns about human testing expressed in a report of a non-governmental advocacy organization, the Environmental Working Group, in July 1998, the Agency began a systematic review of its policy and practice. In a press statement on July 28, 1998, EPA noted that it had not relied on any such studies in any final decisions made under FQPA.

In further response to growing public concern over pesticide research with human subjects, EPA convened an advisory committee under the joint auspices of the EPA Science Advisory

Board (SAB) and the FIFRA Scientific Advisory Panel (SAP) to address issues of the scientific and ethical acceptability of such research. This advisory committee, known as the Data from Testing of Human Subjects Subcommittee (DTHSS), met in December 1998 and November 1999, and completed its report in September 2000. Their report is available in the Docket cited above in this Notice, and on the web at: *http://www.epa.gov/science1/pdf/ec0017.pdf*.

The DTHSS advisory committee heard many comments at their two public meetings, and further comments have been submitted in response to their published report. No clear consensus emerged from the advisory committee process on the acceptability of NOAEL or NOEL studies of systemic toxicity of pesticides to human subjects, and significant differences of opinion remained on both their scientific merit and ethical acceptability. A vigorous public debate continued about the extent to which EPA should accept, consider, or rely on third-party intentional dosing human toxicity studies with pesticides.

In December 2001, EPA asked the advice of the National Academy of Sciences (NAS) on the many difficult scientific and ethical issues raised in this debate, and also stated the Agency's interim approach on third-party intentional dosing human subjects studies. The Agency's press release on this subject is on the web at *http://yosemite.epa.gov/opa/admpress.nsf/b1ab9f485b098972852562e7004dc686/c232a45f5473 717085256b2200740ad4?OpenDocument*. At that time the Agency committed that when it received the NAS report, ''EPA will engage in an open and participatory process involving federal partners, interested parties and the public during its policy development and/or rulemaking regarding future acceptance, consideration or regulatory reliance on such human studies.'' In addition, the press release also stated that while the Academy was considering these issues, EPA ''will not consider or rely on any such human studies in its regulatory decision-making.''

In early 2002, various parties from the pesticide industry filed a petition with the U. S. Court of Appeals for the District of Columbia for review of EPA's December 2001 press release. These parties argued that the Agency's interim approach constituted a ''rule'' promulgated in violation of the procedural requirements of the Administrative Procedure Act and the Federal Food, Drug, and Cosmetic Act. On June 3, 2003, the Court of Appeals concluded that:

> For the reasons enumerated above, we vacate the directive articulated in EPA's December 14, 2001 Press Release for a failure to engage in the requisite notice and comment rulemaking. The consequence is that the agency's previous practice of considering third-party human studies on a case-by-case basis, applying statutory requirements, the Common Rule, and high ethical standards as a guide, is reinstated and remains in effect unless and until it is replaced by a lawfully promulgated regulation.

See *Crop Life America v. Environmental Protection Agency*, 329 F.3d 876, 884 - 85 (D.C. Cir. 2003) (referred to as the *Crop Life America* case).

In the meantime, under a contract with EPA, the NAS convened a committee to provide the requested advice. The committee met publicly in December 2002, and again in January and March 2003. The membership, meeting schedule, and other information about the work of this committee can be found on the NAS website at: *http://www4.nas.edu/webcr.nsf/5c50571a75df49 4485256a95007a091e/9303f725c15902f685256c44005d8931?OpenDocument&Highlight=0,EPA*. The committee issued its final report, ''Intentional Human Dosing Studies for EPA Regulatory Purposes: Scientific and Ethical Issues,'' in February 2004. That report is available at: *http://www.nap.edu/books/0309091721/html/*.

On May 7, 2003, EPA issued an advance notice of proposed rulemaking (ANPR) on Human Testing (68 FR 24410) in which EPA announced its intention to undertake notice-and-comment rulemaking on the subject of its consideration of or reliance on research involving human participants. The ANPR also invited public comment on a broad range of issues related to this subject. EPA received over 600 submissions in response to the ANPR. Approximately 15 were from pesticide companies, pesticide users, and associated trade associations and groups. These comments mostly favored the Agency's use of data from scientifically sound, ethically appropriate studies conducted with human participants. Several of these groups urged EPA to apply the Common Rule to human research conducted for EPA by third parties. About 60 submissions came from religious groups, farm-workers' and children's advocacy groups, and environmental and public health advocacy organizations. Most of these groups generally opposed EPA's consideration of results from human testing, especially those involving intentional dosing of test participants with pesticides, on ethical grounds. Some of these commenters suggested, however, that, under certain strict conditions, EPA might appropriately consider data from human studies that complied with the Common Rule. Over 500 private citizens sent identical comments opposing the use of data from human studies with pesticides in EPA's regulatory decision-making. A sizeable number of other private citizens expressed dismay in their comments at what they misunderstood to be an EPA proposal to test pesticides on human subjects.

C. EPA's Agency-wide Focus on Human Research Issues

Human research issues affect all programs in EPA. In its Office of Research and Development, EPA conducts research with human subjects to provide critical information on environmental risks, exposures, and effects in humans. This is referred to as first-party research. In both its Office of Research and Development and its program offices (including the Office of Air and Radiation, the Office of Water, the Office of Solid Waste and Emergency Response, and the Office of Prevention, Pesticides and Toxic Substances), EPA also supports research with human subjects conducted by others. This is referred to as second-party research. In all this work EPA has been and remains committed to full compliance with the Common Rule. This research has provided many important insights and has contributed to the protection of human health. The Agency will continue to conduct and support such research, and to consider and rely on its results in Agency assessments and decisions.

EPA also remains committed to scientifically sound assessments of the hazards of environmental agents, taking into consideration all available, relevant, and appropriate scientific research. In at least some cases, some of the available, relevant, and appropriate scientific research is conducted with human subjects by third parties, without Federal government support. EPA programs have on occasion relied on such studies to more completely characterize and understand environmental risks to humans; the Agency will continue to do so when it is appropriate.

EPA recognizes that its approach to the issues surrounding human research needs to be consistent across the Agency. EPA is interested in addressing the broad range of issues involving the consideration of and reliance on data from human subjects studies, particularly tests conducted by third

parties. After consideration of the Court of Appeals' decision in the *Crop Life America* case, the public comments on the ANPR, and the report from the NAS, EPA has concluded that it should undertake a number of activities to address these issues fully. The Agency's plan is described in Unit III. of this Notice.

D. Legal Authority

The actions described below are authorized under a variety of provisions of the different environmental statutes EPA administers. Section 25(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) gives the Administrator authority to ''prescribe regulations to carry out the purposes of [FIFRA].'' Such a rule would implement EPA's authority to require data in support of registration of pesticides (see, for example, FIFRA sections 3(c)(1)(F) and 3(c)(2)(B)) and to interpret the provision making it unlawful for any person ''to use any pesticide in tests on human beings unless such human beings (i) are fully informed of the nature and purposes of the test and of any physical and mental health consequences which are reasonably foreseeable therefrom, and (ii) freely volunteer to participate in the test.'' (FIFRA section 12(a)(2)(P)). In addition, section 408(e)(1)(C) of the Federal Food, Drug, and Cosmetic Act (FFDCA) authorizes the Administrator to issue a regulation establishing ''general procedures and requirements to implement this section.''

The Clean Air Act authorizes the Administrator to promulgate regulations necessary to carry out the Agency's functions under that Act at 42 U.S.C. 7601(a). The Clean Water Act contains a comparable provision at 33 U.S.C. 1361. Section 42 U.S.C. 9615 in the Comprehensive Environmental Response, Compensation, and Liability Act authorizes the President to establish regulations to implement the statute; this authority has been delegated to EPA by Executive Order 12580. The Emergency Planning and Community Right-to-Know Act also contains a general rulemaking provision, 42 U.S.C. 11048, authorizing the Administrator to promulgate rules necessary to carry out the Act. The Resource Conservation and Recovery Act specifically authorizes the Administrator to prescribe regulations necessary to carry out EPA's functions under the Act, 42 U.S.C. 6912. The Safe Drinking Water Act contains similar language, authorizing the Administrator to prescribe such regulations ''as are necessary and appropriate'' to carry out EPA's functions under the Act, 42 U.S.C. 300j-9. In addition, EPA has broad authority under 5 U.S.C. 301 and 42 U.S.C. 300v-1(b).

III. EPA's Proposed Plan for Addressing Issues Relating to Human Testing

As a consequence of the public debate over whether it is appropriate to consider or rely on data from intentional dosing of humans, EPA recognizes that it is essential that the Agency state its positions on these issues so that the public can understand under what circumstances the Agency would take particular actions. The public debate has made clear that a number of aspects of EPA's policy and procedures are affected and that changes should be considered. Thus, EPA has identified a number of activities including the issuance of a clarifying description of the current case-by-case approach, rulemakings, and administrative/organizational changes that appear appropriate. EPA's overall goals for these activities are: That human participants in any research required by, conducted for, or considered by EPA are treated ethically; and that all scientifically sound data relevant to EPA decision-making is considered and used appropriately in reaching decisions under our authorities.

EPA has identified a variety of activities that, collectively, will establish a comprehensive framework to address the broad range of issues relating to the consideration of or reliance on data from human studies, particularly when conducted by third parties. EPA has drawn heavily on the recommendations contained in the NAS report in designing this framework.

1. *Publication of a clarifying description of the current case-by-case review of completed third-party human studies.* Consistent with the Court's opinion in the *Crop Life America* case, EPA will continue to evaluate third-party human studies on a case-by-case basis, applying statutory requirements, the Common Rule, and high ethical standards as a guide, until such time as this practice is replaced by a rulemaking. EPA is issuing a clarifying description of its current process in Unit IV. of this Notice. EPA intends to continue this process until such time as it is superseded by rulemaking. EPA, however, welcomes public comment on the description of its current process, and after reviewing comments, EPA may choose to publish additional clarification.

2. *Intent to publish a policy statement to third parties encouraging them to submit protocols for proposed human studies to EPA for review.* EPA intends to develop and make public a policy statement that encourages, but does not require, ''third-party'' researchers, i.e., researchers who are not part of or supported by a Federal agency, who are planning to conduct studies involving human participants to support an EPA regulatory decision, to submit a proposed protocol to EPA prior to conducting the research. The policy statement would explain EPA's intent to review and provide comments to the researcher concerning the ethical and scientific attributes of the proposal.

3. *Intent to publish guidance concerning compliance with the Common Rule for any future human studies specifically required by EPA.* EPA intends to publish non-binding guidance reflecting its plans to extend the Common Rule to specifically cover third-party human subject studies that are intended to be submitted to the Agency either voluntarily or in response to an Agency-imposed requirement and setting forth its expectation that any such study intended to be submitted in the interim should endeavor to include protections such as those included in the Common Rule.

Additionally, in the interim, the Agency intends to utilize existing authority, where appropriate, to require that test sponsors and testing facilities and personnel adhere to the Common Rule in conducting human studies if such studies are submitted to the Agency to satisfy specific data requirements, for example, studies with human participants that may be submitted to the Agency to satisfy data requirements under FIFRA section 3(c)(2)(B) or pursuant to a TSCA section 4 testing rule.

4. *Intent to conduct outreach to scientific journals encouraging improved reporting of the ethics of published human studies.* Many biomedical journals have adopted voluntary, uniform requirements for submitted manuscripts. These requirements include reporting on the protection of human subjects, through indicating whether the procedures followed were in accordance with the ethical standards of the responsible institution and with the Declaration of Helsinki or other, comparable, ethics codes. EPA intends to conduct outreach to these journals to determine the extent of coverage and compliance, and to encourage the reporting of this ethics information in connection with publication of the results of research conducted with human participants.

5. *Intent to expand the functions of the EPA Human Subjects Research Review Official and to relocate the HSRRO office.* Within EPA, the Human Subjects Research Review Official (HSRRO) has responsibility for assuring

that all human subjects research that is conducted or supported by EPA complies with the requirements of the Common Rule. The HSRRO's specific responsibilities are described in EPA Order 1000.17 Change A1. See *http://www.epa.gov/oamrtpnc/forms/1000_17a.pdf*. These responsibilities, in effect, entail addressing the scientific and ethical issues raised by human studies. The HSRRO reviews and approves about 50 projects a year, of which only a few involve intentional dosing of human participants with environmental pollutants. Currently, the HSRRO is located within EPA's Office of Research & Development, which is the Office within EPA that conducts or sponsors most of the research programs reviewed by the HSRRO.

The NAS report included the recommendation that ''[t]o ensure intentional dosing human studies conducted for EPA regulatory purposes meet the highest scientific and ethical standards, EPA should establish a Human Studies Review Board to address in an integrated way the scientific and ethical issues raised by such studies.'' The NAS further recommended that the Human Studies Review Board ''should report directly to the Office of the [EPA] Administrator.'' Consistent with the NAS recommendation, EPA intends to expand the functions of the HSRRO and is looking at where to relocate those functions. In addition to the existing function of ensuring compliance with the Common Rule for human subjects research conducted or supported by EPA, the Agency intends that the HSRRO will have responsibility for overseeing implementation of the ethics screening of completed studies (see Unit IV.), overseeing the review of proposals to conduct new human studies, identifying emerging ethical issues for research not subject to the Common Rule, and developing additional policies, training, and best practices guidance. The Agency welcomes public comment on this part of its plan.

6. *Intent to pursue rulemaking*. EPA intends to publish a proposed rule to make the provisions of the Common Rule, 40 CFR part 26, applicable to certain newly conducted third-party human studies and may propose to adopt some or all of the HHS regulations that provide additional protections for certain populations of vulnerable subjects. These HHS regulations are contained in HHS regulations at 45 CFR part 46, subpart B (Additional Protections for Pregnant Women, Human Fetuses and Neonates Involved in Research), subpart C (Additional Protections Pertaining to Biomedical and Behavioral Research Involving Prisoners as Subjects), and subpart D (Additional Protections for Children Involved as Subjects in Research), and apply to all research involving these respective vulnerable subject groups that is conducted or supported by HHS. This proposal may also require a sponsor or investigator to provide to EPA, for prior review and approval, the protocol for certain human studies. EPA will also consider whether to propose a rule applying to certain previously conducted human studies. In developing its proposals, EPA will consider both the report from the NAS and public comments on the ANPR and this Notice.

IV. Description of EPA's Current Case-by-Case Review Process for Third-Party Human Studies

This unit describes the Agency's process for reviewing and relying on completed, third-party studies that involve intentional dosing of human participants to identify or quantify a toxic endpoint. It is important to note that this is a case-by-case process. As such, it binds no one to a particular process or result--not the regulated community, not advocacy groups, not the public, and not EPA. Therefore, in any decision before EPA, any stakeholder may urge EPA to: (1) Conclude that this process is inapplicable; (2) consider factors other than those described here; or (3) make an exception to the process as described. EPA notes that it may determine, based on individual circumstances to act at variance from the review process as described. Thus, affected parties should not assume that EPA will follow a prescribed method of reviewing a particular human study in each and every instance. In any action involving consideration and review of a third-party, intentional dosing human study, EPA will explicitly state the basis upon which such a study has been evaluated.

As mandated by the D.C. Circuit in the *Crop Life America* case, EPA has resumed consideration of third-party human studies on a case-by-case basis, applying statutory requirements, the Common Rule, and high ethical standards as a guide. In its consideration and review of human studies submitted to the Agency, EPA will continue to generally accept scientifically valid studies unless there is clear evidence that the conduct of those studies was fundamentally unethical (e.g., the studies were intended to seriously harm participants or failed to obtain informed consent), or was significantly deficient relative to the ethical standards prevailing at the time the study was conducted. The Agency notes that this approach is consistent with Recommendation 5-7 of the February 2004, NAS report.

Primary responsibility for conducting case-by-case science and ethics reviews of third-party, intentional dosing human studies for toxic effects is vested in the EPA Office responsible for the relevant Agency action or risk assessment. To maintain high ethical standards the Agency screens all ''priority'' studies involving intentional dosing of human participants for toxic effects for existing ethics and scientific review information, and the responsible Office documents such reviews. A priority study is one which is expected to significantly affect the assessment, either by itself or as a substantial component of the weight of evidence, in determining: A regulatory standard, decision, or risk assessment value; determining an uncertainty factor or safety factor; or defining exposure or effects. The Agency also reviews as a ''priority'' study any study which was not relied on but which, if considered, arguably would change the outcome of the Agency's risk assessment or regulatory judgement or significantly affect the record underlying the Agency's conclusions. In addition, an Office may selectively review the ethics of any non-priority study, as it deems appropriate.

If a study raises potential ethical concerns or if there is uncertainty, the primary Office consults with the Human Subjects Research Review Official (HSRRO) and they jointly develop an evaluation plan for the study, which may include soliciting outside ethics advice. Senior Agency officials decide the appropriate action to take concerning ethically problematic studies on a case-by-case basis. Depending on the context, senior officials could include senior executives in the program office of concern, the Agency's HSRRO, and/or the Agency Science Advisor. If appropriate, the senior Agency officials may seek independent advice from an external peer review group such as the Science Advisory Board or the FIFRA Scientific Advisory Panel.

V. Statutory and Executive Order Reviews

Since this Notice does not impose any requirements, and instead describes EPA's current case-by-case approach for reviewing certain human studies, and seeks comments on EPA's plans for amending that process and any suggestions for the Agency to consider in developing a subsequent notice of proposed rulemaking, the various other

review requirements that apply when an agency imposes requirements do not apply to this action.

As part of your comments on this Notice you may include any comments or information that you have regarding these requirements. In particular, any comments or information that would help the Agency to assess the potential impact of a rule on small entities pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*); to consider voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note); or to consider environmental health or safety effects on children pursuant to Executive Order 13045, titled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). The Agency will consider such comments during the development of any subsequent notice of proposed rulemaking as it takes appropriate steps to address any applicable requirements.

List of Subjects

Environmental protection, Protection of human research subjects.

Dated: February 2, 2005.

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 05–2371 Filed 2–3–05; 11:43 am]

BILLING CODE 6560–50–S

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting; Sunshine Act

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on February 10, 2005, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- January 13, 2005 (Open).

B. New Business—Other

- Spring Unified Agenda and Regulatory Performance Plan.

Dated: February 3, 2005.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 05–2541 Filed 2–4–05; 2:26 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 05–311]

Permanent Process For Registering Links In The 71–76 GHz, 81–86 GHz, And 92–95 GHz Bands

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Wireless Telecommunications Bureau (''WTB'' or ''Bureau'') announces additional details of the link registration process for the 71–76, 81–86, 92–94.0 and 94.1–95 GHz bands. This public notice also establishes February 8, 2005, as the date on which the Commission's Universal Licensing System (ULS) will no longer process link registrations and the third party database system will become the sole source for registering links.

DATES: Effective February 8, 2005.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Cheryl Black or Stephen Buenzow, Broadband Division, WTB, 717–338–2687 or questions regarding the application filing and link registration procedure outlined in this public notice may be directed to the ULS Hotline at 1–888–CallFCC Option #2.

SUPPLEMENTARY INFORMATION: The full text of this Public Notice is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A–257, 445 12th Street, SW., Washington, DC 20554. The complete text 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. The complete item is also available on the Commission's Web site at *http://www.fcc.gov/wtb*.

Background

On October 16, 2003, the Commission adopted a Report and Order [1] establishing service rules to promote non-Federal Government development and use of the ''millimeter wave'' spectrum in the 71–76 GHz, 81–86 GHz and 92–95 GHz bands [2] on a shared basis with Federal Government operations.[3] The Commission adopted a flexible and innovative regulatory framework for the 71–95 GHz bands that would not require traditional frequency coordination among non-Federal Government users. Under this approach, the Commission issues an unlimited number of non-exclusive nationwide licenses to non-Federal Government entities for the 12.9 gigahertz of spectrum allocated for commercial use.[4] These licenses serve as a prerequisite for registering individual point-to-point links, which in turn is required prior to operating a link. Furthermore, the 71–95 GHz bands are allocated on a shared basis with Federal Government users. Therefore, a licensee may not operate on a link until the link has been coordinated with the National Telecommunications and Information

[1] In the *Report and Order* released November 4, 2003, the Commission adopted rules for both unlicensed (Part 15) and licensed (Part 101) use of portions of these bands. Allocations and Service Rules for the 71–76 GHz, 81–86 GHz and 92–95 GHz Bands, WT Docket No. 02–146, *Report and Order*, 69 FR 3257, January 23, 2004, 18 FCC Rcd 23318 (2003) (*Report and Order*) (*recon. pending*). The instant Public Notice concerns licensed use of the bands, which involves all of the bands except for 100 megahertz of spectrum at 94.0–94.1 GHz. For convenience only, we refer to the licensed spectrum herein as ''the bands,'' ''the Millimeter Wave 70/80/90 GHz Radio Service,'' or ''71–95 GHz''; such references do not include 94.0–94.1 GHz. *See* note, *infra*.

[2] On February 23, 2004, The Wireless Communications Association International, Inc. filed a petition for reconsideration of certain aspects of the *Report and Order* relating to the 71–76 and 81–86 GHz bands.

[3] In the context of spectrum management, ''Federal Government'' refers to use by the Federal Government and ''non-Federal Government'' refers to use by private entities and state and local governments. *See Report and Order*, 18 FCC Rcd at 23319 n.3. *See also* 47 CFR 101.147(z) (sites may not operate until NTIA approval is received); 101.511 (authorization will be granted upon proper application filing and link coordination in accordance with the Commission's rules); 101.1523 (sharing and coordination among non-Federal Government licensees and between non-Federal Government licensees and Federal Government services).

[4] The 71–76 GHz, 81–86 GHz and 92–95 GHz bands are allocated to both Federal Government and non-Federal Government users on a co-primary basis, except the 94.0–94.1 GHz portion, which is allocated for exclusive Federal Government use. *See generally, Report and Order*, 18 FCC Rcd at 23322–31.

Administration (NTIA) with respect to Federal Government operations. NTIA has separately developed an automated coordination mechanism discussed in detail in Section I.C. below.

In the *Report and Order*, the Commission explained that link registration would be handled through an independent link registration system (LRS) to be developed and maintained by FCC-appointed database managers. The Commission indicated that the licensing and link registration implementation would be detailed in public notices.[5] The Bureau subsequently announced June 21, 2004, as the start date for filing applications for non-exclusive nationwide licenses and July 19, 2004, as the start date for licensees to register individual links under an interim link registration process (Interim Procedures) through ULS.[6] Pursuant to the *Report and Order*, link registration through ULS would end at such time as a third-party, non-FCC database system was in place through which 70–90 GHz licensees would register links.[7]

On September 29, 2004, the Bureau released an Order announcing the appointment of Comsearch, Frequency Finder, Inc.,™ and Micronet Communications, Inc. as independent database managers (Database Manager or, collectively, Database Managers) responsible for the design and management of the third-party 71–95 GHz bands link registration system (LRS).[8] The LRS is now complete. Accordingly, this Public Notice sets forth the provisions for the permanent link registration process through the LRS.

I. Individual Link Registration and Coordination

A. Introduction

As noted above, links cannot be registered by a licensee until a geographic nationwide license is issued by the Commission to the licensee. Applications for non-exclusive nationwide licenses will continue to be filed with the Commission, and applicants are encouraged to electronically file using ULS[9] for the licenses on FCC Form 601.[10] *See Interim Procedures Public Notice* for further details regarding the filing of applications for a non-exclusive nationwide license.

B. Link Registrations under the Permanent Process—LRS

Transition from Interim Process (using ULS) to Database Managers (using LRS).

Starting on February 8, 2005 (Transition Date), licensees must register links on the LRS. As of the Transition Date, ULS will no longer accept applications for registration of individual links and will no longer assign an interference protection date to any link registration. The first-in-time interference protection date will be established by registration on the LRS.[11] Any pending link registrations filed with the Commission prior to the Transition Date will be processed to completion by the Commission under the Interim Procedures. The link data will be transferred to the Database Managers upon completion of the registration process. Once all registered link data has been transferred to the Database Managers, the link registration data residing in ULS will be archived.

Because the three Database Managers have designed the LRS to work through their separate but redundant databases, each link's status will be available through any one of the three. The successful completion of the registration will be recorded by the originating Database Manager and will be shared with each of the other Database Managers. Licensees should consult the LRS for up-to-date information regarding their links and the public can access information online about all registered links through LRS (see attachment for contact information). Licensees may not begin operation of a link until the registration of that link has been completed through the LRS.

Licensees will not be able to complete link registrations through the LRS until (a) the link is successfully coordinated through NTIA and (b) the necessary approvals and clearances have been obtained through the FCC (see Sections I.C. and I.D. below for further details). The Database Managers have indicated that they may offer FCC filing services as one of several optional services,[12] and LRS will be querying NTIA's automated database at the time the licensee submits the link for registration. Nevertheless, we remind licensees that they remain responsible for obtaining all of the necessary governmental approvals in order to complete the link registration and operate on a link.

Licensees are strongly advised to submit a proposed link to a Database Manager as soon as possible and prior to making any required FCC filings (*see* Section I.D. below).

C. Coordination with Federal Government Operations (NTIA)

Proposed links must be coordinated with NTIA. NTIA has developed an automated coordination mechanism that will allow non-Federal Government users and the Database Managers to determine whether a given non-Federal Government link has any potential conflict with Federal Government users.[13]

[5] *Report and Order* at paragraph 59. *See also* 47 CFR 101.1523(b).

[6] Wireless Telecommunications Bureau Announces Licensing and Interim Link Registration Process, Including Start Date for Filing Applications for Non-Exclusive Nationwide Licenses in the 71–71 GHz, 81–86 GHz, and 92–95 GHz Bands, *Public Notice*, DA 04–1493 (March 12, 2004) (*Interim Procedures Public Notice*).

[7] *Report and Order* at paragraphs 59–60.

[8] Allocations and Service Rules for the 71–76 GHz, 81–86 GHz and 92–95 GHz Bands, *Order*, DA04–3151 (WTB, Sept. 29, 2004) (*Database Manager Order*). Each Database Manager has executed a Memorandum of Understanding with the Commission memorializing their obligations and responsibilities as a 71–95 GHz link registration database manager.

[9] Pursuant to Section 1.913(d) of the Commissions Rules certain categories of applicants are permitted to file their license applications manually. However, the Bureau urges all applicants to file electronically using ULS because ''[l]icensees who continue to file applications manually risk dismissal of their applications for routine errors.'' See Wireless Telecommunications Bureau Revises and Begins Phased Implementation of its Unified Policy for Reviewing License Applications and Pleadings, *Public Notice*, 14 FCC Rcd 11182, 11186 (WTB 1999). The Bureau has noted that ''[m]any of the filing errors routinely made by applicants involve missing signatures, missing or invalid answers to mandatory questions, missing or incorrect fees, and technical information inconsistent with the applicant's authorization,'' and that using ULS would nearly eliminate the filing of applications with these types of errors due to the real-time feedback online prior to the applicant submitting the application electronically. *Id.* at 11185.

[10] An FCC Registration Number (FRN) is required in order to file in ULS. If the applicant does not have an existing FRN, it must register and obtain an FRN prior to filing the license application. The FCC Registration Number (FRN) is the 10-digit number assigned to all entities (individual and corporate) that transact business with the FCC (including via ULS) and is not to be confused with the ''link registrations'' discussed in Section I.B. of the instant Public Notice. Applicants can obtain an FCC Registration Number (FRN) using the Wireless Telecommunications Bureau Web site at *http://wireless.fcc.gov/* and select ''CORES/Call Sign Registration'' from the right hand menu under the heading of Licensing. The printed copy of the non-exclusive nationwide license will not be updated to reflect link registrations and will not be re-issued when individual links are registered with that call sign.

[11] *See* discussion *infra*, Section I.E., ''Interference Protection Date and Interference Dispute Resolution.''

[12] *See Report and Order*, 18 FCC Rcd 23340 paragraph 50.

[13] *See Notice*, Establishment of a Frequency Assignment Coordination Web Site, National Telecommunications and Information Administration, 68 FR 74218 (Dec. 23, 2003); the public may access the NTIA Web site using the following: *http://FreqCoord.ntia.doc.gov*. The sensitive nature of some Federal Government operations precludes the use of a public database containing both Federal Government and non-Federal Government links. *See Report and Order* at paragraph 48.

A proposed link entered into NTIA's automated system will result in either a ''green light'' or a ''yellow light'' response based on the proposed parameters. If the proposed link receives a green light, that link will be protected for a period of sixty (60) days in NTIA's system; if registration has not been completed through the LRS by the end of that time, the link must be resubmitted through NTIA's automated system for coordination with Federal Government operations.[14] If the proposed link receives a yellow light, an FCC Form 601 and Schedule M will need to be filed with the Commission for further coordination with NTIA through the existing Interdepartment Radio Advisory Committee (IRAC) process.

When IRAC clears a proposed link, the licensee will be notified by Commission letter that the IRAC coordination has been completed. The Database Managers will also be provided with the status through the ULS nightly batch files for purposes of completing registration of the link.[15]

D. Link Registrations That Also Require Commission Filings

- A filing with the Commission will be required for links that
- Receive a yellow light from NTIA's automated system (*see* Section I.C. above);
- Require environmental assessment;
- Require coordination because of a radio quiet zone; or
- Are subject to international coordination requirements.[16]

For links that fall into any one of the aforementioned categories, the licensee must file FCC Form 601 Main Form and Schedule M; a separate filing is required for each link. The filings will not be placed on public notice as a matter of routine [17] unless they raise a matter of public significance, *e.g.*, environmental concerns.[18] For those links that are filed on FCC Form 601/Schedule M and shown as accepted or rejected in ULS, the Database Managers are required to record the result of the FCC process for the link in the LRS.[19] Upon acceptance of the link filing in ULS, the link registration can be completed.

E. Interference Protection Date and Interference Dispute Resolution

Under the permanent link registration process, the interference protection date is the date that a link registration (new or modified) is submitted to a Database Manager.[20]

Links do not receive an interference protection date until submitted to the LRS.

To ensure an orderly, reliable and streamlined link registration system that would facilitate the resolution of any interference between links, the Commission provided priority of protection based on the date and time of registration.[21] The first-in-time interference protection rights are explained below: [22]

1. The protection attaches only to a successfully completed registration. Furthermore, first-in-time protection rights can only be established and enforceable for a link that can or ultimately will be constructed.[23]

Examples: (*a*)(i) A proposed link cannot be successfully coordinated through IRAC after receiving a yellow light; (ii) international coordination cannot be successfully completed for the link; (iii) negotiation as to a radio quiet zone is not successful; or (iv) review for environmental assessment of the link is not favorable.

(*b*) The licensee is asked to supplement a Form 601/Schedule M filing with additional information and fails to do so within the required timeframe.

In any of those situations, the filing with the Commission will be dismissed and the interference protection date will be rendered ineffective as of the dismissal date.

(*c*) A registered link is not timely constructed but the licensee fails to remove the link from the LRS.

In (a)–(c), the licensee must resubmit the link for registration to receive an interference protection date.

2. Interference protection inures to a link by the latest technical parameters provided by the licensee through the LRS. If a licensee modifies its link during the link registration process or thereafter, the first-in-time protection date attaches to the date the modified link is submitted to a Database Manager (*see* additional information regarding modifications in Section I.H. below).

Example: (*a*) IRAC (in the case of a yellow light) or the FCC (for environmental assessment, international coordination or radio quiet zone coordination filings) seeks additional information that results in the licensee needing to modify its link.

The Form 601/Schedule M will need to be amended in accordance with the Commission's rules. The link must have a new interference protection date, which will be the date the modified link information is submitted to the LRS. It will not be the date the Form 601/Schedule M amendment is filed.

3. If the licensee (a) timely responds to a request for information from the FCC regarding a pending Form 601/Schedule M link filing, and (b) does not make any changes to the data on FCC Form 601 or Schedule M, the current interference protection date will be preserved.

Example: IRAC seeks more detailed information (*e.g.*, a particular antenna pattern or additional terrain data) that is timely supplied by the licensee. The first-in-time interference protection date assigned to the link does not change.

Should a licensee receive interference from another licensee, the licensees shall take the following steps to resolve the matter. A licensee should look to the LRS to identify the source of the interference and seek the assistance of

[14] A filing with the Commission is required even in the event of a green light from NTIA's automated system when the proposed link requires an environmental assessment, is located in a radio quiet zone, or is in an area subject to international coordination. 47 CFR 101.1523(c).

[15] If a licensee chooses to query NTIA's automated system before submitting a link for registration (for example, in planning a particular system design), we strongly urge the licensee to submit the proposed link(s) for registration on the LRS as soon as possible thereafter in order to receive an interference protection date, thereby avoiding the following situation: Licensee A queries NTIA's system on March 1 and receives a green light. Licensee A submits its proposed link for registration to a Database Manager on April 30; the LRS receives a green light from NTIA's automated system and completes the registration that same day. Licensee B submits its link to a Database Manager on March 5, and a Form 601 for international coordination is filed that same day. The proposed link receives a green light from NTIA on March 5 and international coordination procedures are successfully completed by April 30; registration is completed by June 1. Licensee B's link receives interference from Licensee A's link. Licensee B is entitled to interference protection as against Licensee A's link because Licensee B's link was submitted to the LRS prior to Licensee A's link (*i.e.*, Licensee B's March 5 submission date was preserved while it completed the registration process; Licensee A does not have first-in-time rights against Licensee B because its registration protection date was April 30'the date it submitted the link to the LRS.)

[16] *See Report and Order*, 18 FCC Rcd 23341 paragraph 56.

[17] The filings with the Commission will be electronically available for public inspection through ULS.

[18] *See, e.g.*, 47 CFR 1.933(a)(3) (categories of information of public significance include special environmental considerations as required by Part 1, FCC Rules).

[19] Licensees will continue to file with the Commission any waiver requests or similar filings related to a link. The licensees must inform the Database Managers of any such filings or any other matters related to a proposed or existing link that would affect the status of the link in the LRS.

[20] Licensees are required to notify a Database Manager any time they make changes to the proposed link parameters.

[21] *Report and Order*, 18 FCC Rcd 23343 paragraph 58.

[22] The licensee will receive notice of the request for information and detailed written instructions for submitting the needed information within a prescribed timeframe.

[23] We stress that licensees shall not arbitrage high value paths by filing link registrations to preserve first in time protections against competitors for those paths, and then later making conforming modifications to meet particular coverage needs. The Commission will take appropriate enforcement steps against a licensee should such activity come to the Commission's attention.

the Database Managers in resolution of the interference. The Database Managers will use the interference protection dates of the affected parties in helping to resolve the interference.[24] The licensee causing the interference shall respond immediately and make every reasonable effort to identify and resolve the interference immediately pursuant to the interference resolution procedures outlined in § 101.105 of the Commission's rules.[25] Links shall be protected in accordance with the interference criteria specified in § 101.147(z)(2), unless the parties otherwise mutually agree to other criteria.[26] While the parties may engineer around the interference as they mutually deem appropriate, the licensee with the first-in-time protection date is entitled to interference protection.[27]

The parties shall establish a time period for resolution of the interference. If, however, the licensee receiving the interference and entitled to protection is not satisfied that the problem has been adequately resolved, and after 30 days have passed following completion of the parties' efforts, the licensee may seek Commission assistance to rectify the problem.[28] However, we strongly encourage parties to make every attempt to resolve the harmful interference before seeking assistance from the Commission.[29]

Interference Protection Date—Guide

Under the permanent process, the interference protection date is the date that a link registration is submitted to a Database Manager—even for link registrations that also require FCC filings. Thus, under the permanent process, the interference protection date is not set or changed by the following events:

- Required FCC filings.
- FCC acceptance on ULS.
- NTIA green light.
- IRAC coordination (after NTIA ''yellow light'').

The Interference Protection Date *will change* if at any time technical data is modified or amended

F. Fees for Link Registration

Individual link registrations will not be subject to FCC application or regulatory fees, including those subject to FCC Form 601 filing requirements discussed above.[30] In the *Report and Order*, the Commission provided that Database Managers may charge fees in order to recoup costs associated with LRS services.[31]

G. Link Construction Requirements

Licensees must begin operation of a link within twelve months from the date that the link is registered on the LRS.[32] While licensees need not file a notification of construction completion, it is the responsibility of the licensee to notify a Database Manager to withdraw unconstructed links from the LRS, and Database Managers shall remove a link from the LRS if they learn that a link is unconstructed after the required timeframe.[33] In addition, the interference protection date will be rendered invalid for any registered link that does not comply with the 12-month construction requirement.[34]

H. Modifications and Amendments to Link Registrations

Changes to the technical data on an individual link registration will result in a new interference protection date.[35] The LRS must correctly reflect the interference protection date as the date that the licensee submits the modification to a Database Manager.

A licensee will be required to notify the Database Manager if it modifies the technical data on an individual link registration. The new link parameters must be coordinated with NTIA through its automated system. If the modified link receives a green light from NTIA's automated system, the link registration can be completed. If the modified link parameters receive a yellow light, an FCC Form 601 Main Form and Schedule M must be filed with the FCC for the purpose of coordinating the modified link through IRAC.

Where the original link required filing with the FCC for the purpose of environmental assessment, radio quiet zone, or international coordination, an FCC Form 601 Main Form and Schedule M must be filed with the Commission to obtain approval for the modified link parameters. The applicant must file FCC Form 601 Main Form with a purpose of ''Register Link/Location'' (RL).

To amend or supplement the information contained in a pending Form 601/Schedule M link filing, licensees will be required to file another FCC Form 601 Main Form and Schedule M. The FCC Form 601 should indicate a purpose of Amendment (AM) and identify the file number of the link filing being changed. When filing electronically, the previously entered data from Schedule M will be displayed and the licensee will be allowed to change the data. Licensees are reminded that a change to the technical data provided or included as part of the Schedule M will require a change in the link in the LRS and will result in a new interference protection date.

I. Transfer and Assignment of Registered Links

In setting 71–95 GHz licensee obligations, the Commission noted that ''[t]he overarching purpose of our requirements in this setting, concerning link construction, modification and discontinuance, is to ensure that spectrum is put to use and to maintain the integrity of the information in the relevant databases by correctly reflecting the actual record''[36] Furthermore, the Commission found that, due to the similarity of these bands with other Part 101 microwave bands, the nationwide licenses in the 70–90 GHz bands should be regulated under Part 101 of the Commission's rules.[37] Accordingly, licensees will be allowed to transfer and assign their non-exclusive nationwide licenses pursuant to Part 101 of the Commission's rules, but individual links may be swapped or assigned among 71–95 GHz licensees without the need for Commission approval.[38] Thus, all links registered under a nationwide call sign will continue to be associated with that call sign upon grant of the assignment or transfer. If the nationwide license is not included in the transaction, individual links under a valid call sign that have been successfully registered may be moved from one licensed entity to another through notification to a Database Manager. In either case, the

[24] *See Database Manager Order* at paragraph 10.

[25] 47 CFR 101.105.

[26] *See* 47 CFR 101.147(z)(2).

[27] The licensee who has the earlier filed link may refuse to protect later filed links against interference. Nevertheless, we ask that all licensees consider interference resolutions notwithstanding their first-in-time interference protection rights.

[28] *Report and Order*, 18 FCC Rcd 23343 paragraph 58.

[29] *See* 47 CFR 101.105(e)(2).

[30] The Commission adjusts filing and regulatory fees periodically as required by several statutes, *see* 47 U.S.C. 158(b)(1), 159(b)(2), and proposed adjustments to the regulatory fees for microwave point-to-point and other licenses may be subject to periodic changes. *See e.g,.* Assessment and Collection of Regulatory Fees for Fiscal Year 2004, MD Docket No. 04–73, *Report and Order*, 19 FCC Rcd 11662 (2004).

[31] *See Report and Order* at paragraph 51.

[32] 47 CFR 101.63(b); *see also Report and Order* at paragraph 80.

[33] *Report and Order* at paragraph 80. Forfeiture and termination of a link will be handled in accordance with § 101.65 of the Commission's rules. *Id.*

[34] *Id.* at n.204.

[35] *See* ''Interference Protection Date and Interference Dispute Resolution,'' Section I.D, *supra.*

[36] *Report and Order* at paragraph 80.

[37] *Id.* at paragraphs 88–89.

[38] *See Interim Procedures Public Notice*, ''Transfer and Assignment of Non-exclusive Nationwide Licenses'' at p. 5.

Database Managers must update the LRS to reflect the correct licensee name for call signs and associated links.[39]

Federal Communications Commission.

John J. Schauble,

Deputy Chief, Broadband Division.

Attachment

Licensees may contact any of the Database Managers for more information about registering a link on the Link Registration System (LRS). Please contact one of the following Database Managers (listed in alphabetical order):

- *Comsearch*—Denise Finney, Comsearch, 19700 Janelia Farm Boulevard, Ashburn, VA 20147, (703) 726–5500, facsimile-(703) 726–5599, *http://www.comsearch.com, http://www.gigabitlink.com*; or
- *Frequency Finder*—Peter Moncure, Frequency Finder, Inc., 160 Sosebee Lane, Demorest, GA 30535, (706) 778–6811, facsimile-(706) 778–6812, *http://www.mmRadioForms.com*; or
- *Micronet Communications*—Steve Knauber, Micronet Communications, Inc., 720 F Avenue, Suite 100, Plano, TX 75074, (972) 422–7200, facsimile-(972) 422–1900, *micronet@micronetcommunications.com, http://www.micronetcommunications.com*.

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FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–04–59–B; (Auction No. 59); DA 04–3985]

Multiple Address Systems Spectrum Auction; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming auction of 4,226 Multiple Address Systems (MAS) licenses in the Fixed Microwave Services from the 928/959 and 932/941 MHz bands. This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for this auction.

DATES: Auction No. 59 is scheduled to begin on April 26, 2005.

FOR FURTHER INFORMATION CONTACT: Auctions and Spectrum Access Division (WTB): For legal questions: Howard Davenport at (202) 418–0660. For general auction questions: Roy Knowles or Barbara Sibert at (717) 338–2888. For service rules questions: Public Safety and Critical Infrastructure Division, WTB: Zenji Nakazawa or Stanley Wiggins at (202) 418–0680. For technical questions: Joan Donmoyer at (717) 338–2646. Media Contact: Lauren Patrich at (202) 418–7944.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 59 Procedures Public Notice* released on December 21, 2004. The complete text of the *Auction No. 59 Procedures Public Notice,* including attachments, as well as related Commission documents, are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Auction No. 59 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 you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* The *Auction No. 59 Procedures Public Notice* and related documents are also available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/59/.*

I. General Information

A. Introduction

1. The *Auction No. 59 Public Notice* announces the procedures and minimum opening bids for the upcoming auction of Multiple Address Systems (MAS) licenses in the Fixed Microwave Services from the 928/959 and 932/941 MHz bands, scheduled for April 26, 2005 (Auction No. 59). On November 15, 2004, in accordance with section 309(j)(4) of the Communications Act of 1934, as amended, the Bureau released a public notice seeking comment on reserve prices or minimum opening bids and the procedures to be used in Auction No. 59. The Bureau received one comment in response to the *Auction No. 59 Comment Public Notice,* 69 FR 68364, November 24, 2004.

i. Background of Proceeding

2. On January 19, 2000, the Commission released the *MAS Report and Order,* 65 FR 17445, April 3, 2000, which adopted rules to maximize the use of spectrum in the MAS service. Specifically, the Commission: (a) Designated the 928/952/956 MHz bands exclusively for private internal services, licensed on a first-come, first-served, site-by-site basis; (b) designated the 928/959 MHz bands and twenty of the forty paired channels in the 932/941 MHz bands to be licensed on a geographic area basis; (c) reserved twenty of the forty channel pairs in the 932/941 MHz bands for public safety/Federal Government and private internal services, licensed on a first-come, first-served, site-by-site basis; (d) designated five of the twenty channels in the 932/941 MHz bands' set-aside exclusively for public safety/Federal Government services; (e) grandfathered existing operations on the MAS bands, while limiting expansion in the 928/959 MHz bands; (f) established service areas based on the Commission's and the Department of Commerce's definitions of Economic Areas (EAs); (g) established construction/coverage requirements for EA licensees; (h) introduced flexibility to the MAS technical rules; (i) adopted a flexible approach for defining the regulatory status of MAS licensees by allowing the licensee to indicate its regulatory status; (j) lifted the suspension on the acceptance of applications for the 928/952/956 MHz bands and the twenty channels in the 932/941 MHz bands designated for public safety/Federal Government and/or private internal services upon the release of the *MAS Report and Order*; and (k) adopted the part 1 competitive bidding rules for the MAS spectrum. On March 3, 2000, the Commission amended the text of the *MAS Report and Order* in an *Erratum to the MAS Report and Order.*

3. Subsequently, on May 29, 2001, the Commission released the *MAS Memorandum Opinion and Order,* 66 FR 35107, July 3, 2001, which addressed four petitions for reconsideration and/or clarification of the *MAS Report and Order.* The Commission granted two of the petitions, granted the third petition in part, and dismissed the fourth petition as moot. Additionally, the Commission, on its own motion, adopted minor changes to certain technical requirements in part 101 of the Commission's rules and modified the application freeze in certain MAS bands. A second *Erratum to the MAS Memorandum Opinion and Order* was released by the Commission on June 21, 2001.

4. On November 15, 2004, the Bureau released the *Auction No. 59 Comment Public Notice* announcing that Auction No. 59 will commence on April 26, 2005, setting forth a complete list of licenses for Auction No. 59, and seeking comment on reserve prices or minimum opening bids and other auction procedures.

[39] *See, e.g., Report and Order,* 18 FCC Rcd 23340 paragraph 49 (third-party entity serves as a clearinghouse and repository of site path information).

ii. Licenses To Be Auctioned

5. Auction No. 59 will offer 4,226 MAS licenses in the Fixed Microwave Services in the 928/959 and 932/941 MHz bands. Licenses will be offered in each of the 176 geographic areas known as Economic Areas (EAs), where available. These geographic areas encompass the United States, Guam and the Northern Marianas Islands, Puerto Rico and the United States Virgin Islands, American Samoa, and the Gulf of Mexico. A complete list of the licenses available in Auction No. 59 for each market is provided in electronic format only, available as ''Attachment A'' to the *Auction No. 59 Procedures Public Notice* at *http://wireless.fcc.gov/auctions/59/.*

6. The following table describes the MAS block/frequency bands cross-reference list for Auction No. 59:

Block	Frequency bands * (MHz)	Total ** bandwidth	Pairing	Geographic area Type
AA	928.85625/959.85625	25 kHz	2 × 12.5 kHz	EA
AB	928.86875/959.86875	25 kHz	2 × 12.5 kHz	EA
AC	928.88125/959.88125	25 kHz	2 × 12.5 kHz	EA
AD	928.89375/959.89375	25 kHz	2 × 12.5 kHz	EA
AE	928.90625/959.90625	25 kHz	2 × 12.5 kHz	EA
AF	928.91875/959.91875	25 kHz	2 × 12.5 kHz	EA
AG	928.93125/959.93125	25 kHz	2 × 12.5 kHz	EA
AH	928.94375/959.94375	25 kHz	2 × 12.5 kHz	EA
AI	928.95625/959.95625	25 kHz	2 × 12.5 kHz	EA
AJ	928.96875/959.96875	25 kHz	2 × 12.5 kHz	EA
AK	928.98125/959.98125	25 kHz	2 × 12.5 kHz	EA
AL	928.99375/959.99375	25 kHz	2 × 12.5 kHz	EA
AM	932.00625/941.00625	25 kHz	2 × 12.5 kHz	EA
AN	932.01875/941.01875	25 kHz	2 × 12.5 kHz	EA
AO	932.03125/941.03125	25 kHz	2 × 12.5 kHz	EA
AP	932.04375/941.04375	25 kHz	2 × 12.5 kHz	EA
AQ	932.05625/941.05625	25 kHz	2 × 12.5 kHz	EA
AR	932.06875/941.06875	25 kHz	2 × 12.5 kHz	EA
AS	932.08125/941.08125	25 kHz	2 × 12.5 kHz	EA
AT	932.09375/941.09375	25 kHz	2 × 12.5 kHz	EA
AU	932.15625/941.15625	25 kHz	2 × 12.5 kHz	EA
AV	932.16875/941.16875	25 kHz	2 × 12.5 kHz	EA
AW	932.18125/941.18125	25 kHz	2 × 12.5 kHz	EA
AX	932.19375/941.19375	25 kHz	2 × 12.5 kHz	EA
AY	932.20625/941.20625	25 kHz	2 × 12.5 kHz	EA
AZ	932.21875/941.21875	25 kHz	2 × 12.5 kHz	EA
BA	932.23125/941.23125	25 kHz	2 × 12.5 kHz	EA
BB	932.24375/941.24375	25 kHz	2 × 12.5 kHz	EA

* The individual frequencies listed in this chart are the *center* frequencies of each frequency pair in the block to be auctioned. *See* 47 CFR 101.147(b)(3), (4). Each block consists of two channels of equal bandwidth. For example, in Block AA, 928.85625 and 959.85625 are the *center* frequencies and each frequency pair is comprised of two 12.5 kHz wide channels. Therefore, the two channels in Block AA are 928.85000–928.86250 MHz and 959.85000–959.86250 MHz.

** This represents the total bandwidth for each block, which is the combination of the two channels in each pair.

Note: For Auction No. 59, licenses are not available in every block listed in the above table in every market.

B. Rules and Disclaimers

i. Relevant Authority

7. Prospective applicants must familiarize themselves thoroughly with the Commission's rules relating to the Multiple Address Systems (MAS), contained in 47 CFR parts 22 and 101, and those relating to application and auction procedures, contained in 47 CFR part 1. Prospective applicants must also be thoroughly familiar with the procedures, terms and conditions (collectively, ''terms'') contained in the *Auction No. 59 Procedures Public Notice;* the *Auction No. 59 Comment Public Notice;* the *Part 1 Fifth Report and Order,* 65 FR 52401, August 29, 2000; the *MAS Notice of Proposed Rule Making,* 62 FR 11407, March 12, 1997; the *MAS Further Notice of Proposed Rule Making and Order;* 64 FR 38617, July 19, 1999; the *MAS Report and Order,* the *Erratum to the MAS Report and Order;* the *MAS Memorandum Opinion and Order;* and the *Erratum to the MAS Memorandum Opinion and Order* (as well as prior and subsequent Commission proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees).

8. 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's rules and with all public notices pertaining to this auction.

ii. Prohibition of Collusion

9. To ensure the competitiveness of the auction process, § 1.2105(c) of the Commission's rules prohibits applicants for any of the same geographic license areas from communicating with each other during the auction about bids, bidding strategies, or settlements unless such applicants have identified each other on their FCC Form 175 applications as parties with whom they have entered into agreements under § 1.2105(a)(2)(viii) of the Commission's rules. Thus, applicants for any of the same geographic license areas must conscientiously avoid all discussions with each other that affect, or in their reasonable assessment have the potential to affect, bidding or bidding strategy. 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. For purposes of this prohibition, § 1.2105(c)(7)(i) of the Commission's rules defines applicant as including all controlling interests in the entity submitting a short-form application to participate in the auction, 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, and all officers and directors of that entity.

10. Applicants for licenses in any of the same geographic license areas 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 the applicants he or she is authorized to represent in the auction. A violation could similarly occur if the authorized bidders are different individuals employed by the same organization (*e.g.*, law firm or consulting firm). 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. However, the Bureau cautions 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.

11. The Commission's anti-collusion rules allow applicants to form certain agreements during the auction, provided the applicants have not applied for licenses covering the same geographic areas. In addition, applicants that apply to bid for all markets will be precluded from communicating with all other applicants until after the down payment deadline. However, all applicants may enter into bidding agreements *before* filing their FCC Form 175, as long as they disclose the existence of the agreement(s) in their Form 175. If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application pursuant to § 1.2105(c) of the Commission's rules, even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations. By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with § 1.2105(c) of the Commission's rules.

12. Section 1.65 of the Commission's rules 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, § 1.65 of the Commission's rules requires auction applicants that engage in communications of bids or bidding strategies that result in a bidding agreement, arrangement or understanding not already identified on their short-form applications to promptly disclose any such agreement, arrangement or understanding to the Commission by amending their pending applications. In addition, § 1.2105(c)(6) of the Commission's rules requires all auction applicants to report prohibited discussions or disclosures regarding bids or bidding strategy to the Commission in writing immediately but in no case later than five business days after the communication occurs, even if the communication does not result in an agreement or understanding regarding bids or bidding strategy that must be reported under § 1.65 of the Commission's rules.

13. Applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in all bidding consortia, joint ventures, partnerships, and other arrangements entered into relating to the competitive bidding process. Any applicant found to have violated the anti-collusion rule may be subject to sanctions, including forfeiture of its upfront payment, down payment or full bid amount, and may be prohibited from participating in future auctions. In addition, applicants are reminded that they are subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. If an applicant is found to have violated the antitrust laws 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.

14. A summary listing of documents issued by the Commission and the Bureau addressing the application of the anti-collusion rules may be found in Attachment F of the *Auction No. 59 Procedures Public Notice.*

iii. Interference Protection

15. Potential bidders are reminded that there are incumbent licensees operating on frequencies that will be subject to the upcoming auction. The holder of an EA authorization thus will be required to protect incumbents from harmful interference. Specifically, an EA authorization holder will be required to coordinate with the incumbent licensees by using the interference protection criteria in § 101.1333 of the Commission's rules. However, operational agreements are encouraged between the parties. Should an incumbent's license cancel automatically or otherwise be recovered by the Commission, the incumbent's frequencies will automatically revert to the applicable EA licensee without being subject to further competitive bidding.

iv. Due Diligence

16. 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 licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

17. Applicants are reminded that there are a number of incumbent licensees already licensed and operating on frequencies that will be subject to the upcoming auction. Such incumbents must be protected from harmful interference by MAS Station geographic area licensees in accordance with the Commission's rules. These limitations may restrict the ability of such MAS geographic area licensees to use certain portions of the electromagnetic spectrum or provide service to certain areas in their geographic license areas. The Commission therefore cautions potential applicants in formulating their bidding strategies to investigate and consider the extent to which MAS frequencies are occupied by incumbents.

18. *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 licenses available in Auction No. 59.*

19. Applicants should also be aware that certain pending and future 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 licensees or the licenses available in Auction No. 59. In addition, pending and future judicial proceedings may relate to particular applicants or incumbent licensees, or the licenses available in Auction No. 59. Applicants are responsible for assessing the likelihood of the various possible outcomes, and considering their potential impact on spectrum licenses available in this auction.

20. Applicants should perform due diligence to identify and consider all proceedings that may affect the spectrum licenses being auctioned. We note that resolution of such matters could have an impact on the availability of spectrum for Auction No. 59. 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 time of the auction.

21. Applicants may obtain information about incumbent licenses that may have an effect on availability of licenses in Auction No. 59 through the Bureau's licensing databases on the World Wide Web at *http://wireless.fcc.gov/uls.* Applicants may query the database online and download a copy of their search results if desired. Detailed instructions on using License Search (including frequency searches and the GeoSearch capability) and downloading query results are available online by selecting the ''?'' button at the upper right-hand corner of the License Search screen. Applicants should direct questions regarding the search capabilities to the FCC ULS/Technical Support hotline at 1–877–480–3201 option 2.

22. 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 the database. *Applicants are strongly encouraged to physically inspect any prospective transmitter sites located in, or near, the service area for which they plan to bid.*

23. In addition, licenses in EAs that border Canada may be subject to the Arrangement between the Federal Communications Commission and the National Telecommunications and Information Administration of the United States and Industry Canada concerning the use of the bands 932 to 935 MHz and 941 to 944 MHz along the United States-Canada border. Licenses in EAs that border Mexico may be subject to the Protocol Concerning the Allotment and Use of Channels in the 932–932.5 and 941–941.5 MHz bands for Fixed Point-to-Multipoint Services along the Common Border.

24. Licenses may, in some EAs, be required to protect quiet zones. Licenses in EAs that would affect quiet zones are subject to § 101.1329 of the Commission's rules.

v. Bidder Alerts

25. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 59 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a ''cold call'' from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of investment is less than $25,000.
- The sales representative makes verbal representations that: (a) The Internal Revenue Service (IRS), Federal Trade Commission (FTC), Securities and Exchange Commission (SEC), FCC, or other government agency has approved the investment; (b) the investment is not subject to State or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

26. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the 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. Consumers who have concerns about specific proposals regarding Auction No. 59 may also call the FCC Consumer Center at (888) CALL–FCC ((888) 225–5322).

vi. National Environmental Policy Act Requirements

27. Licensees must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a wireless antenna facility is a federal action and the licensee must comply with the Commission's NEPA rules for each such facility.

C. Auction Specifics

i. Auction Date

28. The auction will begin on Tuesday, April 26, 2005, as announced in the *Auction No. 59 Comment Public Notice.* The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

ii. Auction Title

29. Auction No. 59—Multiple Address Systems.

iii. Bidding Methodology

30. The bidding methodology for Auction No. 59 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Qualified bidders are permitted to bid telephonically or electronically.

iv. Pre-Auction Dates and Deadlines

31. Listed are important dates associated with Auction No. 59:

Auction Seminar	February 23, 2005
Short-Form Application (FCC Form 175) Filing Window Opens	February 23, 2005; 12 p.m. ET
Short-Form Application (FCC Form 175) Filing Window Deadline	March 4, 2005; 6 p.m. ET
Upfront Payments (via wire transfer)	April 1, 2005; 6 p.m. ET

Mock Auction	April 21, 2005
Auction Begins	April 26, 2005

v. Requirements for Participation

32. Those wishing to participate in the auction must:

• Submit a short-form application (FCC Form 175) electronically by 6 p.m. ET, March 4, 2005.

• Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. ET, April 1, 2005.

• Comply with all provisions outlined in the *Auction No. 59 Public Notice.*

vi. Any Filings to Auction No. 59

33. An electronic copy of any filings that are submitted to the Commission related to Auction No. 59, including filings made with the Commission's Office of the Secretary, should also be submitted by electronic mail to the following address: *auction59@fcc.gov.*

34. Following is a list of general contact information relating to Auction No. 59:

vii. General Contact Information

GENERAL AUCTION INFORMATION	FCC Auctions Hotline
General Auction Questions	(888) 225–5322, Press Option #2 or direct (717) 338–2888
Seminar Registration	Hours of Service: 8 a.m.–5:30 p.m. ET, Monday through Friday
AUCTION LEGAL INFORMATION	Auctions and Spectrum Access Division
Auctions Rules, Policies, Regulations	Legal Branch (202) 418–0660
LICENSING INFORMATION	Public Safety and Critical Infrastructure Division
Rules, Policies, Regulations	(202) 418–0680
Licensing Issues	
Due Diligence	
Incumbency Issues	
TECHNICAL SUPPORT	FCC Auctions Technical Support Hotline
Electronic Filing	(202) 414–1250 or 1–877–480–3201, Press Option #9
FCC Automated Auction System	(202) 414–1255 (TTY)
	Hours of service: 8 a.m.–6 p.m. ET, Monday through Friday
PAYMENT INFORMATION	FCC Auctions Accounting Branch
Wire Transfers	(202) 418–0578
Refunds	(202) 418–2843 (Fax)
TELEPHONIC BIDDING	Will be furnished only to qualified bidders
FCC COPY CONTRACTOR	Best Copy and Printing, Inc.
	445 12th Street, SW., Room CY–B402
	Washington, DC 20554
	(800) 378–3160
	http://www.bcpiweb.com
Additional Copies of Commission Documents	
PRESS INFORMATION	Lauren Patrich (202) 418–7944
FCC FORMS	(800) 418–3676 (outside Washington, DC)
	(202) 418–3676 (in the Washington Area)
	http://www.fcc.gov/formpage.html
FCC INTERNET SITES	*http://www.fcc.gov*
	http://wireless.fcc.gov/auctions
	http://wireless.fcc.gov/uls

II. Short-Form (FCC Form 175) Application Requirements

35. Guidelines for completion of the short-form (FCC Form 175) are set forth in Attachment D of the *Auction No. 59 Procedures Public Notice.* All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license.

A. License Selection

36. The Bureau has modified Form 175 for Auction No. 59. In Auction No. 59, Form 175 will include a mechanism that allows an applicant to filter the licenses by Market Number and Channel Block to create customized lists of licenses. The applicant will make selections for one or more of the filter criteria and the system will produce a list of licenses satisfying the specified criteria. The applicant may apply for all the licenses in the customized list by using the ''Save all filtered licenses'' option; select and save individual licenses separately from the list; or create a second customized list without selecting any of the licenses from the first list. Applicants also will be able to select licenses from one customized list and then create a second customized list to select additional licenses.

B. Ownership Disclosure Requirements (FCC Form 175 Exhibit A)

37. All applicants must comply with the uniform part 1 of the Commission's rules ownership disclosure standards and provide information required by §§ 1.2105 and 1.2112 of the Commission's rules. Specifically, in completing FCC Form 175, applicants will be required to file an ''Exhibit A'' providing a full and complete statement of the ownership of the bidding entity. The ownership disclosure standards for the short-form are set forth in § 1.2112 of the Commission's rules.

C. Consortia and Joint Bidding Arrangements (FCC Form 175 Exhibit B)

38. Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings that relate in any way to the licenses being auctioned, including any agreements relating to post-auction market structure. Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements,

arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid.

39. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for licenses in the same geographic license area provided that (i) 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 formed a consortium or entered into a joint bidding arrangement; and (ii) 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.

D. Eligibility

i. Bidding Credit Eligibility (FCC Form 175 Exhibit C)

40. A bidding credit represents the amount by which a bidder's winning bids are discounted. The size of the bidding credit depends on the average of the aggregated annual gross revenues for each of the preceding three years of the bidder, its affiliates, its controlling interests, and the affiliates of its controlling interests.

41. In the *MAS Report and Order,* the Commission adopted bidding credits on a ''tiered'' basis for all small businesses participating in the auction of MAS spectrum Bidding credits are available to small and very small businesses, or consortia thereof, (as defined in 47 CFR 1.2110(c) and 101.1319). For Auction No. 59, bidding credits will be available to small business or consortia thereof, as follows:

- A bidder with attributed average annual gross revenues of not more than $15 million for the preceding three years (''small business'') will receive a 25 percent discount on its winning bids;
- A bidder with attributed average annual gross revenues of not more than $3 million for the preceding three years (''very small business'') will receive a 35 percent discount on its winning bids.

42. Small business bidding credits are not cumulative; a qualifying applicant receives the 25 percent or 35 percent bidding credit on its winning bid, but only one credit per license.

ii. Tribal Lands Bidding Credit

43. To encourage the growth of wireless services in federally recognized tribal lands the Commission has implemented a tribal land bidding credit.

iii. Applicability of Part 1 Attribution Rules

44. *Controlling interest standard.* The Commission uses a ''controlling interest'' standard for attributing to auction applicants the gross revenues of their investors and affiliates in determining small business eligibility for future auctions. The Commission has recently modified its rules governing the attribution of gross revenues for purposes of determining small business eligibility. These changes included exempting the gross revenues of the affiliates of a rural telephone cooperative's officers and directors from attribution to the applicant if certain specified conditions are met. The Commission also clarified that in calculating an applicant's gross revenues under the controlling interest standard, the personal net worth, including personal income, of its officers and directors will not be attributed to the applicant.

45. *Control.* The term ''control'' includes both *de facto* and *de jure* control of the applicant. Typically, *ownership of at least 50.1 percent of an entity's voting stock evidences de jure control. De facto* control is determined on a case-by-case basis. The following are some common indicia of *de facto* control:

- The entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or
- The entity plays an integral role in management decisions.

46. *Attribution for small business and very small business eligibility.* In determining which entities qualify as small businesses or very small businesses, the Commission will consider the gross revenues of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests. The Commission does not impose specific equity requirements on controlling interest holders. Once the principals or entities with a controlling interest are determined, only the revenues of those principals or entities, the affiliates of those principals or entities, and the applicant and its affiliates, will be counted in determining small business eligibility.

47. A consortium of small businesses or very small businesses is a ''conglomerate organization formed as a joint venture between or among mutually independent business firms,'' each of which *individually* must satisfy one of the definitions of small business or very small business in §§ 1.2110(f) and 101.1319 of the Commission's rules.

iv. Supporting Documentation

48. Applicants should note that they will be required to file supporting documentation to their FCC Form 175 short-form applications to establish that they satisfy the eligibility requirements to qualify as small business or very small business (or consortia of small businesses or very small businesses) for this auction.

49. Applicants should further note that submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application and its attachments are true 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.

50. *Small business or very small business eligibility (Exhibit C).* Entities applying to bid as small businesses or very small businesses (or consortia of small businesses or very small businesses) will be required to disclose on Exhibit C to their FCC Form 175 short-form applications, *separately and in the aggregate,* the gross revenues for the preceding three years of each of the following: (i) The applicant, (ii) its affiliates, (iii) its controlling interests, and (iv) the affiliates of its controlling interests. Certification that the average annual gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A statement of the total gross revenues for the preceding three years is also insufficient. The applicant must provide separately for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, a schedule of gross revenues for each of the preceding three years, as well as a statement of total average gross revenues for the three-year period. If the applicant is applying as a consortium of small businesses or very

small businesses, this information must be provided for each consortium member.

E. Provisions Regarding Defaulters and Former Defaulters (FCC Form 175 Exhibit D)

51. Each applicant must certify on its FCC Form 175 application under penalty of perjury that the applicant, its controlling interests, its affiliates, and the affiliates of its controlling interests, as defined by § 1.2110 of the Commission's rules are not in default on any payment for Commission licenses (including down payments) and not delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must attach to its FCC Form 175 application a statement made under penalty of perjury indicating whether or not the applicant, its affiliates, its controlling interests, or the affiliates of its controlling interests, as defined by § 1.2110 of the Commission's rules, have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. *Applicants must include this statement as Exhibit D of the FCC Form 175*.

52. ''Former defaulters''—*i.e.*, applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses 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. 59, provided that they are otherwise qualified. However, as discussed *infra* in section III.D.3, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

F. Installment Payments

53. Installment payment plans will not be available in Auction No. 59.

G. Other Information (FCC Form 175 Exhibits E and F)

54. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(c)(2), may attach an exhibit (Exhibit E) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of ''designated entities'' in its auctions. Applicants wishing to submit additional information may do so on Exhibit F (Miscellaneous Information) to the FCC Form 175.

H. Minor Modifications to Short-Form Applications (FCC Form 175)

55. After the short-form filing deadline (6 p.m. ET March 4, 2005), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections, change the certifying official, change control of the applicant, or change bidding credits). *See* 47 CFR 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants should make these modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: *auction59@fcc.gov*. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 59. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

56. A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338–2850. Questions about other changes should be directed to Howard Davenport of the Auctions and Spectrum Access Division at (202) 418–0660.

I. Maintaining Current Information in Short-Form Applications (FCC Form 175)

57. Section 1.65 of the Commission's rules 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. Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications, as defined by 47 CFR 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

III. Pre-Auction Procedures

A. Auction Seminar

58. On Wednesday, February 23, 2005, the FCC will sponsor a seminar for Auction No. 59 at the Federal Communications Commission, located at 445 12th Street, SW., Washington, DC 20554. The seminar will provide attendees with information about pre-auction procedures, auction conduct, the FCC Automated Auction System, auction rules, and the MAS service rules.

59. For individuals who are unable to attend, Audio/Video of this seminar will be available via webcast from the FCC's Audio/Video Events page at *http://www.fcc.gov/realaudio/*.

B. Short-Form Application (FCC Form 175)—Due March 4, 2005

60. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be submitted electronically and received at the Commission no later than 6 p.m. ET on March 4, 2005. *Late applications will not be accepted*.

61. 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. *See* section III.D.

i. Electronic Filing

62. Applicants must file their FCC Form 175 applications electronically. Applications may generally be filed at any time beginning at noon ET on February 23, 2005, until 6 p.m. ET on March 4, 2005. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on March 4, 2005.

63. Applicants must press the ''SUBMIT Application'' button on the ''Submission'' page of the electronic form to successfully submit their FCC Form 175s. Any form that is not submitted will not be reviewed by the FCC. When an applicant has successfully submitted the initial version of its FCC Form 175, the applicant receives an electronic confirmation that contains its FCC Registration Number (FRN) and associated password.

64. Information about accessing the FCC Form 175 is included in Attachment C of the Auction No. 59 Procedures Public Notice. Technical support is available at (202) 414–1250, 1–877–480–3201 option 9, or (202) 414–1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8 a.m. to 6 p.m. ET. In order to provide better service to the public, all calls to the hotline are recorded.

ii. Completion of the FCC Form 175

65. Applicants should carefully review 47 CFR 1.2105, and must complete all items on the FCC Form

175. Instructions for completing the FCC Form 175 are in Attachment D of the *Auction No. 59 Procedures Public Notice*.

iii. Electronic Review of FCC Form 175

66. The FCC Form 175 electronic review system may be used to locate and print applicants' FCC Form 175 information. There is no fee for accessing this system. *See* Attachment C of the *Auction No. 59 Procedures Public Notice* for details on accessing the review system.

67. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. NOTE: Applicants should not include sensitive information (*i.e.*, TIN/EIN) on any exhibits to their FCC Form 175 applications.

C. Application Processing and Minor Corrections

68. 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 filing such corrected applications.

D. Upfront Payments—Due April 1, 2005

69. 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 faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6 p.m. ET on April 1, 2005. Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 59 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.
- Failure to deliver the upfront payment by the April 1, 2005, deadline will result in dismissal of the application and disqualification from participation in the auction.

i. Making Auction Payments by Wire Transfer

70. Wire transfer payments must be received by 6 p.m. ET on April 1, 2005. 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.

71. Applicants must fax a completed FCC Form 159 (Revised 2/03) to Mellon Bank at (412) 209–6045 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write ''Wire Transfer—Auction Payment for Auction Event No. 59.'' In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account by 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.

ii. Amount of Upfront Payment

72. In the *Part 1 Order*, 62 FR 13540, March 21, 1997, the Commission delegated to the Bureau the authority and discretion to determine appropriate upfront payment(s) for each auction. In addition, in the *Part 1 Fifth Report and Order*, the Commission ordered that ''former defaulters,'' *i.e.*, applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, 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 § 1.2110 of the Commission's rules (as amended in the *Part 1 Fifth Report and Order*).

73. In the *Auction No. 59 Comment Public Notice*, the Bureau proposed that the amount of the upfront payment will determine the number of bidding units on which a bidder may place bids. In order to bid on a license, otherwise qualified bidders that applied for that license on Form 175 must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on 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 licenses for which the applicant has applied on Form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold high bids at any given time.

74. In the *Auction No. 59 Comment Public Notice*, the Bureau proposed upfront payments on a license-by-license basis using a formula based on bandwidth and license area population: $0.00000375 * kHz * License Area Population with a minimum of $1,000 per license.

75. Advanced Metering Data Systems, Inc. (AMDS) suggests that the upfront payment for all licenses is too high and should be $500 per license or be calculated by a different formula.

76. After reviewing AMDS's comment, the Bureau concludes that it should adopt the upfront payments proposed in the *Auction No. 59 Comment Public Notice*. The Bureau also believes that the upfront payment amounts are not too high as discussed in the Reserve Price or Minimum Opening Bid section. The specific upfront payments and bidding units for each license are set forth in Attachment A of the *Auction No. 59 Procedures Public Notice*.

77. In calculating its upfront payment amount, an applicant should determine the *maximum* number of bidding units on which it may wish to be active (bidding units associated with licenses on which the bidder has the standing high bid from the previous round and licenses on which the bidder places a bid in the current round) in any single round, and submit an upfront payment covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all licenses on which it seeks to bid in any given round. Applicants should check their calculations carefully, as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

EXAMPLE: UPFRONT PAYMENTS AND BIDDING FLEXIBILITY

Market No.	Block	Market name	Bidding units	Upfront payment
BEA010	AA	New York-No. New Jer.-Long Island, NY–NJ–CT–PA–MA–VT	$2,400	$2,400
BEA044	AF	Knoxville, TN	1,000	1,000

If a bidder wishes to bid on both licenses in a round, it must have selected both on its FCC Form 175 and purchased at least 3,400 bidding units (2,400 + 1,000). If a bidder only wishes to bid on one, but not both, purchasing 2,400 bidding units would meet the requirement for either license. The bidder would be able to bid on either license, *but not both at the same time.* If the bidder purchased only 1,000 bidding units, it would have enough eligibility for the Knoxville, TN license but not for the New York-No. New Jer.-Long Island, NY–NJ–CT–PA–MA–VT license.

Former defaulters should calculate their upfront payment for all licenses by multiplying the number of bidding units they wish to purchase 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.

iii. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

78. The Commission will use wire transfers for all Auction No. 59 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed be supplied to the FCC. Applicants can provide the information electronically during the initial short-form filing window after the form has been submitted. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Gail Glasser, at (202) 418–2843 by April 1, 2005. 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.

E. Auction Registration

79. 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 licenses for which they applied.

80. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, one containing the confidential bidder identification number (BIN) and the other containing the SecurID cards, both of which are required to place bids. These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.

81. Qualified bidders that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified bidder that has not received both mailings by noon on Wednesday, April 20, 2005, should contact the Auctions Hotline at (717) 338–2888. Receipt of both registration mailings is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

82. Qualified bidders should note that lost bidder identification numbers or SecurID cards can be replaced only by appearing in person at the FCC headquarters, located at 445 12th St., SW., Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacements. Qualified bidders requiring replacements must call technical support prior to arriving at the FCC.

F. Remote Electronic Bidding

83. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. The FCC Wide Area Network will no longer be available as a contingency plan. Qualified bidders are permitted to bid telephonically or electronically. 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 and the FCC Automated Auction System user manual 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. 59. The telephonic bidding phone number will be supplied in the first overnight mailing, which also includes the confidential bidder identification number.

84. Please note that the SecurID cards can be recycled, and we encourage bidders to return the cards to the FCC. We will provide pre-addressed envelopes that bidders may use to return the cards once the auction is over.

G. Mock Auction

85. All qualified bidders will be eligible to participate in a mock auction on Thursday, April 21, 2005. The mock auction will enable applicants to become familiar with the FCC Automated Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

86. The first round of bidding for Auction No. 59 will begin on Tuesday, April 26, 2005. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round Auction

87. The Bureau will award all licenses in Auction No. 59 in a simultaneous multiple round auction. We received no comment on this issue. The Bureau concludes that it is operationally feasible and appropriate to auction the MAS licenses through a simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction. This approach, we believe, allows bidders to take advantage of synergies that exist among licenses and is administratively efficient.

ii. Maximum Eligibility and Activity Rules

88. The amount of the upfront payment submitted by a bidder will determine the initial (maximum) eligibility (as measured in bidding units) for each bidder. We received no comment on this issue.

89. Note again that each license is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the Auction No. 59 Procedures Public Notice on a bidding unit per dollar basis. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid and hold high bids in a round. As there is no provision for increasing a bidder's eligibility after the upfront payment deadline, applicants are cautioned to calculate their upfront payments carefully. The total upfront payment does not affect the total dollar amount a bidder may bid on any given license.

90. In order to ensure that the 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.

91. A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. A bidder is considered active on a license in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits a bid in the current round (*see* ''Minimum Acceptable Bids and Bid Increments'' in Section IV.B.iii). The minimum required activity is expressed as a percentage of the bidder's current bidding eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions (as set forth under ''Auction Stages'' in Section IV.A.3iii and ''Stage Transitions'' in Section IV.A.iv), the Commission adopts them for Auction No. 59.

iii. Auction Stages

92. The Commission will conduct the auction in two stages and employ an activity rule. In each round of Stage One, a bidder desiring to maintain its current eligibility would be required to be active on licenses encompassing at least 80 percent of its current bidding eligibility. Finally, in each round of Stage Two, a bidder desiring to maintain its current eligibility would be required to be active on at least 95 percent of its current bidding eligibility.

93. The Bureau reserves the discretion to further alter the activity percentages before and/or during the auction.

Stage One: During the first stage of the auction, a bidder desiring to maintain its current eligibility will be required to be active on licenses encompassing at least 80 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and bids during the current round) by five-fourths (5/4).

Stage Two: During the second stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and bids during the current round) by twenty-nineteenths (20/19).

Caution: Since activity requirements increase in each auction stage, bidders must carefully check their current activity during the bidding period of the first round following a stage transition. This is especially critical for bidders that have standing high bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required activity level by using the bidding system's bidding module.

94. Because the foregoing procedures have proven successful in maintaining proper pace in previous auctions, the Commission adopts them for Auction No. 59.

iv. Stage Transitions

95. The auction will generally advance to the next stage (*i.e.*, from Stage One to Stage Two) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is below 20 percent for three consecutive rounds of bidding in each Stage. In addition, the Bureau will retain the discretion to change stages unilaterally by announcement during the auction.

96. Thus, the Bureau will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Commission believes that these stage transition rules are appropriate for use in Auction No. 59.

v. Activity Rule Waivers and Reducing Eligibility

97. Each bidder in the auction will be provided three activity rule waivers that may be used 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 level. An activity rule waiver applies to an entire round of bidding and not to a particular license.

98. The FCC Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an ''automatic waiver'') at the end of any round where a bidder's activity level is below the minimum required unless: (i) There are no activity rule waivers available; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements. If a bidder has no waivers remaining and does not satisfy the required activity level, the current eligibility will be permanently reduced, possibly eliminating the bidder from further bidding in the auction.

99. 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 round by using the reduce eligibility function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in ''Auction Stages'' (*see* Section IV.A.iii). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

100. Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a

proactive waiver (using the proactive waiver function in the FCC Automated Auction System) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver triggered during a round in which there are no new bids or withdrawals will not keep the auction open. **Note:** Once a proactive waiver is submitted during a round, that waiver cannot be unsubmitted.

vi. Auction Stopping Rules

101. For Auction No. 59, the Bureau will employ a simultaneous stopping rule and retain discretion to invoke a modified version of the stopping rule. The modified version of the stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder.

102. The Bureau also retains the discretion to keep the auction open even if no new bids or proactive waivers are submitted and no previous high bids are withdrawn in a round.

103. In addition, the Bureau reserves the right to declare that the auction will end after a designated number of additional rounds (''special stopping rule''). If the Bureau invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. The Bureau will exercise this option 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.

vii. Auction Delay, Suspension, or Cancellation

104. By public notice or by announcement during the auction, the Bureau 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. In such cases, the Bureau, in its 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 Bureau to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureau, 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

105. 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.

106. The FCC has 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 Bureau 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 or Minimum Opening Bid

107. In the *Auction No. 59 Comment Public Notice,* the Bureau proposed to establish minimum opening bids for Auction No. 59 using the following license-by-license formula based on bandwidth and population:

$0.00000375 * kHz * License Area Population with a minimum of $1,000 per license.

108. The Bureau adopts the minimum opening bids proposed in the *Auction No. 59 Comment Public Notice.* The Bureau believes that the use of minimum opening bids is in the public interest because parties unable or unwilling to make proposed minimum opening bids most likely will be unable or unwilling to use the licenses to provide service to the public. The Bureau concludes that the absolute minimum opening bid of $1,000 will not impede any party willing and able to use the license to provide Multiple Address Systems service. Under the Commission's current rules, the filing fee for a new microwave service license is $730. Finally, small businesses qualifying for a thirty-five percent (35%) bidding credit and winning a multiple address systems license for the minimum opening bid of $1,000 will have to pay $650 for the license. Thus, even absent an auction, service providers would have to meet costs comparable to the proposed absolute minimum opening bids in order to obtain a license.

109. The minimum opening bids for Auction No. 59 are reducible at the discretion of the Bureau. We 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 Bureau will not entertain requests to reduce the minimum opening bid on specific licenses.

110.The specific minimum opening bids for each license available in Auction No. 59 are set forth in Attachment A of the *Auction No. 59 Procedures Public Notice.*

iii. Minimum Acceptable Bids and Bid Increments

111. In Auction No. 59 we will use a 10 percent bid increment. This means that the minimum acceptable bid for a license will be approximately 10 percent greater than the previous standing high bid received on the license. The minimum acceptable bid amount will be calculated by multiplying the standing high bid times one plus the increment percentage ''*i.e.*, (standing high bid) * (1.10). We will round the result using our standard rounding procedures for minimum acceptable bid calculations: Results above $10,000 are rounded to the nearest $1,000; results below $10,000 but above $1,000 are rounded to the nearest $100; and results below $1,000 are rounded to the nearest $10. The Bureau will retain the discretion to change the minimum acceptable bids and bid increments if circumstances so dictate.

112. In each round, each eligible bidder will be able to place a bid on a particular license for which it applied in any of nine different amounts. The FCC Automated Auction System will list the nine bid amounts for each license.

113. Once there is a standing high bid on a license, the FCC Automated Auction System will calculate a minimum acceptable bid for that license for the following round, as described above. The difference between the minimum acceptable bid and the standing high bid for each license will define the bid increment ''*i.e.*, bid increment = (minimum acceptable bid)—(standing high bid). The nine acceptable bid amounts for each license consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the standing high bid plus two times the bid increment, the third bid

amount equals the standing high bid plus three times the bid increment, etc.).

114. Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. Corresponding additional bid amounts will be calculated using the difference between the minimum opening bid times one plus the minimum percentage increment, rounded as described above, and the minimum opening bid. That is, I = (minimum opening bid)(1 + N){rounded} − (minimum opening bid). Therefore, when N equals 0.1, the first additional bid amount will be approximately ten percent higher than the minimum opening bid; the second, twenty percent; the third, thirty percent; etc.

115. In the case of a license for which the standing high bid has been withdrawn, the minimum acceptable bid will equal the second highest bid received for the license. The additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid.

116. The Bureau retains the discretion to change the minimum acceptable bids and bid increments and the methodology for determining the minimum acceptable bids and bid increments if it determines that circumstances so dictate. The Bureau will do so by announcement in the FCC Automated Auction System. The Bureau may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant.

iv. High Bids

117. At the end of each bidding round, the high bids will be determined based on the highest gross bid amount received for each license. A high bid from a previous round is sometimes referred to as a ''standing high bid.'' A ''standing high bid'' will remain the high bid until there is a higher bid on the same license at the close of a subsequent round. Bidders are reminded that standing high bids are counted as activity for purposes of the activity rule.

118. In the event of identical high bids on a license in a given round (*i.e.*, tied bids) a Sybase® SQL pseudo-random number generator will be used to assign a random number to each bid. The tied bid having the highest random number will become the standing high bid. The remaining bidders, as well as the high bidder, will be able to submit a higher bid in a subsequent round. If no bidder submits a higher bid in a subsequent round, the high bid from the previous round will win the license. If any bids are received on the license in a subsequent round, the high bid will once again be determined on the highest gross bid amount received for the license.

v. Bidding

119. During a round, a bidder may submit bids for as many licenses as it wishes (subject to its eligibility), withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each round. If a bidder submits multiple bids for a single license 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 licenses for which the bidder has removed or withdrawn its bid do not count towards the bidder's activity at the close of the round.

120. Please note that all bidding will take place remotely either through the FCC Automated Auction System or by telephonic bidding. (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 bid submission). There will be no on-site bidding during Auction No. 59.

121. A bidder's ability to bid on specific licenses in the first round of the auction is determined by two factors: (i) The licenses applied for on FCC Form 175 and (ii) the upfront payment amount deposited. The bid submission screens will allow bidders to submit bids on only those licenses for which the bidder applied on its FCC Form 175.

122. In order to access the bidding function of the FCC Automated Auction System, bidders must be logged in during the bidding round using the bidder identification number provided in the registration materials, and the password generated by the SecurID card. Bidders are strongly encouraged to print bid confirmations for each round after they have completed all of their activity for that round.

123. In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts. For each license, the FCC Automated Auction System interface will list the nine acceptable bid amounts in a drop-down box. Bidders may use the drop-down box to select from among the nine bid amounts. The FCC Automated Auction System also includes an import function that allows bidders to upload text files containing bid information and a Type Bids function that allows bidders to enter specific licenses for filtering.

124. Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. Once there is a standing high bid on a license, the FCC Automated Auction System will calculate a minimum acceptable bid for that license for the following round, as described in Section IV.B.iii.

125. Finally, bidders are cautioned to select their bid amounts carefully because, as explained in section vi, bidders that withdraw a standing high bid from a previous round, even if the bid was mistakenly or erroneously made, are subject to bid withdrawal payments.

vi. Bid Removal and Bid Withdrawal

126. For Auction No. 59, the Commission adopts bid removal and bid withdrawal procedures. With respect to bid withdrawals, the Commission will limit each bidder to withdrawals in no more than two rounds during the course of the auction. The two rounds in which withdrawals are used would be at the bidder's discretion.

127. Procedures. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the ''remove bid'' function in the bidding 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. These procedures will enhance bidder flexibility during the auction.

128. Once a round closes, a bidder may no longer remove a bid. However, in later rounds, a bidder may withdraw standing high bids from previous rounds using the withdraw bid function in the FCC Automated Auction System (assuming that the bidder has not reached its withdrawal limit). A high bidder that withdraws its standing high bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). **Note:** Once a withdrawal is submitted during a round, that withdrawal cannot be unsubmitted.

129. The Bureau will limit the number of rounds in which bidders may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals

during the auction will be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market.

130. Calculation. Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the high bid in the same or subsequent auction(s). In the case of multiple bid withdrawals on a single license, within the same or subsequent auctions(s), the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids, in either the same or subsequent auctions(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any withdrawal payments if there is a subsequent higher bid in the same or subsequent auction(s).

131. In instances in which bids have been withdrawn on a license that is not won in the same auction, the Commission will assess an interim withdrawal payment equal to 3 percent of the amount of the withdrawn bids. The 3 percent interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the license. The *Part 1 Fifth Report and Order* provides specific examples showing application of the bid withdrawal payment rule.

vii. Round Results

132. Bids placed during a round will not be made public until the conclusion of that bidding period. After a round closes, the Bureau will compile reports of all bids placed, bids withdrawn, current high bids, new minimum acceptable bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities for Auction No. 59 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.

viii. Auction Announcements

133. The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available by clicking a link on the FCC Automated Auction System.

V. Post-Auction Procedures

A. Down Payments and Withdrawn Bid Payments

134. After bidding has ended, the Commission will issue a public notice declaring the auction closed and identifying winning bidders, down payments, final payments, and any withdrawn bid payments due.

135. 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. 59 to 20 percent of the net amount of its winning bids (gross bids less any applicable small business or very small business bidding credits). In addition, by the same deadline, all bidders must pay any bid withdrawal payments due under 47 CFR 1.2104(g), as discussed in ''Bid Removal and Bid Withdrawal,'' Section IV.B.vi. (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

B. Final Payment

136. 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 (FCC Form 601)

137. Within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 601) and required exhibits for each license won through Auction No. 59.

D. Ownership Disclosure Information Report (FCC Form 602)

138. At the time it submits its long-form application (FCC Form 601), each winning bidder also must comply with the ownership reporting requirements as set forth in 47 CFR 1.913, 1.919, and 1.2112.

E. Tribal Lands Bidding Credit

139. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally recognized tribal lands that are unserved by any telecommunications carrier or that have a wireline penetration rate equal to or below 85 percent is eligible to receive a tribal land bidding credit as set forth in 47 CFR 1.2107 and 1.2110(f). A tribal land bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

F. Default and Disqualification

140. Any high 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). In such event the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at its final bid. 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 licenses held by the applicant.

G. Refund of Remaining Upfront Payment Balance

141. All applicants that submit upfront payments but are not winning bidders for a license in Auction No. 59 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from the applicant after any applicable bid withdrawal payments have been paid. 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.

142. 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, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions, Taxpayer Identification Number (TIN) and FCC Registration Number (FRN). Send refund request to: Federal Communications Commission,

Financial Operations Center, Auctions Accounting Group, Gail Glasser, 445 12th Street, SW., Room 1–C864, Washington, DC 20554.

143. Bidders are encouraged to file their refund information electronically using the refund information portion of the FCC Form 175, but bidders can also fax their information to the Auctions Accounting Group at (202) 418–2843. Once the information has been approved, a refund will be sent to the party identified in the refund information.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Gail Glasser at (202) 418–0578.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. 05–2423 Filed 2–7–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval under Delegated Authority and Submission to OMB

SUMMARY: Background

Notice is hereby given of the final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer–Michelle Long–Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829)

OMB Desk Officer–Mark Menchik–Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or email to mmenchik–omb.eop.gov

Final approval under OMB delegated authority of the extension for three years, without revision, of the following report:

Report title: Home Mortgage Disclosure Act (HMDA) Loan/Application Register.

Agency form number: FR HMDA–LAR.

OMB control number: 7100–0247.

Frequency: Annual.

Reporters: State member banks, subsidiaries of state member banks, subsidiaries of bank holding companies, U.S. branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations under section 25 or 25A of the Federal Reserve Act.

Annual reporting hours: 150,942 hours.

Estimated average hours per response: State member banks, 242 hours; and mortgage subsidiaries, 192 hours.

Number of respondents: 519 State member banks, and 132 mortgage subsidiaries.

General description of report: This information collection is mandatory (12 U.S.C. 2803). The information is not given confidential treatment, however, information that might identify individual borrowers or applicants is given confidential treatment under exemption 6 of the Freedom of Information Act (5 U.S.C. 552(b)(6)) and section 304 (j)(2)(B) of HMDA (12 U.S.C. 2803).

Abstract: The information reported and disclosed pursuant to this collection is used to further the purposes of HMDA. These include: (1) to help determine whether financial institutions are serving the housing needs of their communities; (2) to assist public officials in distributing public–sector investments so as to attract private investment to areas where it is needed; and (3) to assist in identifying possible discriminatory lending patterns and enforcing anti–discrimination statutes.

Board of Governors of the Federal Reserve System, February 2, 2005.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 05–2330 Filed 2–7–05; 8:45 am]

BILLING CODE: 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 05-18530) published on page 5182 of the issue for Tuesday, February 1, 2005.

Under the Federal Reserve Bank of Minneapolis heading, the entry for William E. Blomster, is revised to read as follows:

A. Federal Reserve Bank of Minneapolis (Jacqueline G. Nicholas, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. William E. Blomster; Viola Blomster as trustee of the E. Viola Blomster Revocable Trust; Keri Hilgendorf; and Lance Blomster, all of Fairmont, Minnesota, acting in concert; to acquire voting shares of B & M Bancshares, Inc., Fairmont, Minnesota, and thereby indirectly acquire voting shares of State Bank of Fairmont, Fairmont, Minnesota.

Comments on this application must be received by February 16, 2005.

Board of Governors of the Federal Reserve System, February 2, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–2331 Filed 2–7–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 22, 2005.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Douglas M. Kratz, Bettendorf, Iowa, and Perry B. Hansen, Rapids City,

Illinois; to acquire voting shares of Ridgestone Financial Services, Inc., Brookfield, Wisconsin, and thereby indirectly acquire voting shares of Ridgestone Bank, Brookfield, Wisconsin.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Richard T. Gregg and Jenny D. Gregg, both of Nixa, Missouri; to acquire voting shares of Southwest Missouri Bancshares, Inc., Ozark, Missouri, and thereby indirectly acquire voting shares of Southwest Community Bank, Ozark, Missouri.

C. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Bill D. Inhofe, Muskogee, Oklahoma; to acquire voting shares of Boynton Holding Company, Muskogee, Oklahoma, and thereby indirectly acquire voting shares of Territory Bank, Muskogee, Oklahoma.

Board of Governors of the Federal Reserve System, February 2, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–2333 Filed 2–7–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 4, 2005.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. LeRoy C. Darby, Inc., Employee Stock Ownership Plan, Monona, Iowa; to acquire an additional 11.33 percent of the voting shares of LeRoy C. Darby, Inc., Monona, Iowa, and thereby indirectly acquire voting shares of Peoples State Bank, Elkader, Iowa, and Union State Bank, Monona, Iowa.

2. LeRroy C. Darby, Inc., and LeRoy C. Darby, Inc., Employee Stock Ownership Plan, both of Monona, Iowa; to acquire 100 percent of the voting shares of PSB Bancshares, Ltd., Postville, Iowa, and thereby indirectly acquire voting shares of Postville State Bank, Postville, Iowa.

Board of Governors of the Federal Reserve System, February 2, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–2332 Filed 2–7–05; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary; Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities.'' This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 11⅞% for the quarter ended December 31, 2004. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: January 31, 2005.

George Strader,

Deputy Assistant Secretary, Finance.

[FR Doc. 05–2392 Filed 2–7–05; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Request for Application 05049]

A Cooperative Agreement To Advance the Practice of Preventive Medicine; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2005 funds for a cooperative agreement program to promote the attainment of the objectives outlined in ''Healthy People 2010'' by strengthening the workforce of health professionals (public health professionals, primary care practitioners, and health professionals specializing in prevention) ensuring that graduates of medical schools and graduate programs in public health receive excellent instruction, educational preparation and practical experience in the areas of disease prevention and health promotion. To move toward attainment of these objectives by (1) Assisting medical schools and public health graduate programs in integrating a preventive medicine curriculum into medical and graduate school curricula; (2) Serving as a resource to professional organizations and academic units in developing programs which deliver up-to-date education in prevention for health professionals; and (3) Assisting member institutions to develop projects on prevention effectiveness to (a) increase years of health life, and (b) eliminate health disparities as set forth in ''Health People 2010.'' Every health care provider must understand the basic principles of public health on which the objectives are grounded and must be adequately prepared to provide the clinical preventive services and counseling listed in ''Healthy People 2010'' objectives.

B. Eligible Applicant

Assistance will be provided only to the Association of Teachers of Preventive Medicine (ATPM). ATPM is

the appropriate and only qualified organization to address the activities described under this program announcement.

ATPM is the only association that has an established membership of diverse professionals that includes teachers, practitioners, administrators, and residents in the specialty of preventive medicine, and graduate students from schools of medicine and public health, as well as from public health agencies. For 62 years, ATPM and its members have been in the forefront of advancing, promoting, and supporting health promotion and disease prevention in the education of physicians and other health professionals. ATPM provides an essential connection to individuals and institutions devoted to health promotion and disease prevention education.

C. Funding

Approximately $15,000,000 is available in FY 2005 to fund this award. It is expected that the award will begin on or before September 1, 2005 and will be made for a 12-month budget period within a project period of up to 5 years. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact:

Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, telephone: 770–488–2700.

For technical questions about this program, contact: John (Jack) Rogers, Technical Review Administrator, The Coordinating Center for Health Information and Services (CoCHIS), 4770 Buford Hwy, Mailstop K–38, Atlanta, GA 30341, telephone: 770–488–2516, e-mail: *JJRogers@cdc.gov.*

Dated: February 2, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–2372 Filed 2–7–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Environmental Health/Agency for Toxic Substances and Disease Registry; The Community and Tribal Subcommittee of the Board of Scientific Counselors (BSC), Centers for Disease Control and Prevention (CDC), National Center for Environmental Health (NCEH)/Agency for Toxic Substances and Disease Registry (ATSDR): Teleconference

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention, NCEH/ATSDR announces the following subcommittee meeting:

Name: Community and Tribal Subcommittee (CTS).

Time and Date: 3 p.m.–4:30 p.m., February 28, 2005.

Place: The teleconference will originate at the National Center for Environmental Health/Agency for Toxic Substances and Disease Registry in Atlanta, Georgia. Please see **SUPPLEMENTARY INFORMATION** for details on accessing the teleconference.

Status: Open to the public, teleconference access limited only by availability of telephone ports.

Purpose: Under the charge of the Board of Scientific Counselors, NCEH/ATSDR the Community and Tribal Subcommittee will provide the BSC, NCEH/ATSDR with a forum for community and tribal first-hand perspectives on the interactions and impacts of the NCEH/ATSDR's national and regional policies, practices and programs.

Matters to be Discussed: The teleconference agenda will include discussions on obtaining directions from the BSC on their expectations from the CTS; the community tool kit; faith-based initiative/emergency preparedness; partnering with the Program Review Committee; and an open discussion for other important issues.

Agenda items are subject to change as priorities dictate.

Supplementary Information: This conference call is scheduled to begin at 3 p.m. eastern standard time. To participate in the teleconference, please dial (877) 315–6535 and enter conference code 383520.

For Further Information Contact: Sandra Malcom, Committee Management Specialist, Office of Science, NCEH/ATSDR, M/S E–28, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 404/498–0003.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: February 1, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–2376 Filed 2–7–05; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Issuance of Final Policy Directive

AGENCY: Administration for Native Americans (ANA), HHS.

SUMMARY: The Administration for Native Americans (ANA) herein describes its issuance of final interpretive rules, general statements of policy and rules of agency procedure or practice relating to the Social and Economic Development Strategies (SEDS), Language Preservation and Maintenance (hereinafter referred to as Native Language), and Environmental Regulatory Enhancement (hereinafter referred to as Environmental) programs.

DATES: January 28, 2005.

FOR FURTHER INFORMATION CONTACT: Sheila Cooper, Director of Program Operations at (877) 922–9262.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 814 of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b–1, ANA is required to provide members of the public an opportunity to comment on proposed changes in interpretive rules, statements of general policy, and rules of agency procedure or practice, and to give notice of the final adoption of such changes at least 30 days before the changes become effective.

The Administration for Native Americans (ANA) published a Notice of Public Comment (NOPC) in the **Federal Register** on December 27, 2004 (69 FR 77251), on the proposed ANA policy and program clarifications, modifications, and activities for the FY 2005 Program Announcements. The NOPC closed January 25, 2005. ANA received two public comments: One submitted by an inter-tribal non-profit organization and one from a federally-recognized tribe. The comments in response to the notice have been considered and one has been accepted. The clarification will appear in the FY 2005 SEDS, Native Language and Environmental program announcements. This notice shall

suffice as the response to comments and any public recommendations accepted by ANA will be reflected in the FY 05 program announcements to be published in the **Federal Register.**

Comment and Response

I. ANA Application Format

ANA has revised Part Two, ''Application Review Criteria'' of the FY 2005 Program Announcement, specifically the Application Submission Requirements. Previously, ANA required applicants to include and count the Objective Work Plan (OWP) form (OMB Control Number 0980–0204), and the Federal and non-Federal share line-item budget and budget justification narrative in the page limitation. In FY 2005, ANA has removed the OWP and the line-item budget and budget justification narrative from the page limitation. With the exemption of the OWP and the budget section from the page limitation, ANA has reduced in the FY 2005 program announcements the Application Submission Requirements to 40 pages. The exemption of the OWP and the budget from the page limitation will enable applicants applying for multi-year awards to provide more information on the proposed project. (Legal authority: Section 803(a) and (d) and 803C of the Narrative American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

II. Required Forms

The Grant Application Data Summary (GADS) form (OMB Clearance Number 0970 0261 exp. 03/31/2007) is a new ANA form. The Commissioner for the Administration for Native Americans is required to collect and disseminate information related to the social and economic conditions of Native Americans for inclusion in its Annual Report to Congress. The data collected on the GADS is required to assist in gathering that data. The information is also used to ensure that ANA obtains the proper number of reviewers to review each category of grant applications. Although not included in prior announcements, GADS received OMB approval after the publication of the FY 2004 announcement. It will be included in this announcement and future announcements to be submitted as a part of the application package. (Legal authority: Section 803B of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991B–2.)

III. Evaluation Criteria

(a) ANA has modified five evaluation criteria titles and adjusted the point values and weight of three criteria. In ANA's FY 2004 grant competitions, ANA did not rate applications on how closely they followed the prescribed format. This year, ANA is proposing to revise the Evaluation Criteria to provide for the award of points in rating applications based on whether the applicant complied with the requirements in the announcement with regard to the organization of the application. ANA will maintain six evaluation criteria. The title and merit weights will apply to all three ANA program areas. Criterion One was retitled from ''Project Introduction and Summary/Abstract'' to ''Introduction and Project Summary/Application Format'' and modified to add points for the Application Format to clarify the importance of adhering to the application requirements. Criterion Two was retitled from ''Objectives and Need for Assistance'' to ''Need for Assistance''. Criterion Three was retitled for clarity from ''Approach'' to ''Project Approach''. Criterion Four was retitled from ''Organizational Profiles'' to ''Organizational Capacity'' and the point value was reduced to allow for the increase in weight and points awarded under Criterion One. Criterion Five was retitled for clarity from ''Results or Benefits Expected'' to ''Project Impact/Evaluation'' and the point value was reduced to allow for the increase in weight and points awarded under Criterion Six. For FY 2005 program announcements the titles and assigned point criteria values are: Criterion One—Introduction and Project Summary/Application Format (10 pts.); Criterion Two—Needed for Assistance (20 pts.); Criterion Three—Project Approach (25 pts.); Criterion Four—Organizational Capacity (15 pts.); Criterion Five—Project Impact/Evaluation (15 pts.); Criterion Six—Budget and Budget Justification/Cost Effectiveness (15 pts.). (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

(b) In the FY 2004 Program Announcement within the ANA Criterion Five, ANA used the term ''Performance'' Indicator. In the FY 2005 Program Announcement this term will be changed to ''Impact'' Indicator to be consistent with the Native American Programs Act of 1974, as amended. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

(c) Standard and Required Impact Indicators: As ANA continues to improve its competitive grant program ANA has modified (through addition or deletion) its collection of impact indicators under each of its programs (SEDS, Native Language and Environmental). The modified impact indicators will continue to be used to inform Congress and the public on the effectiveness, success and impact that ANA programs have in Native American communities and on behalf of Native American families. Two impact indicators will be required across all three program areas to serve as a common baseline of data that is required to be reported in ANA's legislation to demonstrate the diversity of projects and to monitor the impact of projects on the community. The FY 2005 program announcements still require five impact indicators to be submitted by the applicant under Criterion Five. ANA has standardized for consistency and program performance data collection two of the required impact indicators across all three program areas (SEDS, Native Language and Environmental). The two standard required impact indicators are: (1) Number of partnerships formed and (2) the amount of dollars leveraged beyond the required NFS match. In addition to the two standard required impact indicators, an applicant must also submit three additional indicators either selected from a suggested list in each program announcement or applicant project-specific impact indicators. (Legal authority: Section 803(a) and (d), 803B and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b, 2991b–2 and 2991b–3.)

Discussion on Comment: A comment was received that expressed concern about how ANA's peer reviewers would interpret ANA's standard impact indicator (2) ''amount of dollars leveraged beyond the required non-federal share match''. The commenter is concerned that peer reviewers will negatively perceive any leveraged resources identified by the applicant in the request for federal funds as an indication that the ANA project funds are not needed by the applicant. The commenter requested that ANA add a disclaimer to the program announcements indicating that information pertaining to leveraged resources will not be a negative factor in the review process.

Response: ANA annually trains peer reviewers and provides specific guidance on how to analyze proposed projects and the application scoring process as it relates to the evaluation criteria. ANA selected the ''leveraged resource'' indicator as a standard for all three ANA program areas because it will

yield useful information to support an analysis of how ANA's limited funding impacts native communities. The applicant's response to this indicator will also demonstrate how the leveraged resources contribute to the impact an ANA funded project has in a community. The ANA definition for ''leveraged resources'' is the total dollar value of all non-ANA resources that are committed to a proposed ANA project and are supported by documentation that exceed the 20% non-Federal match required for an ANA grant. Such resources may include any natural, financial and physical resources available within the tribe, organization, or community to assist in the successful completion of the project. An example would be a letter from an organization that agrees to provide a supportive action, product, and service, human or financial contribution that will add to the potential success of the project. ANA has considered the comment to add a disclaimer to the program announcements and has determined that ANA guidance and peer review procedures are sufficient to ensure a fair and reasonable review is conducted on all applications requesting federal funds. The required ANA impact indicator will remain as a standard data element to be used for ANA program data collection purposes.

The optional impact indicators for SEDS are: (1) Number of infrastructures and administrative systems, including policies and procedures developed and implemented; (2) number of codes or ordinances developed and implemented; (3) number of people to successfully complete a workshop/training; (4) number of children, youth, families or elders assisted or participating; (5) number of volunteer hours; (6) number of faith-based or community-based partnerships; (7) number of jobs created; (8) number of community-based small businesses established or expanded; (9) identification of Tribal or Village government business, industry, energy or financial codes or ordinances that were adopted or enacted; and (10) number of micro-businesses started. The optional impact indicators for Language, Category I are: (1) Number of surveys completed; (2) percent and number of community members assessed; (3) the rate of language loss or gain; (4) number of elders consulted; (5) number of language experts consulted; (6) number of community goals developed to preserve the native language; and (7) number of infrastructure and administrative systems, including policies and procedures developed and implemented. (Legal authority: Section 803(a) and (d), 803B and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b, 2991b–2 and 2991b–3.)

The optional impact indicators for Language, Category II are: (1) Number of people involved in establishment or operation of project; (2) number of training classes or workshops held to teach language; (3) number and type of materials developed; (4) number of media products developed; (5) number of translations achieved; (6) number of individuals who increased in ability to speak the language; (7) number of participants who achieve fluency; (8) number of settings the language is spoken in; and (9) number of infrastructure and administrative systems, including policies and procedures developed and implemented. (Legal authority: Section 803(a) and (d), 803B and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b, 2991b–2 and 2991b–3.)

The optional impact indicators for Environmental are: (1) Number of environmental regulations, codes or ordinances created; (2) number of people to successfully complete a workshop/training; (3) number of workshops/trainings provided; (4) types of capacity building systems created and implemented to support environmental program functions; (5) identification of Tribal or Village government regulations, codes or ordinances that were enacted and adopted; (6) number of regulations, codes or ordinances successfully enforced; and (7) number of infrastructure and administrative systems, including policies and procedures developed and implemented. ANA may add/delete optional impact indicators to program announcements as necessary to support ANA initiatives. (Legal authority: Section 803(a) and (d), 803B and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b, 2991b–2, and 2991b–3.)

Discussion on Comment: One comment was received that pertained to this section. The commenter suggested that ANA clarify in the evaluation criteria section the request to submit five impact indicators. The commenter offered text to clearly define the applicant's option to select three indicators from the suggested program announcement list or to submit applicant defined project indicators or to submit a combination of ANA suggested indicators and applicant defined indicators.

Response: ANA has reviewed the comment and concurs there is a need to clearly describe the optional impact indicators. ANA will incorporate the following text in the three FY 2005 ANA program announcements. The following paragraph will precede the discussion on impact indicators:

In addition to the two standard required impact indicators, an applicant must also submit three additional impact indicators. These three impact indicators may be selected from the suggested list given below, or they may be developed for the specific proposed project, or the applicant may submit a combination of both the ANA suggested indicators and applicant project-specific indicators. (Legal authority: Section 803(a) and (d), 803B and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b, 2991b–2 and 2991b–3.)

(d) ANA corrected the timeframe for use of research data in an application from 48 to 36 months under the Language, Category II program.

IV. ANA Funding Restrictions

In ANA's effort to streamline its program announcements and to clarify Funding Restriction Policies for applicants, ANA has relocated general policy statements from the criterion section of the program announcement text to the Funding Restrictions Policies section. Formerly listed under ''ANA Administrative Policies'', the bullet point on funding requests for feasibility studies, business plans, marketing plans or written materials and the bullet point on proposals from consortia of Tribes were moved to the section entitled ''ANA Funding Restrictions''. These restrictions are already reflected in the ANA eligibility restrictions at 45 CFR 1336.33(b)(2) and (b)(6). The bullet point on the social service delivery programs was inadvertently omitted from previous announcements, but ANA is statutorily required to address these programs. The restriction already appears in the ANA eligibility regulation at 45 CFR 1336.33(b)(3). ANA will include the following funding restrictions in all program announcements in compliance with sections 803(a) and (d) and 803C of the Native American Programs Act of 1974 as amended, 42 U.S.C. 2991b and 2991b–3 and 45 CFR 1336:

- Projects that request funds for feasibility studies, business plans, marketing plans or written materials, such as manuals, that are not an essential part of the applicant's project or SEDS long-rage development plan. (Legal authority: Sections 803(a) and (d) and 803C of the Native American Programs Act of 1974 as amended, 42

U.S.C. 2991b and 2991b–3 and 45 CFR 1336.33.)

• The support of ongoing social service delivery programs or the expansion, or continuation, of existing social service delivery programs. (Legal authority: Sections 803(a) and (d) and 803C of the Native American Programs Act of 1974 as amended, 42 U.S.C. 2991b and 2991b–3 and 45 CFR 1336.33.)

• Proposals from consortia of Tribes that are not specific to support from and roles of member Tribes. An application from a consortium must have goals and objectives that will create positive impacts and outcomes in the communities of its members. ANA will not fund activities by a consortium of Tribes that duplicates activities for which member Tribes also receive funding from ANA. (Legal authority: Sections 803(a) and (d) and 803C of the Native American Programs Act of 1974 as amended, 42 U.S.C. 2991b and 2991b–3 and 45 CFR 1336.33.)

V. Initial Screening

Prior to competitive panel review, all applications are pre-screened for completeness. Previously, each application submitted to ANA in response to a program announcement was pre-screened to ensure that (a) the application was received by the program announcement closing date; (b) the application was submitted in accordance with Section IV, ''Application and Submission Information''; (c) the applicant is eligible for funding in accordance with Section III, ''Eligibility Information''; (d) the applicant submitted the proper supporting documentation such as proof of non-profit status, resolutions, and required government forms; (e) an authorized representative has signed the application; and (f) the applicant has a DUNS number. An application that does not meet (a) through (f) immediately above is determined to be incomplete and is excluded from the competitive review process.

In an effort to ensure consistency with the way ACF evaluates competitive discretionary grant applications, ACF has changed its policy to include only two enforceable screen-out criteria: Timeliness and compliance with stated funding limitations. Additionally, ACF has approved ANA's request to include two additional screen-out criteria: Inclusion of a signed and dated resolution by the governing body and, for applicants that are not Tribes or Alaska Native Village governments, submission of a resolution and proof that a majority of the governing board of directors is representative of the community to be served.

Consequently, ANA will screen applications for completeness prior to the competitive panel review using the following elements: (a) The application is received by ANA on or before the published program announcement closing date; (b) the federal request does not exceed the ceiling award amount as published in the program announcement; (c) the application includes a signed and dated resolution of the governing body; and (d) if the applicant is not a Tribe or Alaska Native Village government, the native non-profit organization submits a resolution and proof that a majority of the governing board of directors is representative of the community to be served. An application that does not contain these elements will be considered incomplete and excluded from the competitive review process.

VI. Administrative Policies

In ANA's effort to streamline its program announcements and to clarify administrative policies for applicants, ANA has relocated general policy statements from the Criterion section of the program announcement text to the Administrative Policies section. ANA has also clarified administrative policies that have historically prompted numerous questions and created application and project development inconsistencies. For example, ANA removed ''Organizational Capacity'' and reworded the first bullet below for clarity. The second bullet below clarifies the administrative policy on the funding of projects versus programs to include the term ''short-term'' to communicate that projects will not be awarded for longer than three years in most program areas. The third and fourth bullets were moved from Definitions to Administrative Policies to establish the policy to determine project progress before additional funding is committed. For the purposes of clarify, the fifth bullet combined and reworded the requirement for community involvement under the definition for ''Community Involvement'' with a similar paragraph under ''Need for Assistance''. The sixth bullet supports the needs of ANA and was reworded for clarity. The seventh bullet was also reworded for clarity. The policy on the treatment of multiple applications and applications from Tribal components has been reworded for clarity and broken into two separate points to ensure application to both Tribes and non-profit organizations. The revised policy is contained in the eighth and ninth bullet points on the list below. The ninth bullet corrects the inadvertent omission of the categories that apply to the board of directors for non-profit applicants. ANA will now include the following administrative policies in each program announcement (legal authority: Sections 803(a) and (d) and 803C of the native American Programs Act of 1974, as amended, and 45 U.S.C. 2991b and 2991b–3):

Applicants must comply with the following administrative policies:

• All funded applications will be reviewed to ensure that the applicant has provided a positive statement to give credit to ANA on all material developed using ANA funds.

• ANA funds short-term projects, not programs. Proposed projects must have definitive goals and objectives that will be achieved by the end of the project period. All projects funded by ANA must be completed, or self-sustaining or supported by other-than-ANA funding at the end of the project period.

• Before funding the second or third year of a multi-year grant, ANA will require verification and support documentation from the grantee that objectives and outcomes proposed in the preceding year were accomplished and that the non-federal share was met.

• ANA reviews the quarterly and annual reports of grantees to determine if the grantee is meeting its goals, objectives and activities identified in the Objective Work Plan (OWP).

• Applications from national and regional organizations must clearly demonstrate a need for the project, explain how the project originated, discuss the community-based delivery strategy of the project, identify and describe the intended beneficiaries, describe and relate the actual project benefits to the community and organization and describe a community-based delivery system. National and regional organizations must describe their membership, define how the organization operates and demonstrate Native community and/or Tribal government support for the project. The type of community to be served will determine the type of documentation necessary to support the project.

• Applicants proposing an Economic Development project must address the project's viability. A business plan, if applicable, must be included to describe the projects feasibility, cash flow and approach for the implementation and marketing of the business.

• ANA will review proposed projects to ensure applicants have considered all resources available to the community to support the project.

• ANA will not accept applications from Tribal components that are

Tribally authorized divisions unless the ANA application includes a Tribal resolution.

• ANA will only accept one application per eligible entity. The first application received by ANA will be the application considered for competition unless ANA is notified in writing which application should be considered for competitive review.

• If the applicant, other than a Tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans, Alaska Natives, or both, the applicant must provide assurance that its duly elected or appointed board of directors is representative of the community to be served. Applicants must provide information that at least a majority of the individuals serving on a non-profit applicant's board fall into one or more of the following categories: (1) A current or past member of the community to be served; (2) a prospective participant or beneficiary of the project to be funded; or (3) have a cultural relationship with the community to be served. (Legal authority: 45 CFR 1336.33 (a).)

VII. Funding Thresholds

This is a clarification to the ANA Environmental Regulatory Enhancement program announcement funding threshold. The funding threshold for the Environmental Regulatory Enhancement program will be $50,000.00 (floor amount) to $250,000.00 (ceiling amount) per budget period. Applications exceeding the $250,000.00 threshold will be considered non-responsive and will not be considered for funding under this announcement. (Legal authority: Sections 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended 42 U.S.C. 2991b and 2991b–3.)

VIII. Definitions

The following definitions will be used in the appropriate program-specific FY 2005 program announcements. ANA has clarified many areas that applicants have historically found difficult to understand and that have previously prompted numerous questions and created application and project development inconsistencies. The ANA program announcements will now include additional definitions for the following terms:

Consortium/Tribal Village: A group of Tribes or Villages that join together for long-term purposes or for the purpose of an ANA grant.

Impact Indicators: Measurement descriptions used to identify the outcomes or results of the project. Outcomes or results must be quantifiable, measurable, verifiable and related to the outcome of the project to determine that the project has achieved its desired objective and can be independently verified through ANA monitoring and evaluation.

Objective Work Plan (OWP): The project plan the applicant will use in meeting the results and benefits expected for the project. The results and benefits are directly related to the Impact Indicators. The OWP provides detailed descriptions of how, when, where, by whom and why activities are proposed for the project and is complemented and condensed in the OWP. ANA will require separate OWPs for each year of the project. (Form OMB# 0980–0204 exp 10/31/2006.)

Minor Renovation or Alteration: Work required to change the interior arrangements or other physical characteristics of an existing facility, or install equipment so that it may be more effectively used for the project. Minor alteration and renovation may include work referred to as improvements, conversion, rehabilitation, remodeling or modernization, but is distinguished from construction and major renovations. A minor alteration and/or renovation must be incidental and essential for the project (''incidental'' meaning the total alteration and renovation budget must not exceed the lesser of $150,000 or 25 percent of total direct costs approved for the entire project period).

Total Approved Project Costs: The sum of the Federal request plus the non-Federal share. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3).

IX. Application Review Information

To ensure that grantees fulfill their obligations to ANA, ANA is including a review of grantees' past performance when considering the applicant for a new or ongoing award under all three program areas. The inclusion of this item in the application consideration process will assist ANA in making its funding decisions on whether or not to award to a particular grant applicant. Factors that may impact a grantee's past performance are their timeliness to report submission requirements, timely use and proper expenditure of the grant award funds and the administrative ease of closing out the grantee at the end of the award period.

The following statement is included under the Application Consideration for the Review and Selection Process:

Application Consideration: The Commissioner's funding decision is based on an analysis of the application by the review panel, panel review scores and recommendations; an analysis by ANA staff; review of previous ANA grantee's past performance; comments from the State and Federal agencies having contract and grant performance-related information; and other interested parties.

X. Native Language Program Area

The title for Native Language Category I grants has been changed from ''Native Language Category I Planning'' to ''Native Language Category I Assessment''. The change clarifies the purpose of the 12-month Category I grant. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

The FY 2005 Native Language Program Announcement expands the Category I-Program Area of Interest and the necessary assessment data to be collected. ANA recommends each applicant consider the Program Area of Interest in the development of a project. The Program Area of Interest under Category I is ''A project for data collection and compilation that surveys the current language status through a ''formal'' method (*e.g.,* work performed by a linguist and/or a language survey conducted by community members) or an ''informal'' method (*e.g.,* a community consensus of the language status based on elders, Tribal scholars and/or other community members) with the development of long-range language preservation goals and uses elders in the development of these goals. This assessment data should capture, at a minimum, the following data: Number of speakers; age of speakers; gender of speakers; level(s) of fluency; number of first language speakers (native language as the first language acquired); number of second language speakers (native language as the second language acquired); where native language is used (*e.g.,* home, court system, religious ceremonies, church, media, school governance or cultural activities); source of data (formal and/or informal); and rate of language loss or gain. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

Additional Information

Technical Correction: Upon general review of the Notice, Section V: Screening Elements, item ''d'' will be re-written as ''Each application submitted under an ANA program announcement will undergo a pre-review screening for:

* * * (d) if the applicant is not a Tribe or Alaska Native Village government, the applicant must submit proof that a majority of the governing board of directors is representative of the community to be served.'' The reference to Native non-profit organizations was inadvertently placed in the text. This correction will be reflected in all three FY 05 ANA program announcements.

Technical Correction: Upon general review of the Notice, Section II. Evaluation Criteria (a) additional text is needed to clarify the use of the ANA Project Abstract form in relation to Criteria One: Introduction and Project Summary/Application Format. Instructional text will be inserted in the ANA evaluation Criterion One to state ''In addition to using the ANA Project Abstract form, applicants will submit a brief narrative summary of the project that provides more information on the applicant and proposed project.'' The additional text will provide clarity to the applicant as they respond to the program announcement.

Dated: January 31, 2005.

Quanah Crossland Stamps,

Commissioner, Administration for Native Americans.

[FR Doc. 05–2325 Filed 2–7–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0016]

Agency Information Collection Activities; Proposed Collection; Comment Request; Evaluation of Consumer-Friendly Formats for Brief Summary in Direct-to-Consumer Print Advertisements for Prescription Drugs: Study 1

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on a proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on a study of consumer evaluations of various consumer-friendly formats for the brief summary in direct-to-consumer (DTC) prescription drug print advertisements.

DATES: Submit written or electronic comments on the collection of information by April 11, 2005.

ADDRESSES: Submit electric comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to each of the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Evaluation of Consumer-Friendly Formats for Brief Summary in Direct-to-Consumer (DTC) Print Advertisements for Prescription Drugs: Study 1

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes FDA to conduct research relating to health information. Section 903(b)(2)(c) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 393(b)(2)(c)) authorizes FDA to conduct research relating to drugs and other FDA regulated products in carrying out the provisions of the act. Under the act, a drug is misbranded if its labeling or advertising is false or misleading. In addition, section 502(n) of the act (21 U.S.C. 352(n)) specifies that advertisements for prescription drugs and biological products must provide a true statement of information ''***in brief summary***'' about the advertised product's ''***side effects, contraindications and effectiveness***.'' Generally, the display text of an advertisement presents a fair and balanced disclosure of the product's indication and benefits and the product's side effects and contraindications. The prescription drug advertising regulations (§ 202.1(e)(3)(iii) (21 CFR 202.1(e)(3)(iii))) specify that the information about risks must include each specific side effect and contraindication'' from the advertised drug's approved labeling. The regulation also specifies that the phrase ''side effect and contraindication'' refers to all of the categories of risk information required in the approved product labeling written for health professionals, including the Warnings, Precautions, and Adverse Reactions sections. Thus, every risk in an advertised drug's approved labeling must be addressed to meet these regulations.

In recent years, FDA has become concerned about the adequacy of the brief summary in DTC print advertisements. Although advertising of prescription drugs was once primarily addressed to health professionals, consumers increasingly have become a primary target audience, and DTC advertising has dramatically increased in the past few years. Results of the FDA 2002 survey on DTC advertising (available at *www.fda.gov/cder/ddmac/researchka.htm*) provide some information regarding the extent to which consumers read these ads and the brief summary that accompanies the main ad—41 percent of respondents in 2002 reported they do not usually read any of the brief summary. Use of the brief summary was a function of whether they have an interest in the

condition; about 45 percent of those having a particular interest in the advertised drug read all or almost all of the brief summary.

Because the regulations do not specify how to address each risk, sponsors can use discretion in fulfilling the brief summary requirement under § 202.1(e)(3)(iii). Frequently, sponsors print in small type, verbatim, the risk-related sections of the approved product labeling (also called the package insert, professional labeling, or prescribing information). This labeling is written for health professionals, using medical terminology. FDA believes that while this is one reasonable way to fulfill the brief summary requirement for print advertisements directed toward health professionals, this method may be difficult for consumers to understand.

Consumers may use the brief summary for many purposes, such as to learn about new treatments, to compare with other prescription brands or over-the-counter (OTC) medications, to form a benefit-risk judgment, to generate questions for their healthcare provider, and to verify promotional claims. All of these possible uses contribute to achieving more informed healthcare decisions.

These different uses likely involve different mental processing strategies, therefore a careful assessment of possible changes in the format and content of the brief summary is necessary. FDA's objectives for communicating important information and sponsors' discretion in choosing what specific information to include requires an understanding of the range of consumer uses of the brief summary.[1] Thus, as a first step in assessing content and format options for the brief summary, the current research will investigate the nature of consumers' goals when they read prescription drug print advertisements, and the relative usefulness of the information topics presented.

The current study will be the first in a series of studies examining the format and content of the brief summary in DTC print advertisements. Format and other content issues will be examined in following studies. This first study will consider the full context of the ''side effect, contraindications, and effectiveness'' information presented in prescription drug advertisements, in terms of what consumers are trying to learn from the entire ad, including the display (or main) page and the brief summary, and what about each is useful. In addition, the research will directly consider caregivers, another important audience for prescription drug advertising. It is estimated that 46 percent of adults help provide healthcare for someone else.[2] Caregivers provide a range of activities, from reminding another person to follow a diet to deciding whether the person in their care will use a prescription drug at all. About 58 percent of caregivers report seeking additional information about the condition they are helping to manage.

Design Overview: This study will employ a between-subjects crossed factorial design using a mall-intercept protocol. Eight print advertisements will be created using two levels of drug risk severity and four medical conditions. Thus, the factors will be severity of risk (high versus low) and medical condition (high cholesterol versus obesity versus asthma versus allergies). Other side effect and risk information will be constant across conditions. Participants, those diagnosed with the condition and those who are caregivers for a person with the condition, will be asked to read a single print advertisement for a new prescription drug. After reading the advertisement, they will be asked questions about their use and evaluation of information topics presented in the advertisement.

Factors:

• Participants. Consumers will be screened and recruited by the contractor to be either currently diagnosed with one of the above conditions, at risk of developing one of the conditions, or currently giving care to someone who has been diagnosed. A caregiver will be defined as an adult male or female who has a concern for the well-being of another person (parent, child, spouse, close friend, or relative) who is currently receiving medication for one of the four medical conditions, and who provides a (near daily) support activity for that person. The support may range from simply reminding them to take their medication to providing direct guidance and physical assistance with their treatment regimen. Thus, participants will be nested within medical condition and randomly assigned to either high or low level of risk. Each condition will be balanced with respect to gender.

Multiple disease conditions will be incorporated to provide generality. The medical conditions chosen represent a variety of conditions varying in severity and for which treatments range from multiple over-the-counter possibilities (allergies) to those where the medications are potentially quite complex and serious (weight loss). These conditions are likely to occur in both males and females, may involve a caregiver, and have fairly high prevalence rates in the general population.

Participants will be screened to represent a range of education levels (some college or less vs. completed college or more). Because the task presumes basic reading abilities, all participants will have English as their primary language and, as appropriate, be required to bring reading glasses with them to the site.

• Severity of Risk. The severity of drug side effects is an important attribute in consumers' evaluation of new prescription products. For example, it may be an important reference point for evaluating benefit claims and for directing further information search. Variation in aspects of consumer mental processing of a prescription drug advertisement, such as confirmation or clarification of promotional claims, may be expected depending on the risk information presented in the display (first) page portion of the advertisement for a new brand.

By incorporating variation in brand risk as a design factor in this study, we can further our confidence in observing a more representative spectrum in how consumers use the brief summary. Risk will be varied to create ''high'' and ''low'' levels of perceived product risk as follows:

HIGH: In rare cases, Oncor may cause heart damage. You should contact your doctor right away if you get a severe cough or chest pain.

LOW: In rare cases, Oncor may cause dry mouth. You should contact your doctor if your dry mouth lasts for more than 4 days.

Procedure: Participants will be shown one ad, e.g., an ad for a high risk drug for asthma or an ad for a low risk drug for high cholesterol. Then a structured interview will be conducted with each participant to examine a number of important perceptions about the brief summary, including perceived riskiness of the drug, ratings of individual sections in the brief summary information, and perceived usefulness of brief summary information. Finally, demographic and health care utilization information will be collected. Interviews are expected to last approximately 20 minutes and participants will be offered a $5

[1]For other FDA research investigating the relationship between consumer processing and issues of format and content, see Levy, Fein and Schucker ''Performance Characteristics of Seven Nutrition Label Formats,'' *Journal of Public Policy and Marketing*, (Spring) 15(1), 1-15, 1996.

[2]Slaughter, E., *Seventh Annual Survey on Consumer Reaction to DTC Advertising of Prescription Medicines. Rodale, Inc., 2004.*

incentive for their time. A total of 432 participants will be involved. This will be a one time (rather than annual) collection of information.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
800 (screener)	1	800	.017	14
432 (survey)	1	432	.33	143
Total				157

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: February 1, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–2419 Filed 2–7–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0038]

Reporting of Adverse Events to Institutional Review Boards; Public Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public hearing; request for comment.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public hearing to consider the process by which institutional review boards (IRBs) obtain and review information on adverse events that occur during the conduct of clinical investigations. FDA is increasingly aware of concerns within the IRB community that the process is burdensome, inefficient, and not as effective as it should be in providing IRBs the information they need to ensure that the rights and welfare of human subjects are protected during the course of a clinical study. The purpose of the hearing is to solicit information and views from interested persons on issues and concerns regarding the submission of adverse events to and their review by IRBs. FDA is seeking general information about the nature of the problem and possible solutions, responses to specific questions (see section III of this document), and any other pertinent information stakeholders would like to share.

Date and Time: The public hearing will be held on March 21, 2005, from 9 a.m. to 5 p.m. Submit written or electronic notices of participation by 4:30 p.m. on March 4, 2005. Submit written and electronic comments by April 21, 2005.

Location: The public hearing will be held at the Advisors and Consultants Staff Conference Room, 5630 Fishers Lane, Rockville, MD 20857.

Addresses: Written or electronic notices of participation should be submitted to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, e-mail: *FDADockets@oc.fda.gov*; or on the Internet at *http://www.accessdata.fda.gov/scripts/oc/dockets/meetings/meetingdocket.cfm*. Written or electronic comments should be submitted to *http://www.accessdata.fda.gov/scripts/oc/dockets/commentdocket.cfm* or to the Division of Dockets Management (see *Addresses* above).

Contacts: Nancy L. Stanisic, Center for Drug Evaluation and Research (HFD–1), Food and Drug Administration, 5600 Fishers Lane, rm. 9–64, Rockville, MD 20857, 301–827–1660, FAX: 301–443–9718, e-mail: *stanisicn@cder.fda.gov*.

For Registration and/or to participate in the meeting: Because of limited seating, we recommend that persons interested in attending the meeting register at *http://www.accessdata.fda.gov/scripts/oc/dockets/meetings/meetingdocket.cfm*. Registration will be accepted on a first-come, first-served basis.

The procedures governing the hearing are found in part 15 (21 CFR part 15). If you wish to make an oral presentation during the open public comment period of the hearing, you must state your intention on your registration form (see *Addresses*). To participate, submit your name, title, business affiliation, address, telephone, fax number, and e-mail address. You should also submit a written statement at the time of registration for each discussion question you wish to address, the names and addresses of all individuals that plan to participate, and the approximate time requested to make your presentation. Individuals who have registered to make an oral presentation will be notified of the scheduled time for their presentation prior to the hearing. Depending on the number of presentations, FDA may need to limit the time allotted for each presentation. Presentations will be limited to the questions and subject matter identified in section III of this document. Presenters should submit two copies of each presentation given. All participants are encouraged to attend the entire day.

If you need special accommodations due to a disability, please inform the registration contact person when you register.

SUPPLEMENTARY INFORMATION:

I. Background

Clinical investigations regulated by FDA under sections 505(i) (drugs and biologics) and 520(g) (medical devices) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i) and 360j(g)) must be reviewed and approved by an IRB in a manner consistent with the requirements of 21 CFR part 50 and part 56 (21 CFR part 56). To approve a proposed clinical investigation, IRBs must determine, among other things, that the risks to subjects are minimized; the risks are reasonable in relation to anticipated benefits (if any); the selection of subjects is equitable; and the informed consent process is adequate for the anticipated study population and appropriately documented (see § 56.111).

After their initial review and approval of a clinical study, IRBs are required to conduct continuing review of the study at intervals appropriate to the degree of risk presented by a study (at least annually) (§ 56.109(f)). IRBs are required to follow written procedures for continuing review of research and for determining which studies require review more often than annually (§ 56.108(a)), and must maintain records of continuing review activities (§ 56.115(a)(3)).

Under existing regulations for drugs and biologics, investigators are required to promptly report to an IRB all unanticipated problems involving risk to human subjects or others (§ 312.66 (21 CFR 312.66)). Under this reporting requirement, IRBs receive many reports of adverse events from clinical investigators. Under existing regulations for medical devices, IRBs receive information about unanticipated adverse device effects from investigators and sponsors. Investigators are required to submit to the IRB and the sponsor a report of any unanticipated adverse device effect occurring during an investigation as soon as possible, and in no event later than 10 days after the investigator learns of the effect (§ 812.150(a)(1) (21 CFR 812.150(a)(1))), and sponsors are required to report the results of an evaluation of a reported effect to reviewing IRBs and investigators within 10 working days after the sponsor receives notice of the effect (§ 812.50(b)(1)). In addition, IRBs are required to follow written procedures to ensure that there is prompt reporting to the IRB, appropriate institutional officials, and FDA of any unanticipated problems involving risks to human subjects or others (§ 56.108(b)).

The regulations describing IRB responsibilities in part 56 and the regulations describing sponsor and investigator responsibilities in parts 312 and 812, were implemented at a time when most clinical studies were conducted at a single site or a small number of sites. In the intervening years, the number of multicenter studies has grown substantially. There are many more studies with very large numbers of study sites, including trials with both foreign and domestic sites. FDA is increasingly aware of significant concerns and confusion within the IRB community about the way IRBs obtain and review adverse event information during the course of a clinical study, particularly in the context of a large multicenter study.

A. Volume of Adverse Event Reports

The rapid growth in the number of clinical research programs in recent years has led to a situation in which many IRBs receive large volumes of information, including a multitude of individual adverse event reports. In a recent letter, the Department of Health and Human Services Secretary's Advisory Committee on Human Research Protections (SACHRP letter) noted that some institutions are receiving in excess of 12,000 adverse event reports per year.[1] The clinical significance and relevance of reported events can vary considerably. FDA is aware that IRBs receive reports of events that range from serious to relatively minor, and that in some cases both anticipated and unanticipated events are reported. FDA is also aware that IRBs receive adverse event reports from other studies using the same drug, but not necessarily under the same conditions (e.g., different doses, durations of therapy, diseases, or subpopulations).

The prevalence of large, multicenter trials further contributes to the volume of adverse event reports to IRBs. Sponsors of investigations of drugs and biological products are required to notify all participating investigators of any adverse experience associated with the use of a drug that is both serious and unexpected and any finding from tests in laboratory animals that suggests a significant risk for human subjects (§ 312.32(c)(1)). Investigators typically forward copies of such reports to their IRBs, and also forward additional sponsor reports that do not meet these criteria. Thus an IRB for a single study site commonly receives reports of adverse events and other information from all study sites.

B. Quality of Adverse Events Information

Another significant concern is that individual adverse event reports submitted to IRBs are often not sufficiently informative to permit IRBs to assess the implications of reported events for study subjects. The SACHRP letter concluded that adverse event reports ''seldom contain adequate information.''

Considerable variation exists among reports in the amount of detail and quality of information provided. For example, in blinded studies, reports might not disclose the treatment the subject received (i.e., whether the subject received the study drug, an active control, or placebo). In addition, it may be difficult for IRBs to review and interpret the significance of large volumes of individual adverse event reports received in isolation (unaggregated and unanalyzed) at sporadic intervals over the course of study.

II. Purpose and Scope of the Hearing

This hearing is intended to provide the IRB community, sponsors, investigators, data monitoring committees, individuals who have participated in clinical studies, and other interested parties an opportunity to discuss their experiences and concerns about the process by which IRBs obtain and review information about adverse events, and to share their ideas about how the process might be improved to best meet the purposes of IRB review—to protect human subjects. FDA is not seeking comment on how to interpret the existing regulations in parts 56, 312, and 812 requiring the reporting of ''unanticipated problems involving risk to human subjects or others'' at this time. Instead, given the role of IRB's, FDA is asking what information about adverse events is necessary or useful for IRBs to consider in how to best protect human subjects, and is asking what the best process is for submitting such information. FDA hopes to obtain information that will help it develop strategies, such as guidance or a change to the regulations, to address the identified concerns.

III. Issues for Discussion

FDA is interested in hearing about the experiences of IRBs, investigators, sponsors, data monitoring committee, individuals who have participated in clinical studies, and other affected parties concerning the reporting of adverse events to IRBs and how IRBs evaluate such reports.

In the conduct of a clinical trial, the following parties have responsibilities related to identifying, evaluating, reporting, and analyzing adverse events:

• Clinical investigators

Clinical investigators have the responsibility of identifying adverse events associated with a drug, biologic, or device, evaluating and documenting the occurrence of such events, and making required safety reports. For drug and biologics trials, the investigator must report to the sponsor any adverse effect that may reasonably be regarded as caused by, or probably caused by, a drug (§ 312.64(b)) or biologic. The investigator must also report to the IRB all unanticipated problems involving risk to human subjects (§ 312.66). In a multicenter trial, the investigator at a site may also serve as a conduit to the site IRB for reports of serious, unexpected adverse events occurring at other study sites because he or she received reports of such events from the sponsor (§ 312.32(c)). For medical device trials, the investigator must report to the sponsor and reviewing IRB any unanticipated adverse device effects occurring during an investigation § 812.150(b)(1).

• Sponsors

[1] July 8, 2004, letter from Ernest D. Prentice, Chair of SACHRP to The Honorable Tommy Thompson, Secretary of Health and Human Services concerning SACHRP recommendations to improve human research protections.

Trial or study sponsors are required to monitor their trials and provide required safety reports (§ 312.32). Sponsors of drug or biologics trials must report to FDA and clinical investigators any adverse experience associated with the use of the drug that is both serious and unexpected or any finding from tests in laboratory animals that suggests a significant risk for human subjects (§ 312.32). Sponsors are also required to submit to FDA annual reports, a component of which contains summary information about adverse events (§ 312.33). Sponsors of medical device trials are required to report the results of evaluations unanticipated adverse device effects to FDA and all reviewing IRBs (§ 812.150(b)(1)).

• FDA

FDA reviews safety reports, and annual reports of adverse events to determine whether there is new information that affects its original evaluation of the reasonableness of the risk to study subjects.

• Data Monitoring Committee (DMC)

In large phase 3 trials, there may also be a DMC (sometimes referred to as a data and safety monitoring board or DSMB) that conducts periodic review of accumulating data from an ongoing trial to assess whether the study continues to be safe and scientifically valid. DMCs report their analyses to the sponsor or an independent steering committee set up by the sponsor.

• IRBs

IRBs are responsible for performing a continuing review of ongoing research at appropriate intervals (at least annually) (§ 56.109(f)). IRBs must have written procedures to ensure prompt reporting to the IRB, appropriate institutional officials, and FDA of any unanticipated problems involving risk to human subjects or others (§ 56.108(b)).

FDA would like to understand better how the IRB's responsibility with respect to adverse events fits with the roles of these other parties and how the process for reporting adverse events to IRBs can be improved to better enable IRBs to meet their obligation to protect the rights and welfare of human subjects. FDA would like interested parties to address the following issues and questions:

1. The role of IRBs in the review of adverse event information from ongoing clinical trials.

Given the number of parties with responsibilities related to adverse events that occur during the course of a clinical trial, what role should IRBs play in the review of adverse events information from an ongoing clinical trial? How does that role differ from the current role of IRBs? Should IRB responsibilities for multi-site trials differ from those for single-site trials? If so, how should they differ?

2. The types of adverse events about which IRBs should receive information.

Based on your view of the role of IRBs in the review of adverse event information from ongoing clinical trials, what types of adverse events should an IRB receive information about, and what types of information need not be provided to IRBs? For example, should IRBs generally receive information only about adverse events that are both serious and unexpected? Are there circumstances under which IRBs should receive information about adverse events that are not both serious and unexpected (e.g., if the information would provide a basis for changing the protocol, informed consent, or investigator's brochure)? In a multicenter study, should the criteria for reporting adverse events to an IRB differ, depending on whether the adverse events occur at the IRB's site or at another site?

3. Approaches to providing adverse events information to IRBs.

There seems to be a general consensus in the IRB community that adverse event reports submitted individually and sporadically throughout the course of a study without any type of interpretation are ordinarily not informative to permit IRBs to assess the implications of reported events for study subjects (see, e.g., the SACHRP letter, NIH Regulatory Burden v. Human Subjects Protection—Workgroups Report, available at *http://grants2.nih.gov/grants/policy/regulatoryburden/humansubjectsprotection.htm*, which states that data that are neither aggregated nor interpreted do ''not provide useful information to allow the IRB to make an informed judgment on the appropriate action to be taken, if any.''). What can be done to provide IRBs adverse event information that will enable them to better assess the implications of reported events for study subjects? For example, if prior to submission to an IRB, adverse event reports were consolidated or aggregated and the information analyzed and/or summarized, would that improve an IRB's ability to make useful determinations based on the adverse event information it receives? If so, what kinds of information should be included in consolidated reports? And when should consolidated reports be provided to IRBs (e.g., at specified intervals, only when there is a change to the protocol, informed consent, or investigator's brochure due to adverse events experience)? Who should provide such reports? Should the approach to providing IRB's adverse event reports be the same for drugs and devices?

IV. Notice of Hearing Under Part 15

The Commissioner of FDA is announcing that the public hearing will be held in accordance with part 15. The hearing will have a presiding officer, who will be accompanied by senior management from the Center for Biologics Evaluation and Research, the Center for Drug Evaluation and Research, the Center for Devices and Radiological Health, and the agency's Good Clinical Practice Program.

Persons who wish to participate in the part 15 hearing must file a written or electronic notice of participation with the Division of Dockets Management (see *Addresses*). To ensure timely handling, any outer envelope should be clearly marked with the docket number listed in brackets in the heading of this document along with the statement ''IRB-Adverse Event Reporting.'' Groups should submit two written copies. The notice of participation should contain the person's name, address, telephone number, affiliation, if any; the sponsor of the presentation (e.g., the organization paying travel expenses or fees), if any; a brief summary of the presentation (including the specific discussion questions that will be addressed); and the approximate amount of time requested for the presentation. The agency requests that interested persons and groups having similar interests consolidate their comments and present them through a single representative. After reviewing the notices of participation and accompanying information, FDA will schedule each appearance and notify each participant by telephone of the time allotted to the person and the approximate time the person's oral presentation is scheduled to begin. If time permits, FDA may allow interested persons attending the hearing who did not submit a written or electronic notice of participation in advance to make an oral presentation at the conclusion of the hearing. The hearing schedule will be available at the hearing. After the hearing, the hearing schedule will be placed on file in the Division of Dockets Management under the docket number listed in brackets in the heading of this document.

Under § 15.30(f), the hearing is informal, and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officer and panel members may question any person

during or at the conclusion of each presentation.

Public hearings under part 15 are subject to FDA's policy and procedures for electronic media coverage of FDA's public administrative proceedings (part 10, subpart C (21 CFR part 10, subpart C)). Under § 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Any persons requiring special accommodations to attend the hearing should contact Nancy L. Stanisic (see *Contacts*).

To the extent that the conditions for the hearing, as described in this notice, conflict with any provisions set out in part 15, this notice acts as a waiver of those provisions as specified in § 15.30(h).

V. Request for Comments

Interested persons may submit to the Division of Dockets Management (see *Addresses*) written or electronic notices of participation and comments for consideration at the hearing. To permit time for all interested persons to submit data, information, or views on this subject, the administrative record of the hearing will remain open following the hearing. Persons who wish to provide additional materials for consideration should file these materials with the Division of Dockets Management. You should annotate and organize your comments to identify the specific questions to which they refer (see section III of this document). Two copies of any mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. Transcripts of the hearing also will be available for review at the Division of Dockets Management.

VI. Transcripts

The hearing will be transcribed as stipulated in § 15.30(b). The transcript of the hearing will be available 30 days after the hearing on the Internet at *http://www.fda.gov/ohrms/dockets*, and orders for copies of the transcript can be placed at the meeting or through the Freedom of Information Staff (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, at a cost of 10 cents per page.

Dated: February 2, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–2300 Filed 2–7–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0422]

Guidance for Industry: Animal Drug Sponsor Fees Under the Animal Drug User Fee Act; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry (#173) entitled ''Guidance for Industry: Animal Drug Sponsor Fees Under the Animal Drug User Fee Act (ADUFA).'' This guidance describes how FDA intends to implement the Federal Food, Drug, and Cosmetic Act (the act) as it relates to animal drug sponsor fees.

DATES: Comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments on the guidance via the Internet at *http://www.fda.gov/dockets/ecomments*. Comments should be identified with the full title of the guidance and the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written requests for single copies of the guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

FOR FURTHER INFORMATION CONTACT: David Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6967, e-mail: *dnewkirk@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry (#173) entitled ''Guidance for Industry: Animal Drug Sponsor Fees Under the Animal Drug User Fee Act.'' ADUFA requires FDA to assess and collect user fees for certain applications, products, establishments, and sponsors. This guidance represents FDA's current thinking on how it intends to implement the animal drug sponsor fee provision of ADUFA.

In the **Federal Register** of September 28, 2004 (69 FR 57941), FDA published a notice of availability for a draft of the guidance, giving interested persons until October 28, 2004, to comment. FDA received one comment on the draft guidance. No substantive changes were made in finalizing this guidance document.

II. Paperwork Reduction Act of 1995

FDA concludes that this guidance contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

III. Significance of Guidance

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This guidance represents the agency's current thinking on the topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternate method may be used as long as it satisfies the requirements of applicable statutes and regulations.

IV. Comments

As with all FDA's guidances, the public is encouraged to submit written or electronic comments with new data or other new information pertinent to this guidance. FDA periodically will review the comments in the docket and, where appropriate, will amend the guidance. The agency will notify the public of any substantive amendments through a document in the **Federal Register**.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the guidance at any time. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Copies of the guidance document entitled ''Guidance for Industry: Animal Drug Sponsor Fees Under the Animal Drug User Fee Act'' may be obtained from the CVM home page (*http://www.fda.gov/cvm*) and from the Division of Dockets Management Web site (*http://www.fda.gov/ohrms/dockets/default.htm*).

Dated: January 28, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–2417 Filed 2–7–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0030]

Draft Guidance for Industry on Clinical Lactation Studies—Study Design, Data Analysis, and Recommendations for Labeling; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Clinical Lactation Studies—Study Design, Data Analysis, and Recommendations for Labeling.'' This guidance discusses agency recommendations on how and when to conduct clinical lactation studies and how to assess the influence of drugs or biologic products on lactation. The goals of this guidance are to provide the basic framework for designing, conducting, and analyzing clinical lactation studies and to stimulate further study and research to assist in rational therapeutics for lactating patients.

DATES: Submit written or electronic comments on the draft guidance by April 11, 2005. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communications, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. The guidance may also be obtained from CBER by mail by calling 1–800–835–4709 or 301–827–1800. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Kathleen Uhl, Center for Drug Evaluation and Research (HFD–020), Food and Drug Administration, 5515 Security Lane, Rockville, MD 20852, 301–443–5157, or Toni M. Stifano, Center for Biologics Evaluation and Research (HFM–600), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–6190.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Clinical Lactation Studies—Study Design, Data Analysis, and Recommendations for Labeling.'' This guidance is intended to provide recommendations to sponsors and investigators on how to design, conduct, and assess studies investigating the influence of lactation on maternal pharmacokinetics (PK), and where appropriate, the pharmacodynamics of drugs or biologic products, the extent of drug transfer into breast milk, and the effects of drugs on milk production and composition. Clinical lactation studies are usually not conducted during the development of most products and lactating women are actively excluded from trials. Consequently, at the time of a drug's initial marketing, there are seldom meaningful human data on the appropriate dosage and frequency of administration during lactation. Even after years of marketing, data in product labels regarding lactation rarely provide more information for appropriate prescribing in lactation than what was available at the time of initial marketing.

The information in this guidance is intended to promote an increase in the amount of useful data concerning how drug kinetics are affected by lactation, the extent of drug transfer into breast milk, and the effects of drugs on milk production and composition. Topics covered include study design, data analysis, labeling, and considerations for future research. The agency recommends using this guidance in conjunction with other pharmacological and clinical literature on the design, conduct, and interpretation of PK studies. Because the conduct of studies in lactating women and their breast-fed infants requires specialized knowledge in a variety of areas, investigators designing such studies are encouraged to obtain advice from experts in fields including obstetrics, pediatrics, pharmacology, clinical pharmacology, pharmacometrics, statistics, and other applicable disciplines.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the draft guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: February 1, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–2416 Filed 2–7–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0022]

International Conference on Harmonisation; Draft Guidance on S8 Immunotoxicity Studies for Human Pharmaceuticals; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''S8 Immunotoxicity Studies for Human Pharmaceuticals.'' The draft guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guidance describes a weight-of-evidence approach to determining whether additional immunotoxicity testing for nonbiological pharmaceuticals is appropriate when the findings from standard toxicity studies indicate signs of immunotoxicity. The draft guidance is intended to provide recommendations on nonclinical testing to identify compounds that have the potential to be immunosuppressive and guidance on a weight-of-evidence decision making approach for immunotoxicity testing.

DATES: Submit written or electronic comments on the draft guidance by April 11, 2005. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; or the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. The guidance may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. Send one self-addressed adhesive label to assist the office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Kenneth L. Hastings, Center for Drug Evaluation and Research (HFD–024), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5922.

Regarding the ICH: Michelle Limoli, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4480.

SUPPLEMENTARY INFORMATION:

I. Background

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health, Labour, and Welfare, the Japanese Pharmaceutical Manufacturers Association, CDER and CBER (FDA), and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations.

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization (WHO), Health Canada, and the European Free Trade Area.

In November 2004, the ICH Steering Committee agreed that a draft guidance entitled ''S8 Immunotoxicity Studies for Human Pharmaceuticals'' should be made available for public comment. The draft guidance is the product of the Safety Expert Working Group of the ICH. Comments about this draft guidance will be considered by FDA and the Safety Expert Working Group.

The draft guidance describes a weight-of-evidence approach to determining whether additional immunotoxicity testing for nonbiological pharmaceuticals is appropriate when the findings from standard toxicity studies indicate signs of immunotoxicity. The draft guidance provides the following: (1) Recommendations on nonclinical testing approaches to identify compounds which have the potential to be immunosuppressive and (2) guidance on a weight-of-evidence decision making approach for immunotoxicity testing. The primary data are from routine nonclinical toxicology studies conducted during drug development. Additional causes for concern that can affect the decision for additional immunotoxicity testing include the pharmacology of the drug, intended patient population, known drug class effects, and retention of the drug in cells of the immune system.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This draft guidance, when finalized, will represent the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the draft guidance. Two copies of mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/ohrms/dockets/default.htm*, *http://www.fda.gov/cder/guidance/index.htm*, or *http://www.fda.gov/cber/publications.htm*.

Dated: February 1, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–2418 Filed 2–7–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: January 2005

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of January 2005, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion 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		
ABENDROTH, MICHAEL	FLORENCE, CO	2/20/2005
AKHIGBE, SAMUEL	JONESVILLE, VA	2/20/2005
ALLCUTT, JOSEPH	ALEXANDRIA, LA	2/20/2005
ALVARINO, MAGDA	MIAMI, FL	2/20/2005
ARMSTRONG, JONI	FORT SMITH, AR	2/20/2005
BALL, DARCY	AUBURN, WA	2/20/2005
BAQUERIZO, MARIA	MIAMI, FL	2/20/2005
BROOKS, GLORIA	RENTON, WA	2/20/2005
BROWN, HEATHER	OKLAHOMA CITY, OK	2/20/2005
CHAMBERS, DEANA	DAVISON, MI	2/20/2005
DADYAN, GEGAM	LONG BEACH, CA	2/20/2005
DE LA VEGA, HAYDEE	MIAMI, FL	2/20/2005
DENNIE, TONY	MCDONOUGH, GA	2/20/2005
DUNN, FREDERIC	GULFPORT, MS	2/20/2005
ETHERTON, JERAMEY	LEXINGTON, KY	2/20/2005
FALCON, CORINA	DOWNEY, CA	2/20/2005
FIELDS, JEFFREY	SAN ANTONIO, TX	2/20/2005
FLORES, JUAN	LOS ANGELES, CA	2/20/2005
GOODMAN, GARY	SHERIDAN, OR	2/20/2005
HARRIS, LINDA	ATLANTA, GA	2/20/2005
HICKS, CAROLYN	BENTONIA, MS	2/20/2005
JAMES, ALMA	VALRICO, FL	2/20/2005
JIMENEZ, ANAY	HIALEAH, FL	2/20/2005
JOHNSON, ROSEMARY	FRESNO, CA	2/20/2005
LEAHEY, ROBERT	BEAVER, WV	2/20/2005
LITTLETON, DARLENE	CHAMPAIGN, IL	2/20/2005
LOPEZ, LIZZETTE	MIAMI, FL	2/20/2005
MCKINNEY, MICHELLE	FAIRFIELD, OH	2/20/2005
MURPHY, MONICA	BAKERSFIELD, CA	2/20/2005
PARRISH, VIVIAN	PORT ORANGE, FL	2/20/2005
PEKERMAN, KONSTANTYN	FORT DIX, NJ	2/20/2005
PENA, OVIDA	MIAMI, FL	2/20/2005
PORBEN, MIRIAM	HIALEAH, FL	2/20/2005
PRIME CARE SERVICES, INC	BRADFORD, PA	2/20/2005
QUEVEDO, IDANYS	HIALEAH, FL	2/20/2005
RODRIGUEZ, ALEXIS	MIAMI, FL	2/20/2005
RODRIGUEZ, ALFONSO	MIAMI, FL	2/20/2005
SARMIENTO, DAISY	MIAMI, FL	2/20/2005
SCHMITT, DERIL	LONG BEACH, CA	2/20/2005
ST JOHN, SAMUEL	PHENIX, VA	2/20/2005
TEJEDA, MARIA	MIAMI, FL	2/20/2005
TYLER, JOLIE	LORIS, SC	2/20/2005
VELAZCO, REBECA	MIAMI, FL	2/20/2005
VIDA, ALAIN	1410 WATERLOO, BELGIUM,	2/20/2005
VILLAR, SILVIA	MIAMI, FL	2/20/2005
YANES, REGLA	MIAMI, FL	2/20/2005
FELONY CONVICTION FOR HEALTH CARE FRAUD		
BLEGGI, NICOLA	LIVONIA, MI	2/20/2005
CARDENAS, KIMBERLY	LA PORTE, TX	2/20/2005
COTA, PETER	MADISON, OH	2/20/2005
DIAMOND-RILEY, ANGELA	CHICAGO, IL	2/20/2005
ENGLER, KIMBERLY	ROBERTSVILLE, MO	2/20/2005
FERNANDEZ, JOSE	OAKLAND PARK, FL	2/20/2005
HOPKINS, WYCONDA	FRESNO, CA	2/20/2005
KLEIN, REBECCA	PERRYSBURG, OH	2/20/2005
LADD, ELLA	OVERLAND PARK, KS	2/20/2005
MANZE, PATRICK	CHATHAM, NJ	2/20/2005
MARTIN-FREDERICK, CHARMAINE	PALMDALE, CA	2/20/2005
MILLER, TONI	ST JOSEPH, MO	2/20/2005
OBEROI, TEJBIR	WHITEDEER, PA	2/20/2005
OYSTER, CHERYL	KIRTLAND, OH	2/20/2005
SMITH, LISA	WESTMINSTER, SC	2/20/2005

Subject name	Address	Effective date
WINER, CLARENCE	KANSAS CITY, MO	2/20/2005
FELONY CONTROL SUBSTANCE CONVICTION		
BAKER, MICHAEL	OCALA, FL	2/20/2005
BERTUCCI, PAMELA	METAIRIE, LA	2/20/2005
CARROLL, BRIDGET	CHESTERFIELD, MO	2/20/2005
HOPWOOD, BECKY	DAYTON, WA	2/20/2005
JACKSON, TERI	AVINGER, TX	2/20/2005
JACOBS, TAMIE	WEST PALM BEACH, FL	2/20/2005
MODI, KAILAS	OAKWOOD, VA	2/20/2005
PEPPER, CHRISTI	CADIZ, KY	2/20/2005
PORTALATIN, MICHELE	FLORISSANT, MO	2/20/2005
PATIENT ABUSE/NEGLECT CONVICTIONS		
BALL, SANDRA	BROOKHAVEN, MS	2/20/2005
BELLANTON, JUDITH	WOODSTOCK, GA	2/20/2005
BYNEM, SHAKESHA	GILBERT, SC	2/20/2005
CRAWFORD, PHILIP	VILLAGE OF PALMETTO BAY, FL	2/20/2005
EVANS, BRIAN	FONTANA, CA	2/20/2005
EVANS, THOMAS	RIENZI, MS	2/20/2005
GONZALEZ, ERNESTO	TORRINGTON, WY	2/20/2005
GREENE, MARY	SACRAMENTO, CA	2/20/2005
HUNTER, FRANK	BRIDGETON, NJ	2/20/2005
MANDOLESI, MICHAEL	LONDON, OH	2/20/2005
MCCRAY, RHONDA	SHREVEPORT, LA	2/20/2005
NEACE, DARLENE	CYNTHIANA, KY	2/20/2005
OWENS, BUDDY	SOMERSET, KY	2/20/2005
PADGETT, TAMEKIA	BATESBURG, SC	2/20/2005
PAVIA, DAILLYN	GRANITE CITY, IL	2/20/2005
SANDIFER, TERESA	GREENWOOD, MS	2/20/2005
SLAVNEY, KENNETH	FRESNO, CA	2/20/2005
THOMAS, TAMIKA	EAST CLEVELAND, OH	2/20/2005
WATTS, WARDELL	CINCINNATI, OH	2/20/2005
LICENSE REVOCATION/SUSPENSION/SURRENDERED		
ADAMS, JO	VIRGIE, KY	2/20/2005
ALBRITTON, CYNTHIA	BOYNTON BEACH, FL	2/20/2005
AMES, DIANNE	BRYAN, TX	2/20/2005
ARNOLD, LISA	WEST PALM BEACH, FL	2/20/2005
ATENCIO, SALLY	HENDERSON, NV	2/20/2005
ATWOOD-ALDEN, DONNA	NEWBURYPORT, MA	2/20/2005
AUTHELET, JERILYN	WARREN, RI	2/20/2005
BAILEY, CHERYL	SPARKS, NV	2/20/2005
BAUKNIGHT, POLLA	BELLEVUE, WA	2/20/2005
BINGHAM, NATHANIEL	CHICAGO, IL	2/20/2005
BLANTON, EBONY	PALMDALE, CA	2/20/2005
BOUTROS, SAMIR	BRIARWOOD, NY	2/20/2005
BOWLING, SARAH	JACKSON, KY	2/20/2005
CALLERAME, WILLIAM	LARGO, FL	2/20/2005
CAMPBELL, CHRISTINE	EVERETT, WA	2/20/2005
CHANEY, CINDY	HAMILTON, OH	2/20/2005
CHEATHAM, DOUGLAS	PHOENIX, AZ	2/20/2005
COMBS, JOYCE	HAZARD, KY	2/20/2005
CORDELL, KIMBERLY	ARITON, AL	2/20/2005
COX, CASEY	BARDSTOWN, KY	2/20/2005
COX, HILDA	DORA, AL	2/20/2005
CRIST-LEGG, BARBARA	WESTERVILLE, OH	2/20/2005
CRUZ, VANIDY	NEW BEDFORD, MA	2/20/2005
DELACRUZ BROWN, JENNIFER	CENTRAL FALLS, RI	2/20/2005
DIAZ, MAGDALENA	HOUSTON, TX	2/20/2005
DORAN, MICHAEL	MOUNT VERNON, WA	2/20/2005
EDDINGS, JOLENE	SILVER SPRINGS, NV	2/20/2005
FERNANDES, SHARON	ARCADIA, FL	2/20/2005
FLANDERS, CHERYL	WILLOUGHBY HILLS, OH	2/20/2005
FORD, KAYLA	KILLEN, AL	2/20/2005
FREE, MICHAEL	LANSING, IL	2/20/2005
FULLMAN, LINDA	MIDFIELD, AL	2/20/2005
FUQUA, LYNN	TONEY, AL	2/20/2005
GABALDON, JENNIFER	FLAGSTAFF, AZ	2/20/2005
GALINDO, VIOLET	PEORIA, AZ	2/20/2005
GILLEY, VICKIE	VERBENA, AL	2/20/2005

Subject name	Address	Effective date
GINN, DAVID	COCKEYSVILLE, MD	2/20/2005
GLOYD, JASON	HEBRON, OH	2/20/2005
GLUSCHKE, REGINA	POMPANO BEACH, FL	2/20/2005
GOMEZ, ALVERA	LAKE HAVASU, AZ	2/20/2005
GREEN, KARMEN	HOLYOKE, MA	2/20/2005
GREEN, PRISCILLA	QUINCY, FL	2/20/2005
GREER, KAREN	GREENEVILLE, TN	2/20/2005
GUARA, ANTHONY	DENVER, CO	2/20/2005
HARDIN, SUSAN	LAWRENCEBURG, KY	2/20/2005
HARDY, JERI	PORTER, TX	2/20/2005
HARRIS, LINC	BASTROP, TX	2/20/2005
HAYES, WILEY	LOCKPORT, IL	2/20/2005
HEATH, RICHARD	ALAMEDA, CA	2/20/2005
HERNANDEZ, REBECCA	CRESTWOOD, KY	2/20/2005
HIGHTOWER, ANNIE	TUSKEGEE, AL	2/20/2005
HINDS, WILLIAM	SODDY DAISY, TN	2/20/2005
HINOJOSA, MARIA	TEMECULA, CA	2/20/2005
HOWARD, ANNA	PORT ARTHUR, TX	2/20/2005
JENRETTE, VICKY	SUMMERVILLE, SC	2/20/2005
JENSEN, TAMMER	RIVERSIDE, CA	2/20/2005
JONES, KRISTINE	HUNTSVILLE, AL	2/20/2005
KANATZAR, MONTI	NICHOLASVILLE, KY	2/20/2005
KERR, SHEILA	OLIVE BRANCH, MS	2/20/2005
KLEIN, GALE	OLALLA, WA	2/20/2005
KLIMAS, RICHARD	HUNTSVILLE, AL	2/20/2005
LANE, GREGORY	BAKERSFIELD, CA	2/20/2005
LAZARRE, SANDRA	FT LAUDERDALE, FL	2/20/2005
LEONARD, JUDITH	LONG BRANCH, NJ	2/20/2005
LIPSCHUTZ, HOWARD	WYNNEWOOD, PA	2/20/2005
LOMAX, AVERY	ONTARIO, CA	2/20/2005
LUCIANO, CHERYLANNE	ATLANTIC BEACH, FL	2/20/2005
LUNA, TRACY	SPOKANE, WA	2/20/2005
MCCORMICK, NATALIE	INDIANAPOLIS, IN	2/20/2005
MEYER, JAMES	LITTLE ROCK, AR	2/20/2005
MOLINAR, ARTHUR	GLENDALE, AZ	2/20/2005
MONTECINO, DOUGLAS	MARRERO, LA	2/20/2005
MOORE, JANICE	JACKSONVILLE, FL	2/20/2005
NAVARRETTE, MARY	EL PASO, TX	2/20/2005
NICOSIA, PATRICIA	BERWYN, IL	2/20/2005
PALMER, LATRICIA	SPRING CITY, TN	2/20/2005
PATZ, ERIC	ORLANDO, FL	2/20/2005
PERRI, JODIE	BENSALEM, PA	2/20/2005
PITTS, ROCHELLE	PENSACOLA, FL	2/20/2005
POMONIS, LILLIAN	MESA, AZ	2/20/2005
POTTER, NICOLE	W WARWICK, RI	2/20/2005
PRESTON, ROBERT	YOUNGTOWN, AZ	2/20/2005
PRINTZ, BRUCE	WESTFIELD, NJ	2/20/2005
RICE, TONI	CRESTVIEW, FL	2/20/2005
RILES, RACHEL	MOCKSVILLE, NC	2/20/2005
ROAN, RHONDA	MONROE, LA	2/20/2005
ROEDERSHEIMER, MARCY	ROCKPORT, TX	2/20/2005
RUIZ, MIREYA	TUCSON, AZ	2/20/2005
RYAN, MICHAEL	EL MIRAGE, AZ	2/20/2005
SAUCEDA, MICHELLE	ARLINGTON, TX	2/20/2005
SCOTT, JIMMY	CUMBERLAND, KY	2/20/2005
SEDGWICK, DONNA	SPOKANE, WA	2/20/2005
SHEPHERD, LORETTA	ABERDEEN, OH	2/20/2005
SMITH, ANGELINE	ORLANDO, FL	2/20/2005
SMITH, JANET	POLO, IL	2/20/2005
SMITH, LETICIA	SURPRISE, AZ	2/20/2005
SMITH, MEON	LANCASTER, CA	2/20/2005
SMOOT, MARY	PHILADELPHIA, PA	2/20/2005
STUBBLEFIELD, MARQUETTA	NICHOLASVILLE, KY	2/20/2005
SWARTZ, PAUL	LAFAYETTE, IN	2/20/2005
TANNER, PATTI	BARLOW, KY	2/20/2005
TREADWELL, DIANE	WARE, MA	2/20/2005
TRUJILLO, RAFAEL	SUNLAND, CA	2/20/2005
VELEZ, LABONNIA	CLOVIS, CA	2/20/2005
VERA, MIRIAM	PORT ST LUCIE, FL	2/20/2005
WALSH, PATRICIA	WALTHAM, MA	2/20/2005
WALTERS, PATRICIA	SUWANEE, GA	2/20/2005
WATSON, MARTHA	MAYSLICK, KY	2/20/2005
WEISSMAN, ARTHUR	BUFFALO, NY	2/20/2005
WELBORN, VELVET	FULTON, MS	2/20/2005

Subject name	Address	Effective date
WETTEROW, MELANIE	PHOENIX, AZ	2/20/2005
WHITE, SEAN	GLENDALE, AZ	2/20/2005
WHITTENTON, ANGELA	COATS, NC	2/20/2005
WILD, LISA	COLUMBIA, CT	2/20/2005
WILLIAMS, PATRICIA	ANNANDALE, VA	2/20/2005
WILLIAMS, WARREN	OAKLAND, CA	2/20/2005
WOOLLEY, TODD	OLYMPIA, WA	2/20/2005
ZIBA, GRACE	LOMA LINDA, CA	2/20/2005
FRAUD/KICKBACKS/PROHIBITED ACTS/SETTLEMENT AGREEMENTS		
GLANZER, ELROY	IDAHO FALLS, ID	2/18/2004
OWNED/CONTROLLED BY CONVICTED ENTITIES		
MONTECINO'S DRUGS, INC	MARRERO, LA	2/20/2005
VALLEY COUNTRY CARE	EDEN VALLEY, MN	2/20/2005
DEFAULT ON HEAL LOAN		
BUKOWSKI, TODD	WASHINGTON, DC	11/19/2004
MANRIQUEZ, ANTONIO	COACHELLA, CA	2/20/2005
RICHARDS, JOHN	WASHINGTON, DC	2/20/2005

Dated: February 1, 2005.

Katherine B. Petrowski,

Director, Exclusions Staff, Office of Inspector General.

[FR Doc. 05–2369 Filed 2–7–05; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Methods for Treating Active Uveitis

Robert Nussenblatt (NEI) and Thomas Waldmann (NCI), Zhuqing Li (NEI), Ronald Buggage (NEI).

U.S. Provisional Patent Application No. 60/616,760 filed 06 Oct 2004 (DHHS Reference No. E–328–2004/0–US–01).

Licensing Contact: Susan Carson; 301/435–5020; *carsonsu@mail.nih.gov.*

Intraocular inflammatory disease (uveitis) is characterized by pain and a decrease in vision that can lead to blindness if not treated appropriately. The incidence and prevalence of the disease are approximately 52/100,000 and 112/100,000, and this translates into an incidence of 151,000 per year and a prevalence of 322,000. The numbers are expected to increase as the population ages. Treatment of severe uveitis often focuses on the control of the inflammatory symptoms using high dose corticosteroids, cytotoxic drugs or other immunosuppressive agents and there is a need for therapies that reduce the major side effects associated with the prolonged use of systemic steroids (*e.g.* hyperglycemia, osteoporosis and loss of immunocompetence).

Daclizumab is a humanized anti-Tac (HAT) antibody that specifically binds to the alpha subunit (CD25 or Tac subunit) of the human high affinity interleukin-2 (IL–2) receptor expressed on the surface of activated lymphocytes. Dr. Nussenblatt and colleagues at the NEI have previously shown that daclizumab can be used to successfully treat quiescent uveitis. Long term daclizumab therapy at a dose of 1mg/kg can be used instead of standard immunosuppressive agents to treat severe uveitis for more than 4 years with no adverse effects attributable to the medication, and subcutaneously administered daclizumab also appeared to be clinically effective. However, subjects with active uveitis were less likely under this regimen to have their disease controlled (J. Autoimmunity (2003) 21, 283–293).

The present invention targets patients with refractory, active uveitis and consists of a high dose intravenous induction therapy using daclizumab at two different doses and times followed by a longer term maintenance therapy. Positive therapeutic effects have been seen with this protocol in a small group of patients within 4–6 weeks after the initiation of therapy. As previous work indicated that IL–2R receptors have a slow turnover rate on CD4 positive subpopulation of lymphocytes, a possible mechanism of action of this new protocol is saturation of CD25 (TAC) receptors on cells in sequestered sites.

Available for licensing are methods directed to this treatment of active uveitis using a high dose pulsatile induction protocol of an interleukin-2 (Il–2) receptor antagonist. Methods are also provided for the treatment of corneal transplant rejection, limbal stem cell rejection following transplantation, optic neuritis and dry eye.

Novel Thermostable Y-Family DNA Polymerases

Roger Woodgate (NICHD), John P. McDonald (NICHD), and Wei Yang (NIDDK).

U.S. Provisional Patent Application No. 60/573,684 filed 20 May 2004 (DHHS Ref No. E–166–2004/0–US–01); U.S. Provisional Patent Application No. 60/623, 490 filed 29 Oct 2004 (DHHS Ref No. E–166–2004/1–US–01).

Licensing Contact: Susan Carson; 301/435–5020; *carsonsu@mail.nih.gov.*

Y-family polymerases are able to bypass lesions in DNA that would otherwise block replication by high fidelity DNA polymerases and are key to the effective study of ancient DNA and for use in forensic medicine. These enzymes are ubiquitous and are found in all kingdoms of life: bacteria, archaea and eukaryotes. The number of proteins related to the Y-family polymerases is well over 200 orthologs and despite being closely related at the phylogenetic level, the few polymerases now characterized, each show a unique set of properties including processivity, fidelity, and the ability to bypass certain types of DNA. Y-family polymerases from thermostable organisms are of particular interest because the enzymes isolated from such species tend to be more stable, easy to work with and may have more utility in assays at higher temperatures, such as Polymerase Chain Reaction (PCR). For example, the thermostable archeal *Sulfolobus solfataricus* DinB-like polymerase Dpo4 can bypass lesions by generally inserting the correct complementary nucleotide opposite a variety of damaged bases and can, under appropriate conditions substitute for Taq polymerase in PCR applications [NAR (2001) 29, 4607–4616; DHHS Ref. No. E–232–2001/0]. Additionally, functional and structural organization of this family of polymerases permits domain swapping designed to optimize specific properties of use in novel applications [J. Biol. Chem. (2004) 279, 32932–32940].

Dr. Woodgate's group at the National Institute of Child Health and Development have expanded their earlier work and have now discovered several additional thermostable dpo4 homologs from other strains found in the *Sulfolobaceae* family, some of which have optimal growth temperatures higher than 80°C. These novel DinB-like proteins have thermostable DNA polymerase activity and are capable of: (1) PCR amplifications over 1kb in length, (2) replication past DNA lesions such as abasic sites and CPD (cis-syn cyclobutane pyrimidine dimer) lesions and (3) incorporation of several different labeled DNA nucleotides into DNA during replication. These enzymes may therefore be a good substitute for Taq polymerase in applications utilizing fluorescent nucleoside triphosphate derivatives. These lesion-bypassing Dpo4-like polymerases could also be included along with a conventional thermostable polymerase in a PCR protocol designed to amplify old or damaged DNA samples which could greatly increase recoverability, accuracy and length of products. Other applications could include labelling or tagging DNA, real-time PCR, detection of SNPs, mismatches or DNA lesions, mutagenic PCR, directed-evolution methods and expanding the ''DNA alphabet'' utilizing non-natural nucleotides.

Available for licensing are seven novel Y-family polymerases. Claims are directed to these sequences and chimeras, as well as to methods of identifying other Y-family polymerases and generating other chimeric Y-family polymerases and methods of use. These enzymes and methods of identifying and generating novel Y-family polymerases should be of interest to forensic DNA service companies as well as to research reagent companies pursuing novel thermophlic enzymes for use in ancient and damaged DNA analysis and for novel applications with modified nucleotides.

In addition to licensing, the technology is available for further development through collaborative research with the inventors via a Cooperative Research and Development Agreement (CRADA).

Related technologies available for licensing as research tools include: DHHS Ref. No. E–232–2001/0 (dpo4 Y-family polymerase) and DHHS E–229–2001/0 (pol iota Y-family polymerase).

Rapid, Efficient In Vivo Site-Directed Mutagenesis Using Oligonucleotides

Francesca Storici, Michael A. Resnick, Lysle Kevin Lewis (NIEHS).

PCT Application No. PCT/US02/23634 filed 26 July 2002, which published as International Publication No. WO03/012036 on 13 Feb 2003 (DHHS Reference No. E–204–2001/0–PCT–02).

National Stage Entry: EPC, CA, AU, US, JP.

U.S. Patent Application No. 10/484,989 filed 26 Jan 2004 (DHHS Reference No. E–204–2001/0–US–07).

Licensing Contact: Susan Carson; 301/435–5020; *carsonsu@mail.nih.gov.*

The rapid modification of genes provides opportunities to study gene function and evaluate drug responsiveness. Scientists at the National Institute for Environmental and Health Sciences have developed a new system in yeast, *delitto perfetto,* which provides for rapid, efficient and accurate in vivo genomic mutagenesis using oligonucleotides (IROs) and involves the complete removal of the heterologous sequence previously integrated at the target locus (Nature Biotechnol. (2001) 19, 773–776). They have demonstrated that synthetic oligonucleotides can target a desired mutation to almost any chromosomal locus where a marker cassette has been previously integrated. The oligonucleotides, which are designed with short sequence homology to sites up- and down-stream of the marker cassette, replace the marker cassette with the chosen mutation without leaving any heterologous sequence in the targeted locus. Since the system always provides selection for the clones containing the desired mutation, it can be used to generate any kind of modification: *i.e.*, it is not constrained by the generation of mutations that provide a detectable phenotype. Additionally, induction of double-strand breaks (*delitto perfetto-DSB*) in vivo before standard transformation procedures provides 1,000 to 10,000 fold stimulation of oligonucleotide targeting, resulting in 5–20% of all cells in the population being efficiently targeted by small oligonucleotides (PNAS (2003), 100, 14994–14999). With such a high stimulation of targeting even gross rearrangements, like large DNA deletions, chromosome fusions, circularizations, reciprocal or non reciprocal translocations are obtained with high frequency and direct selection.

The core invention is a novel self-cloning system for simple and high-throughput in vivo site-directed mutagenesis applicable to all organisms capable of homologous recombination and developed in the non-pathogenic yeast *Saccharomyces cerevisiae.* Since changes are created through a self-cloning process, this system could represent a highly versatile tool to generate modifications of genes in yeasts for commercial application in the food and beverage industries (such as, baking, brewing, wine and sake) without the resulting organisms being classified as GMO (genetically modified organisms). This approach could also be well positioned within drug discovery protocols where the need to mutagenize particular target sequences forms an integral part of the drug development process.

Delitto perfetto-DSB is efficient for targeting homologous sequences that are close or distant to the DSB and in the presence of a competing homologous chromosome in diploid cells, and can strongly stimulate recombination with single-stranded DNA, without strand bias. The mechanism of DSB repair with oligonucleotides follows primarily a single-strand annealing pathway of recombinational repair. This novel system is also independent of restriction sites, requires minimal sequence

analysis. This method has been used in *S. cerevisiae* for many yeast chromosomal genes and the human gene p53 and has obvious potential for use with YAC and TAR clones. Claims are directed to several methods for generating DNA nucleic acid mutations in vivo and are applicable to any organism that has a homologous recombination system, as well as to kits. This methodology is available for licensing and is a highly versatile tool of direct use to drug discovery, pharma and research reagent companies as well as to companies working with industrial yeast strains.

In addition to licensing, the technology is available for further development through collaborative research with the inventors via a Cooperative Research and Development Agreement (CRADA).

Related technologies also available for licensing include: DHHS Ref. No. E–121–1996/0–US–06, Transformation-Associated Recombination Cloning (U.S. Patent No. 6,391,642 issued 21 May 2002); and DHHS Ref. No. E–262–1984/0–US–03, Process for Site Specific Mutagenesis Without Phenotypic Selection (U.S. Patent No. 4,873,192 issued 10 Oct 1989).

The Whey Acidic Protein (WAP) Promoter and Its Use to Express Therapeutic Proteins in the Milk of Transgenic Mammals

Lothar Hennighausen (NIDDK), Heiner Westphal (NICHD), *et al.* U.S. Patent No. 6,727,405 issued 27 Apr 2004 (DHHS Reference No. E–411–1987/0–US–03).

Licensing Contact: Susan Carson; 301/435–5020; *carsonsu@mail.nih.gov.*

Transgenic animals can be engineered to express complex human proteins at high concentrations in milk. Protein replacement therapy is often the only treatment available for congenital diseases such as hemophilia or lysosomal storage disease, and the cost of treatment can be high with the therapeutic protein market estimated to reach more than $50 billion by 2010.

U.S. Patent No. 6,727,405 has recently been issued (expiry date 2021) to NIH scientists and their collaborators. This patent provides for a non-human mammal such as mouse, sheep, pig, goat and cow whose genome contains a DNA sequence comprising a milk serum protein (whey acidic protein) promoter linked to a heterologous gene sequence and secretory peptide, as well as methods for producing a secreted protein into the transgenic animal's milk and claims directed to the DNA construct. The invention permits the production of any desired protein in an easily maintained, stable, mammalian bioreactor, which is capable not only of producing the desired protein in milk, but can also pass the ability to do so to its female offspring. Although other methods of obtaining recombinant protein products are available, these require inefficient, expensive purification of the protein from the blood or from cell culture media and there remains a need for an efficient and cost effective method for producing therapeutic proteins.

This WAP promoter platform technology provides a viable alternative to other milk protein promoters and is available for non-exclusive licensing.

Dated: January 31, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05–2364 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: (301) 496–7057; fax: (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

A3 Adenosine Receptor Agonists

Kenneth A. Jacobson *et al.* (NIDDK).

U.S. Provisional Patent Application No. 60/608,823 filed 09 Sep 2004 (DHHS Reference No. E–248–2004/0–US–01).

Licensing Contact: Marlene Shinn-Astor; (301) 435–4426; *shinnm@mail.nih.gov.*

Researchers have been pursuing compounds that activate or inhibit adenosine A3 receptors because these cell membrane proteins have a wide range of physiological and disease-related effects and are thus considered to be promising drug targets. The adenosine A3 receptors are G-protein-coupled receptors and are found mostly in brain, lung, liver, heart, kidney, and testis. When this receptor is activated moderately, a cytoprotective effect is observed, such as reducing damage to heart cells from lack of oxygen. However, at high levels of stimulation they can cause cell death. Both agonists and antagonists are being tested for therapeutic potential, for example, treatment of cancer, heart conditions, neurological conditions, pain, asthma, inflammation and other immune implications.

Adenosine receptors have provided fertile leads for pharmaceutical development, and there are currently a variety of adenosinergic compounds advancing toward clinical trials. Therapeutics which target the adenosine A3 receptors is now an emerging focus that the major pharmaceutical companies are developing. Smaller companies are also developing drugs that stem from proprietary technology targeting adenosine A3 receptors. These companies have products in clinical trials for colorectal cancer and rheumatoid arthritis.

This invention pertains to highly potent A3 adenosine receptor agonists, pharmaceutical compositions comprising such nucleosides, and a method of use of these nucleosides.

This research has been published, in part, in S. Tchilibon, B.V. Joshi, S.-K. Kim, H.T. Duong, Z.-G. Gao, and K.A. Jacobson, ''N-methano adenosine derivatives as A3 receptor agonists,'' J. Med. Chem., ASAP web release date 23 Sep 2004, doi: 10.1021/jm049580r.

In addition to licensing, the technology is available for further development through collaborative research with the inventors via a Cooperative Research and Development Agreement (CRADA).

Apparatus for Multifocal Deposition and Analysis

Bradford Wood, Alexander Gorbach, Ziv Neeman, Julia Hvisda (all of NIHCC), *et al.* U.S. Provisional Patent Application No. 60/403,875 filed 16 Aug 2002 (DHHS Reference No. E–248–2001/0–US–01); International Application Number PCT/US03/25575 filed 14 Aug 2003, which

published as WO 2004/016155 A3 on 26 Feb 2004 (DHHS Reference No. E–248–2001/0–PCT–02).

Licensing Contact: Michael Shmilovich; (301) 435–5019; *shmilovm@mail.nih.gov.*

Available for licensing and commercial development is a multifocal apparatus for delivering an agent or for gathering information about a biological tissue, such as optical spectroscopy for tissue characterization (nuclear chromatic density). The apparatus includes a needle or catheter having a lumen extending longitudinally at least partially through it and a deployment port within the distal portion of the catheter. A plurality of extendable-retractable needles are housed within the catheter lumen, when deployed, extend through the deployment port. The needles may be solid or hollow and may deliver an agent to the tissue, include a mechanism for gathering information about the tissue, or both. Optical spectroscopy in a needle-based system provides in vivo tissue characterization without removal of tissue for microscopic analysis, which may be helpful during surgery or image guided therapies to localize cancerous tissue.

Figure 1 is a schematic diagram of one embodiment of the apparatus in use. The distal end of the apparatus is shown within a neoplasm and the needles are in a deployed state.

Figure 2 is an enlarged, longitudinal section through the distal end of an embodiment of the apparatus, showing several extendable-retractable needles in a non-deployed, or retracted, state.

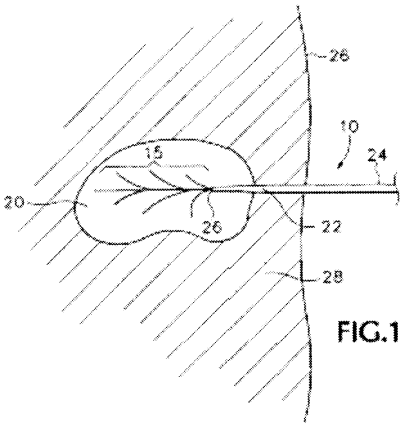

FIG.1

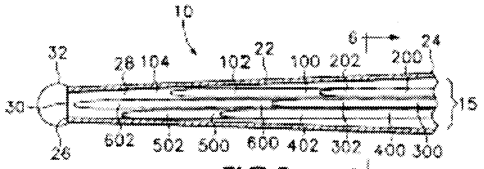

FIG.2

In addition to licensing, the technology is available for further development through collaborative research with the inventors via a Cooperative Research and Development Agreement (CRADA).

Dated: February 1, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05–2365 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

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Monoclonal Antibody 90.12 Recognizes a Novel B Cell Surface Antigen Upregulated on Both Activated and Apoptotic Lymphocytes

Marjorie A. Shapiro *et al.* (FDA).

DHHS Reference No. E–195–2004/0—Research Tool.

Licensing Contact: Cristina Thalhammer-Reyero; 301/435-4507; *thalhamc@mail.nih.gov.*

Monoclonal antibody 90.12 recognizes a molecule expressed on the surface of a subset of B lymphocytes and on all types of blood cells. This antigen is increased upon stimulation of B and T lymphocytes as well as on cells undergoing programmed cell death. Amino acid sequencing of the beginning of the protein suggests that it is a member of the S100 family of calcium binding proteins. The antibody is further described in ''Characterization of a B cell surface antigen with homology to the S100 protein MRP8'' by Shapiro MA, Fitzsimmons SP, Clark KJ, Biochem Biophys Res Commun. 1999 Sep 16;263(1):17–22 and ''A novel activation induced lymphocyte surface antigen, 90.12, is also expressed on apoptotic cells'' by Clark KJ, Monser M, Stein KE, Shapiro MA, Scand J Immunol. 2000 Feb;51(2):155–63.

Methods for Analyzing High Dimensional Data for Classifying, Diagnosing, Prognosticating, and/or Predicting Diseases and Other Biological States

Javed Khan and Paul S. Meltzer (NHGRI), *et al.*

U.S. Patent Application No. 10/133,937 filed 25 Apr 2002 (DHHS Reference No. E–324–2001/0–US–01).

Licensing Contact: Cristina Thalhammer-Reyero; 301/435–4507; *thalhamc@mail.nih.gov.*

This invention relates to a method of using supervised pattern recognition methods to classifying, diagnosing, predicting, or prognosticating various diseases. The method includes

obtaining high dimensional experimental data, such as gene expression profiling data, filtering the data, reducing the dimensionality of the data through use of one or more methods, training a supervised pattern recognition method, ranking individual data points from the data, choosing multiple data points from the data based on the relative ranking, and using the multiple data points to determine if an unknown set of experimental data indicates a diseased condition, a predilection for a diseased condition, or a prognosis about a diseased condition.

Artificial neural networks (ANNs) are computer-based algorithms capable of pattern recognition particularly suited to making diagnoses. ANNs do not require explicit encoding of process knowledge in a set of rules and can be trained from examples to recognize and categorize complex patterns. ANNs learn more efficiently when the data to be input into the neural network is preprocessed. Various ANN approaches to the analysis of data have seen extensive application to biomedical problems, including those in the areas of diagnosis and drug development. Unsupervised neural networks are also extensively used for the analysis of DNA microarray data.

The technology is further described in J. Khan *et al.*, ''Classification and diagnostic prediction of cancers using gene expression profiling and artificial neural networks,'' Nature Medicine, 7(6):673–679, June 2001.

Selections of Genes

Javed Khan and Paul S. Meltzer (NHGRI), *et al.*

U.S. Patent Application No. 10/159,563 filed 31 May 2002 (DHHS Reference No. E–324–2001/1–US–01).

Licensing Contact: Cristina Thalhammer-Reyero; 301/435–4507; *thalhamc@mail.nih.gov.*

The invention provides selections of genes expressed in a cancer cell that function to characterize such cancer, and methods of using the same for diagnosis and for targeting the therapy of selected cancers. In particular, methods are provided to classify cancers belonging to distinct diagnostic categories, which often present diagnostic dilemmas in clinical practice, such as the small round blue cell tumors (SRBCTs) of childhood, including neuroblastoma (NB), rhabdomyosarcoma RMS), Burkitt's lymphoma (BL), and the Ewing family of tumors (EWS). More specifically, the invention is an application of Artificial Neural Networks (ANNs) for the diagnostic classification of cancers based on gene expression profiling data derived from cDNA microarrays. The ANNs were trained using as models. The ANNs then correctly classified all samples tested and identified the genes most relevant to the classification. Their study demonstrated the potential applications of these methods for tumor diagnosis and for the identification of candidate targets for therapy. The uniqueness of this method is taking gene expression data generated by microarrays, minimizing the genes from the original 1000s to less than 100, identifying which genes are the most relevant to a classification, which gives an immediate clue to the actual biological processes involved, not just surrogate markers which have no bearing on the biology.

The technology is further described in J. Khan *et al.*, ''Classification and diagnostic prediction of cancers using gene expression profiling and artificial neural networks,'' Nature Medicine 7(6): 673–679, June 2001.

Dated: February 1, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05–2366 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: (301) 496–7057; fax: (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Methods for Prophylaxis and Treatment of HER–2/neu Tumors

John C Morris, Jay A. Berzofsky, Yoshio Sakai, Jong-Myun Park, Masake Terabe (all of NCI).

Serial Nos. PCT/US2003/034362 filed 29 Oct 2003 (DHHS Reference No. E–025–2003/1–PCT–1) and 60/422,395 filed 30 Oct 2002 (DHHS Reference No. E–025–2003/0–US–01).

Licensing Contact: Susan S. Rucker; (301) 435–4478; *ruckersu@mail.nih.gov.*

This application relates to methods for cancer prophylaxis and treatment. More particularly, the application relates to methods for the treatment and prophylaxis of cancers caused by the activity of the HER–2/neu/erbB–2 gene employing immunotherapy. Such cancers include breast cancers, cancers of the female genital tract and some cancers of the gastrointestinal tract.

The methods claimed involve the use of a HER–2/neu vaccine employing recombinant non-replicating adenovirus expressing a HER–2/neu/erbB–2 gene. In a preferred embodiment the vaccine comprises a recombinant non-replicating adenoviral vector encoding a HER–2/neu/erbB–2 gene that is expressed as a truncated HER–2/neu/erbB–2 protein. Antigen presenting cells, such as dendritic cells infected with the recombinant adenoviral vector, process and present the truncated HER–2/neu/erbB–2 protein, thereby stimulating an immune response. Preferred HER–2/neu/erbB–2 proteins contain regions of the extracellular domain and the transmembrane domain of the intact HER–2/neu/erbB–2 gene product and do not contain any tyrosine kinase domains.

This work has been published in part in Sakai, Y, *et al.* Cancer Research 64(21): 8022 (Nov 1 2004) and as WO 2004/041065 (May 21 2004).

Antibodies and Polypeptides to AAMP–1 for Use in Diagnosis and Therapy of AAMP–1–Expressing Cancers

Lance Liotta *et al.* (NCI).

U.S. Patent No. 6,274,134 issued 14 Aug 2001 (DHHS Reference No. E–084–1991/1–US–01); Australian Patent No. 684806 issued 23 Apr 1998 (DHHS Reference No. E–084–1991/1–AU–05).

Licensing Contact: Thomas Clouse; (301) 435–4076; *clousetp@mail.nih.gov.*

Angio-associated migratory cell protein (AAMP–1) was first isolated from a human melanoma cell line as a motility-associated cell protein. AAMP–1 contains two immunoglobin domains,

six WD40 repeats, and a heparin-binding domain. *In vitro,* over expression of AAMP–1 promotes tumor cell invasion and metastasis as well as angiogenesis. AAMP–1 was later found to be over expressed in endothelial cells, cytotrophoblasts, and poorly differentiated colon adenocarcinoma cells found in lymphatics. In addition, gene expression studies have shown that AAMP–1 is over expressed in breast and gastrointestinal tumors.

The issued patents claim proteins, polypeptides, and recombinant polyclonal antibodies specific to AAMP–1 and their use in diagnostic and therapeutic applications. The antibodies are specific and can detect formalin-fixed antigen and SDS-denatured antigen.

These antibodies can be used for detailed expression studies of AAMP–1 in different cancer cell lines. The antibodies could also be used to promote cell adhesion to a substrate, promote tissue acceptance of prostheses, and promote wound healing. The antibodies could also be used to detect AAMP–1 in patient's sera as a useful diagnostic marker for multiple carcinomas including high nuclear grade ductal carcinoma *in situ* (Clinical Cancer Research Dec 2002 8:3788–95).

Dated: January 31, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05–2394 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, RFA CA–05–002 and CA–05–006–IMAT.

Date: March 9–10, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Sherwood Githens, PhD, Scientific Review Administrator, Special Review and Logistics Branch, National Cancer Institute, Division of Extramural Activities, 6116 Executives Blvd., Bethesda, MD 20892, 301/435–1822, *githenss@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 2, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committees Policy.

[FR Doc. 05–2349 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Special Emphasis Panel or Review of R25 Applications.

Date: March 30–31, 2005.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center Hotel, 1143 New Hampshire Ave., NW., Washington, DC 20037.

Contact Person: David E. Maslow, PhD, Chief, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard—Room 8117, Bethesda, MD 20892–7405, (301) 496–2330.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 2, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2350 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Transdiciplinary Research on Energetics and Cancer.

Date: March 2–3, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Mary Jane Slesinski, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8045, Bethesda, MD 20892, 301/594–1566.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 2, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2353 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Director's Consumer Liaison Group.

Date: February 28–March 1, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: 1. Reports from NCI: Health Disparities; Planning; Survivorship; 2. Status of NCI Listens and Learns Web Site; 3. Listens and Learns Evaluation Plan and Summit Evaluation Plan; 4. Listens and Learns Working Group Meetings; 5. Meetings with NCI Deputy Director; 6. Public Comment; 7. Next steps.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Nancy Caliman, Executive Secretary, Office of Liaison Activities, National Institutes of Health, National Cancer Institute, 6116 Executive Boulevard, Suite 220, MSC8324, Bethesda, MD 20892, (301) 496–0307, *calimann@mail.nih.gov*.

This notice is to be published less than 15 days prior to the meeting due to scheduling conflicts.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institutes's/Center's home page: *http://deainfo.nci.nih.gov/advisory/dclg/dclg.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.932, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 2, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2354 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Board of Scientific Advisors.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Board of Scientific Advisors.

Date: March 7–8, 2005.

Time: March 7, 2005, 8 a.m. to 10:30 a.m.

Agenda: Joint meeting of the NCI Board of Scientific Advisors and NCI Board of Scientific Counselors; Report of the Director, NCI; Legislative Update; and Ethics Overview.

Place: National Cancer Institute, Building 31, C Wing, 6 Floor, 9000 Rockville Pike, Conference Room 10, Bethesda, MD 20892.

Time: March 7, 2005, 10:30 a.m. to 6 p.m.

Agenda: Ongoing and New Business; Reports of Program Review Group(s); and Budget Presentation; Reports of Special Initiatives; RFA and RFP Concept Reviews; and Scientific Presentations.

Place: National Cancer Institute, Building 31, C Wing, 6 Floor, 9000 Rockville Pike, Conference Room 10, Bethesda, MD 20892.

Time: March 8, 2005, 8:30 a.m. to 1 p.m.

Agenda: Reports of Special Initiatives; RFA and RFP Concept Reviews; and Scientific Presentations.

Place: National Cancer Institute, Building 31, C Wing, 6 Floor, 9000 Rockville Pike, Conference Room 10, Bethesda, MD 20892.

Contact Person: Paulette S. Gray, PhD, Executive Secretary, Acting Director, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Rm. 8001, Bethesda, MD 20892, 301–496–5147.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/bsa.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 2, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2355 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel. TREC Coordination Center.

Date: March 3, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesdsa, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Mary Jane Slesinski, PhD, Scientific Review Adaministrator, Special Review and Resouirces Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8045, Bethesda, MD 20892, (301) 301/594–1566.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS).

Dated: February 2, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2356 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, SBIR Topics 204: Plant Genomic Models for Establishing Physiological Relevance.

Date: March 15, 2005.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Joyce C. Pegues, PhD, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd. 7149, Bethesda, MD 20892, 301/594–1286, *peguesj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 2, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2357 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel. SBIR Topic 203: Development of a Database & Software for Tobacco-Related Disease.

Date: March 10, 2005.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Joyce C. Pegues, PhD, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd. 7149, Bethesda, MD 20892, 301/594–1286, *peguesj@mail.nih.gov..*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 2, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2358 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee F—Manpower & Training, NCI F—Initial Review of Manpower and Training Grants.

Date: March 10–11, 2005.

Time: 7:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select, 480 King Street, Alexandria, VA 22314.

Contact Person: Lynn M. Amende, PhD, Scientific Review Administrator, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8105, Bethesda, MD 20892, 301–451–4759, *amendel@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 2, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2359 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, February 10, 2005, 8 a.m. to February 11, 2005, 5 p.m. Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878 which was published in **Federal Register** on December 26, 2004, 69 FR 241.

The amendment text was the addition of the title of the meeting: Colorectal Cancer Screening in Primary Care Practice. The meeting is closed to the public.

Dated: February 22, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2360 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Topic 210 Using Social Marketing to Disseminate Evidence based Energy Balanced Intervention Approaches to Worksites.

Date: March 8, 2005.

Time: 1:30 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Thomas M. Vollberg, PhD, Scientific Review Administrator, Special Review And Logistics Branch, Division Of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 7142, Bethesda, MD 20892, 301/594–9582, *vollbert@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 2, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2361 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Cancer Institute.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Cancer Institute, Subcommittee 2—Basic Sciences.

Date: March 6—7, 2005.

Closed: March 6, 2005, 6 p.m. to 10 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Holiday Inn Bethesda, Versailles IV, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Open: March 7, 2005, 8:30 a.m. to 10:45 a.m.

Agenda: Joint Session of NCI, Board of Scientific Advisors and BSC Subcommittees.

Place: National Institutes of Health, National Cancer Institute, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Closed: March 7, 2005, 10:45 a.m. to 4:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, National Cancer Institute, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Contact Person: Florence E. Farber, PhD., Health Scientific Administrator, Office of the Director, National Cancer Institute, National institutes of Health, 6116 Executive Boulevard, Room 2115, Bethesda, MD 20892, 301—496–7628, *ff6p@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 2, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2362 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee I—Career Development NCI—I Initial Review of Training Grants.

Date: March 10–11, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select, 480 King Street, Alexandria, VA 22314.

Contact Person: Robert Bird, PhD, Scientific Review Administrator, Resources and Training Review Branch, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., MSC 8328, Room 8113, Bethesda, MD 20892–8328, 301–496–7978, *bird@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 2, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2363 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center on Minority Health and Health Disparities Special Emphasis Panel, Minority Health and Health Disparities International Research Training Program.

Date: March 13–15, 2005.

Time: 5 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Lorrita Watson, PhD, National Center on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Blvd, Suite 800, Bethesda, MD 20892–5465, 301–594–7784, *watsonl@ncmhd.nih.gov.*

Dated: January 31, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2395 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Review of Education Project Training Applications (R–25s).

Date: March 3, 2005.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Judy S. Hannah, PhD, Scientific Review Administrator, Review Branch, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892, (301) 435–0287.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Specialized Centers for Cell-based Therapy and Data and Coordinating Center.

Date: March 10–11, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Loews Hotel Annapolis, 126 West Street, Annapolis, MD 21401.

Contact Person: David A. Wilson, PhD, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7204, MSC 7924, Bethesda, MD 20892, (301) 435–0929.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS.)

Dated: February 2, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2346 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Review of Transfusion Medicine (P50) Applications.

Date: March 29–30, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Irina Gordienko, PhD, Review Branch, NIH, NHLBI, DEA, Bethesda, MD 20892, (301) 435–0725, *gordieni@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases

and Resources Research, National Institutes of Health, HHS)

Dated: January 31, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2403 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closd to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Biobehavioral and Behavioral Sciences Subcommitttee.

Date: March 23–24, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcello, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Marita R. Hopmann, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301) 435–6911, *hopmannm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 1, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2334 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, International Collaborations in Infectious Disease Research.

Date: March 8–10, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Gary S. Madonna, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 496–3528, *gm12w@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 1, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2335 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology, Infectious diseases and AIDS Initial Review Group, Microbiology and Infectious Diseases Research Committee.

Date: February 23–25, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Annie Walker-Abbey, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, RM. 3266, Bethesda, MD 20892–7616, 301–451–2671, *aabbey@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 1, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2338 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Centers for AIDS Research (CFAR).

Date: March 1, 2005

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Brenda Lange-Gustafson, PhD, Scientific Review Administrator, NIAID, DEA, Scientific Review Program, Room 2217, 6700–B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–496–2550, *bgustafson@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 1, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2339 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, SBIR Contract Reviews (3 applications).

Date: February 11, 2005.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Fishers Building, 5635 Fishers Lane 3033, Bethesda, MD 20892, (telephone conference call).

Contact Person: Jeffrey I. Toward, PhD. Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Extramural Project Review Branch, OSA, 5635 Fishers Lane, Bethesda, MD 20892–9304, (301) 435–5337, *jtoward@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1 CC (30).

Date: February 18, 2005.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Terrace Room, Chevy Chase, MD 20815.

Contact Person: Mahadev Murthy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse, and Alcoholism, MSC 9304, Room 3037, Bethesda, MD 20892– 9304, (301) 433–0800, *mmurthy@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: February 1, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2340 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group Clinical and Treatment Subcommittee AA–3.

Date: February 17–18, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Terrace Room, Chevy Chase, MD 20815.

Contact Person: Mahadev Murthy, MBA, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse, and Alcoholism, MSC 9304, Room 3037, Bethesda, MD 20892–9304, (301) 443–0800, *mmurthy@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs, 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: February 1, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2341 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Predoctoral Research Training Grant in Biostatistics.

Date: March 4, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Carole H. Latker, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–18, Bethesda, MD 20892, (301) 594–2848, *latkerc@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 1, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2342 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Initial Review Group, Biomedical Research and Research Training Review Subcommittee A.

Date: March 3, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Carole H. Latker, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–18, Bethesda, MD 20892, (3010 594–2848, *latkerc@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 1, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2343 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse, Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Centers Review Meeting.

Date: February 14, 2005.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Rita Liu, PhD, Associate Director, OEA, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 212, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1388.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Medication Development Research Subcommittee.

Date: February 28, 2005.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Khursheed Asghar, PhD, Chief, Basic Sciences Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 433–2755.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Medication Development Conflict.

Date: February 28, 2005.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rita Liu, PhD, Associate Director, OEA, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 212, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1388.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Health Services Research Subcommittee.

Date: March 1–2, 2005.

Time: 8:304 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mark R. Green, PhD, Chief, CEASRB, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1431.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Treatment Research Subcommittee.

Date: March 1–2, 2005.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Kesinee Nimit, MD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1432.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Training and Career Development Subcommittee.

Date: March 8–10, 2005.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Eliane Lazar-Wesley, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6101 Executive Boulevard, Room 220, MSC 8401, Bethesda, MD 20892–8401, (301) 451–4530.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist

Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: February 2, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2345 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provision set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Initial Review Group.

Date: February 28–March 1, 2005.

Time: 8:15 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Jeffrey M. Chernak, PhD, Scientific Review Administrator, Office of Review, National Institute of Nursing Research, 6701 Democracy Plaza, Suite 712, MSC 4870, Bethesda, MD 20817, (301) 402–6959, *chernak@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: February 2, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2347 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel Research Scientist Development Award for Minority Investigators Applications.

Date: March 1, 2005.

Time: 3 p.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Jeffrey M. Chernak, PhD, Scientific Review Administrator, Office of Review, National Institute of Nursing Research, 6701 Democracy Plaza, Suite 712, MSC 4870, Bethesda, MD 20817, (301) 402–6959, *chernak@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: February 2, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2348 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Ancillary Studies to Obesity Related Clinical Trials.

Date: March 22, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: D. G. Patel, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 2, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2351 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasions of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel Mechanical Stimulation.

Date: February 24, 2005.

Time: 11:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alicaja L. Markowska, PhD, DSC, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7706, *markowsa@nia.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel ''NLTCS.''

Date: February 27–28, 2005.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Alfonso R. Latoni, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20892, 301–496–9666, *latonia@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Initial Review Group Behavior and Social Science of Aging Review Committee.

Date: March 3–4, 2005.

Time: 4 p.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Alfonso R. Latoni, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9666, *latonia@mail.nih.gov.*

Name of Committee: National Institute on Aging Initial Review Group Biological Aging Review Committee.

Date: March 3, 2005.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Ave., Room 2C212, Bethesda, MD 10892, (Telephone Conference Call).

Contact Person: Alessandra M. Bini, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7708.

Name of Committee: National Institute on Aging Initial Review Group Neuroscience on Aging Review Committee.

Date: March 7–8, 2005.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Louise L. Hsu, PhD, Scientific Review Office, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–7705. *hsul@exmur.nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel Medical Student Training.

Date: March 10–11, 2005.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Bita Nakhai, PhD, Scientific Review Administrator, Scientific Review Office, Gateway Building, 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701. *nakhaib@nia.nih.gov.*

Name of Committee: National Institute on Aging Initial Review Group, Clinical Aging Review Committee.

Date: March 10–11, 2005.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Alicja L. Markowska, PhD, DCS, National Institute on Aging, National Institutes of Health, Gateway Building, 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–496–9666. *markowsa@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Beeson Career Development.

Date: March 14–15, 2005.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Jon Rolf, PhD, Health Scientist Administrator, Scientific Review Office, National Institutes of Health, National Institute on Aging, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20814, (301) 402–7703. *rolfj@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel Antecedent Biomarkers For Alzheimer's Disease.

Date: March 16–17, 2005.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Alessandra M. Bini, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7708, *binia@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel Collaborative Alzheimer.

Date: March 21–22, 2005.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Alicja L. Markowska, PhD, DSC, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7706, *markowsa@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel Aging and Ischemia.

Date: March 28–29, 2005.

Time: 6 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: William Cruce, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7704, *crucew@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 2, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2352 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Obesity and the Built Environment.

Date: March 9–11, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hawthorne Suites Hotel, 300 Meredith Drive, Research Triangle Park, NC 27713.

Contact Person: Leroy Worth, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, 919/541–0670, *worth@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: January 31, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2396 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Environmental and Therapeutic Agents.

Date: March 17, 2005.

Time: 9 a.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive 122, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: January 31, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2397 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The great applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Research Program Project Applications (P01s).

Date: March 23–24, 2005.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hawthorne Suites Hotel, 300 Meredith Drive, Research Triangle Park, NC 27713.

Contact Person: Sally Eckert-Tilotta, PhD, Scientific Review Administrator, National Inst. of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–1446, *eckertt1@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: January 31, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2398 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Regional Centers of Excellence Review.

Date: February 17–18, 2005.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Katherine L. White, PhD, Scientific Review Administrator, Special Review Programs, NIAID/DEA, 6700B Rockledge Drive, Bethesda, MD 20892, (301) 496–2550, *kwhite@niaid.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS).

Dated: January 31, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2399 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Metal Health Special Emphasis Panel SBIR Topic 45.

Date: February 25, 2005.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Michael J Moody, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6156, MSC 9608, Bethesda, MD 20892—9608, 301–443–5160, *mmody@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS.)

Dated: January 31, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2400 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to he public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Immunobiology of Xenotransplantation.

Date: February 23–24, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Mercy R. PrabhuDas, PhD., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2615, *mp457n@nih.gov.*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 31, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2401 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, IP–RISPS.

Date: February 25, 2005.

Time: 8:30 a.m. to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Martha Ann Carey, PhD., RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301–443–1606, *mcarey@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, MH Research Education Grants.

Date: February 28, 2005.

Agenda: To review and evaluate grant applications.

Time: 9 a.m. to 5 p.m.

Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: Martha Ann Carey, PhD., RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301–443–1606, *mcarey@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Developing and Advance Centers for Mental Health Services.

Date: March 1, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Aileen Schulte, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1225, *aschulte@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 31, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2402 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting the Board of Scientific Counselors, NIDA.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Drug Abuse, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDA.

Date: February 24–25, 2005.

Time: 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Intramural Research Program, National Institute on Drug Abuse, NIH, Johns Hopkins Bayview Campus, Bldg. C, 2nd Floor Auditorium, Baltimore, MD 21224.

Contact Person: Stephen J. Heishman, PhD, Research Psychologist, Clinical Pharmacology Branch, Intramural Research Program, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5500 Nathan Shock Drive, Baltimore, MD 21224, (410) 550–1547.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93. 278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: January 31, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2404 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the PubMed Central National Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: PubMed Central National Advisory Committee.

Date: April 28, 2005.

Time: 9:30 a.m. to 4 p.m.

Agenda: Review and analysis of systems.

Place: National Institutes of Health, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: David J. Lipman, MD, Director, Natl Ctr for Biotechnology Information, National Library of Medicine, Department of Health and Human Services, Bethesda, MD 20894.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.pubmedcentral.nih.gov/about/nac.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: February 1, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2336 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Library of Medicine.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual other conducted by the National Library of Medicine, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Library of Medicine, National Center for Biotechnology Information.

Date: April 19, 2005.

Open: 9 a.m. to 12 p.m.

Agenda: Program discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: 12 p.m. to 2 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Open: 2 p.m. to 5 p.m.

Agenda: Program discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: David J. Lipman, MD, Director, Natl Ctr for Biotechnology Information, National Library of Medicine, Department of Health and Human Services, Bethesda, MD 20894.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government

employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: February 1, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2337 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Recombinant DNA Advisory Committee.

Date: March 15–17, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: The Committee will review and discuss selected human gene transfer protocols as well as related data management activities. The meeting also includes an update on gene transfer clinical trails for X–SCID.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Laurie Lewallen, Advisory Committee Coordinator, Office of Biotechnology Activities, National Institutes of Health, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892–7985, 301–496–9838, *lewallla@od.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. Information is also available on the Institute's/Center's home page: *http://www4.od.nih.gov/oba/,* where an agenda and any additional information for the meeting will be posted when available.

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: February 1, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2344 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to he public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Pharmacogenetics and Bioinformatics.

Date: February 14, 2005.

Time: 3 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Barbara Whitmarsh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892, 301/435–4511, *whitmarshb@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 AED Member Conflict.

Date: February 15, 2005.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: David M. Armstrong, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, 301/435–1253, *armstrada@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Health of the Population Integrated Review Group. Nursing Science: Children and Families Study Section.

Date: February 17, 2005.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Karin F. Helmers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, 301/435–1017 *helmersk@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Renal and Urological Studies Integrated Review Group, Pathobiology of Kidney Disease Study Section.

Date: February 22–23, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington Embassy Row, 2015 Massachusetts Ave., NW., Washington, DC 20036.

Contact Person: M. Chris Langub, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7814, Bethesda, MD 20892, 301–496–8551, *langubm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflicts for HSOD.

Date: February 23, 2005.
Time: 1 p.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda North Marriott Hotel, 11200 Rockville Pike, Rockville, MD 20852.
Contact Person: Karin F. Helmers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, 301–435–1017, *helmersk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel DNA Damage and Carcinogenesis.
Date: February 25, 2005.
Time: 2 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Hungyi Shau, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, 301–435–1720, *shauhung@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 ASG–01 Q: Aging Systems and Geriatrics: Quorum.
Date: February 28–March 1, 2005.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Sherry L. Dupere, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7840, Bethesda, MD 20892, 301–435–1021, *duperes@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Alcohol and Behavior.
Date: February 28, 2005.
Time: 3 p.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rocklecge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Christine L. Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1713, *melchioc@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: February 3, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2405 Filed 2–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

The National Toxicology Program (NTP) Announces the Availability of the Report on Carcinogens, Eleventh Edition

The Department of Health and Human Services released the Report on Carcinogens, Eleventh Edition to the public on January 31, 2005. The report is available free-of-charge on the Internet from the NTP Web site at: *http://ntp.niehs.nih.gov*. Printed copies of the Report on Carcinogens, Eleventh Edition can be obtained by contacting: Central Data Management (CDM), MD–EC–03, National Institute of Environmental Health Sciences, P.O. Box 12233, 79 T.W. Alexander Dr., Building 4401, Suite 100, Research Triangle Park, NC 27709 USA; 919–541–3419 (phone), 919–541–3687 (fax), e-mail: *cdm@niehs.nih.gov*.

Background

The Report on Carcinogens (RoC) (previously known as the Annual Report on Carcinogens) is a Congressionally mandated listing of known human carcinogens and reasonably anticipated human carcinogens whose preparation is delegated to the NTP by the Secretary, Department of Health and Human Services (DHHS). Section 301(b)(4) of the Public Health Service Act, as amended, provides that the Secretary, DHHS, shall publish a biennial report which contains a list of all substances (1) which either are known to be human carcinogens or may reasonably be anticipated to be human carcinogens; and (2) to which a significant number of persons residing in the United States are exposed. The law also states that the reports should provide available information on the nature of exposures, the estimated number of persons exposed, and the extent to which the implementation of federal regulations decreases the risk to public health from exposure to these chemicals.

The RoC is an informational, scientific, and public health document that identifies and discusses agents, substances, mixtures, or exposure circumstances that may pose a carcinogenic hazard to human health. It serves as a meaningful and useful compilation of data on the (1) carcinogenicity, genotoxicity, and biologic mechanisms of the listed substances in humans and/or animals, (2) the potential for exposure to these substances, and (3) the regulations promulgated by Federal agencies to limit exposures. The report does not present quantitative assessments of carcinogenic risk, an assessment that defines the conditions under which the hazard may be unacceptable. Listing of substances in the report, therefore, does not establish that such substances present carcinogenic risks to individuals in their daily lives. Such formal risk assessments are the purview of the appropriate federal, state, and local health regulatory and research agencies.

New Listings to the RoC, Eleventh Edition

The RoC, Eleventh Edition, contains 246 entries, 17 of which have not appeared in earlier RoCs. The table below summarizes the actions taken for the substances or exposure circumstances reviewed for possible listing in the RoC, Eleventh Edition.

The review of the new entries to the RoC, Eleventh Edition followed a formal process that included many phases of scientific peer review and multiple opportunities for public comment. The process included three scientific peer reviews: two separate, internal reviews conducted by scientists within the federal government and an external review in a public forum conducted by both non-government and government scientists. The three scientific review committees evaluated all available data relevant to the criteria for inclusion of candidate nominations in the report. The criteria used to evaluate the nominations and a description of the review procedures used are available on the NTP Web site at *http://ntp.niehs.nih.gov/* or by contacting: Dr. C. W. Jameson, Head—Report on Carcinogens, National Toxicology Program, National Institute of Environmental Health Sciences, MD EC–14, P.O. Box 12233, Research Triangle Park, NC 27709; phone: (919) 541–4096, fax: (919) 541–0144, e-mail: *jameson@niehs.nih.gov*.

Questions or comments concerning the RoC, Eleventh Edition should be directed to: Dr. Mary Wolfe, NTP Liaison and Scientific Review Office, National Institute of Environmental Health Sciences, MD–A3, P.O. Box 12233, Research Triangle Park, NC 27709; phone: (919) 541–0530, fax: (919) 541–0295, e-mail: *wolfe@niehs.nih.gov*.

Dated: January 31, 2005.

Kenneth Olden,

Director, National Toxicology Program.

SUMMARY OF ACTIONS FOR AGENTS, SUBSTANCES, MIXTURES OR EXPOSURE CIRCUMSTANCES REVIEWED FOR LISTING IN THE ELEVENTH EDITION OF THE REPORT ON CARCINOGENS

Nominations	Primary uses or exposures	Action
1–Amino-2,4-dibromoanthraquinone	An anthraquinone-derived vat dye that is used in the textile industry.	Listed as reasonably anticipated to be a human carcinogen.
Cobalt Sulfate	Used in electroplating and electrochemical industries. It is also used as a coloring agent for ceramics and as a drying agent in inks, paints, varnishes and linoleum, and has been added to animal feed as a mineral supplement.	Listed as reasonably anticipated to be a human carcinogen.
Diazoaminobenzene	Used as an intermediate in the production of dyes and to promote adhesion of natural rubber to steel.	Listed as reasonably anticipated to be a human carcinogen.
Diethanolamine	Used in the preparation of surfactants used in liquid laundry, dishwashing detergents, cosmetics, shampoos, and hair conditioners; as a surface-active agent and corrosion inhibitor in metalworking fluids; and as a dispersant in agricultural chemical formulations.	Not listed.
Hepatitis B Virus	A small DNA-enveloped virus that, along with Hepatitis C Virus, causes most parenterally transmitted viral hepatitis.	Listed as known to be a human carcinogen.
Hepatitis C Virus	An RNA-enveloped virus that, along with Hepatitis B Virus, causes most parenterally transmitted viral hepatitis.	Listed as known to be a human carcinogen.
Selected Heterocyclic Amines (three): (1) 2-Amino-3,4-dimethylimidazo[4,5-f]quinoline (MeIQ) (2) 2-Amino-3,8-dimethylimidazo[4,5-f]quinoxaline (MeIQx) (3) 2-Amino-1-methyl-6-phenylimidazo[4,5-b]pyridine (PhIP)	Heterocyclic amines that are formed during grilling or cooking at high temperature and are found in cooked meat and fish.	Listed as reasonably anticipated to be human carcinogens.
Human Papillomaviruses, Some Genital-Mucosal Types.	Small, non-enveloped viruses that infect genital skin, and genital and non-genital mucosa. HPV infections are common throughout the world.	Listed as known to be human carcinogens.
Lead and Lead Compounds	Major use is in making lead-acid storage batteries. Other common uses include ammunition and cable covering. Lead compounds are used in paint, glass, ceramics, fuel additives, and some traditional cosmetics.	Listed as reasonably anticipated to be human carcinogens.
Naphthalene	Used as an intermediate in the synthesis of many industrial chemicals, and has been used as an ingredient in some moth repellants and toilet bowl deodorants.	Listed as reasonably anticipated to be a human carcinogen.
Neutrons	Exposures normally occur from a mixed irradiation field in which neutrons are a minor component. The exceptions are exposure of patients to neutron radiotherapy beams and exposures of aircraft passengers and crew.	Listed as known to be human carcinogens.
Nitrobenzene	Used mainly in the production of aniline, itself a major chemical intermediate in the production of dyes.	Listed as reasonably anticipated to be a human carcinogen.
Nitromethane	Used in specialized fuels, in explosives, and in the synthesis of nitromethane derivatives, pharmaceuticals, agricultural soil fumigants, and industrial antimicrobials.	Listed as reasonably anticipated to be a human carcinogen.
4,4'-Thiodianiline	Used as an intermediate of several diazo dyes.	Listed as reasonably anticipated to be a human carcinogen.
X–Radiation and Gamma (γ)-Radiation	Exposure to these forms of ionizing radiation comes from a variety of natural (environmental exposure) and anthropogenic sources, including exposure for military, medical, and occupational purposes.	Listed as known to be human carcinogens.

[FR Doc. 05–2393 Filed 2–7–05; 8:45 am]
BILLING CODE 4140–01–U

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2004–18949]

Collection of Information Under Review by Office of Management and Budget (OMB): 1625–0006 (Formerly 2115–0015), Shipping Articles

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded one Information Collection Report (ICR)—1625–0006, Shipping Articles—abstracted below, to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) for review and comment. Our ICR describes the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit your comments on or before March 10, 2005.

ADDRESSES: To make sure that your comments and related material do not reach the docket [USCG–2004–18949] or OIRA more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. (b) By mail to OIRA, 725 17th St., NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard.

(2)(a) By delivery to room PL–401 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329. (b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Facility at (202) 493–2298 and (b) OIRA at (202) 395–6566, or e-mail to OIRA at *oira-docket@omb.eop.gov* attention: Desk Officer for the Coast Guard.

(4)(a) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.* (b) OIRA does not have a Web site on which you can post your comments.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICR are available through this docket on the Internet at *http://dms.dot.gov,* and also from Commandant (CG–611), U.S. Coast Guard Headquarters, room 6106 (Attn: Ms. Barbara Davis), 2100 Second Street, SW., Washington, DC 20593–0001. The telephone number is (202) 267–2326.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Davis, Office of Information Management, telephone (202) 267–2326 or fax (202) 267–4814, for questions on these documents; or Ms. Andrea M. Jenkins, Program Manager, Docket Operations, (202) 366–0271, for questions on the docket.

SUPPLEMENTARY INFORMATION: The Coast Guard invites comments on the proposed collection of information to determine whether the collections are necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to DMS or OIRA must contain the OMB Control Number of the Information Collection Reports (ICR) addressed. Comments to DMS must contain the docket number of this request, [USCG 2004–18949]. Comments to OIRA are best assured of having their full effect if OIRA receives them on or before March 10, 2005.

Public participation and request for comments: We encourage you to participate in this request for comments by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov*, and they will include any personal information you have provided. We have an agreement with DOT to use their Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2004–18949], indicate the specific section of this document or the ICR to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**, but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard has already published the 60-day notice required by 44 U.S.C. 3506(c)(2) (69 FR 54301, September 8, 2004). That notice elicited one comment. The commenter noted that form CG–705A—Shipping Articles, should be revised, including an altering of the layout to a more standard size, utilizing IT (*i.e.* online) if possible. The Coast Guard agrees that form CG–705A is long overdue for updating and redesign. The Coast Guard will,

priorities permitting, look into alternate formats of required data collection. The Coast Guard currently has other forms (.pdf format) available for download, which allow the user to complete necessary fields online and print the completed form for signature(s). A similar approach may be feasible for form CG–705A.

The Coast Guard notes that Title 46, Code of Federal Regulations, 14.207, allows shipping companies to manually or electronically prepare their own version of the form CG–705A. Although these companies creating forms require approval from the Coast Guard prior to use, they may be used in lieu of form CG–705A as long as they conform to the statutory requirements.

The Coast Guard also notes that if shipping companies elect to produce their own shipping articles form, they must be created for crewmembers as a composite. Individual shipping articles do not meet the statutory requirements.

Information Collection Request

1. *Title:* Shipping Articles.

OMB Control Number: 1625–0006.

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Affected Public: Individuals or companies.

Form: CG–705A.

Abstract: The information collected provides verification, identification, location and the employment record of U.S. merchant seamen to the following: (1) Federal, state and local law enforcement agencies for use in criminal or civil law enforcement purposes; (2) shipping companies; (3) labor unions; (4) seaman's next of kin; (5) whenever the disclosure of such information would be in the best interest of the seaman or his/her family.

Burden Estimates: The estimated burden is 18,000 hours a year.

Dated: February 1, 2005.

Nathaniel S. Heiner,

Acting, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 05–2312 Filed 2–7–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2004–18005]

Collection of Information Under Review by Office of Management and Budget (OMB): 1625–0004, United States Coast Guard Academy Application and Supplemental Forms

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded one Information Collection Report (ICR)—1625–0004, United States Coast Guard Academy Application and Supplemental Forms—abstracted below, to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) for review and comment. Our ICR describes the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before March 10, 2005.

ADDRESSES: To make sure that your comments and related material do not reach the docket [USCG–2004–18005] or OIRA more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. (b) By mail to OIRA, 725 17th St., NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard.

(2)(a) By delivery to room PL–401 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329. (b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Facility at (202) 493–2298 and (b) OIRA at (202) 395–6566, or e-mail to OIRA at *oira-docket@omb.eop.gov* attention: Desk Officer for the Coast Guard.

(4)(a) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov*. (b) OIRA does not have a Web site on which you can post your comments.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICR are available through this docket on the Internet at *http://dms.dot.gov,* and also from Commandant (CG–611), U.S. Coast Guard Headquarters, room 6106 (Attn: Ms. Barbara Davis), 2100 Second Street, SW., Washington, DC 20593–0001. The telephone number is (202) 267–2326.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Davis, Office of Information Management, telephone (202) 267–2326 or fax (202) 267–4814, for questions on these documents; or Ms. Andrea M. Jenkins, Program Manager, Docket Operations, (202) 366–0271, for questions on the docket.

SUPPLEMENTARY INFORMATION:

The Coast Guard invites comments on the proposed collection of information to determine whether the collections are necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to DMS or OIRA must contain the OMB Control Number of the Information Collection Reports (ICR) addressed. Comments to DMS must contain the docket number of this request, [USCG 2004–18005]. Comments to OIRA are best assured of having their full effect if OIRA receives them on or before the March 10, 2005.

Public participation and request for comments: We encourage you to participate in this request for comments by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov,* and they will include any personal information you have provided. We have an agreement with DOT to use their Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2004–18005], indicate the specific section of this document or the ICR to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**, but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard has already published the 60-day notice required by 44 U.S.C. 3506(c)(2) (69 FR 35388, June 24, 2004). That notice elicited no comments.

Information Collection Request

1. *Title:* United States Coast Guard Academy Application.

OMB Control Number: 1625–0004.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Affected Public: Individuals or household.

Forms: U.S. Coast Guard Academy On-line Application Form, Math Teacher Recommendation, English Teacher Recommendation, High School Transcript, High School Transcript Update, Physical Fitness Evaluation Scoresheet and Physical Fitness Evaluation Instruction Booklet.

Abstract: Any person who wishes to compete for an appointment as a Coast Guard Cadet must fill out and submit an on-line application and supplemental forms.

Burden Estimates: The estimated burden is 8,300 hours a year.

Dated: February 1, 2005.

Nathaniel S. Heiner,

Acting, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 05–2313 Filed 2–7–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Class III Gaming Compacts.

SUMMARY: This notice publishes the Approval of the Tribal-State Compacts between the Chickasaw Nation, the Quapaw Tribe and the State of Oklahoma.

EFFECTIVE DATE: February 8, 2005.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. § 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Principal Deputy Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Class III gaming compacts between the Chickasaw Nation, the Quapaw Tribe and the State of Oklahoma. These Compacts authorize Indian tribes to engage in certain Class III gaming activities, provides for certain geographical exclusivity, limits the number of gaming machines at existing racetracks, and prohibits non-tribal operation of certain machines and covered games.

Dated: January 28, 2005.

Michael D. Olsen,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 05–2428 Filed 2–7–05; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of revision of an information collection (1010–0041).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR 250, subpart K, ''Oil and Gas Production Rates.''

DATES: Submit written comments by April 11, 2005.

ADDRESSES: You may submit comments on the burden by any of the following methods listed below. Please use OMB control number 1010–0041 as an identifier in your message.

- MMS's Public Connect on-line commenting system, *https://ocsconnect.mms.gov*. Follow the instructions on the website for submitting comments.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions on the website for submitting comments.
- E-mail MMS at *rules.comments@mms.gov*. Use 1010–0041 in the subject line.
- Fax: 703–787–1093. Identify with 1010–0041.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team (RPT); 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference Information Collection 1010–0041 in your comments and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Rules Processing Team

at (703) 787–1600. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulations and the forms that require the subject collection of information.

SUPPLEMENTARY INFORMATION: *Title:* 30 CFR Part 250, Subpart K, Oil and Gas Production Rates.

OMB Control Number: 1010–0041.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Section 5(a) of the OCS Lands Act requires the Secretary to prescribe rules and regulations ''to provide for the prevention of waste, and conservation of the natural resources of the Outer Continental Shelf, and the protection of correlative rights therein'' and to include provisions ''for the prompt and efficient exploration and development of a lease area.''

Section 1334(g)(2) states ''* * * the lessee shall produce such oil or gas, or both, at rates * * * to assure the maximum rate of production which may be sustained without loss of ultimate recovery of oil or gas, or both, under sound engineering and economic principles, and which is safe for the duration of the activity covered by the approved plan.''

These authorities and responsibilities are among those delegated to the Minerals Management Service (MMS). The regulations at 30 CFR part 250, subpart K, concern oil and gas production rates, and are the subject of this collection.

In addition, MMS also issues various Notices to Lessees (NTLs) and Operators to clarify and provide additional guidance on some aspects of the regulations, as well as various forms to capture the data and information. The current subpart K regulations specify the use of forms MMS–126 (Well Potential Test Report, OMB Control Number 1010–0039, expiration 10/31/07), MMS–127 (Sensitive Reservoir Information Report, OMB Control Number 1010–0018, expiration 10/31/07), and MMS–128 (Semiannual Well Test Report, OMB Control Number 1010–0017, expiration 8/31/05), all of which were approved individually by OMB and assigned separate control numbers. This submission also includes the burden for form MMS–140 (Bottomhole Pressure Survey Report). Form MMS–140 is used in the Gulf of Mexico OCS Region (GOMR) for submitting the results of static bottomhole pressure surveys required under § 250.1104(c). With this submission, we are merging the collections for the general use requirements of 30 CFR 250.1100, Oil and Gas Production Rates, as well as the collections for the four forms associated with subpart K into the primary collection for subpart K, OMB Control Number, 1010–0041.

The forms and their purposes are:

Form MMS–126, Well Potential Test Report

MMS uses this information for various environmental, reservoir, reserves, and conservation analyses, including the determination of maximum production rates (MPRs) when necessary for certain oil and gas completions. This requirement implements the conservation provisions of the OCS Lands Act and 30 CFR 250. The information obtained from the well potential test is essential to determine if an MPR is necessary for a well and to establish the appropriate rate. It is not possible to specify an MPR in the absence of information about the production rate capability (potential) of the well.

Form MMS–127, Sensitive Reservoir Information Report

MMS uses this information to determine whether a rate-sensitive reservoir is being prudently developed. This represents an essential control mechanism that MMS uses to regulate production rates from each sensitive reservoir being actively produced. Occasionally, the information available on a reservoir, early in its producing life, may indicate it to be non-sensitive, while later and more complete information would establish the reservoir as being sensitive. Production from a well completed in the gas cap of a sensitive reservoir requires approval from the Regional Supervisor. The information submitted on this form provides reservoir parameters that are revised at least annually or sooner if reservoir development results in a change in reservoir interpretation. The engineers and geologists use the information for rate control and reservoir studies.

Form MMS–128, Semiannual Well Test Report

MMS uses this information to evaluate the results of well tests to determine if reservoirs are being depleted in a manner that will lead to the greatest ultimate recovery of hydrocarbons. This information is collected to determine the capability of hydrocarbon wells and to evaluate and verify an operator's approved maximum production rate if assigned. The form was designed to present current well data on a semiannual basis, to permit the updating of permissible producing rates, and to provide the basis for estimates of currently remaining recoverable gas reserves.

Form MMS–140, Bottomhole Pressure Survey Report

MMS uses the information in our efforts to conserve natural resources, prevent waste, and protect correlative rights, including the Government's royalty interest. Specifically, MMS uses the information to determine maximum production and efficient rates and to review applications for downhole commingling to ensure that action does not result in harm to ultimate recovery or undervalued royalties.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR 250.196, ''Data and information to be made available to the public.'' No items of a sensitive nature are collected. Responses are mandatory.

Frequency: On occasion, monthly, semi-annually, annually and as a result of situations encountered.

Estimated Number and Description of Respondents: Approximately 151 Federal OCS permittees or notice filers.

Estimated Reporting and Recordkeeping ''Hour'' Burden: The currently approved annual reporting burdens totaled for the consolidated collection is 18,961 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 Subpart K and NTL(s)	Reporting & recordkeeping requirement	Hour burden
1101(b)	Request approval to produce within 500 feet of a lease line	5
1101(c)	Request approval to produce gas cap of a sensitive reservoir	12
1102	Submit form MMS–126	0.2
	Submit form MMS–127	1.5
	Submit form MMS–128	0.5–3
1102(a)(5)	Submit alternative plan for overproduction status—MMS is not currently collecting this information	
1102(b)(6)	Request extension of time to submit results of semiannual well test	0.5
1103(a)	Request approval of test periods of less than 4 hours and pretest stabilization periods of less than 6 hours.	0.5
1103(c)	Provide advance notice of time and date of well tests	0.5
1104(c)	Submit results of all static bottomhole pressure surveys obtained by lessee. Information is submitted on form MMS–140 in the Gulf of Mexico Region.	1
1105(a), (b)	Request special approval to flare or vent oil-well gas	0.5
1105(c)	Request approval to burn produced liquid hydrocarbons	0.5
1105(f)	Submit monthly reports of flared or vented gas containing H_2S	2
1106	Submit application to commingle hydrocarbons produced from multiple reservoirs and inform other lessees having an interest.	6
1107(b)	Submit proposed plan for enhanced recovery operations	12
1107(c)	Submit periodic reports of volumes of oil, gas, or other substances injected, produced, or reproduced.	2
1100–1107	General departure or alternative compliance requests not specifically covered elsewhere in subpart K, including bottomhole pressure survey waivers and reservoir reclassification requests.	1 6
Reporting Subtotal		
1105(d), (e)	Maintain records for 2 years detailing gas flaring or venting	13
1105(d), (e)	Maintain records for 2 years detailing liquid hydrocarbon burning	0.5

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no cost burdens for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *''. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the ''non-hour cost'' burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedure: MMS's practice is to make comments, including names and addresses of respondents, available for public review. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. MMS will honor this request to the extent allowable by law; however, anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: February 1, 2005.

E.P. Danenberger,

Chief, Office of Offshore Regulatory Programs.

[FR Doc. 05–2425 Filed 2–7–05; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

Request for Comments Concerning the Institution of Section 751(b) Review Investigations; Certain Frozen Warmwater Shrimp From India and Thailand

AGENCY: United States International Trade Commission.

ACTION: Request for comments regarding the institution of section 751(b) review investigations concerning the Commission's affirmative determinations in investigations Nos. 731–TA–1066 and 1067 (Final), certain frozen or canned warmwater shrimp and prawns from India and Thailand.

SUMMARY: The Commission invites comments from the public, including but not limited to interested parties, on whether changed circumstances exist sufficient to warrant the institution of investigations pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) (the Act) to review the Commission's affirmative determinations in investigations Nos. 731–TA–1066–1067 (Final). The purpose of the proposed review investigations is to determine whether revocation of the existing antidumping duty orders on imports of certain frozen warmwater shrimp from India and Thailand is likely to lead to continuation or recurrence of material injury (19 U.S.C. 1675(b)(2)(A)). Certain frozen warmwater shrimp are provided for in subheadings 0306.13.00 and 1605.20.10 of the Harmonized Tariff Schedule of the United States.

EFFECTIVE DATE: February 8, 2005.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202–205–3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this matter may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On December 23, 2004, the Department of Commerce determined that imports of certain frozen and canned warmwater shrimp from India and Thailand are being sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act (19 U.S.C. 1673) (69 FR 76916 and 76918, respectively, December 23, 2004); and on January 21, 2005 the Commission determined, pursuant to section 735(b)(1) of the Act (19 U.S.C. 1673d(b)(1)), that an industry in the United States producing certain non-canned warmwater shrimp and prawns was materially injured by reason of LTFV imports (70 FR 3943, January 27, 2005). Accordingly, Commerce ordered that antidumping duties be imposed on such imports of certain frozen warmwater shrimp (70 FR 5147 (India) and 5145 (Thailand), February 1, 2005).

On January 6, 2005, when the Commission conducted its vote in these investigations, it stated that it was concerned about the possible impact of the December 26, 2004, tsunami on the shrimping industries of India and Thailand. The tsunami occurred prior to the closing of the record in these investigations on December 27, 2004. At the time the record closed, however, factual information as to any impact of the tsunami on the ability of producers in India or Thailand to produce and export shrimp was not available. At the vote and in its views in these investigations, the Commission stated its intention to collect information as to whether the tsunami's impact on the affected countries' industries warrants the Commission self-initiating a changed circumstances review under 19 U.S.C. 1675(b). A decision as to whether changed circumstance reviews will be instituted as to India and/or Thailand will be made following the collection and analysis of information submitted.

Written comments requested.—Pursuant to section 207.45(b) of the Commission's Rules of Practice and Procedure, the Commission requests comments concerning whether there are changed circumstances brought about by the effects of the December 26, 2004 tsunami on the shrimp industries of India and Thailand sufficient to warrant institution of review investigations. Information submitted to the Commission should address the impact of the tsunami on the ability of the shrimp industries in India and Thailand to produce and export shrimp to the United States. This information may include, but is not necessarily limited to, an analysis of the condition of shrimp hatcheries, ponds, fishing fleet, and processing and storage facilities post-tsunami; estimates of the share of the countries' historical production that has been impacted by the tsunami; estimates of the cost and time required to repair, restock, or rebuild any damaged or destroyed production, storage, or transportation infrastructure; and any data on current inventories of shrimp in these countries which may be exported to the United States.

Written submissions.—Comments must be filed with the Secretary to the Commission no later than 45 days after the date of publication of this notice in the **Federal Register.** The Commission will make its determinations regarding institution of review investigations within 30 days of the close of the comment period. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain business proprietary information must also conform with the requirements of section 201.6 of the Commission's rules. Such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Each sheet must be clearly marked at the top ''Confidential Business Information.'' The Commission will either accept the submission in confidence or return it. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile. The Secretary accepts documents filed electronically through the Commission's Electronic Document Imaging System (EDIS), on the World Wide Web at *http://edis.usitc.gov.* Documents must contain only public information; cannot contain exhibits of original documents, such as certified copies; and must meet certain size limits. Filing requirements are outlined on the EDIS Web site and by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

Authority: This notice is published pursuant to section 207.45 of the Commission's rules.

By order of the Commission.

Issued: February 3, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–2460 Filed 2–7–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–125 (Second Review)]

Potassium Permanganate From China

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject review.

DATES: February 1, 2005.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187 or *fred.ruggles@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On January 4, 2005, the Commission established a schedule for the conduct of the subject expedited five-year review (70 FR 2428, January 13, 2005). Subsequently, on January 27, 2005, the Department of Commerce (Commerce) determined that its review is extraordinarily complicated and extended the time limit for its final results in the expedited five-year review from January 31, 2005, to not later than March 31, 2005 (70 FR 3904). The Commission, therefore, has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B)[1] and is revising its schedule to reflect Commerce's extension of the time limit for the final results of its expedited sunset review.

As provided for in the Commission's original scheduling notice (70 FR 2428, January 13, 2005), final party comments concerning Commerce's final results of its expedited sunset review are due three business days after the issuance of Commerce's results.

For further information concerning this expedited review see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

[1] As a transition order five-year review, the subject review is extraordinarily complicated pursuant to section 751(c)(5)(C) of the Tariff Act of 1930.

By order of the Commission.

Issued: February 2, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–2321 Filed 2–7–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,281]

BASF Corp., Morganton Liquid Plant, Morganton, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 3, 2005, in response to a petition filed by a company official on behalf of workers at BASF Crop., Morganton Liquid Plant, Morganton, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed in Washington, DC this 6th day of January, 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–491 Filed 2–7–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,064]

Boston Scientific, Murrieta, CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 22, 2004, in response to a petition filed by a company official on behalf of workers at Boston Scientific, Murrieta, California.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed in Washington, DC, this 10th day of January, 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–493 Filed 2–7–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,222]

Dana Undies, Colquitt, GA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 16, 2004, in response to a petition filed by the State of Georgia Department of Labor on behalf of workers at Dana Undies, Colquitt, Georgia.

The Department issued a negative determination (TA–W–55,395) applicable to the petitioning group of workers on September 14, 2004. No new information or change in circumstances is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 4th day of January, 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–492 Filed 2–7–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,871 and TA–W–54,871A]

DeVLIEG Bullard II, Inc., Tooling Systems Division Frankenmuth, MI; Including an Employee of DeVlieg Bullard II, Inc.,Tooling System Division, Frankenmuth, MI Located in Houston, TX; Amended Certification Regarding Eligibility, To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on June 21, 2004, applicable to workers of DeVlieg Bullard II, Inc., Tooling Systems Division, Frankenmuth, Michigan. The notice was published in the **Federal Register** on August 3, 2004 (69 FR 46575).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that a worker

separation occurred involving an employee of the Frankenmuth, Michigan facility of DeVlieg Bullard II, Inc., Tooling Systems Division located in Houston, Texas. Mr. Frank Swanson provided support services for production of metal tooling produced at the Frankenmuth, Michigan location of the subject firm.

Based on this finding, the Department is amending this certification to include an employee of the Frankenmuth, Michigan facility of DeVlieg Bullard II, Inc., Tooling Systems Division location in Houston, Texas. Since workers of the Frankenmuth, Michigan location of the firm were certified eligible to apply for alternative trade adjustment assistance, the Department is extending this eligibility to Mr. Frank Swanson in Houston, Texas.

The intent of the Department's certification is to include all workers of DeVlieg Bullard II, Inc., Tooling Systems Division, Frankenmuth, Michigan, who were adversely affected by increased imports.

The amended notice applicable to TA–W–54,871 is hereby issued as follows:

All workers of DeVlieg Bullard II, Inc., Tooling Systems Division, Frankenmuth, Michigan (TA–W–54,871), including an employee of DeVlieg Bullard II, Inc., Tooling Systems Division, Frankenmuth, Michigan, location in Houston, Texas (TA–W–54,871A), who became totally or partially separated from employment on or after May 5, 2003, through June 21, 2006, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC this 31st day of January 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–488 Filed 2–7–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment And Training Administration

[TA–W–50,486]

Electronic Data Systems Corporation, I Solutions Center, Fairborn, OH; Notice of Negative Determination on Remand

The United States Court of International Trade (USCIT) remanded to the Secretary of Labor for further investigation of the negative determination in *Former Employees of Electronic Data Systems Corporation* v. *U.S. Secretary of Labor* (Court No. 03–00373).

On January 15, 2003, the Department of Labor (Department) issued a negative determination regarding the eligibility of workers at Electronic Data Systems (EDS) Corporation, I Solutions Center, Fairborn, Ohio to apply for Trade Adjustment Assistance (TAA). The determination was based on the Department's finding that the workers at the subject facility performed information technology services, and did not produce or support the production of an article. Therefore, the workers did not satisfy the eligibility criteria of section 222 of the Trade Act of 1974. 19 U.S.C. 2272. On February 6, 2003, the Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for Electronic Data Systems Corporation, I Solutions Center, Fairborn, Ohio was published in the **Federal Register** (68 FR 6211).

In a letter dated March 4, 2003, the petitioner requested administrative reconsideration of the Department's negative determination, and included additional information indicating that all usage and copyrights of the computer programs, job control language, documentation, etc. produced at the Fairborn facility were transferred to the client upon sale. The Department determined that the information submitted did not constitute an adequate basis for reconsideration and affirmed its finding that the workers of Electronic Data Systems Corporation, I Solutions Center, Fairborn, Ohio were not eligible to apply for TAA, because they did not produce an article within the meaning of section 222 of the Trade Act. Accordingly, the Department issued a Notice of Negative Determination Regarding Application for Reconsideration on April 15, 2003. The notice was published in the **Federal Register** on April 24, 2003 (68 FR 20180). On June 9, 2003, the petitioner filed a Summons and Complaint, regarding the Department's Negative Determination Regarding Application for Reconsideration with the Court of International Trade (USCIT).

On May 28, 2004, the petitioner filed a Motion for Judgment on the Agency Record in the USCIT. The supporting memorandum for the Motion stated that the Department's findings ''are not supported by substantial evidence or in accordance with the law,'' and that the Department ''failed to sufficiently reconsider its denial of the Plaintiff's petition to apply for TAA, including determining whether certain products alleged by Plaintiffs to constitute 'articles' were subject to duty under the Harmonized Tariff Schedule of the United States (HTSUS).''

The USCIT remanded the case to the Department on December 1, 2004, and ordered the Department to proceed as follows:

On remand, Labor shall conduct a thorough investigation into plaintiffs' claims. In particular, Labor shall (1) determine whether computer programs were embodied in any medium when transferred to customers, (2) explain the significance of custom-designed software as opposed to mass produced computer programs, (3) identify what type of documentation was produced by EDS (brochures, manuals, etc.), (4) determine what was the production volume of such documentation and whether it was considered part of the product purchased by EDS's customers, and (5) with respect to each finding made in its determination, state with specificity the facts relied upon in reaching such finding, including specific references to documents in the record.

Remand Order at 18.

Accordingly, the Department conducted a remand investigation in order to determine whether the subject worker group met the criteria set forth in the Trade Act of 1974 for TAA certification as primarily-affected workers, with particular attention to the inquiries required by the remand order. Section 222(a) of the Trade Act (19 U.S.C. 2272(a)) provides:

A group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) shall be certified by the Secretary as eligible to apply for adjustment assistance under this part pursuant to a petition filed under section 2271 of this title if the Secretary determines that—

(1) a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated; and

(2)(A)(i) the sales or production, or both, of such firm or subdivision have decreased absolutely;

(ii) imports of articles like or directly competitive with articles produced by such firm or subdivision have increased; and

(iii) the increase in imports described in clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm or subdivision; or

(B)(i) there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

(ii)(I) the country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

(II) the country to which the workers' firm has shifted production of the articles is a beneficiary country under the Andean Trade Preference Act, African Growth and

Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

(III) there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

On December 16, 2004, the Department made initial contact with an EDS company official. On December 17, 2004, the Department issued a detailed information request to EDS seeking new information as well as clarification of previously submitted information. The overall purpose of the inquiry was to address the directives of the remand order and determine if the petitioning worker group had satisfied the statutory criteria for eligibility. In particular, the Department sought to ascertain whether the work performed by the petitioning worker group was mass replicated on a physical carrier medium, such as books, manuals, CD–Rom, or diskette, and if so, whether there was an increase in imports or shift in production of articles like or directly competitive with those produced at the Fairborn facility. On January 4, 2005, the Department received a response from EDS (SAR at 11) that has enabled the Department to evaluate petitioners' eligibility, including consideration of the factors identified by the remand order, as set forth below.

In general, the information supplied by the company on remand indicates that the EDS, I Solutions Center, Fairborn, Ohio performed information technology services supporting financial systems software for a single client. This included the design, development, and deployment of new solutions and documentation to meet the requirements of the client, as well as maintenance and troubleshooting of the existing systems. This work was performed at an EDS facility, and not on-site at a client facility.

In the course of the remand investigation, the Department contacted the petitioners by telephone on December 17, 2004; January 25, 2005; and January 26, 2005, in order to gather information on the nature of the work performed at the subject facility (SAR at 4, 17, 19, 20). Further, on January 24, 2005 the Department provided the petitioners with a copy of the EDS questionnaire response, so that petitioners would have an opportunity to review it and to provide the Department with comments for consideration. On January 28, 2005, the Department followed up with the petitioners, inquiring as to the status of their response. As of January 31, 2005, the petitioners had not commented on the EDS questionnaire response.

(1) Determine whether computer programs were embodied in any medium when transferred to customers:

The remand investigation revealed that the software and documentation designed and/or supported by the workers of the subject facility was rarely delivered to the client on a physical carrier medium, but was normally installed onto a mainframe data center from which the client could access it remotely and print it if necessary. Software on CDs was virtually never created at the Fairborn facility, except in extraordinary circumstances where a technical issue prevented normal electronic distribution to the client's data centers (Id). Further, the subject facility's client owned the intellectual property rights to the software and documentation designed and supported at the subject facility, so EDS could not have incorporated that work product into products for other clients (*Id.*).

The Department has consistently maintained that the design and development of software is a service. The Department considers software that is mass-replicated on physical media (such as CDs, tapes, or diskettes) and widely marketed and commercially available (*e.g.*, packaged ''off-the-shelf'' programs) and dutiable under the Harmonized Tariff Schedule of the United States (HTSUS) to be an ''article'' for the purposes of TAA certification requirements. Those workers designing and developing such products are considered to be engaged in services supporting the production of an article.

This policy is consistent with the classification of computer programs and software in the HTSUS depending on the media on which they are recorded. HTSUS heading 8524 encompasses pre-recorded media including those recorded on tape, disks for laser reading systems, and nesoi for sound, image, or other phenomena. Subheading 8524 31 00 HTSUS provides for ''pre-recorded discs for laser reading systems, reproducing other than sound or image,'' and subheading 8524 91 00 HTSUS provides for ''pre-recorded media, nesoi, with recordings of phenomena other than sound or images.''

Software and information systems that are not embodied in a physical carrier medium are not listed on the HTSUS, published by the United States International Trade Commission (USITC), Office of Tariff Affairs and Trade Agreements, which describes all ''articles'' imported to or exported from the United States. This codification represents an international standard maintained by most industrialized countries as established by the International Convention on the Harmonized Commodity Description and Coding (also known as the HS Convention).

The TAA program was established to help workers who produce articles and who lose their jobs as a result of increases in imports or a shift in production of articles ''like or directly competitive'' with those produced at the workers' firm. An article must have a value that makes it marketable, fungible and interchangeable for commercial purposes to be subject to a duty on a tariff schedule. Although a wide variety of products are described as articles and characterized as dutiable in the HTSUS, software and associated information technology services that are not embodied in a physical carrier medium are not listed in the HTSUS. In fact, such telecommunications transmissions (*i.e.* electronically transmitted computer code) are specifically exempted from duty as they ''are not goods subject to the provisions of the tariff schedule'' (HTSUS (2004) General Notes, 3e).

Intellectual property that is not embodied on a physical carrier medium is not provided for in the HTSUS, and is not considered an article for the purposes of TAA.

(2) Explain the significance of custom-designed software as opposed to mass produced computer programs:

In order to meet the criteria set forth in the Trade Act of 1974 for TAA certification as primarily-affected workers, there must be an increase in imports or shift in production of articles like or directly competitive with those produced by the petitioning worker group. Software that is custom designed to meet the constantly changing needs of an individual client is an inherently unique product. Therefore, it cannot be considered ''like or directly'' competitive with other custom designed software, under the definition of this term in 29 CFR 90.2. This definition applies to petitions seeking certification based on either the ''shift in production'' of an article under section 222(a)(2)(B) or ''increased imports'' of an article under section 222(a)(2)(A).

There is virtually no work activity that does not eventually result in the creation of some sort of documentation. For example, a secretary may print out a memo for a supervisor, a travel agent may create itineraries and print out tickets for a client's travel, and a lawyer may create a brief for a particular case. The information contained in each of these creations, regardless of what medium they may be embodied in, is clearly unique. If unique solutions, which happen to be contained on a

medium, are considered to be ''like or directly competitive'' with other custom services, then almost any work can be covered by the Trade Act, and the like or directly competitive requirement is effectively read out of the Act.

(3) and (4) Identify what type of documentation was produced by EDS (brochures, manuals, etc.), and determine what was the production volume of such documentation and whether it was considered part of the product purchased by EDS's customers:

As stated above, the software and documentation designed and/or supported by the workers of the subject facility was rarely delivered to the client on a physical carrier medium, but was normally installed onto a mainframe data center from which the client could access it remotely and print it. Documentation was rarely embodied in hardcopy, because the client could print such documentation on their own. On the rare occasion that the client requested hardcopies of documentation, bulk printing was carried out by a third-party copy facility (SAR at 11). In effect, EDS provided no brochures, manuals, or other physical product documentation to its client in the course of serving the client's needs. Accordingly, there is no volume to measure or value to assess for the documentation the subject facility provided to its customer.

Conclusion

The Department thoroughly investigated the petition for EDS, I Solutions Center, Fairborn, Ohio on remand and could not find any evidence that workers of the subject facility produced or supported production of any article. To the contrary, the evidence presented in the SAR supports the conclusion that the EDS workers did not produce an article. Indeed, the products designed and/or developed at the Fairborn facility were not mass-replicated to any physical carrier medium. In any event, as custom designs, the software solutions and documentation were inherently unique and, therefore, not ''like or directly competitive'' with any other products.

In the case of EDS, I Solutions Center, Fairborn, Ohio, the evidence clearly establishes that the workers of the subject facility did not produce an article, nor did they support, either directly or through an appropriate subdivision of EDS, the production of an article within the meaning of the Trade Act. Because the petitioners are employees of a firm or subdivision that does not produce or support production of an article within the meaning of the Trade Act, they are not eligible for certification.

As the result of the findings of the investigation on remand, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance for workers and former workers of Electronic Data Systems Corporation, I Solutions Center, Fairborn, Ohio.

Signed in Washington, DC this 31st day of January 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–487 Filed 2–7–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment And Training Administration

[TA–W–54,434]

Gale Group, Inc., Belmont, CA; Notice of Negative Determination on Remand

The United States Court of International Trade (USCIT) granted the Department of Labor's motion for voluntary remand for further investigation in *Former Employees of Gale Group, Inc.* v. *U.S. Secretary of Labor,* Court No. 04–00374. The Court Order was issued on October 25, 2004.

On May 20, 2004, the Department of Labor (Department) issued a negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) for the workers of Gale Group, A Division of the Thompson Corporation, Belmont, California (Gale Group). The determination was based on the investigation's finding that the workers at the subject facility performed electronic indexing services, including converting paper periodicals into an electronic format, assigning relevant index terms and occasionally writing abstracts of articles, and thus did not produce an article in accordance with section 222 of the Trade Act of 1974. The Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for the subject firm was published in the **Federal Register** on June 17, 2004 (69 FR 33940).

In a letter dated June 16, 2004, the petitioner requested administrative reconsideration of the Department's negative determination. The Department affirmed its finding that the workers of the subject firm should not be certified as eligible to apply for TAA on the basis that the firm did not produce an article within the meaning of section 222 of the Trade Act because the application contained no new substantial information. Accordingly, the Department issued a letter (dated July 13, 2004) dismissing the petitioner's application for reconsideration. A Dismissal of Application for Reconsideration was issued on July 16, 2004 and the Notice of Dismissal of Application for Reconsideration was published in the **Federal Register** on July 23, 2004 (69 FR 44064).

By letter dated August 1, 2004, the petitioner requested judicial review by the USCIT. The petitioner asserted that because ''informational products are real commodities that are manufactured and produced for sale,'' the workers produce an article and are entitled to a new investigation to determine whether they should be certified as eligible for TAA.

In the motion for voluntary remand, the Department indicated the need to determine whether the workers were engaged in the production of an article and to resolve certain ambiguities in the record.

On October 25, 2004, the USCIT granted the Department's consent motion for voluntary remand and ordered the Department to conduct a further investigation and to make a redetermination as to whether petitioners should be certified as eligible for TAA.

In its remand investigation, the Department carefully reviewed previously submitted information, contacted the company official to obtain new and additional information regarding the work done by the subject worker group, the products and services offered by the company, and also solicited information from the petitioners. The main purpose of this extensive investigation was to ascertain whether the work performed by the petitioning worker group can be construed as production or in support of production of an article by the firm, Gale Group.

Petitioners allege that they are engaged in the production of CD-ROMS and databases which are articles under the Act. The Department has investigated each claim and has determined that the workers are not engaged in the production of any articles because no production took place at the subject firm during the relevant period and that a mere shift of service functions abroad cannot support TAA certification.

The petitioners state that members of the worker group worked on databases which were ''marketed for access by purchasers and by their licensees initially on CD–ROMS and in electronic format, and later only on electronic format—*i.e.,* through a real-time internet connection.'' Supp. A.R. 77. The

petitioners also identify products which they allege are articles: Infotrac, Gale E-Commerce Sourcebook, World Retail Directory and Sourcebook, and Ward's Business Directory. Supp. A.R. 81, 82, 88, 89.

Information supplied by the subject company indicates that the workers primarily convert paper periodicals into an electronic format, process the electronic data so they can be indexed, and provide access to the databases for on-line subscribers. Supp. A.R. 8–42. This information is not contradicted by petitioners' submissions, which indicate that the petitioners' tasks included reading and indexing paper articles, as well as researching, entering and editing information into the databases. Supp. A.R. 86–90.

The newly obtained information also shows that the databases are accessed via the Internet, are neither recorded nor stored on a physical carrier medium, such as CD–Rom, and are not mass-replicated by Gale Group. Supp. A.R. 9–11, 94. The information further reveals that no tangible articles are manufactured within either the subject facility or the larger corporate entity. Id. On the rare occasion that a customer requests paper copies of the databases, the printing is carried out by an unaffiliated, off-site, third party copy facility. Supp. A.R. 91. Moreover, as to these databases, Gale Group derived revenue not from the sale of copies of the databases on a physical carrier medium, but from customers purchasing a subscription to access information which is stored in a server off-site, at an affiliated location in Michigan. Supp. A.R. 9, 12.

The petitioners do not produce an article within the meaning of the Trade Act of 1974. The Department has consistently held that the processing of information, especially information which is created, manipulated and stored in electronic format, is not the production of an article for TAA purposes. Throughout the Trade Act, an article is referenced as something that can be subject to a duty. Telecommunications transmissions (such as electronically transmitted text and information) are specifically exempted from duty as they ''are not goods subject to the provisions of the tariff schedule'' (Harmonized Tariff Schedule of the U.S., 2004, General Notes, 3e). As telecommunications transmissions, the on-line services provided by Gale Group are not articles. Further, the Infotrac data base is available only in the electronic format. Supp. A.R. 92.

While there is evidence in the record that seems to indicate that these workers did work on some products that were converted into CDs, this did not constitute the production of an article under the Act since the CDs were produced at an unaffiliated off-site location owned by a third party. Supp. A.R. 95. It is the production of the CDs, not the creation of information in electronic format that constitutes production of an article under the Act. In any case, the petitioning workers have not contributed to any products recorded on CDs in the last three years. Supp. A.R. 95.

It is clear that certain product lines of electronic indexing services sold by Gale Group could be considered ''articles'' for TAA certification purposes if they were put on a physical carrier medium such as paper or CD–Rom. These product lines would be dutiable under the Harmonized Tariff Schedule as recorded media. However, because Gale Group did not replicate its electronic indexing services on recorded media on site or at an affiliated facility, it did not produce the article for TAA purposes of the Act and the petitioning workers at the subject facility are not workers of the ''firm'' producing an article. Instead, an unaffiliated facility with which Gale Group contracted replicated certain but not all of the electronic indexing services developed and sold by Gale Group. The unaffiliated facility produced the article—electronic indexing services on the recorded media—that Gale Group sold. That facility was not part of the petitioning workers ''firm'' under the longstanding regulatory definition of firm at 29 CFR 90.2 because the facility was not affiliated with Gale Group. Because Gale Group was not part of the ''firm'' that produced the article (the third party replicating vendor), Gale Group did not produce an ''article'' for TAA purposes.

To be eligible for TAA, workers must be engaged in activity in support of an affiliated production facility which is eligible for TAA certification on its own merits if their facility does not produce an article. Because neither Gale Group nor its affiliates replicates any product, Supp. A.R. 91 and 94, there is no qualifying production facility of which the workers can be in support. As such, the worker group cannot be eligible for TAA as service workers in support of a certifiable production facility.

The petitioner further alleges that because workers lost their jobs due to a transfer of job functions to India, petitioning workers should be considered import-impacted.

Although the company official stated that some positions were shifted to India and Philippines, the petitioning workers cannot be eligible for TAA because only the shift of production, not services, abroad is a basis for certification. Further, because informational material that is electronically transmitted is not considered production for purposes of TAA eligibility requirements, there cannot be any imports following a shift of services abroad.

The Department has thoroughly investigated the matter and could not find a basis to determine that workers of Gale Group are engaged in the production of an article. Consequently, they are not eligible for certification.

Conclusion

In the case of Gale Group, A Division of the Thompson Corporation, Belmont, California, it is clearly established that the workers of the subject facility did not produce an article, nor did they support, either directly or through an appropriate subdivision, the production of an article within the meaning of the Trade Act. Because the petitioners are employees of a firm or subdivision that does not produce or support production of an article within the meaning of the Trade Act, they are not eligible for certification.

As the result of the findings of the investigation on remand, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance for workers and former workers of Gale Group, A Division of the Thompson Corporation, Belmont, California.

Signed in Washington, DC this 27th day of January 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–486 Filed 2–7–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,239]

Gasque Plumbing Company, Inc., Myrtle Beach, SC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 22, 2004, in response to a petition filed on behalf of workers at Gasque Plumbing Company, Inc., Myrtle Beach, South Carolina. Workers at the subject firm install plumbing in commercial buildings.

The Department of Labor issued a negative determination applicable to the petitioning group of workers on December 20, 2004 (TA–W–56,096). Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 5th day of January 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–494 Filed 2–7–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,129A and TA–W–54,129D]

Kemet Electronics Corporation, Simpsonville Facility, Simpsonville, South Carolina; Including Employees of Kemet Electronics Corporation, Simpsonville Facility, Simpsonville, SC, Located in Greenwood, SC; Amended Certification Regarding Eligibility, To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on February 23, 2004, applicable to workers of KEMET Electronics Corporation, Simpsonville Facility, Simpsonville, South Carolina. The notice was published in the **Federal Register** on April 6, 2004 (69 FR 18111).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. Workers of KEMET's headquarters are included in the certification for workers at the Simpsonville Facility located in Simpsonville, South Carolina. New information provided by the firm shows that Mr. Larry Budreau and Mr. Jimmy Arflin were separated from employment with the firm. They were reporting to headquarters but were working out of Greenwood, South Carolina. They provided support services related to the electronic capacitors produced by the firm.

Based on these findings, the Department is amending this certification to include employees of KEMET Electronics Corporation, Simpsonville Facility, Simpsonville, South Carolina working in Greenwood, South Carolina. Since the workers of the Simpsonville Facility were certified eligible to apply for alternative trade adjustment assistance, the Department is extending this eligibility to Mr. Larry Budreau and Mr. Jimmy Arflin.

The intent of the Department's certification is to include all workers of KEMET Electronics Corporation, Simpsonville Facility, Simpsonville, South Carolina, who were adversely affected by a shift in production to Mexico.

The amended notice applicable to TA–W–54,129A is hereby issued as follows:

All workers of KEMET Electronics Corporation, Simpsonville Facility, Simpsonville, South Carolina (TA–W–54,129A), including employees of KEMET Electronics Corporation, Simpsonville facility, Simpsonville, South Carolina, located in Greenwood, South Carolina (TA–W–54,129D), who became totally or partially separated from employment on or after January 3, 2004, through February 23, 2006, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC this 31st day of January 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–489 Filed 2–7–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,127]

Standard Corporation; A UTI Worldwide Company Kinston, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 3, 2004, in response to a worker petition filed by company official on behalf of workers at Standard Corporation, a UTi Worldwide Company, Kinston, North Carolina.

The petitioning group of workers is covered by an active certification, (TA–W–55,977) which expires on December 9, 2006. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 7th day of January 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–490 Filed 2–7–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Announcement of the Mailing Addresses for Applications Not Filed Electronically Under the New Permanent Foreign Labor Certification (PERM) Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The regulation to implement the re-engineered permanent foreign labor certification program (PERM) was published in the **Federal Register** on December 27, 2004, with an effective date of March 28, 2005. *See* 69 FR 77326. The Employment and Training Administration (ETA) of the Department of Labor (Department or DOL) is issuing this notice to announce the mailing addresses for employers that choose to file applications by mail under the new permanent foreign labor certification program. The Department encourages employers to file applications electronically as applications submitted by mail will not be processed as quickly as those filed electronically.

As of December 13, 2004, the Department opened two new National Processing Centers in Atlanta and Chicago. The National Processing Centers will handle permanent labor certification cases filed under the PERM system. In addition, these centers will process all applications that are withdrawn from the current permanent labor certification program and re-filed under the new PERM program.

FOR FURTHER INFORMATION CONTACT: William Carlson, Chief, Division of Foreign Labor Certification, Employment and Training Administration, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210; Telephone: (202) 693–3010 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The new PERM regulation is effective March 28, 2005. Under the PERM program, employers will submit their applications for permanent labor certification directly to DOL using either electronic or mail-in options. Employers will, among other things, be required to obtain a prevailing wage determination from the appropriate State Workforce Agency (SWA) prior to filing their applications with DOL.

Until March 27, 2005, employers must continue to submit applications for permanent labor certification to State Workforce Agencies. All applications

for permanent labor certification received by the SWAs postmarked March 28, 2005 or later will be returned to the sender.

Employers choosing to use the e-filing option under the new PERM program will complete their applications via the Internet at *http://www.workforcesecurity.doleta.gov/foreign.* A major advantage of e-filing is the on-line system's ability to assist employers by instantaneously checking for obvious errors. This option will also speed the process of evaluating the applications, and prevent data entry errors.

For employers choosing to submit an application for permanent employment certification by U.S. mail, applications must be sent to one of the two National Processing Centers, as explained below.

If the area of intended employment is in one of the following states or territories, then the PERM application must be mailed to the Atlanta Processing Center at the address listed below:

Alabama, Connecticut, Delaware, Florida, Georgia, Kentucky, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Vermont, Virgin Islands, Virginia, Washington DC, West Virginia, U.S. Department of Labor, Employment and Training Administration, Harris Tower, 233 Peachtree Street, NE., Suite 410, Atlanta, Georgia 30303; Phone: (404) 893–0101, Fax: (404) 893–4642.

If the area of intended employment is in one of the following states or territories then the PERM application must be mailed to the Chicago Processing Center at the address listed below:

Alaska, Arizona, Arkansas, California, Colorado, Guam, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wisconsin, Wyoming, U.S. Department of Labor, Employment and Training Administration, 844 North Rush Street, 12th Floor, Chicago, Illinois 60611; Phone: (312) 886–8000, Fax: (312) 886–1688.

Signed in Washington, DC, this 31st day of January, 2005.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 05–2373 Filed 2–7–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,173 and NAFTA–6472]

Ericsson, Inc., Brea, CA; Notice of Revised Determination on Remand

The United States Court of International Trade (USCIT) granted the Secretary of Labor's motion for a second voluntary remand for further investigation in *Former Employees of Ericsson, Inc.* v. *U.S. Secretary of Labor* (Court No. 02–00809).

The Department's denial of the initial Trade Adjustment Assistance (TAA) petition was issued on April 15, 2003. The Notice of determination was published in the **Federal Register** on August 18, 2003 (68 FR 49522). The negative determination was based on the finding that the worker group did not produce an article within the meaning of section 222 of the Trade Act of 1974, as amended. The workers performed software development.

The Department's denial of the initial NAFTA–TAA petition was issued on September 24, 2002. The notice of determination was published in the **Federal Register** on October 10, 2002 (67 FR 63160). The negative determination was based on the finding that the worker group did not produce an article within the meaning of section 250(a) of the Trade Act of 1974, as amended. Workers at the subject facility developed software for other Ericsson units.

The Plaintiffs requested judicial review of the TAA case by letter to the USCIT, filed on December 18, 2002. In the letter, the Plaintiffs contended that the Department failed to fully investigate the TAA petition, that the subject worker group was misclassified, and that the Department did not correctly apply the statutory criteria. On August 20, 2003, the USCIT granted the Plaintiff's motion to consolidate the TAA case into the NAFTA case. On September 11, 2003, the USCIT issued a Voluntary Remand Order, directing the Department to determine whether the workers are eligible for benefits.

During the remand investigation, the Department investigated whether the workers produced an article and, if so, whether the workers were eligible to apply for NAFTA–TAA. The investigation found that the subject worker group did not produce an article within the meaning of the Trade Act. The Department issued a Notice of Negative Determination on Reconsideration on Remand on January 14, 2004. The notice of determination was published in the **Federal Register** on January 23, 2004 (69 FR 3394).

On October 13, 2004, the USCIT again remanded the matter to the Department, finding that the Department failed to adequately investigate the Plaintiff's claims and that the Department's findings were unsupported by substantial evidence on the record. The USCIT directed the Department to investigate whether the workers were eligible for benefits.

During the second remand investigation, the Department raised additional questions and obtained detailed supplemental responses from the company. In particular, the new information indicates that, in addition to software development, the subject worker group supported production at an affiliated software production facility. As such, the subject worker group did engage in activity related to the production of an article. The second remand investigation also revealed that all production at the affiliated facility shifted to Canada during the relevant period and the subject firm simultaneously began importing the product from Canada.

The investigation revealed that the subject facility experienced employment declines during the relevant time and that the workers were in support of an affiliated production facility that is TAA and NAFTA–TAA certifiable. As such, the Department determines that the subject worker group meets the statutory criteria for TAA and NAFTA–TAA certification.

Conclusion

After careful review of the additional facts obtained on remand, I determine that a shift of production to Canada of articles like or directly competitive with those produced by the subject firm and the simultaneous imports of those articles from Canada, contributed importantly to the worker separations and sales or production declines at the subject firm.

In accordance with the provisions of the Trade Act, I make the following certification:

''All workers of Ericsson, Inc., Brea, California (TA–W–51,173), who became totally or partially separated from employment on or after January 6, 2002, through two years from the issuance of this revised determination, are eligible to apply for worker adjustment assistance under section 223 of the Trade Act of 1974,'' and''All workers of Ericsson, Inc., Brea, California (NAFTA 6472), who became totally or partially separated from employment on or after August 1, 2001, through two years from the issuance of this revised determination, are eligible to apply

for NAFTA–TAA under section 250 of the Trade Act of 1974.''

Signed in Washington, DC this 31st day of January 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–485 Filed 2–7–05; 8:45 am]

BILLING CODE 4510–30–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2004–1 CARP DTRA4]

Digital Performance Right in Sound Recordings and Ephemeral Recordings

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of termination of proceeding and current rates.

SUMMARY: The Copyright Office of the Library of Congress is announcing the termination of the proceeding to determine reasonable rates and terms for two compulsory licenses for the period beginning January 1, 2005, and ending on December 31, 2006. One license allows public performances of sound recordings by means of eligible digital audio transmissions; the other permits the making of an ephemeral phonorecord of a sound recording in furtherance of making a permitted public performance of the sound recording. The rates and terms applicable to new subscription services, eligible nonsubscription services, and services that transmit performances to business establishments that were in effect on December 31, 2004, will remain in effect during 2005.

FOR FURTHER INFORMATION CONTACT: Tanya M. Sandros, Associate General Counsel, or Abioye E. Oyewole, CARP Specialist. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: In 1995, Congress enacted the Digital Performance Right in Sound Recordings Act of 1995 (''DPRA''), Public Law 104–39, which created an exclusive right for copyright owners of sound recordings, subject to certain limitations, to perform publicly sound recordings by means of certain digital audio transmissions. Among the limitations on the performance right was the creation of a new compulsory license for nonexempt, noninteractive digital subscription transmissions. 17 U.S.C. 114(d).

The scope of this license was expanded in 1998 upon passage of the Digital Millennium Copyright Act of 1998 (''DMCA''), Public Law 105–304, in order to allow for the public performance of a sound recording when made in accordance with the terms and rates of the statutory license, 17 U.S.C. 114(d), by a preexisting satellite digital audio radio service or as part of an eligible nonsubscription transmission. In addition to expanding the section 114 license, the DMCA also created a new statutory license for the making of an ''ephemeral recording'' of a sound recording by certain transmitting organizations. 17 U.S.C. 112(e). The new statutory license allows entities that transmit performances of sound recordings to business establishments, pursuant to the limitations set forth in section 114(d)(1)(C)(iv), and those entities operating under the section 114 statutory license to make ephemeral recordings of a sound recording to facilitate those transmissions.

The statutory scheme for establishing reasonable terms and rates is the same for both licenses. Terms and rates may be determined by voluntary agreement among the affected parties, or if necessary, through compulsory arbitration conducted pursuant to Chapter 8 of the Copyright Act. Rates and terms are set for a two–year period through this process, except when a different period is otherwise agreed upon by the parties as part of a negotiated agreement. *See* 17 U.S.C. 112(e)(6) and 114(f)(2)(C)(i)(II). Accordingly, on January 6, 2004, the Copyright Office announced the voluntary negotiation period to set rates and terms for the license period beginning January 1, 2005, and ending on December 31, 2006. 69 FR 689 (January 6, 2004) and 69 FR 5196 (February 3, 2004).

However, on November 30, 2004, the Copyright Royalty and Distribution Reform Act of 2004, (the ''Act''), Public Law 108–419, 118 Stat. 2341, was enacted. This Act, which becomes effective on May 31, 2005, eliminates the Copyright Arbitration Royalty Panel (''CARP'') system and replaces it with three permanent Copyright Royalty Judges. In addition, the Act terminates the proceeding initiated in January 2004 to set rates and terms under sections 114(f)(2) and 112(e) for the 2005–2006 license period.

The Act further provides that the rates and terms in effect under section 114(f)(2) or 112(e) of title 17, United States Code, on December 31, 2004, for new subscription services, eligible nonsubscription services, and services exempt under section 114(d)(1)(C)(iv) of such title, and the rates and terms published in the **Federal Register** under the authority of the Small Webcaster Settlement Act of 2002 (17 U.S.C. 114 note; Public Law 107–321) (including the amendments made by that Act) for the years 2003 through 2004, as well as any notice and recordkeeping provisions adopted pursuant thereto, shall remain in effect until the later of the first applicable date for successor terms and rates specified in section 804(b)(2) or (3)(A) of title 17, United States Code (effective May 31, 2005), or such later date as the parties may agree or the Copyright Royalty Judges may establish. In accordance with this provision, the rates and terms applicable to these services that were in effect on December 31, 2004, shall remain in effect at least for 2005.

Until such rates and terms have been established under the new procedures, beginning January 1, 2005, eligible small and noncommercial webcasters may elect to be subject to the terms and rates published in the Small Webcaster Settlement Act of 2002, Public Law 107–321, by complying with the procedures governing the election process set forth in that agreement not later than the first date on which the webcaster would be obligated to make a royalty payment for such period. *See* 67 FR 78510 (December 24, 2002).

Dated: February 3, 2005

Tanya M. Sandros,

Associate General Counsel.

[FR Doc. 05–2406 Filed 2–7–05; 8:45 am]

BILLING CODE 1410–33–S

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in

which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before March 25, 2005. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: records.mgt@nara.gov.

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–3120. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending:

1. Department of Defense, Office of the Secretary of Defense (N1–330–05–1, 18 items, 11 temporary items). Paper copies of files accumulated by the Coalition Provisional Authority—Baghdad relating to policy and plans, operational and logistical support, and budget and finance that have been converted to an electronic format. Also included are electronic copies of documents created using electronic mail and word processing and records in all media relating to housekeeping activities, such as personnel management and internal office financial matters. Proposed for permanent retention are electronic versions of files relating to policy and plans, operational and logistical support, and budget and finance.

2. Department of Energy, Agency-wide (N1–434–05–1, 3 items, 3 temporary items). Case files consisting of paper or electronic records accumulated in connection with investigations that result in the debarment or suspension of contractors and grant recipients from contracting with or receiving assistance from the agency. Also included are electronic copies of records created using electronic mail and word processing.

3. Department of Homeland Security, United States Secret Service (N1–87–05–2, 7 items, 7 temporary items). Case files relating to investigations of agency employees, inspection reports relating to agency components, and files relating to other fact finding investigations and special projects. Also included are electronic copies of records created using electronic mail and word processing.

4. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (N1–436–05–3, 3 items, 3 temporary items). Incident reports containing information or allegations which are of an investigative nature but do not relate to a specific investigation. Also included are electronic copies of documents created using electronic mail and word processing.

5. Department of Justice, Bureau of Prisons (N1–129–05–4, 7 items, 7 temporary items). Inputs, outputs, master files, and documentation associated with the Federal Prison Industries' Web-based customer service and sales system. Also included are electronic copies of records created using electronic mail and word processing.

6. Department of Labor, Office of Labor-Management Standards (N1–317–02–03, 33 items, 23 temporary items). General correspondence, reports and completed forms containing information received from labor organizations, financial data, employee reports, routine investigative files, and other records accumulated by the Office of Labor-Management Standards. Also included are records created using electronic mail and word processing. Records proposed for permanent retention include recordkeeping copies of program policy files, Assistant Secretary decision and order files, operations manuals, international labor reports, and significant investigative case files.

7. Department of Transportation, Bureau of Transportation Statistics (N1–570–04–4, 5 items, 4 temporary items). Records relating to organizational planning, including working papers that pertain to plans that were implemented and all documentation that relates to plans that were not. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of studies and other records that relate to implemented organization plans, including organization charts, plans, and delegations of authority. This schedule authorizes the agency to apply

the proposed disposition instructions to any recordkeeping medium.

8. Department of Transportation, Bureau of Transportation Statistics (N1–570–04–25, 3 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to interagency and other external committees, task forces, and non-rulemaking workgroups. Proposed for permanent retention are recordkeeping copies of records that relate to committees for which the agency is the committee secretariat. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

9. Department of Transportation, Bureau of Transportation Statistics (N1–570–04–26, 3 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to intra-agency and other internal committees, task forces, and non-rulemaking workgroups. Proposed for permanent retention are recordkeeping copies of records that relate to committees for which the agency is the committee secretariat. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

10. Department of Transportation, Bureau of Transportation Statistics (N1–570–04–27, 4 items, 3 temporary items). Working papers relating to management studies. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of management studies, which relate to such matters as administrative policies and procedures, staffing, and management improvements. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

11. Department of Transportation, Bureau of Transportation Statistics (N1–570–04–33, 4 items, 4 temporary items). Background files relating to special studies and projects, including such records as working papers, drafts, informal notes taken at meetings, and reference materials. Also included are electronic copies of records created using electronic mail and word processing. Recordkeeping copies of studies and final project reports are proposed for permanent retention in another schedule. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

12. Department of Transportation, Bureau of Transportation Statistics (N1–570–04–34, 3 items, 2 temporary items). Electronic copies of final deliverables and reports created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of all mission-related final deliverables, products, and reports submitted by contractors and grantees or produced in-house. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

13. Department of the Treasury, Bureau of Engraving and Printing (N1–318–04–12, 8 items, 5 temporary items). Records of the Historical Resources Center, including administrative files and subject files that relate to managing the agency's collection of historical objects. Also included are electronic copies of records created using electronic mail or word processing. Proposed for permanent retention are master files and documentation associated with the Historical Collections Database as well as historical research materials, such as agency histories, articles, and transcripts of interviews.

14. Environmental Protection Agency, Office of Environmental Information (N1–412–05–4, 7 items, 7 temporary items). Records accumulated in response to requests from the public to correct errors in information the agency distributes or disseminates, including requests for correction, requests for reconsideration, and electronic copies of records created using word processing and electronic.

Dated: January 31, 2005.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. 05–2380 Filed 2–7–05; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of the National Museum and Library Services Board

AGENCY: Institute of Museum and Library Services.

ACTION: Notice of meeting, correction.

SUMMARY: This action corrects a notice published in the **Federal Register** on February 2, 2005, at 70 FR 5494. In that notice, the time and date of the Fourth Meeting of National Museum and Library Services Board was inadvertently published as 9 a.m. to 12:30 p.m. on Wednesday, February 9, 2005. The correct date of the Fourth Meeting of National Museum and Library Services Board is 9 a.m. to 12:30 p.m. on Wednesday, February 16, 2005. This action corrects that error. The agenda and address of the meeting remain as announced on February 2, 2005, at 70 FR 5494.

DATES: 9 a.m. to 12:30 p.m. on Wednesday, February 16, 2005.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lyons, Special Assistant to the Director, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Room 510, Washington, DC 20506—(202) 606–4649.

SUPPLEMENTARY INFORMATION: In the Institute of Museum and Library Services' notice of meeting published on February 2, 2005, at 70 FR 5494, the date of the Fourth Meeting of National Museum and Library Services Board has been corrected as set forth in the Time/Date section of this notice. No other information has been changed. Notice of this meeting is required under the Sunshine in Government Act.

Dated: February 2, 2005.

Teresa LaHaie,

Administrative Officer, National Foundation on the Arts and the Humanities, Institute of Museum and Library Services.

[FR Doc. 05–2324 Filed 2–7–05; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL INDIAN GAMING COMMISSION

Fee Rates

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given, pursuant to 25 CFR 514.1(a)(3), that the National Indian Gaming Commission has adopted preliminary annual fee rates of 0.00% for tier 1 and 0.059% (.00059) for tier 2 for calendar year 2005. These rates shall apply to all assessable gross revenues from each gaming operation under the jurisdiction of the Commission. If a tribe has a certificate of self-regulation under 25 CFR part 518, the preliminary fee rate on class II revenues for calendar year 2005 shall be one-half of the annual fee rate, which is 0.0295% (.000295).

FOR FURTHER INFORMATION CONTACT: Bobby Gordon, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005; telephone (202) 632–7003; fax 202/632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulation Act established the National Indian Gaming Commission which is charged with, among other things, regulating gaming on Indian lands.

The regulations of the Commission (25 CFR part 514), as amended, provide for a system of fee assessment and payment that is self-administered by gaming operations. Pursuant to those regulations, the Commission is required to adopt and communicate assessment rates; the gaming operations are required to apply those rates to their revenues, compute the fees to be paid, report the revenues, and remit the fees to the Commission on a quarterly basis.

The regulations of the Commission and the preliminary rate being adopted today are effective for calendar year 2005. Therefore, all gaming operations within the jurisdiction of the Commission are required to self-administer the provisions of these regulations and report and pay any fees that are due to the Commission By March 31, 2005.

Nelson Westrin,

Vice-Chairman, National Indian Gaming Commission.

[FR Doc. 05–2431 Filed 2–7–05; 8:45 am]

BILLING CODE 7565–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Modification Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at title 45 part 670 of the Code of Federal Regulations. This is the required notice of a requested permit modification.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by March 10, 2005. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Polly A. Penhale at the above address or (703) 292–8030.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Description of Permit Modification Requested: The Foundation issued a permit (2004–009) to Dr. Robert L. Pitman on January 15, 2004. The issued permit allows the applicant to collect biopsy samples (size of a pencil eraser) of skin and tissue from up to 200 Killer Whales *(Orcinus orca).* These samples help to determine the taxonomic status of the three different morphotypes of Killer Whales observed in the Antarctic.

The applicant requests a modification to his permit to extend his permit for one year, to cover the full extent of his grant. In addition he wishes to collect skin and tissue samples from up to 10 Minke *(Balaenoptera bonaerensis)* and 5 Arnoux's beaked whales *(Berardius arnouxii).* The applicant during his research has identified a species of diatoms on the Killer Whales and is interested to see if the same species of diatoms are present on other whales in the southern Ross Sea. If the diatoms are different from then the samples could provide additional evidence that there is more than one species of Killer Whale in Antarctica.

Location: Waters surrounding Antarctica, including the Ross Sea.

Dates: April 1, 2005, to March 31, 2006.

Polly A. Penhale,

Environmental Officer, Office of Polar Programs.

[FR Doc. 05–2408 Filed 2–7–05; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Proposal Review; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meeting is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The review and evaluation may also include assessment of the progress of awarded proposals. The majority of these meetings will take place at NSF, 4201 Wilson Blvd., Arlington, Virginia 22230.

These meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 522b(c), (4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

The closed proposal review meetings will not be announced on an individual basis in the **Federal Register**. NSF intends to publish a similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF Web site: *http://www.nsf.gov/home/pubinfo/advisory.htm.* This information may also be requested by telephoning 703/292–8182.

Dated: February 3, 2004.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 05–2424 Filed 2–7–05; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 30–35321–CivP, ASLBP No. 05–836–02–CivP]

All Tech Corporation; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and the Commission's regulations, *see* 10 CFR 2.104, 2.300, 2.303, 2.309, 2.311, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board is being established to preside over the following proceeding: All Tech Corporation, Pocatello, Idaho, (Civil Monetary Penalty).

This proceeding concerns a request for hearing submitted on January 10, 2005, by All Tech Corporation in response to a December 10, 2004 NRC staff order (69 FR 76,019 (Dec. 20, 2004)), imposing a civil penalty associated with a staff investigation of All Tech Corporation activities that

concluded All Tech Corporation had not conducted its activities in full compliance with NRC requirements.

The Board is comprised of the following administrative judges:

Lawrence McDade, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

E. Roy Hawkens, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Peter S. Lam, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed with the administrative judges in accordance with 10 CFR 2.346(I).

Issued in Rockville, Maryland, this 2nd day of February 2005.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 05–2367 Filed 2–7–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act; Meetings

DATE: Weeks of February 7, 14, 21, 28, March 7, 14, 2005.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of February 7, 2005

There are no meetings scheduled for the week of February 7, 2005.

Week of February 14, 2005—Tentative

Tuesday, February 15, 2005:

9:30 a.m. Briefing on Office of Nuclear Material Safety and Safeguards Programs, Performance, and Plans—Waste Safety (Public Meeting) (Contact: Jessica Shin, 301–415–8117). This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of February 21, 2005—Tentative

Tuesday, February 22, 2005:

9:30 a.m. Briefing on Status of Office of the Chief Information Officer (OCIO) Programs, Performance, and Plans (Public Meeting) (Contact: Patricia Wolfe, 301–415–6031). This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

1:30 p.m. Briefing on Emergency Preparedness Program Initiatives (Closed—Ex. 1)

Wednesday, February 23, 2005:

9:30 a.m. Briefing on Status of Office of the Chief Financial Officer (OCFO) Programs, Performance, and Plans (Public Meeting) (Contact: Edward New, 301–415–5646). This meeting will be webcast live at the Web address—*http://www/nrc.gov.*

Thursday, February 24, 2005:

9 a.m. Discussion of Security Issues (Closed—Ex. 1)

1 p.m. Briefing on Nuclear Fuel Performance (Public Meeting) (Contact: Frank Akstulewicz, 301–415–1136). This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of February 28, 2005—Tentative

There are no meetings scheduled for the week of February 28, 2005.

Week of March 7, 2005—Tentative

Monday, March 7, 2005:

9:30 a.m. Briefing on Office of Nuclear Material Safety and Safeguards Programs, Performance, and Plans—Materials Safety (Public Meeting) (Contact: Shamica Walker, 301–415–5142). This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of March 14, 2005—Tentative

Wednesday, March 16, 2005:

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: Dave Gamberoni, (301) 415–1651.

* * * * *

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, August Spector, at 301–415–7080, TDD: 301–415–2100, or by e-mail at *aks@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: February 3, 2005.

Dave Gamberoni,

Office of the Secretary.

[FR Doc. 05–2481 Filed 2–4–05; 9:27 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51124; File No. SR–ODD–2004–03]

Canadian Derivatives Clearing Corporation; Order Approving Accelerated Distribution of an Amended Options Disclosure Document

February 2, 2005.

On January 28, 2005, the Canadian Derivatives Clearing Corporation (''CDCC''),[1] on behalf of the Bourse de Montréal, Inc. (''Bourse de Montréal''), submitted to the Securities and Exchange Commission (''Commission''), pursuant to Rule 9b–1 under the Securities Exchange Act of 1934 (''Act''),[2] five definitive copies of an amended options disclosure document (''ODD'') that describes the risks and characteristics of options traded on the Bourse de Montréal.[3] The CDCC has

[1] The CDCC formerly was known as Trans Canada Options, Inc. (''TCO''). The name of the corporation was changed in January 1996.

[2] 17 CFR 240.9b–1.

[3] The Commission initially reviewed the ODD in 1984. *See* Securities Exchange Act Release No. 21365 (October 2, 1984), 49 FR 39400 (October 5, 1984) (File No. ODD–84–1). Since then, the Commission has reviewed several amendments to the ODD. *See, e.g.,* Securities Exchange Act Release Nos. 44333 (May 21, 2001), 66 FR 29193 (May 29, 2001) (File No. SR–ODD–00–04) (amending the ODD to reflect, among other things, changes to the structure of the Canadian equity markets and to provide a discussion of Enhanced Capital Marketing); 37569 (August 14, 1996), 61 FR 43281 (August 21, 1996) (File No. SR–ODD–96–01) (amending the ODD to reflect, among other things, the name change from TCO to CDCC); 29033 (April 1, 1991), 56 FR 14407 (April 9, 1991) (File No. SR–ODD–91–1) (amending the ODD to include, among other things, references to Toronto Stock Exchange 35 Composite Index options); 24480 (May 19, 1987), 52 FR 20179 (May 29, 1987) (File No. SR–ODD–87–

revised the ODD to, among other things, reflect the CDCC's new automatic exercise parameters for equity and bond options, to add an Annex to the ODD setting forth the holidays and early closings of the Bourse de Montréal, to update the discussion of Canadian federal income tax considerations applicable to non-residents, and to indicate that the S&P/TSE 60 Index is now named the S&P/TSX 60 Index.

Rule 9b–1 under the Act provides that an options market must file five preliminary copies of an amended ODD with the Commission at least 30 days prior to the date when definitive copies of the amended ODD are furnished to customers, unless the Commission determines otherwise, having due regard to the adequacy of the information disclosed and the public interest and protection of investors.[4]

The Commission has reviewed the amended ODD and finds, having due regard to the adequacy of the information disclosed, that it is consistent with the protection of investors and in the public interest to allow the distribution of the amended ODD as of the date of this order.[5]

It is therefore ordered, pursuant to Rule 9b–1 under the Act,[6] that the distribution of the revised ODD (SR–ODD–2004–03) as of the date of this order, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–511 Filed 2–7–05; 8:45 am]

BILLING CODE 8010–01–P

2) (amending the ODD to include, among other things, a discussion of Government of Canada Treasury Bill Price Index options; and 22349 (August 21, 1985), 50 FR 34956 (August 28, 1985) (File No. SR–ODD–85–1) (amending the ODD to include, among other things, a discussion of the risks and uses of stock index and bond options).

[4] This provision is intended to permit the Commission either to accelerate or extend the time period in which definitive copies of a disclosure document may be distributed to the public.

[5] Rule 9b–1 under the Act provides that the use of an ODD shall not be permitted unless the options class to which the documents relates is the subject of an effective registration statement on Form S–20 under the Securities Act of 1933. On April 19, 2004, the Commission, pursuant to delegated authority, declared effective the CDCC's most recent Post-Effective Amendment to its Form S–20 registration statement. *See* File No. 2–69458.

[6] 17 CFR 240.9b–1.

[7] 17 CFR 200.30–3(a)(39)(i).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51119; File No. SR–Amex–2004–72]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC to Amend Its Minor Rule Violation Plan

February 1, 2005.

On August 23, 2004, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 590, its Minor Rule Violation Fine Plan (''Plan''). On November 23, 2004, Amex filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on December 22, 2004.[3] The Commission received no comments regarding the proposal.

The Exchange proposed to make the following actions subject to its Plan:

- Failure to comply with trade reporting requirements for options (Amex Rule 992);
- Violation of Exchange rules regarding the deactivation of quote assist as it pertains to options (Amex Rules 950(g), Commentary .01 and 950–ANTE(g), Commentary .01);
- Violation of Exchange rules regarding the Options Linkage Program relating to the responding to, and receiving of, Linkage Orders (Amex Rule 941(d) and (e)), Avoidance and Satisfaction of Trade-Throughs (Amex Rule 942(a)), and Locked Markets (Amex Rule 943);
- Violation of Exchange policy regarding affirmative determination of the availability for borrowing of shares of Amex-listed issues prior to effecting short sale transactions (Circular 90–25); and
- Effecting or causing to be effected a transaction outside of business hours through the Intermarket Trading System (Amex Rules 1, 100, and 233).

The Exchange also proposed to amend the Plan as follows:

- Expand the requirement of reporting trade comparison data (Part 2(d)(3) of Amex Rule 590) to include all transactions effected on the Exchange and to relocate such rule to Part 1(g) of Amex Rule 590 so as to subject it to Amex Enforcement Department action rather than Amex Floor Official action; and
- Revise Part 3 of Amex Rule 590 to reflect the current filing schedule for the Form 50 (Short Position), which is now also required to be filed at or about the end of the month for selected derivative products.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act[5] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 6(b)(1)[6] and 6(b)(6)[7] of the Act which require that the rules of an exchange enforce compliance and provide appropriate discipline for violations of Commission and Exchange rules. In addition, because Amex Rule 590 provides procedural rights to a person fined under the Plan to contest the fine and permit a hearing on the matter, the Exchange believes the proposal provides a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7)[8] and 6(d)(1)[9] of the Act.

Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act[10] which governs minor rule violation plans. The Commission believes that these changes to Amex's Plan will strengthen its ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation.

In approving this proposed rule change, the Commission in no way

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 50871 (December 16, 2004), 69 FR 76801.

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(1).

[7] 15 U.S.C. 78f(b)(6).

[8] 15 U.S.C. 78f(b)(7).

[9] 15 U.S.C. 78f(d)(1).

[10] 17 CFR 240.19d–1(c)(2).

minimizes the importance of compliance with Amex rules and all other rules subject to the imposition of fines under the Exchange's Plan. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, the Exchange's Plan provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that Amex will continue to conduct surveillance with due diligence and make a determination based on its findings, whether fines of more or less than the recommended amount are appropriate for violations under the Plan, on case-by-case basis, or a violation requires formal disciplinary action.

It is therefore ordered, pursuant to section 19(b)(2) of the Act [11] and Rule 19d–1(c)(2) under the Act,[12] that the proposed rule change (SR–Amex–2004–72), as amended, be, and hereby is, approved and declared effective.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–495 Filed 2–7–05; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 240.19d–1(c)(2).

[13] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(44).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51112; File No. SR–CBOE–2005–013]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Extend a Pilot Program Relating to Certain Limitations on Trade-Through Liability at the End of the Options Trading Day

January 31, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 26, 2005, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I and II below, which items have been prepared by the CBOE. On January 28, 2005, the CBOE filed Amendment No. 1 to the proposed rule change.[3] The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to extend a pilot program relating to certain limitations on trade-through liability at the end of the trading day.

The text of the proposed rule change is available on the CBOE's Web site at *http://www.cboe.com*, at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the filing is to conform CBOE rules to Joint Amendment No. 14 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the ''Linkage Plan'') [7] to extend the pilot provision in the CBOE rules limiting trade-through liability at the end of the options trading day. Pursuant to the Linkage Plan pilot as currently in effect, an options exchange member's trade-through liability is limited to 25 contracts per Satisfaction Order [8] for the period between five minutes prior to the close of trading in the underlying security and the close of trading in the options class. The participant option exchanges in the Linkage Plan (''Participants'') originally proposed this limitation on liability as a one-year pilot in Joint Amendment No. 4 to the Linkage Plan. The Commission temporarily put into effectiveness the Linkage Plan pilot on January 31, 2003,[9] followed by permanent approval on June 18, 2003.[10] The Commission then granted two extensions to the Linkage Plan pilot, first until June 30, 2004[11] and then until January 31, 2005.[12]

The Exchange is proposing to extend the pilot in CBOE's rules for an additional year, until January 31, 2006. In addition, the Exchange proposes to increase the limit on trade-through liability at the end of the day from 25 contracts to 50 contracts per Satisfaction Order. This increase in the limit on liability would be effective on February 1, 2005, when the current pilot expires. The period during which this limit will apply will remain the same, from five minutes prior to the close of trading in the underlying security until the close of trading in the options class.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5),[14] in particular, in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market

[3] In Amendment No. 1 the Exchange made certain technical corrections to Exhibit 5 to the filing.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] The CBOE asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[7] *See* Joint Amendment No. 14 to the Linkage Plan filed by the Exchange on January 27, 2005 in a letter from Edward J. Joyce, President and Chief Operating Officer, CBOE, to Jonathan G, Katz, Secretary, Commission, dated January 26, 2005.

[8] A ''Satisfaction Order'' is an order sent through the Linkage to notify a Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through. *See* Section 2(16)(c) of the Linkage Plan.

[9] *See* Securities Exchange Act Release No. 47298 (January 31, 2003), 68 FR 6524 (February 7, 2003) (Temporary effectiveness of pilot program on a 120-day basis).

[10] *See* Securities Exchange Act Release No. 48055 (June 18, 2003), 68 FR 37869 (June 25, 2003) (Order approving Joint Amendment No. 4).

[11] *See* Securities Exchange Act Release No. 49146 (January 29, 2004), 69 FR 5618 (February 5, 2004) (Order approving Joint Amendment No. 8).

[12] As a part of this extension of the Linkage Plan pilot program, the Participants increased the maximum liability from 10 to 25 contracts. *See* Securities Exchange Act Release No. 49863 (June 15, 2004), 69 FR 35081 (June 23, 2004) (Order approving Joint Amendment No. 12).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6) [17] normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii), and designate the proposed rule change immediately operative.

The Commission believes that waiving the five-day pre-filing provision and the 30-day operative delay is consistent with the protection of investors and the public interest.[18] By waiving the pre-filing requirement and accelerating the operative date, the Pilot Program can continue without interruption. The Commission believes that allowing the pilot to continue will allow Participants to either gather sufficient information to justify the need for the pilot program or determine that the exemption from trade-through liability is no longer necessary. Increasing the maximum number of contracts to be satisfied with respect to Satisfaction Orders in the last seven minutes of trading in options to 50 contracts will enhance customer order protection.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2005–013 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2005–013. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal offices of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–013 and should be submitted on or before March 1, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–496 Filed 2–7–05; 8:45 am]

BILLING CODE 8010–01–P

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 *Id.*

[18] For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51123; File No. SR–NASD–2004–169]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 3 Thereto To Adopt Additional Listing Standards Applicable to the Securities of the Nasdaq Stock Market, Inc. or an Affiliate

February 2, 2005.

I. Introduction

On November 2, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt additional listing standards that would apply to securities of Nasdaq or its affiliate listed on The Nasdaq Stock Market. On December 14, 2004, and December 15, 2004, Nasdaq filed Amendments No. 1 and No. 2, respectively.[3] On December 15, 2004, Nasdaq filed Amendment No. 3 to the proposal.[4] The proposed rule change

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 and Amendment No. 2 were deficient for technical reasons and were withdrawn on December 14 and December 15, 2004, respectively.

[4] Amendment No. 3 slightly modified the text of the proposed rule to make clear that the exclusion in the definition of an Affiliate Security would encompass both portfolio depository receipts and index fund shares. The amendment also further

Continued

was published for notice and comment in the **Federal Register** on December 29, 2004.[5] The Commission received no comments on the proposal.

This order approves the proposed rule change, as amended.

II. Description of the Proposal

Nasdaq proposes to adopt new Rule 4370 that would impose additional reporting requirements on Nasdaq should Nasdaq or an affiliate of Nasdaq (collectively, the ''Nasdaq Affiliates'' or ''Nasdaq Affiliate'')[6] list a security on The Nasdaq Stock Market. In the event that a Nasdaq Affiliate lists a security on The Nasdaq Stock Market (the ''Affiliate Security''), the proposed rule change would require Nasdaq to file a report with the Commission on a monthly basis detailing Nasdaq's monitoring of (1) the Nasdaq Affiliate's compliance with the provisions of the Rule 4200, 4300 and 4400 Series,[7] and (2) the trading of the Affiliate Security, including summaries of all related surveillance alerts, complaints, regulatory referrals, trades cancelled or adjusted pursuant to NASD Rule 11890, investigations, examinations, formal and informal disciplinary actions, exception reports and trading data.

Nasdaq also would be required to notify the Commission at the same time it notifies the Nasdaq Affiliate if Nasdaq determines that the Nasdaq Affiliate was not in compliance with any of its listing standards. Nasdaq would be required to notify the Commission within five business days of its receipt of a plan of compliance from the Nasdaq Affiliate and advise the Commission on whether the plan of compliance was accepted by Nasdaq or what other action was taken with respect to the plan, and the time period provided to regain compliance with the Rule 4200, 4300 and 4400 Series, if any.

In addition, Nasdaq would be required to commission an annual review and report by an independent accounting firm of the compliance of the Affiliate Security with the Rule 4200, 4300 and 4400 Series. Nasdaq would be required to furnish promptly a copy of the report to the Commission.

Solely for the purposes of Rule 4370, Nasdaq proposes to exclude from the definition of ''Affiliate Security'' securities that meet the definition of ''Portfolio Depository Receipts'' under NASD Rule 4420(i)(1)(A) and ''Index Fund Shares'' under NASD Rule 4420(j)(1)(A).[8]

Nasdaq believes that the additional requirements contained in Rule 4370 would provide additional assurance that any securities listed on The Nasdaq Stock Market by a Nasdaq Affiliate comply with Nasdaq's listing standards on an on-going basis. Nasdaq believes that the proposed rule change would eliminate any perception of a potential conflict of interest if a Nasdaq Affiliate seeks to list a security on The Nasdaq Stock Market.

III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change, as amended, and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[9] In particular, the Commission believes that the proposal, as amended, is consistent with Section 15A(b)(6) of the Act,[10] which requires that an association's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and, in general, protect investors and the public interest. The Commission also finds that the proposed rule change, as amended, is consistent with Section 15A(b)(2) of the Act,[11] which requires a national securities association to be so organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the association.

The listing of an Affiliate Security on The Nasdaq Stock Market could potentially create a conflict of interest between the NASD's, Nasdaq's, and NASD Regulation, Inc.'s (''NASDR'') regulatory responsibilities to vigorously oversee the listing and trading of an Affiliate Security on The Nasdaq Stock Market, and their own commercial or economic interests. Such ''self-listing'' may raise questions as to the NASD's, Nasdaq's, and NASDR's ability to independently and effectively enforce the Commission's and the NASD's rules against an affiliate of Nasdaq. In addition, such listing has the potential to exacerbate possible conflicts that may arise when these entities oversee competitors that may also be listed on The Nasdaq Stock Market.

The Commission believes that the proposed rule change, by requiring heightened reporting by Nasdaq to the Commission with respect to oversight of the listing and trading on The Nasdaq Stock Market of an Affiliate Security, will help protect against concerns that Nasdaq will not effectively enforce its rules with respect to the listing and trading of these securities. In addition, the requirement that an independent accounting firm review such issuer's compliance with Nasdaq's listing standards adds a degree of independent oversight to Nasdaq's regulation of the listing of these securities, which may mitigate any potential or actual conflicts of interest.[12]

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (File No. SR–NASD–2004–169), as amended, be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–512 Filed 2–7–05; 8:45 am]

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clarifies and explains the proposed rule change. Amendment No. 3 was incorporated into the notice.

[5] *See* Securities Exchange Act Release No. 50897 (December 21, 2004), 69 FR 78076.

[6] The NASD currently would be considered a Nasdaq Affiliate for purposes of the proposed rule change.

[7] These rules include quantitative (minimum bid price, number of round lot holders, number of publicly held shares, market value, etc.) and qualitative (concerning independent directors, audit committee, shareholder meetings, etc.) requirements for initial and continued inclusion of securities in The Nasdaq Stock Market, as well as issuer designation requirements.

[8] These securities are types of exchange-traded funds (''ETFs'').

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78o–3(b)(6).

[11] 15 U.S.C. 78o–3(b)(2).

[12] On December 8, 2004, the Commission published for comment a proposed rulemaking that would impose reporting and other requirements on a self-regulatory organization (''SRO'') that chooses to list or trade its own securities, the securities of any trading facility, the securities of an affiliate of the SRO, or the securities of an affiliate of a trading facility of the SRO. Unlike the NASD's proposed rule change, the Commission's proposed rule would apply to investment companies that track an index, such as exchange-traded funds. *See* Securities Exchange Act Release No. 50699, 69 FR 71126 (December 8, 2004). The NASD would, of course, have to conform its rules to any rules the Commission may adopt in the future.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before March 10, 2005. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *David_Rostker@omb.eop.gov,* fax number 202–395–7285 Office of Information and Regulatory Affairs, Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, *jacqueline.white@sba.gov* (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: BusinessLINC Program.
Form No: N/A.
Frequency: On Occasion.
Description of Respondents: Small Business Owners.
Responses: 14.
Annual Burden: 448.

Jacqueline K. White,
Chief, Administrative Information Branch.

[FR Doc. 05–2444 Filed 2–7–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before March 10, 2005. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *David_Rostker@omb.eop.gov*, fax number 202–395–7285, Office of Information and Regulatory Affairs, Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, *jacqueline.white@sba.gov* (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Secondary Participation Guaranty Agreement.
Form No: SBA 1086 and 1502.
Frequency: On occasion.
Description of Respondents: SBA Participating Lenders.
Responses: 14,000.
Annual Burden: 42,000.

Jacqueline K. White,
Chief, Administrative Information Branch.

[FR Doc. 05–2445 Filed 2–7–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before March 10, 2005. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *David_Rostker@omb.eop.gov,* fax number 202–395–7285, Office of Information and Regulatory Affairs, Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, *Jacqueline.white@sba.gov,* (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Personal Financial Statement.
Form No: 413.
Frequency: On occasion.
Description of Respondents: Applicants for an SBA Loan.
Responses: 148,788.
Annual Burden: 223,182.

Jacqueline K. White,
Chief, Administrative Information Branch.

[FR Doc. 05–2446 Filed 2–7–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4987]

U.S. Advisory Commission on Public Diplomacy; Notice of Meeting

The U.S. Advisory Commission on Public Diplomacy will hold a meeting at the U.S. Department of State at 2201 C Street, NW., Washington, DC on February 17, 2005, at 10 a.m. The Commissioners will discuss public diplomacy issues with senior officials of the Department.

The Commission was reauthorized pursuant to Pub. L. 106–113 (H.R. 3194, Consolidated Appropriations Act, 2000). The U.S. Advisory Commission on Public Diplomacy is a bipartisan Presidentially appointed panel created by Congress in 1948 to provide oversight of U.S. Government activities intended to understand, inform and influence foreign publics. The Commission reports its findings and recommendations to the President, the Congress and the Secretary of State and the American people. Current Commission members include Barbara M. Barrett of Arizona, who is the Chairman; Harold Pachios of Maine; Ambassador Penne Percy Korth of Washington, DC; Ambassador Elizabeth Bagley of Washington, DC; Charles ''Tre'' Evers of Florida; Jay T. Snyder of New York; and Maria Sophia Aguirre of Washington, DC.

For more information, please contact Razvigor Bazala at (202) 203–7880.

Dated: February 3, 2005.

Razvigor Bazala,

Acting Executive Director, IIP/ACPD, Department of State.

[FR Doc. 05–2522 Filed 2–7–05; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Acceptance of Noise Exposure Maps and Request for Review of Noise Compatibility

AGENCY: Federal Aviation Administration

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the Noise Exposure Maps submitted by the American Samoa Government, Department of Port Administration for Pago Pago International Airport under the provisions of 49 U.S.C. 47501 *et. seq.* (Aviation Safety and Noise Abatement Act) and 14 Code of Federal Regulations (CFR) part 150, are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed Noise Compatibility Program that was submitted for Pago Pago International Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before July 27, 2005.

DATES: The effective date of the FAA's acceptance of Noise Exposure Maps and of the start of its review of the associated Noise Compatibility Program is January 28, 2005. The public comment period ends March 29, 2005.

FOR FURTHER INFORMATION CONTACT: Gordon Wong, Project Manager. Mailing address: Federal Aviation Administration, Western-Pacific Region, Honolulu Airports District Office, Box 50244, Honolulu, Hawaii 96850–0001. Street address: 300 Ala Moana Boulevard, Room 7–128, Honolulu, Hawaii 96850–0001. Telephone number (808) 541–3565. Comments on the proposed Noise Compatibility Program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the Noise Exposure Maps submitted for Pago Pago International Airport are in compliance with applicable requirements of part 150, effective January 28, 2005. Further, FAA is reviewing a proposed Noise Compatibility Program for that airport, which will be approved or disapproved on or before July 27, 2005. This notice also announces the availability of this program for public review and comment.

Under 49 U.S.C., section 47503 (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act''), an airport operator may submit to the FAA, Noise Exposure Maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted Noise Exposure Maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to the Act, may submit a Noise Compatibility Program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The American Samoa Government, Department of Port Administration submitted to the FAA on December 9, 2004, noise exposure maps, descriptions and other documentation that were produced during the FAR part 150 Noise Compatibility Study for Pago Pago International Airport which began in mid-2003. It was requested that the FAA review this material as the Noise Exposure Maps, as described in section 47503 of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a Noise Compatibility Program under section 47504 of the Act.

The FAA has completed its review of the Noise Exposure Maps and related descriptions submitted by American Samoa Government, Department of Port Administration. The specific documentation determined to constitute the Noise Exposure Maps includes: Existing Year 2004 Conditions NEM and Future Year 2010 NEM/NCP exhibits, plus all other narrative, graphic, or tabular representations of the data required by section A150.101 of part 150, and sections 47503 and 47506 of the Act. The FAA has determined that these maps for Pago Pago International Airport are in compliance with applicable requirements. This determination is effective on January 28, 2005. FAA's determination on an airport operator's Noise Exposure Maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or constitute a commitment to approve a Noise Compatibility Program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a Noise Exposure Map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the Noise Exposure Maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of Noise Exposure Maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the Noise Compatibility Program for Pago Pago International Airport, also effective on January 28, 2005. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of Noise Compatibility Programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before July 27, 2005.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The Primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign

commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the Noise Exposure Maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, National Headquarters, Community and Environmental Needs Division, 800 Independence Avenue, SW., Room 617, Washington, DC 20591.

Federal Aviation Administration, Western Pacific Region, Airports Division, California Standards Section, AWP 621, 15000 Aviation Boulevard, Lawndale, CA 90261.

Federal Aviation Administration, Honolulu Airports District Office, 300 Ala Moana Boulevard, Room 7–128, Honolulu, Hawaii, 96813.

American Samoan Government, Department of Port Administration, Pago Pago, American Samoa, 96799.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Hawthorne, California on January 28, 2005.

Mark A. McClardy,

Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 05–2316 Filed 2–7–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Government/Industry Air Traffic Management Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA/Industry Air Traffic Management Advisory Committee.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Government/Industry Air Traffic Management Advisory Committee.

DATES: The meeting will be held February 25, 9 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at the Federal Aviation Administration, 800 Independence Ave., SW., Bessie Coleman Conference Room (2nd Floor) Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the Air Traffic Management Advisory Committee meeting.

Note: Non-Government attendees to the meeting must go through security and be escorted to and from the conference room.

Issued in Washington, DC, on January 21, 2005.

Natalie Ogletree,

FAA General Engineer, RTCA Advisory Committee.

[FR Doc. 05–2317 Filed 2–7–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 200: Integrated Modular Avionics (IMA)/ EUROCAE WG–60

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 200 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 200: Integrated Modular Avionics.

DATES: The meeting will be held on February 14–18, 2005 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at Kuffner Sternwarte Vienna, Johann Staud-Strabe 10, 1160 Wein, Austria.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036–5133; telephone (202) 833–9339, fax (202) 833–9434; Web site *http://www.rtca.org*. (2) *http://www.kuffner.ac.at/site/de/index.html*; Martin Schwarz; telephone +43 1 585 3434 72; e-mail: *martin.schwarz@tttech.com*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 200 meeting. The agenda will include:

- February 14:
- Subgroup Meetings: Review Edit document, closing comment sheets.
- February 15:
- Subgroup Meetings: Edit document/prepare plenary presentation.
- February 16:
- Opening Session (Welcome, Introductory and Administrative Remarks, Approve Agenda, Review Summary of Previous Meeting).
- Review action items.
- Brief reports on related committees activities (ARINC653, WG 63).
- Editorial Team Report/Subgroup Reports.
- Target of the meeting.
- Subgroup Meetings: Final edit.
- February 17:
- Subgroup Meetings: Final edit/prepare plenary approval.
- February 18:
- Subgroup final reports/Plenary approval of the document.
- Near term schedule/Start of ballot process.
- Closing Session (Plans for next meeting, Review action items, Closing Remarks, Adjourn).

Attendance is open to the interested public but limited to space availiability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, January 21, 2005.

Natalie Ogletree,

FAA General Engineer, RTCA Advisory Committee.

[FR Doc. 05–2318 Filed 2–7–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 05–08–C–00–MSP To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Minneapolis-St. Paul International Airport, Minneapolis, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites pubilc comment on the application to impose and use the revenue from a PFC at Minneapolis-St. Paul International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 10, 2005.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis 55450–2706.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Jeffrey W. Hamiel, Executive Director, of the Metropolitan Airports Commission at the following address: Metropolitan Airports Commission, 6040 28th Avenue South, Minneapolis, Minnesota 55450.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Metropolitan Airports Commission under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Gordon Nelson, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450–2706, telephone (612) 713–4358. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Minneapolis-St. Paul International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 28, 2005, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Metropolitan Airports Commission was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 28, 2005.

The following is a brief overview of hte application.

Proposed charge effective date: November 1, 2015.

Proposed charge expiration date: April 1, 2019.

Level of the proposed PFC: $3.00.

Total estimated PFC revenue: $30,966,600.

Brief description of proposed projects: (Impose & Use Project) Pavement rehabilitation—aprons. (Impose Only Project) Maintenance building addition.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $260,135,064.

Brief description of proposed projects: (Impose & Use Projects) Glycol management facility, Runway 17/35 communications, Runway 17/35 south end construction, Runway 17/35 land acquisition, Runway 17/35 runway protection zone restoration, Taxiway M construction, environmental mitigation, school sound insulation, pavement rehabilitation—Runway 12R/30L segment 2, miscellaneous construction, Navy building relocation, Cat. II system installation—airport lighting electrical center modifications, fire truck replacement. (Impose Only Projects) Taxiway C/D complex, Runway 30R safety area improvements, Air Traffic Control Tower.

Class or classes of air carriers, which the public agency has requested, not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) filing FAA form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Metropolitan Airports Commission.

Issued in Des Plaines, Illinois, on January 31, 2005.

Barbara Jordan,

Acting Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 05–2315 Filed 2–7–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Maritime Security Training Course

AGENCY: Maritime Administration (MARAD), DOT.

ACTION: Notice of availability of maritime security training course approval program.

SUMMARY: The purpose of this notice is to announce a voluntary program for approval of maritime security training courses under the Maritime Transportation Security Act of 2002 (MTSA). Training providers wishing to receive course approval are invited to submit applications under this program, which was developed jointly by MARAD and the United States Coast Guard (USCG). Training providers—profit or non-profit—must be organized and authorized to conduct business under the Federal laws of the United States, or under the laws of any state of the United States, and they must conduct the training in the United States or aboard a United States flag vessel to be eligible for this program.

There is no cost to training providers for course approval under this program; however, the program is subject to limited funding, and fees may be required when funding is exhausted. The goal of the program is to promote high quality, uniform training of maritime security professionals. Details of the program are available on the MARAD Web site: *http://www.marad.dot.gov.*

DATES: Effective Date: This program is effective February 8, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher E. Krusa, Office of Policy and Plans, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–2648, *chris.krusa@marad.dot.gov.* Program details are also available on the MARAD Web site: *http://www://marad.dot.gov.*

SUPPLEMENTARY INFORMATION: Section 109 of the Maritime Transportation Security Act of 2002 (Pub. L. 107–295) addressed the need for maritime security education and training to counter terrorist and other security threats involving the port, maritime, and intermodal transportation environment. Section 109 specifically charged the Secretary of Transportation with responsibility for fulfilling this need, requiring that ''the Secretary shall develop standards and curriculum to allow for the training and certification of maritime security professionals.'' The Secretary of Transportation found that MARAD had the expertise to develop and implement a program for the training and certification of maritime security professionals within its area of responsibility. Accordingly, on April 3, 2003, the Secretary delegated the Section 109 security mandate to MARAD.

At the request of the Maritime Administrator, the United States Merchant Marine Academy (USMMA) developed the required training standards and curriculum and prepared a report to Congress in May 2003. The report characterized security threats to the marine and intermodal transportation system; summarized relevant domestic legislation, international conventions, and other guidance; delineated key workforce development issues; described the project undertaken by MARAD in fulfillment of the Secretary's Section 109 responsibilities; presented the standards and curriculum developed in response to the MTSA mandate; and offered recommendations for the certification and oversight of maritime security education and training.

The standards, curriculum, and recommendations contained in the report were developed through a deliberative and collaborative process, during which MARAD proactively sought public comment and initiated interagency cooperation. Collaboration with the Coast Guard, the Transportation Security Administration (TSA), other public agencies, industry associations, and private-sector firms was pursued to ensure that the education and training guidelines developed were responsive to the needs of affected parties and incorporated the views of stakeholders to the maximum extent possible.

During development of the training guidelines, MARAD received many comments from training providers seeking a means through which to have their courses ''approved,'' or otherwise designated as courses that incorporate the standards and curriculum developed under MTSA. Similar requests were received from facility and vessel operators wishing to send their security personnel to ''approved'' courses utilizing MARAD's training standards and curriculum.

In response to these comments from training providers and facility and vessel operators, MARAD and the Coast Guard have developed an optional program for maritime security training course approval. This program is voluntary because, while there are domestic and international regulatory requirements for certain classes of personnel to receive appropriate maritime security training and/or have equivalent job experience, it is not currently mandatory for maritime security training to be approved by MARAD, the Coast Guard, or any other government agency. Nonetheless, this voluntary program is designed to align with any potential future regulatory requirements for maritime security training course approval at both the domestic and international levels.

Based upon the standards, curriculum, and recommendations contained in the report to Congress, as derived from MTSA, MARAD and the Coast Guard have identified seven discrete types of maritime security training courses as appropriate for inclusion in the program: (1) Vessel Security Officer (VSO), (2) Company Security Officer (CSO), (3) Facility Security Officer (FSO), (4) Maritime Security for Vessel Personnel with Specific Security Duties (VPSSD), (5) Maritime Security for Facility Personnel with Specific Security Duties (FPSSD), (6) Maritime Security for Military, Security, and Law Enforcement Personnel (MSLEP), and (7) Maritime Security Awareness (MSA). These are based upon the model course frameworks published in the report to Congress.

Initially, only instructor-based VSO, CSO, and FSO courses will be evaluated under this voluntary course approval program. Applications for approval of VPSSD, FPSSD, MSLEP and MSA courses—as well as for non-instructor-based VSO, CSO, and FSO courses—may be considered in subsequent stages of the program, contingent upon funding and/or on the payment of fees by training providers seeking approval for these types of courses. All terms and conditions of VPSSD, FPSSD, MSLEP, and MSA course approval—as well as for non-instructor-based VSO, CSO, and FSO course approval—will be posted on the MARAD Web site (*http://www://marad.dot.gov*) if/when a determination is made to evaluate these types of courses under this program. Until then, no applications for approval of VPSSD, FPSSD, MSLEP, and MSA courses or for non-instructor-based VSO, CSO, and FSO courses will be accepted.

Training providers wishing to obtain course approval for instructor-based VSO, CSO, and/or FSO courses must submit their applications electronically in strict accordance with Appendix A of the *Guidelines for Maritime Security Training Course Providers*, ''Elements of Request for Maritime Security Training Course Approval,'' published on the MARAD Web site (*http://www://marad.dot.gov*). These procedures include a requirement for training providers to certify that they are verifying the identity of all students. After the application materials are properly received, they will be forwarded to a Coast Guard-accepted Quality Standards System (QSS) organization, approved by the Coast Guard in accordance with Navigation and Vessel Inspection Circular (NVIC) 9–01 (November 30, 2001), for review. NVIC 9–01 is publicly available on the Internet at: *http://www.uscg.mil/hq/g-/nvic/NVIC%209_01.pdf.*

The QSS organization will determine the adequacy of the submitted course(s) and work with the training provider to correct any deficiencies in accordance with the *Guidelines for Maritime Security Training Course Providers* published on the MARAD Web site (*http://www://marad.dot.gov*). Training providers—profit or non-profit—must be organized and authorized to conduct business under the federal laws of the United States, or under the laws of any State of the United States, and they must conduct the training in the United States or aboard a United States flag vessel to be eligible for this program.

International Maritime Organization (IMO) model courses for Ship Security Officer (Model Course 3.19), Company Security Officer (Model Course 3.20), and Port Facility Security Officer (Model Course 3.21), respectively, will be used for evaluation of all submitted courses. The IMO model courses were developed by USMMA staff in collaboration with counterparts in India, in coordination with the U.S. Coast Guard, and are available for purchase in the U.S. through IMO-designated distributors listed on the IMO Web site at *http://www.imo.org/.*

The Coast Guard and MARAD will provide oversight of the QSS organization and the course approval process. For VSO courses, the QSS organization will issue approval letters and course approval certificates on behalf of the Coast Guard. For CSO and FSO courses, the QSS organization will issue approval letters and course approval certificates on behalf of MARAD. If a single course covers multiple topics that would separately be approved on behalf of the Coast Guard or MARAD (*e.g.*, a combination VSO and CSO course) the QSS organization will issue approval letters and course approval certificates jointly on behalf of both MARAD and the Coast Guard.

Paperwork Reduction Act

The information collection for this voluntary program for approval of maritime security training courses was approved by the Office of Management and Budget on July 27, 2004, as MARAD's information collection #2133–0535, Elements of Request for Course Approval.

(Authority: Pub. L. 107–295)

By order of the Maritime Administrator.

Dated: February 2, 2005.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–2320 Filed 2–7–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–20275]

Impaired-Driving Program Assessments; Technical Report

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments on technical report.

SUMMARY: This notice announces NHTSA's publication of a technical report summarizing and comparing the findings in 38 Assessments of State programs to control impaired driving. The report's title is Impaired-Driving Program Assessments—A Summary of Recommendations (1991 to 2003).

DATES: Comments must be received no later than June 8, 2005.

ADDRESSES: *Report:* The report is available on the Internet for viewing on line in HTML and in PDF format at *http://www.nhtsa.dot.gov/cars/rules/regrev/evaluate/809815.html*. You may also obtain a copy of the report free of charge by sending a self-addressed mailing label to Charles Kahane (NPO–131), National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

Comments: You may submit comments [identified by DOT DMS Docket Number NHTSA–2005–20275] by any of the following methods:

- Web Site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

You may call Docket Management at 1–800–647–5527 or visit the Docket from 9 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Charles Kahane, Chief, Evaluation Division, NPO–131, National Center for Statistics and Analysis, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW., Washington, DC 20590. Telephone: 202–366–2560. FAX: 202–366–2559. E-mail: *ckahane@nhtsa.dot.gov*.

For information about NHTSA's evaluations of the effectiveness of existing regulations and programs: Visit the NHTSA Web site at *http://www.nhtsa.dot.gov/cars/rules/regrev/evaluate*.

SUPPLEMENTARY INFORMATION: NHTSA developed an assessment process that gives States an opportunity to conduct a review of their efforts to control impaired driving by an outside team of nationally recognized experts. Each assessment examines a State's overall program and presents recommendations to improve or enhance it. NHTSA reviewed 38 State assessment reports and found 2,982 individual recommendations, including 852 that were identified as priority recommendations by the teams.

Most of the recommendations fit into ten broad thematic areas: (1) Increasing deterrence by prioritizing enforcement efforts and enhancing the arrest, prosecution, and adjudication process; (2) improving public information and education efforts related to prevention and deterrence; (3) remedying problems involving DUI data and records (reporting requirements, offender tracking systems, data linkages, uniform traffic citations); (4) enacting new laws or revising existing laws aimed at increasing the deterrence and/or prevention of DUI; (5) enhancing training for law enforcement, prosecution, and judicial personnel; (6) evaluating programs and activities to combat impaired driving; (7) providing sufficient resources for treatment and rehabilitation; (8) improving inter/intra-governmental coordination and cooperation; (9) providing funding (including self-sufficiency) to provide for adequate resources (personnel, equipment); and (10) developing or increasing task forces and/or community involvement.

How Can I Influence NHTSA's Thinking on This Subject?

NHTSA welcomes public review of the technical report and invites reviewers to submit comments about the analyses. NHTSA will submit to the Docket a response to the comments and, if appropriate, additional analyses that supplement or revise the technical report.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the Docket number of this document (NHTSA–2005–20275) in your comments.

Your primary comments must not be more than 15 pages long (49 CFR 553.21). However, you may attach additional documents to your primary comments. There is no limit on the length of the attachments.

Please send a paper copy of your comments to Docket Management, submit them electronically, fax them, or use the Federal eRulemaking Portal. The mailing address is U. S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. If you submit your comments electronically, log onto the Dockets Management System Web site at *http://dms.dot.gov and click on ''Help''* to obtain instructions. The fax number is 1–202–493–2251. To use the Federal eRulemaking Portal, go to *http://www.regulations.gov* and follow the online instructions for submitting comments.

We also request, but do not require you to send a copy to Charles Kahane, Chief, Evaluation Division, NPO–131, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW, Washington, DC 20590 (alternatively, FAX to 202–366–2559 or e-mail to *ckahane@nhtsa.dot.gov*). He can check if your comments have been received at the Docket and he can expedite their review by NHTSA.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NCC–01, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, SW., Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR part 512).

In addition, send a copy from which you have deleted the claimed confidential business information to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit them electronically.

Will the Agency Consider Late Comments?

In our response, we will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments.

Accordingly, we recommend that you periodically check the Docket for new material.

How Can I Read the Comments Submitted by Other People?

You may read the comments by visiting Docket Management in person at Room PL–401, 400 Seventh Street, SW., Washington, DC from 9 a.m. to 5 p.m., Monday through Friday.

You may also see the comments on the Internet by taking the following steps:

A. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov*).

B. On that page, click on ''Simple Search.''

C. On the next page (*(http://dms.dot.gov/search/searchFormSimple.cfm/)* type in the five-digit Docket number shown at the beginning of this Notice (20275). Click on ''Search.''

D. On the next page, which contains Docket summary information for the Docket you selected, click on the desired comments. You may also download the comments.

Authority: 49 U.S.C. 30111, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

Joseph S. Carra,

Associate Administrator for the National Center for Statistics and Analysis.

[FR Doc. 05–2430 Filed 2–7–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34644]

Finger Lakes Railway Corporation—Trackage Rights Exemption—CSX Transportation, Inc.

CSX Transportation, Inc. (CSXT) has agreed to grant overhead trackage rights to Finger Lakes Railway Corporation (FGLK) over CSXT's: (1) CSXT/NYSW Interchange Track between the CSXT/New York, Susquehanna and Western Railway Corporation property line and the Geddes Lead Track; (2) Geddes Lead Track for its entire length to the Auburn Secondary; (3) Auburn Secondary Track between its connection to the Geddes Lead Track and its connection to the CSXT/FGLK Interchange Track; and (4) CSXT/FGLK Interchange Track between the CSXT/FGLK property line and the connection to the Auburn Secondary Track, a total distance of approximately 1.5 miles. The railroad line trackage is located in the State of New York.[1]

The transaction was scheduled to be consummated on or after the January 26, 2005, effective date of the exemption.

The purpose of the trackage rights is to allow FGLK to access another Class III rail carrier in furtherance of the principles of the Railroad Industry Agreement.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.-Trackage Rights-BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.-Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34644, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hocky, Gollatz, Griffin & Ewing, P.C., Four Penn Center Plaza, 1600 John F. Kennedy Blvd., Suite 200, Philadelphia, PA 19103–2808.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: February 1, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–2375 Filed 2–7–05; 8:45 am]

BILLING CODE 4915–01–P

[1] A redacted version of the trackage rights agreement between CSXT and FGLK was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was filed under seal along with a motion for protective order on January 28, 2005. A protective order is being served on February 1, 2005.

Federal Register

Tuesday,
February 8, 2005

Part II

Department of Labor

Employment and Training Administration

Trade Adjustment Assistance Program; Designation of Certifying Officers; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

Trade Adjustment Assistance Program; Designation of Certifying Officers

AGENCY: Employment and Training Administration; Labor.

ACTION: Notice of designation of certifying officers.

SUMMARY: The trade adjustment assistance program operates under the Trade Act of 1974 to furnish program benefits to domestic workers adversely affected in their employment by imports of articles which are like or are directly competitive with articles produced by the firm employing the workers. The Trade Adjustment Assistance Reform Act of 2002 amended the Trade Act of 1974, to extend eligibility to those workers whose firm shifted production to certain foreign countries; to workers of upstream supplier firms selling components to firms whose workers have received a certification of eligibility to apply for trade adjustment assistance; to workers of downstream producer firms engaged in assembly or finishing for firms whose workers have received a certification of eligibility to apply for trade adjustment assistance based on a shift in production or increased imports from Mexico or Canada; and added the program option of alternative trade adjustment assistance for older workers over age 50 years. Workers become eligible for program benefits only if the worker group is certified under the Act as eligible to apply for adjustment assistance and/or alternative trade adjustment assistance. From time to time the agency issues an Order designating or redesignating officials of the agency authorized to act as certifying officers, responsible for reviewing and signing adjustment assistance determinations. Employment and Training Order No. 1–05, was issued to revise the listing of officials designated as certifying officers, superseding the previous Order. Employment and Training Order No. 1–05, is published below.

Signed at Washington, DC, this 31st day of January 2005.

Emily Stover DeRocco,

Assistant Secretary of Labor, Employment and Training Administration.

BILLING CODE 4510–30–P

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION TAA
	CORRESPONDENCE SYMBOL ONR
	DATE February 1, 2005

EMPLOYMENT AND TRAINING ORDER NO. 1-05

TO: NATIONAL AND REGIONAL OFFICES

FROM: EMILY STOVER DeROCCO
Assistant Secretary

SUBJECT: Trade Adjustment Assistance Program (Trade Act of 1974) – Designation of Certifying Officers

1. **Purpose**. To designate certifying officers to carry out functions required for the worker adjustment assistance program under the Trade Act of 1974, as amended (the Act), including the Alternative Trade Adjustment Assistance program, and the regulations in the Code of Federal Regulations (CFR) at title 29, part 90.

2. **Directive Affected**. Employment and Training Order No. 1-01, February 14, 2001, 66 Fed. Reg. 29593 (May 31, 2001), is superseded.

3. **Background**. Persons designated as certifying officers are vested with certain authority and assigned to carry out responsibilities under 29 CFR part 90. Such authority and responsibilities include making determinations and issuing certifications with respect to the eligibility of groups of workers to apply for adjustment assistance under the Act and the program benefit regulations at 20 CFR part 617. The operating instructions for the Trade Adjustment Assistant Reform Act of 2002 amendments to the Trade Act of 1974 are contained in Training and Employment Guidance Letter, TEGL 11-02, and Change 1. The operating instructions for the alternative trade adjustment assistance provisions of the Reform Act are contained in Training and Employment Guidance Letter, TEGL 2-03, and Change 1. The Secretary of Labor's Order 3-81, June 1, 1981 (46 Fed. Reg. 31117-01 (June 12, 1981)), among other things- -

> delegated authority and assigned responsibility [to the Assistant Secretary for Employment and Training] for coordinating, monitoring, and insuring that the functions of the Secretary of Labor under the Trade Act of 1974 are carried out, including but not limited to. . .[d]eveloping and promulgating program performance standards relating to the conduct of certification investigations, public hearings, issuance of notice of certification decisions, delivery of program benefits, and other processes involved in the administration of the trade

RECISSIONS ETO 1-01	EXPIRATION DATE Continuing

adjustment assistance program. . .[and] determining eligibility of groups of workers to apply for adjustment assistance.

4. **Designation of Officials**. By virtue of the authority vested in me by Secretary's Order 3-81, the following officials of the Employment and Training Administration, United States Department of Labor, are hereby designated and/or redesignated as certifying officers for the trade adjustment assistance programs.

   a. Linda G. Poole, Program Analyst, Division of Trade Adjustment Assistance

   b. Elliott S. Kushner, Program Analyst, Division of Trade Adjustment Assistance

   c. Richard Church, Program Analyst, Division of Trade Adjustment Assistance

The foregoing designated certifying officers are delegated authority and assigned responsibility, subject to the general direction and control of the Assistant Secretary and Deputy Assistant Secretaries of the Employment and Training Administration, the Administrator of the Office of National Response, and the Program Manager for the Division of Trade Adjustment Assistance, to carry out the duties and functions of certifying officers under 29 CFR part 90 and any succeeding regulations.

5. **Effective Date**. This Order is effective on date of issuance.

[FR Doc. 05–2305 Filed 2–7–05; 8:45 am]
BILLING CODE 4510–30–C

Federal Register

Tuesday,
February 8, 2005

Part III

Federal Communications Commission

47 CFR Parts 22 and 90

Private Land Mobile Services; 800 MHz Public Safety Interference Proceeding; Improving Public Safety Communications in the 800 MHz Band; Public Information Collections Approved by Office of Management and Budget; Final Rules and Notice

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 02–55; ET Docket No. 00–258; ET Docket No. 95–18; RM–9498; RM–10024; FCC 04–294]

Private Land Mobile Services; 800 MHz Public Safety Interference Proceeding

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document clarifies and revises the technical and procedural measures that it adopted in a *Report and Order* on July 8, 2004 to address the ongoing and growing problem of interference to public safety communications in the 800 MHz band. In the *Report and Order,* the Commission concluded that a plan comprised of both long-term and short-term components represented the most effective solution to the public safety interference problem in the 800 MHz band. Subsequent to the release of the *Report and Order,* parties made a series of *ex parte* presentations which provided additional information. The Commission issued a *public notice* soliciting comment on certain *ex parte* presentations. Based on this supplementary record and review of the document, the Commission believes it appropriate to make the following clarifications of, and changes to, the provisions of the *Report and Order* and its accompanying rules. The Commission believe these changes will facilitate a more efficient and timely reconfiguration of the 800 MHz band.

DATES: Effective March 10, 2005.

FOR FURTHER INFORMATION CONTACT: Technical Information: Brian Marenco, *Brian.Marenco@FCC.gov,* Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418–0680, or TTY (202) 418–7233. Legal Information: Roberto Mussenden, Esq., *Roberto.Mussenden@FCC.gov,* Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau (202) 418–0680, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This document summarizes the Federal Communications Commission's Supplemental Order and Order on Reconsideration (*Order*), FCC 04–294, adopted and released on December 22, 2004. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *Brian.Millin@fcc.gov.*

1. The *Order* clarifies and revises portions of the *Report and Order,* 69 FR 67823 November 22, 2004, to create an environment conducive to the efficient implementation of the 800 MHz band reconfiguration and operations of 800 MHz band licensees. Specifically, the Commission:

a. Explicitly requires Nextel to submit its 700 MHz Guard Band licenses to the Commission for cancellation.

b. Modifies provisions relating to the letter of credit to provide that the letter of credit will serve as a security against default, and will not constitute the corpus of band reconfiguration funds absent a default. We also provide that up to ten financial institutions may issue the letter or letters of credit under certain conditions and provide that we will consider waiver of the conflict of interest provisions governing the Trustee.

c. Clarifies the scope of the acknowledgment that Nextel must file with the Commission as part of its acceptance of the terms and provisions of the Report and Order.

d. Clarifies the entities from which Nextel must obtain a Letter of Cooperation, committing such entities to make changes necessary to implement 800 MHz band reconfiguration.

e. Analyzes more recent and comprehensive data on the spectrum holdings of Nextel and revises, accordingly, the credit Nextel receives for spectrum it must surrender as part of the band reconfiguration process.

f. Sets interim received power level thresholds that non-cellular systems must maintain in order to claim protection against unacceptable interference during band reconfiguration. These interim threshold levels will remain in effect until band reconfiguration in a particular 800 MHz National Public Safety Planning Advisory Committee (NPSPAC) region is complete at which time the threshold levels adopted in the Report and Order go into effect.

g. Sets out provisions for abating interference to public safety systems that do not meet the interim received power level thresholds during the period in which said interim received power level thresholds are in effect.

h. Clarifies and amplifies certain actions falling within the Report and Order requirement that parties conduct their relocation negotiations in good faith.

i. Modifies the eighteen-month benchmark so that, by that time, Nextel shall have relocated all non-Nextel and non-SouthernLINC incumbents from the former General Category channels 1–120 in at least twenty NPSPAC regions, and shall have initiated relocation negotiations with all NPSPAC licensees in said regions.

j. Clarifies that mobile-only systems operating on a secondary basis on former General Category Channels 1–120 may continue to operate on said channels on a secondary basis.

k. Clarifies when public safety and Critical Infrastructure Industry (CII) licensees gain exclusive access to channels vacated by ''Enhanced Specialized Mobile Radio'' (ESMR) licensees as a part of band reconfiguration.

l. Specifies that non-public safety and non-CII incumbents operating on Channels 231–260 may continue to operate on these channels.

m. Clarifies that a Commission-certified coordinator must coordinate channels vacated by ESMR licensees and applied for after completion of band reconfiguration of a given NPSPAC region.

n. Declines to impose a two percent limit on administrative costs associated with incumbent relocation.

o. Elaborates on the duties and authority of the Transition Administrator.

p. Clarifies which Economic Area (EA) licensees are eligible for relocation to channels above 817 MHz/862 MHz.

q. Declines to afford relocating licensees their choice of channels, provided that they are relocated to comparable facilities.

r. Declines to require that relocating licensees be assigned channels in any particular sequence, leaving such determinations to the Transition Administrator.

s. Defines the parameters governing the voluntary relocation of CMRS licensees to the Guard Band.

t. Clarifies the extent to which Nextel may be involved in the physical process of retuning incumbent systems.

u. Prohibits ''high site'' systems above 817 MHz/862 MHz.

v. Clarifies that relocation of EA licensees does not constitute issuance of ''new'' licenses.

w. Clarifies that license modifications necessary to implement band

reconfiguration do not implicate the Commission's ''unjust enrichment'' rule.

x. Modifies the rules affecting the ''freeze'' on 800 MHz license modification applications during reconfiguration of a given NPSPAC region.

y. Clarifies the applicability of Section 22.917 of the Rules to cellular systems causing interference to 900 MHz systems.

I. Procedural Matters

A. Paperwork Reduction Act Analysis

2. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA) and found to impose no new or modified reporting or recordkeeping requirements or burdens to the public, including businesses with fewer than 25 employees.

B. Supplemental Final Regulatory Flexibility Certification

3. The Regulatory Flexibility Act (RFA) requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

4. In the *Order* the Commission clarifies and revises portions of the *Report and Order* to further create a spectrum climate that is conducive to the efficient implementation of the 800 MHz band reconfiguration and operations of 800 MHz band licensees. With regard to the substantive rule changes, the revision to Section 90.175 is deregulatory as applications filed to implement band reconfiguration will not be subject to frequency coordination. The revision to Section 90.676 applies only to the Transition Administrator. Changes to Sections 90.613, 90.614, 90.615, 90.617, 90.621, 90.685, and 90.693 are designed to more accurately reflect the Commission's 800 MHz band plan. The Commission certifies, pursuant to the RFA, that the clarifications and rule changes contained in this *Order* will not have a significant economic impact on a substantial number of small entities, including businesses with fewer than 25 employees.

5. The Commission will send a copy of this Order, including this Supplemental Final Regulatory Flexibility Certification, in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act. See 5 U.S.C. 801(a)(1)(A). In addition the Commission will send a copy of the *Order* including a copy of this Supplemental Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA. *See* 5 U.S.C. 605(b). A summary of this *Order* and this certification will also be published in the **Federal Register**.

List of Subjects in 47 CFR Part 90

Communications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 90 as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 302(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 2. Section 90.175 is amended by adding paragraph (j)(7) to read as follows:

§ 90.175 Frequency coordinator requirements.

* * * * *

(j) * * *

(7) Applications filed exclusively to modify channels in accordance with band reconfiguration in the 806–824/851–869 MHz band.

* * * * *

■ 3. Section 90.613 is amended by revising the introductory text to read as follows:

§ 90.613 Frequencies available.

The following tables indicate the channel designations of frequencies available for assignment to eligible applicants under this subpart. Frequencies shall be assigned in pairs, with mobile and control station transmitting frequencies taken from the 806–824 MHz band with corresponding base station frequencies being 45 MHz higher and taken from the 851–869 MHz band, or with mobile and control station frequencies taken from the 896–901 MHz band with corresponding base station frequencies being 39 MHz higher and taken from the 935–940 MHz band. Only the base station transmitting frequency of each pair is listed in the following tables. Applicants filing for channels prior to the announcement of an application freeze within an 800 MHz NPSPAC region, however, should specify channels based on the table listed in § 90.613 (2003).

* * * * *

■ 4. Amend § 90.614 by revising the introductory text, and paragraphs (a), (b), and (c) introductory text to read as follows:

§ 90.614 Cellular and non-cellular portions of 806–824/851–869 MHz band for non-border areas.

The 806–824/851–869 MHz band (''800 MHz band'') will be divided as follows at locations farther then 110 km (68.4 miles) from the U.S./Mexico border and 140 km (87 miles) from the U.S./Canadian border (''non-border areas''):

(a) 800 MHz cellular systems—as defined in § 90.7—are prohibited from operating on channels 1–550 in non-border areas.

(b) Only ESMR systems—as defined in § 90.7—are permitted to operate on channels 551–830 in non-border areas.

(c) In the following counties and parishes, only ESMR systems—as defined in § 90.7—are permitted to operate on channels 411–830.

* * * * *

■ 5. Section 90.615 is revised to read as follows:

§ 90.615 Individual channels available in the General Category in 806–824/851–869 MHz band.

The General Category will consist of channels 231–260 and 511–550 at locations farther then 110 km (68.4 miles) from the U.S./Mexico border and 140 km (87 miles) from the U.S./Canadian border. All entities will be eligible for licensing on these channels except as described in paragraphs (a) and (b) of this section.

(a) In a given 800 MHz NPSPAC region, any channel in the 231–260 range which is vacated by an ESMR licensee and remains vacant after band reconfiguration will be available as follows:

(1) Only to eligible applicants in the Public Safety Category until three years after the release of a public notice

announcing the completion of band reconfiguration in that region;

(2) Only to eligible applicants in the Public Safety or Critical Infrastructure Industry Categories from three to five years after the release of a public notice announcing the completion of band reconfiguration in that region;

(3) To all entities five years after release of a public notice announcing the completion of band reconfiguration in that region.

(b) In a given 800 MHz NPSPAC region, any channel in the 231–260 range which is vacated by a licensee relocating to channels 511–550 and remains vacant after band reconfiguration will be available as follows:

(1) Only to eligible applicants in the Public Safety Category until three years after the release of a public notice announcing the completion of band reconfiguration in that region;

(2) Only to eligible applicants in the Public Safety or Critical Infrastructure Industry Categories from three to five years after the release of a public notice announcing the completion of band reconfiguration in that region;

(3) To all entities five years after release of a public notice announcing the completion of band reconfiguration in that region.

(c) Spectrum Block F1 consists of channels 236–260.

■ 6. Section 90.617 is amended by revising paragraphs (g) and (h) to read as follows:

§ 90.617 Frequencies in the 809.750–824/854.750–869 MHz, and 896–901/935–940 MHz bands available for trunked, conventional or cellular system use in non-border areas.

* * * * *

(g) In a given 800 MHz NPSPAC region, channels below 470 listed in Tables 2 and 4B which are vacated by an ESMR licensee and remain vacant after band reconfiguration will be available as follows:

(1) Only to eligible applicants in the Public Safety Category until three years after the release of a public notice announcing the completion of band reconfiguration in that region;

(2) Only to eligible applicants in the Public Safety or Critical Infrastructure Industry Categories from three to five years after the release of a public notice announcing the completion of band reconfiguration in that region;

(3) Five years after the release of a public notice announcing the completion of band reconfiguration in that region, these channels revert back to their original pool categories.

(h) In a given 800 MHz NPSPAC region, channels below 470 listed in Tables 2 and 4B which are vacated by a licensee relocating to channels 511–550 and remain vacant after band reconfiguration will be available as follows:

(1) Only to eligible applicants in the Public Safety Category until three years after the release of a public notice announcing the completion of band reconfiguration in that region;

(2) Only to eligible applicants in the Public Safety or Critical Infrastructure Industry Categories from three to five years after the release of a public notice announcing the completion of band reconfiguration in that region;

(3) Five years after the release of a public notice announcing the completion of band reconfiguration in that region, these channels revert back to their original pool categories.

* * * * *

■ 7. Section 90.621 is amended by revising paragraphs (b) introductory text, (b)(1) and the text of (b)(3) before the table to read as follows. The note before the table in (b)(3) remains unchanged.

§ 90.621 Selection and assignment of frequencies.

* * * * *

(b) Stations authorized on frequencies listed in this subpart, except for those stations authorized pursuant to paragraph (g) of this section and EA-based and MTA-based SMR systems, will be assigned frequencies solely on the basis of fixed distance separation criteria. The separation between co-channel systems will be a minimum of 113 km (70 mi) with one exception. For incumbent licensees in Channel Blocks F1 through V, that have received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBμV/m signal strength interference contour (*see* § 90.693), the separation between co-channel systems will be a minimum of 173 km (107 mi). The following exceptions to these separations shall apply:

(1) Except as indicated in paragraph (b)(4) of this section, no station in Channel Blocks A through V shall be less than 169 km (105 mi) distant from a co-channel station that has been granted channel exclusivity and authorized 1 kW ERP on any of the following mountaintop sites: Santiago Peak, Sierra Peak, Mount Lukens, Mount Wilson (California). Except as indicated in paragraph (b)(4) of this section, no incumbent licensee in Channel Blocks F1 through V that has received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBμV/m signal strength interference contour shall be less than 229 km (142 mi) distant from a co-channel station that has been granted channel exclusivity and authorized 1 kW ERP on any of the following mountaintop sites: Santiago Peak, Sierra Peak, Mount Lukens, Mount Wilson (California).

* * * * *

(3) Except as indicated in paragraph (b)(4) of this section, stations in Channel Blocks A through V that have been granted channel exclusivity and are located in the State of Washington at the locations listed in the table below shall be separated from co-channel stations by a minimum of 169 km (105 mi). Except as indicated in paragraph (b)(4) of this section, incumbent licensees in Channel Blocks F1 through V that have received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBμV/m signal strength interference contour, have been granted channel exclusivity and are located in the State of Washington at the locations listed in the table below shall be separated from co-channel stations by a minimum of 229 km (142 mi). Locations within one mile of the geographical coordinates listed in the table below will be considered to be at that site.

* * * * *

■ 8. Section 90.676 is amended by adding a new paragraph (b)(6) to read as follows:

§ 90.676 Transition administrator for reconfiguration of the 806–824/851–869 MHz band in order to separate cellular systems from non-cellular systems.

* * * * *

(b) * * *

(6) Notify the Commission when band reconfiguration is complete in each 800 MHz NPSPAC Region and identify which vacant channels are exclusively available to eligible applicants in the Public Safety or Critical Infrastructure Industry Categories as set forth in § 90.615(a), (b) and § 90.617(g), (h).

* * * * *

■ 9. Section 90.685 is amended by revising paragraph (b) to read as follows:

§ 90.685 Authorization, construction and implementation of EA licenses.

* * * * *

(b) EA licensees in the 809–824/854–869 MHz band must, within three years of the grant of their initial license, construct and place into operation a sufficient number of base stations to provide coverage to at least one-third of the population of its EA-based service area. Further, each EA licensee must provide coverage to at least two-thirds of the population of the EA-based service area within five years of the

grant of their initial license. EA-based licensees may, in the alternative, provide substantial service to their markets within five years of the grant of their initial license. Substantial service shall be defined as: ''Service which is sound, favorable, and substantially above a level of mediocre service.''

* * * * *

■ 10. Section 90.693 is amended by revising paragraphs (c), and (d)(2) to read as follows:

§ 90.693 Grandfathering provisions for incumbent licensees.

* * * * *

(c) *Special provisions for Spectrum Blocks F1 through V.* Incumbent licensees that have received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBμV/m signal strength interference contour shall have their service area defined by their originally-licensed 36 dBμV/m field strength contour and their interference contour shall be defined as their originally-licensed 18 dBμV/m field strength contour. The ''originally-licensed'' contour shall be calculated using the maximum ERP and the actual HAAT along each radial. Incumbent licensees seeking to utilize an 18 dBμV/m signal strength interference contour shall first seek to obtain the consent of affected co-channel incumbents. When the consent of a co-channel licensee is withheld, an incumbent licensee may submit to any certified frequency coordinator an engineering study showing that interference will not occur, together with proof that the incumbent licensee has sought consent. Incumbent licensees are permitted to add, remove or modify transmitter sites within their original 18 dBμV/m field strength contour without prior notification to the Commission so long as their original 18 dBμV/m field strength contour is not expanded and the station complies with the Commission's short-spacing criteria in §§ 90.621(b)(4) through 90.621(b)(6). Incumbent licensee protection extends only to its 36 dBμV/m signal strength contour. Pursuant to the minor modification notification procedure set forth in § 1.947(b) of this chapter the incumbent licensee must notify the Commission within 30 days of any changes in technical parameters or additional stations constructed that fall within the short-spacing criteria. See 47 CFR 90.621(b).

(d) * * *

(2) *Special Provisions for Spectrum Blocks F1 through V.* Incumbent licensees that have received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBμV/m signal strength interference contour operating at multiple sites may, after grant of EA licenses has been completed, exchange multiple site licenses for a single license. This single site license will authorize operations throughout the contiguous and overlapping 36 dBμV/m field strength contours of the multiple sites. Incumbents exercising this license exchange option must submit specific information on Form 601 for each of their external base sites after the close of the 800 SMR auction. The incumbent's geographic license area is defined by the contiguous and overlapping 18 dBμV/m contours of its constructed and operational external base stations and interior sites that are constructed within the construction period applicable to the incumbent. Once the geographic license is issued, facilities that are added within an incumbent's existing footprint and that are not subject to prior approval by the Commission will not be subject to construction requirements.

[FR Doc. 05–2420 Filed 2–7–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22 and 90

[WT Docket No. 02–55; FCC 04–168]

Improving Public Safety Communications in the 800 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces that the information collection requirements adopted in the 800 MHz Report and Order are effective upon publication of this document in the **Federal Register**.

DATES: 47 CFR 22.972, 22.973, 90.674, 90.676, and 90.677, published at 68 FR 67823 (Nov. 22, 2004) are effective February 8, 2005.

FOR FURTHER INFORMATION CONTACT: John Evanoff, Esq., Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau at (202) 418–0680 or via the Internet at *jevanoff@fcc.gov.* For additional information concerning the Paperwork Reduction Act information collection requirements, contact Judith B. Herman at (202) 418–0214.

SUPPLEMENTARY INFORMATION: A summary of the 800 MHz Report and Order was published in the **Federal Register** on November 22, 2004, 68 FR 67823. The 800 MHz Report and Order adopted rules designed to abate interference to public safety entities. The summary stated that with the exception of rules requiring OMB approval, the rules adopted in the 800 MHz Report and Order would become effective January 21, 2005. With regard to rules requiring OMB approval, the Commission stated it will publish a document in the **Federal Register** announcing the effective date of these rules. The information collection requirements in §§ 22.972, 22.973, 90.674, 90.675, 90.676 and 90.677 have been approved by OMB. In a separate document published in this issue, the Commission has announced that OMB has approved the information collection requirements adopted in the 800 MHz Report and Order. With publication of the instant document in the **Federal Register**, all rules adopted in the 800 MHz Report and Order are now effective.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–2421 Filed 2–7–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

January 27, 2005.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. 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 control number.

In the 800 MHz Report and Order the Commission adopted certain information collection requirements and third party disclosures as part of its plan to abate interference to public safety communications, such as those of police, fire and emergency medical agencies. The information collection requirements and third-party disclosures will be used by the Commission to ensure that licensees of certain 800 MHz Commercial Mobile Radio Service systems abate interference to the reception of signals from public safety, Critical Infrastructure Industry (CII), and certain other 800 MHz communications systems.

In a separate document published in the Final Rules section of this issue, the Commission also announces that the information collection requirements adopted in the 800 MHz Report and Order are effective upon publication of the aforementioned document in the **Federal Register**. A summary of the 800 MHz Report and Order was published in the **Federal Register** on November 22, 2004, 68 FR 67823. The summary stated that, with the exception of rules requiring OMB approval, the rules adopted in the 800 MHz Report and Order would become effective January 21, 2005. With regard to rules requiring OMB approval, the Commission stated it will publish a document in the **Federal Register** announcing the effective date of these rules. With publication of the aforementioned document in the Final Rules section, all rules adopted in the 800 MHz Report and Order are effective.

The Commission obtained emergency clearance of the information collections adopted in the 800 MHz Report and Order pursuant to 5 CFR 1320.13(a)(2)(i) and waiver of the notice and comment provisions of 5 CFR 1320.8(d) and 1320.5(a)(iv). As a result, OMB approval for these requirements will expire June 30, 2005. The Commission will establish a period for public comment on these PRA matters before submitting its request for regular, three-year OMB approval of these collections.

FOR FURTHER INFORMATION CONTACT: John Evanoff, Federal Communications Commission, 445 12th Street, SW., Washington DC, 20554, (202) 418–0680 or via the Internet at *jevanoff@fcc.gov*. For additional information concerning the Paperwork Reduction Act information collection requirements, contact Judith B. Herman at (202) 418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1080.

OMB Approval Date: 1/27/2005.

Expiration Date: 6/30/2005.

Title: Improving Public Safety Communications in the 800 MHz Band.

Form No.: N/A.

Estimated Annual Burden: 2,500 responses; 27,162 total annual burden hours; 3–8 hours average per respondent.

Needs and Uses: Cellular Radiotelephone (Cellular) and Enhanced Mobile Radio Service (ESMR) licensees, jointly, must establish an electronic means of information collection in order to receive interference complaints and promptly resolve them. Whenever an interference problem presents a clear and imminent danger to life or property, there is an information collection requirement that allows the affected public safety licensee to state, in writing, the basis for such determination. This statement must be filed with the Commission and served upon any offending licensee(s). A Cellular or ESMR carrier that receives an initial notification of interference must respond and prepare a written interference analysis. This information collection is necessary to promptly identify the source of and abate interference.

Certain information collection requirements are designed to forestall activation of facilities that have the potential to create unacceptable interference to public safety communications. Thus, Cellular and ESMR licensees must apprise public safety entities of changes to the operating parameters of Cellular and ESMR systems and the public safety licensees have a reciprocal obligation to apprise Cellular and ESMR licensees of the operating parameters of 800 MHz public safety communications systems. This information collection requirement is necessary to identify and address potential interference before it occurs.

In the 800 MHz Report and Order, the Commission established a Transition Administrator. The Commission authorized the Transition Administrator to obtain certain information from certain 800 MHz licensees in order to facilitate 800 MHz band reconfiguration. Licensees must provide the Transition Administrator with the estimated cost of reconfiguring their systems. The Transition Administrator must then make this information available to the Commission upon request. Some information will be exchanged between certain 800 MHz licensees and Nextel Communications, Inc., with copies thereof submitted to the Transition Administrator. The Transition Administrator must apprise the Commission of the progress of band reconfiguration by means of reports which, among other things, contain certifications by 800 MHz incumbent licensees that relocation has been completed and that parties agree on the costs encountered and the amounts received. The Transition Administrator must submit a written record to the Commission of any dispute the Transition Administrator has been unable to resolve. The foregoing information collections are necessary to facilitate relocation negotiations and execution of relocation agreements in a timely manner and is integral to the Commission's overall band reconfiguration plan to eliminate interference to public safety operations. Without these information collection requirements, it would not be practical to abate interference in the manner, and on the schedule, necessary to timely abate potentially life threatening interference to CII and public safety systems.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–2422 Filed 2–7–05; 8:45 am]

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