AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

# Federal Register

3–24–05 Thursday
Vol. 70 No. 56 Mar. 24, 2005

Pages 14967–15198

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

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

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

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

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

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

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

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

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

**How To Cite This Publication:** Use the volume number and the page number. Example: 70 FR 12345.

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

## SUBSCRIPTIONS AND COPIES

**PUBLIC**

**Subscriptions:**

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

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

**Single copies/back copies:**

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

**FEDERAL AGENCIES**

**Subscriptions:**

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

**FEDERAL REGISTER WORKSHOP**

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

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

WHO: Sponsored by the Office of the Federal Register.

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

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

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

3. The important elements of typical Federal Register documents.

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

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

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

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

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

# Contents

**Federal Register**

Vol. 70, No. 56

Thursday, March 24, 2005

**Administration on Aging**
*See* Aging Administration

**Agency for Healthcare Research and Quality**
NOTICES
Reports and guidance documents; availability, etc.:
Healthcare experiences of people with mobility impairment; measures request, 13504, **[Editorial Note:** This document was inadvertently placed under the Health and Human Services Department in the **Federal Register** table of contents of March 21, 2005]

**Aging Administration**
NOTICES
Grants and cooperative agreements; availability, etc.:
Senior Medicare Patrol Projects, 15095–15097

**Agricultural Marketing Service**
RULES
Fluid milk promotion order, 14974–14976
Spearmint oil produced in—
Far West, 14969–14974
NOTICES
Field grown leaf lettuce; grade standards, 15065

**Agriculture Department**
*See* Agricultural Marketing Service
*See* Animal and Plant Health Inspection Service
*See* Food Safety and Inspection Service
*See* Forest Service

**Animal and Plant Health Inspection Service**
NOTICES
Agency information collection activities; proposals, submissions, and approvals; correction, 15162

**Centers for Disease Control and Prevention**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15097–15098

**Children and Families Administration**
NOTICES
Grants and cooperative agreements; availability, etc.:
Child Care Bureau Research Scholar projects, 15098–15106

**Commerce Department**
*See* Foreign-Trade Zones Board
*See* International Trade Administration
*See* National Oceanic and Atmospheric Administration

**Drug Enforcement Administration**
NOTICES
*Applications, hearings, determinations, etc.:*
Ortega-Ortiz, Orlando, M.D., 15122–15123

**Education Department**
RULES
Grants:
Credit Enhancement for Charter School Facilities Program, 14999–15004
NOTICES
Grants and cooperative agreements; availability, etc.:
Credit Enhancement for Charter School Facilities Program, 15070–15073
Special Education and Rehabilitative Services—State Personnel Development Grants Program; correction, 15073
Meetings:
Institutional Quality and Integrity National Advisory Committee, 15073–15075

**Energy Department**
*See* Federal Energy Regulatory Commission
RULES
Climate change:
Voluntary Greenhouse Gas reporting Program—
General guidelines, 15168–15192
Technical guidelines, 15163–15169
NOTICES
Meetings:
Fusion Energy Sciences Advisory Committee, 15075

**Environmental Protection Agency**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15079–15083
Committees; establishment, renewal, termination, etc.:
Science Advisory Board, 15083–15084
Meetings:
Science Advisory Board, 15084–15086
Scientific Counselors Board; canceled, 15086
Privacy Act:
Systems of records, 15086–15088

**Executive Office of the President**
*See* Presidential Documents

**Federal Aviation Administration**
RULES
Air carrier certification and operations:
Emergency medical equipment; approved power sources for automated external defibrillators on aircraft, 15193–15196
Airworthiness directives:
Class E airspace, 14976–14977
PROPOSED RULES
Airworthiness directives:
Pilatus Aircraft Ltd., 15019–15022
Class B airspace, 15022–15028
NOTICES
Environmental statements; record of decision:
Gary/Chicago International Airport, IN; master plan development, 15156–15157
Passenger facility charges; applications, etc.:
Cleveland Hopkins International Airport, OH, 15157
Minneapolis-St.Paul International Airport, MN, 15157–15158

**Federal Communications Commission**
RULES
Common carrier services:
Private land mobile radio services—
450-470 MHx frequency band; airport terminal use frequencies, 15005–15010
PROPOSED RULES
Common carrier services:
Unified intercarrier compensation regime; development, 15030–15044
Radio stations; table of assignments:
Arkansas and Missouri, 15047–15048
Colorado, 15044–15045
Louisiana and Texas, 15047
Texas, 15046
Texas and Wyoming, 15046–15047
Wyoming, 15045
Television broadcasting:
Satellite Home Viewer Extension and Reauthorization Act of 2004; implementation—
Reciprocal bargaining obligations, 15048–15051
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15088

**Federal Energy Regulatory Commission**
NOTICES
Electric rate and corporate regulation filings, 15075–15079

**Federal Housing Enterprise Oversight Office**
PROPOSED RULES
Safety and soundness:
Mortgage fraud reporting, 15018

**Federal Reserve System**
NOTICES
Banks and bank holding companies:
Change in bank control, 15088
Permissible nonbanking activities, 15089

**Fish and Wildlife Service**
PROPOSED RULES
Endangered and threatened species:
American crocodile, 15052–15063
NOTICES
Endangered and threatened species and marine mammal permit applications, 15117
Endangered and threatened species permit applications, 15117–15119

**Food and Drug Administration**
RULES
Organization, functions, and authority delegations:
Drug and biological product consolidation; addresses information; technical amendment, 14978–14986
NOTICES
Debarment orders:
Acevedo, Eduardo Caro, 15106–15107

**Food Safety and Inspection Service**
PROPOSED RULES
Ready-to-eat meat and poultry products;
Risk assessments; comment request and meeting, 15017–15018

**Foreign-Trade Zones Board**
NOTICES
*Applications, hearings, determinations, etc.:*
Wisconsin, 15066

**Forest Service**
NOTICES
Meetings:
Resource Advisory Committees—
Crook County, 15065–15066

**Health and Human Services Department**
*See* Agency for Healthcare Research and Quality
*See* Aging Administration
*See* Centers for Disease Control and Prevention
*See* Children and Families Administration
*See* Food and Drug Administration
*See* National Institutes of Health
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15089–15091
Meetings:
Vital and Health Statistics National Committee, 15091–15092
Scientific misconduct findings; administrative actions:
Poehlman, Eric T., Ph.D., 15092–15095

**Housing and Urban Development Department**
*See* Federal Housing Enterprise Oversight Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15114–15117

**Indian Affairs Bureau**
NOTICES
Grants and cooperative agreements; availability, etc.:
Contract Support Funds and Indian Self-Determination Funds; distribution methodology, 15119–15122

**Interior Department**
*See* Fish and Wildlife Service
*See* Indian Affairs Bureau
*See* Reclamation Bureau
*See* Surface Mining Reclamation and Enforcement Office

**International Trade Administration**
NOTICES
Antidumping:
Saccharin from—
China, 15066–15067

**Justice Department**
*See* Drug Enforcement Administration

**Labor Department**
*See* Occupational Safety and Health Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15123–15125
Committees; establishment, renewal, termination, etc.:
Labor Provisions of U.S. Free Trade Agreements National Advisory Committee, 15125–15126

**National Aeronautics and Space Administration**
NOTICES
Environmental statements; availability, etc.:
NASA Shared Services Center, 15126–15130
Meetings:
Exploration Transportation System Strategic Roadmap Committee, 15130
Universe Exploration Strategic Roadmap Committee, 15131

**National Highway Traffic Safety Administration**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15158–15159

**National Institutes of Health**
NOTICES
Inventions, Government-owned; availability for licensing, 15107–15109
Meetings:
Clinical Research Advisory Board, 15109
National Heart, Lung, and Blood Institute, 15109
National Institute of Allergy and Infectious Diseases, 15111–15112
National Institute of Diabetes and Digestive and Kidney Diseases, 15109–15111
National Institute of Neurological Disorders and Stroke, 15110
National Institute on Alcohol Abuse and Alcoholism, 15112
National Library of Medicine, 15112–15113
Scientific Review Center, 15113–15114

**National Oceanic and Atmospheric Administration**
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—Western Alaska Community Development Quota Program, 15010–15016
PROPOSED RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—Scallop Fishery License Limitation Program, 15063–15064
NOTICES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—Bering Sea and Aleutian Islands and Gulf of Alaska groundfish, 15067
Grants and cooperative agreements; availability, etc.:
Oceans and Human Health Initiative, 15067–15070

**Neighborhood Reinvestment Corporation**
NOTICES
Meetings; Sunshine Act, 15131

**Occupational Safety and Health Administration**
NOTICES
Meetings:
Occupational Safety and Health Federal Advisory Council, 15126

**Office of Federal Housing Enterprise Oversight**
*See* Federal Housing Enterprise Oversight Office

**Pension Benefit Guaranty Corporation**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15131–15132

**Presidential Documents**
ADMINISTRATIVE ORDERS
Sudan; delegation of functions related to the Sudan Peace Act (Memorandum of March 14, 2005), 14967

**Reclamation Bureau**
NOTICES
Meetings:
California Bay-Delta Public Advisory Committee, 15122

**Saint Lawrence Seaway Development Corporation**
PROPOSED RULES
Seaway regulations and rules:
Tariff of tolls, 15029–15030

**Securities and Exchange Commission**
NOTICES
Consolidated Tape Association and Quotation Plans; amendments, 15132–15134
Self-regulatory organizations; proposed rule changes:
Boston Stock Exchange, Inc., 15135–15137
New York Stock Exchange, Inc., 15137–15139
Pacific Exchange, Inc., 15139–15141
Philadelphia Stock Exchange, Inc., 15141–15145

**Social Security Administration**
RULES
Social Security benefits:
Federal old age, survivors, and disability insurance—Credit for quarters of coverage before 1978, cross-reference changed; form SSA-1388, report of student beneficiary at end of school year, reference removed, 14977–14978

**State Department**
NOTICES
Grants and cooperative agreements; availability, etc.:
International Sports Programming Initiative, 15145–15150
International Visitor Leadership Programs, 15150–15156

**Surface Mining Reclamation and Enforcement Office**
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Colorado, 14986–14999

**Surface Transportation Board**
NOTICES
Railroad services abandonment:
Union Pacific Railroad Co., 15159–15160

**Thrift Supervision Office**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15160

**Transportation Department**
*See* Federal Aviation Administration
*See* National Highway Traffic Safety Administration
*See* Saint Lawrence Seaway Development Corporation
*See* Surface Transportation Board
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 15197–15198
Certificates of pubic convenience and necessity and foreign air carrier permits filed, 15197–15198

**Treasury Department**
*See* Thrift Supervision Office
*See* United States Mint

**United States Mint**
NOTICES
Meetings:
Citizens Coinage Advisory Committee, 15160–15161

## Separate Parts In This Issue

**Part II**
Energy Department, 15163–15192

**Part III**
Transportation Department, Federal Aviation Administration, 15193–15196

**Part IV**
Transportation Department, 15197–15198

## Reader Aids

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

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

## CFR PARTS AFFECTED IN THIS ISSUE

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


**3 CFR**

**Administrative Orders:**

Memorandums:

Memorandum of March 14, 2005 ..... 14967

**7 CFR**

985 ..... 14969

1160 ..... 14974

**9 CFR**

**Proposed Rules:**

301 ..... 15017

303 ..... 15017

317 ..... 15017

318 ..... 15017

319 ..... 15017

320 ..... 15017

325 ..... 15017

331 ..... 15017

381 ..... 15017

417 ..... 15017

430 ..... 15017

**10 CFR**

300 (2 documents) ..... 15164, 15169

**12 CFR**

**Proposed Rules:**

1731 ..... 15018

**14 CFR**

71 ..... 14976

121 ..... 15194

**Proposed Rules:**

39 ..... 15019

71 ..... 15022

**20 CFR**

404 ..... 14977

422 ..... 14977

**21 CFR**

1 ..... 14978

25 ..... 14978

26 ..... 14978

99 ..... 14978

201 ..... 14978

203 ..... 14978

206 ..... 14978

310 ..... 14978

312 ..... 14978

314 ..... 14978

600 ..... 14978

601 ..... 14978

606 ..... 14978

607 ..... 14978

610 ..... 14978

640 ..... 14978

660 ..... 14978

680 ..... 14978

807 ..... 14978

822 ..... 14978

**30 CFR**

906 ..... 14986

**33 CFR**

**Proposed Rules:**

402 ..... 15029

**34 CFR**

225 ..... 14999

**47 CFR**

90 ..... 15005

**Proposed Rules:**

Ch. 1 ..... 15030

73 (6 documents) ..... 15044, 15045, 15046, 15047

76 ..... 15048

**50 CFR**

679 ..... 15010

**Proposed Rules:**

17 ..... 15052

679 ..... 15063

Federal Register
Vol. 70, No. 56
Thursday, March 24, 2005

# Presidential Documents

**Title 3—**

## The President

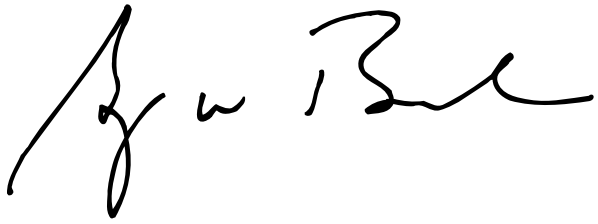
**Memorandum of March 14, 2005**

## Delegation of Reporting Function Related to the Sudan Peace Act

**Memorandum for the Secretary of State**

By virtue of the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby delegate to you the reporting function conferred upon the President by section 6(e) of the Sudan Peace Act (Public Law 107–245).

You are authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
*Washington, March 14, 2004.*

[FR Doc. 05–5971
Filed 3–23–05; 8:45 am]
Billing code 4710–10–P

# Rules and Regulations

Federal Register
Vol. 70, No. 56
Thursday, March 24, 2005

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

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 985

**[Docket No. FV05–985–1 FR]**

### Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2005–2006 Marketing Year

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule establishes the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 2005–2006 marketing year, which begins on June 1, 2005. This rule establishes salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil of 677,409 pounds and 35 percent, respectively, and for Class 3 (Native) spearmint oil of 867,958 pounds and 40 percent, respectively. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended these limitations for the purpose of avoiding extreme fluctuations in supplies and prices to help maintain stability in the spearmint oil market.

**EFFECTIVE DATE:** June 1, 2005, through May 31, 2006.

**FOR FURTHER INFORMATION CONTACT:** Susan M. Hiller, Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Suite 385, Portland, Oregon 97204; telephone: (503) 326–2724; Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491; Fax: (202) 720–8938.

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

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the ''order.'' This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule establishes the quantity of spearmint oil produced in the Far West, by class, which may be purchased from or handled for producers by handlers during the 2005–2006 marketing year, which begins on June 1, 2005. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

Pursuant to authority in §§ 985.50, 985.51, and 985.52 of the order, the Committee, with seven of its eight members present, met on October 6, 2004, and recommended salable quantities and allotment percentages for both classes of oil for the 2005–2006 marketing year. The Committee unanimously recommended the establishment of a salable quantity and allotment percentage for Scotch spearmint oil of 677,409 pounds and 35 percent, respectively. For Native spearmint oil, the Committee unanimously recommended the establishment of a salable quantity and allotment percentage of 867,958 pounds and 40 percent, respectively.

This final rule limits the amount of spearmint oil that handlers may purchase from, or handle for, producers during the 2005–2006 marketing year, which begins on June 1, 2005. Salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980.

The U.S. production of Scotch spearmint oil is concentrated in the Far West, which includes Washington, Idaho, and Oregon and a portion of Nevada and Utah. Scotch spearmint oil is also produced in the Midwest states of Indiana, Michigan, and Wisconsin, as well as in the States of Montana, South Dakota, North Dakota, and Minnesota. The production area covered by the marketing order currently accounts for approximately 68 percent of the annual U.S. sales of Scotch spearmint oil.

When the order became effective in 1980, the Far West had 72 percent of the world's sales of Scotch spearmint oil. While the Far West is still the leading producer of Scotch spearmint oil, its share of world sales is now estimated to be about 36 percent. This loss in world sales for the Far West region is directly attributed to the increase in global production. Other factors that have played a significant role include the overall quality of the imported oil and technological advances that allow for more blending of lower quality oils. Such factors have provided the

Committee with challenges in accurately predicting trade demand for Scotch oil. This, in turn, has made it difficult to balance available supplies with demand and to achieve the Committee's overall goal of stabilizing producer and market prices.

The marketing order has continued to contribute to price and general market stabilization for Far West producers. The Committee, as well as spearmint oil producers and handlers attending the October 6, 2004, meeting estimated that the 2004 producer price of Scotch oil would maintain an average of $10.00 per pound. However, this producer price is below the cost of production for most producers as indicated in a study from the Washington State University Cooperative Extension Service (WSU), which estimates production costs to be between $13.50 and $15.00 per pound.

This low level of producer returns has caused a reduction in acreage. When the order became effective in 1980, the Far West region had 9,702 acres of Scotch spearmint. The acreage of Scotch spearmint for the 2004–2005 marketing year has decreased to 4,771 acres. Based on this acreage, the Committee estimates that production for the 2004–2005 marketing year will be about 635,508 pounds.

The Committee recommended the 2005–2006 Scotch spearmint oil salable quantity (677,409 pounds) and allotment percentage (35 percent) utilizing sales estimates for 2005–2006 Scotch oil as provided by several of the industry's handlers, as well as historical and current Scotch oil sales levels. The Committee is estimating that about 650,000 pounds of Scotch spearmint oil, on average, may be sold during the 2005–2006 marketing year. When considered in conjunction with the estimated carry in of 351,427 pounds of oil on June 1, 2005, the recommended salable quantity of 677,409 pounds results in a total available supply of Scotch spearmint oil during the 2005–2006 marketing year of about 1,028,836 pounds.

The recommendation for the 2005–2006 Scotch spearmint oil volume regulation is consistent with the Committee's stated intent of keeping adequate supplies available at all times, while attempting to stabilize prices at a level adequate to sustain the producers. Furthermore, the recommendation takes into consideration the industry's desire to compete with less expensive oil produced outside the regulated area.

Although Native spearmint oil producers are facing market conditions similar to those affecting the Scotch spearmint oil market, the market share is quite different. Over 90 percent of the U.S. production of Native spearmint is produced within the Far West production area. Also, most of the world's supply of Native spearmint is produced in the U.S.

The supply and demand characteristics of the Native spearmint oil market, combined with the stabilizing impact of the marketing order, have kept the price relatively steady, between $9.10 and $9.30 per pound over the last five years. The Committee considers this level too low for the majority of producers to maintain viability. The WSU study referenced earlier indicates that the cost of producing Native spearmint oil ranges from $10.26 to $10.92 per pound.

Similar to Scotch, the low level of producer returns has also caused a reduction in Native spearmint acreage. When the order became effective in 1980, the Far West region had 12,153 acres of Native spearmint. The acreage of Native spearmint for the 2004–2005 marketing year has decreased to 4,804 acres. Based on this acreage, the Committee estimates that production for the 2004–2005 marketing year will be about 701,372 pounds.

The Committee recommended the 2005–2006 Native spearmint oil salable quantity (867,958 pounds) and allotment percentage (40 percent) utilizing sales estimates for 2005–2006 Native oil as provided by several of the industry's handlers, as well as historical and current Native oil sales levels. The Committee is estimating that about 945,000 pounds of Native spearmint oil, on average, may be sold during the 2005–2006 marketing year. When considered in conjunction with the estimated carry-in of 60,000 pounds of oil on June 1, 2005, the recommended salable quantity of 867,958 pounds results in a total available supply of Native spearmint oil during the 2005–2006 marketing year of about 927,958 pounds.

The Committee's method of calculating the Native spearmint oil salable quantity and allotment percentage continues to primarily utilize information on price and available supply as they are affected by the estimated trade demand. The Committee's stated intent is to make adequate supplies available to meet market needs and improve producer prices.

The Committee believes that the order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year to year. According to the National Agricultural Statistics Service, for example, the average price paid for both classes of spearmint oil ranged from $4.00 per pound to $11.10 per pound during the period between 1968 and 1980. Prices since the order's inception have generally stabilized at about $9.85 per pound for Native spearmint oil and at about $12.93 per pound for Scotch spearmint oil. However, the current prices for both classes of oil are below the average due to several factors, including the general uncertainty being experienced through the U.S. economy and the continuing overall weak farm situation, as well as an abundant global supply of spearmint oil. As noted earlier,—although lower than what producers believe to be viable—prices currently appear to be stable at about $9.50 for both classes of oil.

The Committee based its recommendation for the proposed salable quantity and allotment percentage for each class of spearmint oil for the 2005–2006 marketing year on the information discussed above, as well as the data outlined below.

**(1) Class 1 (Scotch) Spearmint Oil**

(A) Estimated carry-in on June 1, 2005—351,427 pounds. This figure is the difference between the estimated 2004–2005 marketing year trade demand of 620,000 pounds and the 2004–2005 marketing year total available supply of 971,427 pounds.

(B) Estimated trade demand for the 2005–2006 marketing year—650,000 pounds. This figure is based on input from producers at five Scotch spearmint oil production area meetings held in September 2004, as well as estimates provided by handlers and other meeting participants at the October 6, 2004, meeting. The average estimated trade demand provided at the five production area meetings was 620,867 pounds, whereas the average handler trade demand ranged from 600,000 to 650,000 pounds. The average of sales over the last five years was 761,142 pounds.

(C) Salable quantity required from the 2005–2006 marketing year production—298,573 pounds. This figure is the difference between the estimated 2005–2006 marketing year trade demand (650,000 pounds) and the estimated carry-in on June 1, 2005 (351,427 pounds).

(D) Total estimated allotment base for the 2005–2006 marketing year—1,935,455 pounds. This figure represents a one-percent increase over the revised 2004–2005 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost due to the bona fide effort production provisions of § 985.53(e). The revision is usually minimal.

(E) Computed allotment percentage—15.4 percent. This percentage is computed by dividing the required salable quantity by the total estimated allotment base.

(F) Recommended allotment percentage—35 percent. This recommendation is based on the Committee's determination that a decrease from the current season's allotment percentage of 40 percent to the computed 15.4 percent would not adequately supply the potential 2005–2006 market.

(G) The Committee's recommended salable quantity—677,409 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

(H) Estimated available supply for the 2005–2006 marketing year—1,028,836 pounds. This figure is the sum of the 2005–2006 recommended salable quantity (677,409 pounds) and the estimated carry-in on June 1, 2005 (351,427 pounds).

**(2) Class 3 (Native) Spearmint Oil**

(A) Estimated carry-in on June 1, 2005—60,000 pounds. This figure is the difference between the estimated 2004–2005 marketing year trade demand of 1,063,438 pounds and the revised 2004–2005 marketing year total available supply of 1,123,438 pounds.

(B) Estimated trade demand for the 2005–2006 marketing year—945,000 pounds. This figure is based on input from producers at the five Native spearmint oil production area meetings held in September 2004, as well as estimates provided by handlers and other meeting participants at the October 6, 2004, meeting. The average estimated trade demand provided at the five production area meetings was 957,000 pounds, whereas the average handler estimate was 945,000 pounds.

(C) Salable quantity required from the 2005–2006 marketing year production—885,000 pounds. This figure is the difference between the estimated 2005–2006 marketing year trade demand (945,000 pounds) and the estimated carry-in on June 1, 2005 (60,000 pounds).

(D) Total estimated allotment base for the 2005–2006 marketing year—2,169,894 pounds. This figure represents a one percent increase over the revised 2004–2005 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost due to the bona fide effort production provisions of § 985.53(e). The revision is usually minimal.

(E) Computed allotment percentage—40.8 percent. This percentage is computed by dividing the required salable quantity by the total estimated allotment base.

(F) Recommended allotment percentage—40 percent. This is the Committee's recommendation based on the computed allotment percentage, the average of the computed allotment percentage figures from the five production area meetings (40.6 percent), and input from producers and handlers at the October 6, 2004, meeting.

(G) The Committee's recommended salable quantity—867,958 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

(H) Estimated available supply for the 2005–2006 marketing year—927,958 pounds. This figure is the sum of the 2005–2006 recommended salable quantity (867,958 pounds) and the estimated carry-in on June 1, 2005 (60,000 pounds).

The salable quantity is the total quantity of each class of spearmint oil, which handlers may purchase from, or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The Committee's recommended Scotch and Native spearmint oil salable quantities and allotment percentages of 677,409 pounds and 35 percent and 867,958 and 40 percent, respectively, are based on the Committee's goal of maintaining market stability by avoiding extreme fluctuations in supplies and prices and the anticipated supply and trade demand during the 2005–2006 marketing year. The salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil, which may develop during the marketing year, can be satisfied by an increase in the salable quantities. Both Scotch and Native spearmint oil producers who produce more than their annual allotments during the 2005–2006 marketing year may transfer such excess spearmint oil to a producer with spearmint oil production less than his or her annual allotment or put it into the reserve pool until November 1, 2005.

This regulation is similar to regulations issued in prior seasons. Costs to producers and handlers resulting from this rule are expected to be offset by the benefits derived from a stable market and improved returns. In conjunction with the issuance of this final rule, USDA has reviewed the Committee's marketing policy statement for the 2005–2006 marketing year. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulations, fully meets the intent of § 985.50 of the order. During its discussion of potential 2005–2006 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with the USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' has also been reviewed and confirmed.

The establishment of these salable quantities and allotment percentages will allow for anticipated market needs. In determining anticipated market needs, consideration by the Committee was given to historical sales, as well as changes and trends in production and demand. This rule also provides producers with information on the amount of spearmint oil that should be produced for the 2005–2006 season in order to meet anticipated market demand.

**Final Regulatory Flexibility Analysis**

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

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

There are eight spearmint oil handlers subject to regulation under the order, and approximately 59 producers of Class 1 (Scotch) spearmint oil and approximately 91 producers of Class 3 (Native) spearmint oil in the regulated production area. Small agricultural

service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000.

Based on the SBA's definition of small entities, the Committee estimates that 2 of the 8 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 19 of the 59 Scotch spearmint oil producers and 21 of the 91 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. A typical spearmint oil-producing operation has enough acreage for rotation such that the total acreage required to produce the crop is about one-third spearmint and two-thirds rotational crops. Thus, the typical spearmint oil producer has to have considerably more acreage than is planted to spearmint during any given season. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil-producing farms fall into the SBA category of large businesses.

Small spearmint oil producers generally are not as extensively diversified as larger ones and as such are more at risk from market fluctuations. Such small producers generally need to market their entire annual crop and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because income from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

This final rule establishes the quantity of spearmint oil produced in the Far West, by class that handlers may purchase from, or handle for, producers during the 2005–2006 marketing year. The Committee recommended this rule to help maintain stability in the spearmint oil market by avoiding extreme fluctuations in supplies and prices. Establishing quantities to be purchased or handled during the marketing year through volume regulations allows producers to plan their spearmint planting and harvesting to meet expected market needs. The provisions of §§ 985.50, 985.51, and 985.52 of the order authorize this rule.

Instability in the spearmint oil sub-sector of the mint industry is much more likely to originate on the supply side than the demand side. Fluctuations in yield and acreage planted from season-to-season tend to be larger than fluctuations in the amount purchased by buyers. Demand for spearmint oil tends to be relatively stable from year-to-year. The demand for spearmint oil is expected to grow slowly for the foreseeable future because the demand for consumer products that use spearmint oil will likely expand slowly, in line with population growth.

Demand for spearmint oil at the farm level is derived from retail demand for spearmint-flavored products such as chewing gum, toothpaste, and mouthwash. The manufacturers of these products are by far the largest users of mint oil. However, spearmint flavoring is generally a very minor component of the products in which it is used, so changes in the raw product price have no impact on retail prices for those goods.

Spearmint oil production tends to be cyclical. Years of large production, with demand remaining reasonably stable, have led to periods in which large producer stocks of unsold spearmint oil have depressed producer prices for a number of years. Shortages and high prices may follow in subsequent years, as producers respond to price signals by cutting back production.

The significant variability is illustrated by the fact that the coefficient of variation (a standard measure of variability; ''CV'') of Far West spearmint oil production from 1980 through 2003 was about 0.24. The CV for spearmint oil grower prices was about 0.14, well below the CV for production. This provides an indication of the price stabilizing impact of the marketing order.

Production in the shortest marketing years was about 49 percent of the 24-year average (1.875 million pounds from 1980 through 2003) and the largest crop was approximately 166 percent of the 24-year average. A key consequence is that in years of oversupply and low prices the season average producer price of spearmint oil is below the average cost of production (as measured by the Washington State University Cooperative Extension Service.)

The wide fluctuations in supply and prices that result from this cycle, which was even more pronounced before the creation of the marketing order, can create liquidity problems for some producers. The marketing order was designed to reduce the price impacts of the cyclical swings in production. However, producers have been less able to weather these cycles in recent years because of the decline in prices of many of the alternative crops they grow. As noted earlier, almost all spearmint oil producers diversify by growing other crops.

In an effort to stabilize prices, the spearmint oil industry uses the volume control mechanisms authorized under the order. This authority allows the Committee to recommend a salable quantity and allotment percentage for each class of oil for the upcoming marketing year. The salable quantity for each class of oil is the total volume of oil that producers may sell during the marketing year. The allotment percentage for each class of spearmint oil is derived by dividing the salable quantity by the total allotment base.

Each producer is then issued an annual allotment certificate, in pounds, for the applicable class of oil, which is calculated by multiplying the producer's allotment base by the applicable allotment percentage. This is the amount of oil for the applicable class that the producer can sell.

By November 1 of each year, the Committee identifies any oil that individual producers have produced above the volume specified on their annual allotment certificates. This excess oil is placed in a reserve pool administered by the Committee.

There is a reserve pool for each class of oil that may not be sold during the current marketing year unless USDA approves a Committee recommendation to make a portion of the pool available. However, limited quantities of reserve oil are typically sold to fill deficiencies. A deficiency occurs when on-farm production is less than a producer's allotment. In that case, a producer's own reserve oil can be sold to fill that

deficiency. Excess production (higher than the producer's allotment) can be sold to fill other producers' deficiencies.

In any given year, the total available supply of spearmint oil is composed of current production plus carry-over stocks from the previous crop. The Committee seeks to maintain market stability by balancing supply and demand, and to close the marketing year with an appropriate level of carryout. If the industry has production in excess of the salable quantity, then the reserve pool absorbs the surplus quantity of spearmint oil, which goes unsold during that year, unless the oil is needed for unanticipated sales.

Under its provisions, the order may attempt to stabilize prices by (1) limiting supply and establishing reserves in high production years, thus minimizing the price-depressing effect that excess producer stocks have on unsold spearmint oil, and (2) ensuring that stocks are available in short supply years when prices would otherwise increase dramatically. The reserve pool stocks grown in large production years are drawn down in short crop years.

An econometric model was used to assess the impact that volume control has on the prices producers receive for their commodity. Without volume control, spearmint oil markets would likely be over-supplied, resulting in low producer prices and a large volume of oil stored and carried over to the next crop year. The model estimates how much lower producer prices would likely be in the absence of volume controls.

The Committee estimated the available supply during the 2004–2005 marketing year for both classes of oil at 2,094,865 pounds, and that the expected carry-in will be 411,427 pounds. Therefore, with volume control, sales by producers for the 2005–2006 marketing year would be limited to 1,545,367 pounds (the recommended salable quantity for both classes of spearmint oil).

The recommended salable percentages, upon which 2005–2006 producer allotments are based, are 35 percent for Scotch and 40 percent for Native. Without volume controls, producers would not be limited to these allotment levels, and could produce and sell additional spearmint. The econometric model estimated a $1.60 decline in the season average producer price per pound (from both classes of spearmint oil) resulting from the higher quantities that would be produced and marketed without volume control. The Far West producer price for both classes of spearmint oil was $9.50 for 2003, which is below the average of $11.26 for the period of 1980 through 2003, based on National Agricultural Statistics Service data. The surplus situation for the spearmint oil market that would exist without volume controls in 2005–2006 also would likely dampen prospects for improved producer prices in future years because of the buildup in stocks.

The use of volume controls allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. The use of volume controls is believed to have little or no effect on consumer prices of products containing spearmint oil and will not result in fewer retail sales of such products.

The Committee discussed alternatives to the recommendations contained in this rule for both classes of spearmint oil. The Committee discussed and rejected the idea of recommending that there not be any volume regulation for Scotch spearmint oil because of the severe price-depressing effects that would occur without volume control.

The Committee also considered various alternative levels of volume control for Scotch spearmint oil, including leaving the percentage the same as the current season, increasing the percentage to a less restrictive level, or decreasing the percentage. After considerable discussion the Committee unanimously supported decreasing the percentage to 35 percent.

The Committee discussed and rejected the idea of recommending that there not be any volume regulation for Native spearmint oil. The immediate result would be to put an excessive amount of Native reserve pool oil on the market causing depressed prices at the producer level. With the current price for Native spearmint oil lower than the 10-year average, and sales below the 5-year average, the Committee, after considerable discussion, determined that 867,958 pounds and 40 percent would be the most effective salable quantity and allotment percentage, respectively, for the 2005–2006 marketing year.

As noted earlier, the Committee's recommendation to establish salable quantities and allotment percentages for both classes of spearmint oil was made after careful consideration of all available information, including: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Based on its review, the Committee believes that the salable quantity and allotment percentage levels recommended would achieve the objectives sought.

Without any regulations in effect, the Committee believes the industry would return to the pronounced cyclical price patterns that occurred prior to the order, and that prices in 2005–2006 would decline substantially below current levels.

As stated earlier, the Committee believes that the order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year-to-year. National Agricultural Statistics Service records show that the average price paid for both classes of spearmint oil ranged from $4.00 per pound to $11.10 per pound during the period between 1968 and 1980. Prices have been consistently more stable since the marketing order's inception in 1980, with an average price (1980–2003) of $12.93 per pound for Scotch spearmint oil and $9.85 per pound for Native spearmint oil.

During the period of 1998 through 2003, however, large production and carry-in inventories have contributed to prices below the 24-year average, despite the Committee's efforts to balance available supplies with demand. Prices have ranged from $8.00 to $11.00 per pound for Scotch spearmint oil and between $9.10 and $10.00 per pound for Native spearmint oil.

According to the Committee, the recommended salable quantities and allotment percentages are expected to achieve the goals of market and price stability.

As previously stated, annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Reporting and recordkeeping requirements have remained the same for each year of regulation. These requirements have been approved by the Office of Management and Budget under OMB Control No. 0581–0065. Accordingly, this rule will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers and handlers. All reports and forms associated with this program are reviewed periodically in order to avoid

unnecessary and duplicative information collection by industry and public sector agencies. The USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

The Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the October 6, 2004, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A proposed rule concerning this action was published in the **Federal Register** on January 12, 2005 (70 FR 2027). Copies of the rule were provided to Committee staff, which in turn made it available to spearmint oil producers, handlers, and other interested persons. Finally, the rule was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending February 11, 2005, was provided to allow interested persons to respond to the proposal. No comments were received.

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

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 985**

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

■ For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

## PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

■ 1. The authority citation for 7 CFR part 985 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. A new § 985.224 is added to read as follows:

**(Note:** This section will not appear in the Code of Federal Regulations.)

**§ 985.224 Salable quantities and allotment percentages—2005–2006 marketing year.**

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2005, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 677,409 pounds and an allotment percentage of 35 percent.

(b) Class 3 (Native) oil—a salable quantity of 867,958 pounds and an allotment percentage of 40 percent.

Dated: March 18, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05–5812 Filed 3–23–05; 8:45 am]

BILLING CODE 3410–02–P

---

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 1160

**[Docket No. DA–04–04]**

### Fluid Milk Promotion Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Fluid Milk Promotion Order (Order) by modifying the terms of membership of the Fluid Milk Promotion Board (Board). The amendment requires that any change in a fluid milk processor member's employer or change in ownership of the fluid milk processor who the member represents would disqualify that member. The member would continue to serve on the Board for a period of up to six months until a successor was appointed. In addition, a public member to the Board who changes employment, gains employment with a new employer, or ceases to continue in the same business would be disqualified in a manner similar to a fluid milk processor member. The amendments ensure that the Board is able to equitably represent fluid milk processing constituents and the public interest through the National Fluid Milk Processor Promotion Program.

**EFFECTIVE DATE:** May 1, 2005.

**FOR FURTHER INFORMATION CONTACT:** David R. Jamison, USDA/AMS/Dairy Programs, Promotion and Research Branch, Stop 0233—Room 2958–S, 1400 Independence Avenue, SW., Washington, DC 20250–0233, (202) 720–6961, *David.Jamison2@usda.gov.*

**SUPPLEMENTARY INFORMATION:** This final rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

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

The Fluid Milk Promotion Act of 1990 (Act), as amended, authorizes the Order. The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1999K of the Act, any person subject to the Order may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with the law and request a modification of the Order or to be exempted from the Order. A person subject to an Order is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

**Regulatory Flexibility Act and Paperwork Reduction Act**

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has certified that this final rule will not have a significant economic impact on a substantial number of small entities. Small businesses in the fluid milk processing industry have been defined by the Small Business Administration as those processors employing not more than 500 employees. For purposes of determining a processor's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees. As of February 2005, there were approximately 100 fluid milk processors subject to the provisions of the Order. Most of these processors are considered

small entities. The implementation of this rule will not affect the number of fluid milk processors subject to the Order.

The Fluid Milk Promotion Order (7 CFR part 1160) is authorized under the Fluid Milk Promotion Act of 1990 (Act) (7 U.S.C. 6401 *et seq.*). The Order provides for a 20-member Board with 15 members representing geographic regions and five at-large members. To the extent practicable, members representing geographic regions should represent processing operations of differing sizes. No fluid milk processor shall be represented on the Board by more than three members. The at-large members shall include at least three fluid milk processors and at least one member from the general public.

The amendment to the membership provisions requires that any change in a fluid milk processor member's employer or change in ownership of the fluid milk processor who the member represents would disqualify that member. The member would continue to serve on the Board for a period of up to six months until a successor was appointed. In addition, a public member to the Board who changes employment or ceases to continue in the same business would be disqualified in a manner similar to a fluid milk processor member. These changes address (1) potential movement of members from one fluid milk processor to another fluid milk processor or any other change in company affiliation; and (2) changes in affiliation of at-large public members.

The amendments ensure that the Board is able to equitably represent fluid milk processing constituents and the public interest through the National Fluid Milk Processor Promotion Program.

The amendment to the Order should not add any additional burden to regulated parties because it relates only to provisions concerning Board membership. Accordingly, the amendment will not have a significant economic impact on a substantial number of small entities.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that this amendment would have no impact on reporting, recordkeeping, or other compliance requirements because they would remain the same to the current requirements. No new forms are proposed and no additional reporting requirements would be necessary.

This notice does not require additional information collection that requires clearance by the OMB beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

**Statement of Consideration**

This document amends the membership provisions of the Order by modifying the terms of membership to the Board. Section 1160.200 of the Order sets out the criteria for the Secretary to appoint members to the Board where 15 members represent geographic regions and 5 are at-large members of the Board. The Board proposed these amendments to address (1) potential movement of members from one fluid milk processor to another fluid milk processor; and (2) changes in affiliation of at-large public members.

The fluid milk industry is a dynamic marketplace where mergers and other purchase activities are commonplace. As a result, there have already been circumstances where members representing a fluid milk processor have been subject to employment or ownership changes due to such mergers and other purchase activities. Consequently, any change in a fluid milk processor member's employer or change in ownership of the fluid milk processor who the member represents should be subject to further examination. Accordingly, any change in employment or ownership should disqualify any member. The member would continue to serve on the Board for a period of up to six months until a successor was appointed.

At-large public members appointed by the Secretary should be subject to the same criteria for disqualification as processor representatives serving on the Board. Pursuant to the Order, the Secretary may appoint up to two members from the general public. Since the Board is comprised of only 20 members, these at-large public representatives play an important role in guiding the Board's operations. Normally, these members have a high level of expertise in a certain area and provide an invaluable perspective in the Board's deliberations and changes in a public member's affiliation should be treated similarly to processor members. Thus, a public member who changes employment or ceases to continue in the business that the public member was operating when appointed to the Board will be disqualified in a manner similar to a fluid milk processor member. This provides the Secretary with the ability to appoint a new public member should the circumstances warrant a change in representation.

The amendments ensure that the Board is able to equitably represent fluid milk processing constituents and the public interest through the National Fluid Milk Processor Promotion Program.

One comment was received in response to the proposed amendment. The comment did not address the amendment that was under consideration.

**List of Subjects in 7 CFR Part 1160**

Fluid milk, Milk, Promotion.

■ For the reasons set forth in the preamble, 7 CFR part 1160 is amended as follows:

## PART 1160—FLUID MILK PROMOTION PROGRAM

■ 1. The authority citation for 7 CFR Part 1160 continues to read as follows:

**Authority:** 7 U.S.C. 6401–6417.

■ 2. In § 1160.200, paragraph (a) is revised to read as follows:

### § 1160.200 Establishment and membership.

(a) There is hereby established a National Fluid Milk Processor Promotion Board of 20 members, 15 of whom shall represent geographic regions and five of whom shall be at-large members of the Board. To the extent practicable, members representing geographic regions shall represent fluid milk processing operations of differing sizes. No fluid milk processor shall be represented on the Board by more than three members. The at-large members shall include at least three fluid milk processors and at least one member from the general public. Except for the non-processor member or members from the general public, nominees appointed to the Board must be active owners or employees of a fluid milk processor. The failure of such a member to own or work for such fluid milk processor shall disqualify that member for membership on the Board except that such member shall continue to serve on the Board for a period not to exceed 6 months following the disqualification or until appointment of a successor Board member to such position, whichever is sooner, provided that such person continues to meet the criteria for serving on the Board as a processor representative. Should a member

representing the general public cease to be employed by the entity employing that member when appointed, gain employment with a new employer, or cease to own or operate the business which that member owned or operated at the date of appointment, such member shall be disqualified for membership on the Board, except that such member shall continue to serve on the Board for a period not to exceed 6 months, or until appointment of a successor Board member, whichever is sooner.

* * * * *

Dated: March 18, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05–5814 Filed 3–23–05; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2005–20573; Airspace Docket No. 05–ACE–10]**

## Modification of Class E Airspace; Parsons, KS

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E airspace at Parsons, KS. The FAA is canceling three, modifying two and establishing three new standard instrument approach procedures (SIAPs) to serve Tri-City Airport, Parsons, KS. These actions require modification of the Class E airspace area extending upward from 700 feet above ground level (AGL) at Parsons, KS. The area is enlarged and two extensions are eliminated to conform to airspace criteria in FAA Orders. The intended effect of this rule is to provide controlled airspace of appropriate dimensions to protect aircraft departing from and executing SIAPs to Tri-City Airport.

**DATES:** This direct final rule is effective on 0901 UTC, July 7, 2005. Comments for inclusion in the Rules Docket must be received on or before May 2, 2005.

**ADDRESSES:** Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–001. You must identify the docket number FAA–2005–20573/ Airspace Docket No. 05–ACE–10, 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.

**FOR FURTHER INFORMATION CONTACT:** Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

**SUPPLEMENTARY INFORMATION:** This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Parsons, KS. The FAA is canceling very high frequency omni-directional radio range/distance measuring equipment (VOR/DME) area navigation (RNAV) SIAPs to runways 17 and 35 as well as the VOR–A SIAP that serve Tri-City Airport, Parsons, KS. The FAA is also modifying nondirectional radio beacon (NDB) SIAPs to runways 17 and 35 and has developed RNAV global positioning system (GPS) SIAPs to serve runways 17 and 35 as well. In order to comply with airspace requirements set forth in FAA Orders 7400.2E, Procedures for Handling Airspace Matters, and 8260.19C, Flight Procedures and Airspace, the airspace area is expanded from a 6.5-mile to a 7.5-mile radius of Tri-City Airport, the south and northwest extensions are eliminated and the north extension is decreased in width from 2.6 to 2.5 miles each side of the 009° bearing from the Parsons NDB. Additionally, reference to Oswego collocated VOR/tactical air navigational aid (VORTAC) is removed from the legal description of the airspace area. These modifications provide controlled airspace of appropriate dimensions to protect aircraft departing from and executing SIAPs to Tri-City Airport and bring the legal description of the Parsons, KS Class E airspace area into compliance with FAA Orders 7400.2E and 8260.19C. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9M, Airspace Designations and Reporting Points, 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 will be published subsequently in the Order.

### The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

### Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–20573/Airspace Docket No. 05–ACE–10.'' The postcard will be date/time stamped and returned to the commenter.

### Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States,

or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Tri-City Airport.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

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

* * * * *

**ACE KS E5 Parsons, KS**

Parsons, Tri-City Airport, KS
(Lat. 37°19′48″ N., long. 95°30′22″ W.)
Parsons NDB
(Lat. 37°20′17″ N., long. 95°30′31″ W.)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Tri-City Airport and within 2.5 miles each side of the 009° bearing from the Parsons NDB extending from the 7.5-mile radius of the airport to 7 miles north of the NDB.

* * * * *

Issued in Kansas City, MO, on March 14, 2005.

**Anthony D. Roetzel,**

*Acting Area Director, Western Flight Services Operations.*

[FR Doc. 05–5837 Filed 3–23–05; 8:45 am]

BILLING CODE 4910–13–M

---

## SOCIAL SECURITY ADMINISTRATION

## 20 CFR Parts 404 and 422

**[Regulation Nos. 4 and 22]**

**RIN 0960–AG24**

## Technical Amendments To Change a Cross-Reference and To Remove Reference to an Obsolete Form

**AGENCY:** Social Security Administration.

**ACTION:** Correcting amendments.

**SUMMARY:** This document contains two technical corrections to our regulations. The first correction changes a cross-reference in our regulations regarding how we credit quarters of coverage for calendar years before 1978. The second correction removes reference to a form that has been obsolete since November 2002.

**EFFECTIVE DATE:** Effective on March 24, 2005.

**FOR FURTHER INFORMATION CONTACT:** Rosemarie Greenwald, Policy Analyst, Office of Program Development and Research, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401. Call (410) 965–5651 or TTY 1–800–325–0778 for information about these correcting amendments. For information on eligibility or filing for benefits, call our national toll-free number 1–(800) 772–1213 or TTY 1–(800) 325–0778. You may also contact Social Security Online at *http://www.socialsecurity.gov/.*

**SUPPLEMENTARY INFORMATION:** We are making two corrections to our current regulations. The first correction is being made to 20 CFR 404.141, *How we credit quarters of coverage for calendar years before 1978.* The cross-reference in paragraph (d)(1) of this section incorrectly cross-refers to § 404.1027(a). The correct cross reference should be to §§ 404.1047 and 404.1096, which contain the annual wage limitations based on wages and self-employment income.

The second correction we are making is to remove from § 422.505(b) the reference to, and description of, form SSA–1388, Report of Student Beneficiary at End of School Year. This form became obsolete on November 1, 2002.

(Catalog of Federal Domestic Assistance Programs Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance)

**List of Subjects**

*20 CFR Part 404*

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

*20 CFR Part 422*

Administrative practice and procedure, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Social Security.

Dated: March 17, 2005.

**Martin Sussman,**

*Regulations Officer.*

■ For the reasons set out in the preamble, part 404 and part 422 of chapter III of title 20 of the Code of Federal Regulations are corrected by making the following correcting amendments:

## PART 404–FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

## Subpart B—[Amended]

■ 1. The authority citation for subpart B continues to read as follows:

**Authority:** Secs. 205(a), 212, 213, 214, 216, 217, 223 and 702(a)(5) of the Social Security Act (42 U.S.C. 405 (a), 412, 413, 414, 416, 417, 423 and 902(a)(5)).

**§ 404.141 [Amended]**

■ 2. Paragraph (d)(1) of § 404.141 is amended by correcting the reference ''§ 404.1027(a)'' to read ''§§ 404.1047 and 404.1096.''

## PART 422—ORGANIZATION AND PROCEDURES

### Subpart F—[Amended]

■ 3. The authority citation for subpart F continues to read as follows:

**Authority:** Secs. 205 and 702(a)(5) of the Social Security Act (42 U.S.C. 405 and 902(a)(5).

### § 422.505 [Amended]

■ 4. In the list of forms in paragraph (b) of § 422.505, remove the form SSA—1388 and its description.

[FR Doc. 05–5774 Filed 3–23–05; 8:45 am]

BILLING CODE 4191–02–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 1, 25, 26, 99, 201, 203, 206, 310, 312, 314, 600, 601, 606, 607, 610, 640, 660, 680, 807, and 822

### Food and Drug Administration Regulations; Drug and Biological Product Consolidation; Addresses; Technical Amendment

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Food and Drug Administration (FDA) is amending certain regulations regarding biological products to include references to the Center for Drug Evaluation and Research (CDER) or the Director, CDER, and to include CDER address information or updated CDER address information, where appropriate. FDA is also amending the regulations to update mailing address information including mailing codes for the Center for Biologics Evaluation and Research (CBER), and to place the current mailing addresses for certain biologics regulations in a single location. These changes, among others, are being taken to reflect the reorganization between CBER and CDER due to the transfer of responsibility for certain products from CBER to CDER, and to ensure the consistency and accuracy of the regulations.

**DATES:** This rule is effective March 24, 2005.

**FOR FURTHER INFORMATION CONTACT:** Stephen M. Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

**SUPPLEMENTARY INFORMATION:**

### I. Background

*A. Transfer of Regulatory Responsibility from the Center for Biologics Evaluation and Research to the Center for Drug Evaluation and Research*

In a letter dated June 20, 2003, FDA notified sponsors that the regulatory responsibility, review, and continuing oversight for many biological products would be transferred from CBER to CDER. This change in regulatory responsibility resulted in the transfer of applications for the affected product classes (see section I.B of this document). This consolidation initiative was undertaken to provide greater opportunities to further develop and coordinate scientific and regulatory activities between CBER and CDER, leading to a more efficient, effective, and consistent review program for human drugs and biologics.

In the **Federal Register** of June 26, 2003 (68 FR 38067), we published a notice announcing the transfer of certain product oversight from CBER to CDER. On June 30, 2003, the responsibility for regulating most therapeutic biologics, with certain exceptions (e.g., cell and gene therapy products and therapeutic vaccines) was transferred from the Office of Therapeutics Research and Review (OTRR), CBER, to the Office of New Drugs (OND) and the Office of Pharmaceutical Science (OPS), CDER. Initially, this transfer of products was effected when the divisions of OTRR formerly within CBER were detailed to offices within CDER. On October 1, 2003, those CBER offices detailed to CDER were incorporated into CDER's organizational structure. Throughout these transitions, the staff that was formerly with OTRR, CBER, maintained responsibility for the therapeutic biologic products.

The two new CDER offices established for review of the therapeutic biologics include the OND, Office of Drug Evaluation VI (ODE VI), and the OPS, Office of Biotechnology Products (OBP). Within ODE VI, the following divisions were established: Division of Therapeutic Biological Oncology Products, Division of Therapeutic Biological Internal Medicine Products, and Division of Review Management and Policy. Within OBP, the following divisions were established: Division of Monoclonal Antibodies and Division of Therapeutic Proteins. The delegations of authority for CBER and CDER, which give officials in the Centers the legal authority needed to take substantive actions and perform certain functions of the Commissioner of Food and Drugs, have been revised to reflect these changes.

*B. Products Transferred to CDER and Products Remaining in CBER*

The change in regulatory responsibility resulted in the transfer of applications to CDER for products belonging to the following product classes:

- Monoclonal antibodies for in-vivo use;
- Proteins intended for therapeutic use, including cytokines (e.g., interferons), enzymes (e.g., thrombolytics), and other novel proteins, except for those that are specifically assigned to CBER (e.g., vaccines and blood products). This category includes therapeutic proteins derived from plants, animals, or microorganisms, and recombinant versions of these products;
- Immunomodulators (nonvaccine and nonallergenic products intended to treat disease by inhibiting or modifying a preexisting immune response); and
- Growth factors, cytokines, and monoclonal antibodies intended to mobilize, stimulate, decrease or otherwise alter the production of hematopoietic cells in vivo.[1]

The following biological product classes remain at CBER:

- Cellular products, including products composed of human, bacterial or animal cells (such as pancreatic islet cells for transplantation), or from physical parts of those cells (such as whole cells, cell fragments, or other components intended for use as preventative or therapeutic vaccines);
- Allergenic extracts used for the diagnosis and treatment of allergic diseases and allergen patch tests;
- Antitoxins, antivenins, and venoms;
- Vaccines (products intended to induce or increase an antigen specific immune response for prophylactic or therapeutic immunization, regardless of the composition or method of manufacture);
- Blood, blood components, plasma derived products (e.g., albumin, immunoglobulins, clotting factors, fibrin sealants, proteinase inhibitors), including recombinant and transgenic versions of plasma derivatives (e.g., clotting factors), blood substitutes,

[1] Growth factors, cytokines, and monoclonal antibodies intended to mobilize, stimulate, decrease or otherwise alter the production of hematopoietic cells in vivo, for the purpose of being harvested for use in the production of a therapeutic cellular or blood product, may be regulated in combination with the therapeutic cellular or blood product, as appropriate. Sponsors of products that fit this description should contact the center jurisdiction officers for guidance on appropriate center assignment.

plasma volume expanders, human or animal polyclonal antibody preparations including radiolabeled or conjugated forms, and certain fibrinolytics such as plasma-derived plasmin, and red cell reagents.

The lists above contain some combination products comprised of a biological product component with a device and/or drug component, though such products are not specifically identified. Combination products are assigned to a Center for review and regulation in accordance with the products' primary mode of action.[2] When a product's primary mode of action is attributable to a type of biological product assigned to CDER, the product will be assigned to CDER. Similarly, when a product's primary mode of action is attributable to a type of biological product assigned to CBER, the product will be assigned to CBER. For further information about combination products, see *http://www.fda.gov/oc/combination*, or contact the Office of Combination Products at 301–827–9229, or *combination@fda.gov*.

## II. Organizational and Mailing Address Changes

As a result of this product consolidation and the resulting changes to the organizational structure of CBER and CDER, certain technical amendments are necessary to the regulations in title 21 of the Code of Federal Regulations, chapter I. These amendments include adding references to CDER or the CDER Director, and the CDER address information or updated CDER address information where appropriate. CDER has announced through the Internet new mailing addresses for certain therapeutic biological product submissions.

We are also amending the biologics regulations in parts 600 through 680 (21 CFR parts 600 through 680) to update the mailing address information including mailing codes for the various submissions to CBER, and are amending these regulations to place the current mailing addresses in a single location in part 600.

The various CBER mailing addresses currently listed in the biologics regulations under parts 600 through 680, as applicable, are being moved to one location under new § 600.2. The creation of § 600.2 will ensure the consistency and accuracy of the regulations in part 600 by providing one central location to obtain CBER's mailing addresses and will expedite the mail flow system throughout CBER. Section 600.2 will provide the public with direct and easy access to CBER's mailing addresses for various CBER submissions. The specific biologics regulations will continue to identify the appropriate recipient and specific submission requirements for the various CBER submissions. Section 600.2 will include the addresses for submissions such as biologics license applications and the amendments and supplements to these applications, samples and protocols for licensed biological products, biological product deviation reports, adverse experience reports, fatality reports, Vaccine Adverse Event Reporting System (VAERS) reports, and other correspondence.

The CDER addresses for some of the various submissions under parts 600 through 680, related to the transferred biological products regulated by CDER, have also been included in § 600.2.

In the amendments to parts 1, 99, 201, 203, 206, 310, 312, and 314 (21 CFR parts 1, 99, 201, 203, 206, 310, 312, and 314), the updated CBER mailing address and other related information will continue to be located directly in the applicable regulations so as to minimize the need for cross-referencing across different volumes of the Code of Federal Regulations.

Section 610.12(e)(2)(ii) is amended to include the updated address for obtaining American Type Culture Collection (ATCC) strains of microorganisms described in that regulation and available from the ATCC.

## III. Other Changes as a Result of the Drug and Biological Product Consolidation

The revised address information for the submission of investigational new drug applications is included in § 312.140(a). We are revising § 312.140(b), by removing the currently listed products, and removing § 312.140(c), biological products for human use which are also radioactive drugs, because these products will be submitted to the appropriate Center in accordance with revised § 312.140(a). As a result of the removal of current § 312.140(c), we are redesignating current § 312.140(d) as § 312.140(c).

We are removing current § 314.440(b)(2), urokinase products, because this product is now regulated by CDER. As a result, we are redesignating current § 314.440(b)(3) as § 314.440(b)(2). We are also clarifying § 314.440(b) by adding as paragraphs (b)(3) and (b)(4), two additional products that are submitted to CBER as new drug applications.

We have also removed and reserved § 601.2(b), radioactive biological products, because these products will be submitted in accordance with revised § 601.2(a). In addition, we have removed any reference to § 601.2(b) under § 601.2.

Finally, we have also included the appropriate CDER information under 21 CFR 807.90 and 822.8. This reflects the fact that authority to use the device authorities has already been delegated to CDER officials. One investigational device exemption product was transferred from CBER to CDER in this product consolidation initiative.

Publication of this document constitutes final action under the Administrative Procedure Act (5 U.S.C. 553). FDA has determined that notice and public comment are unnecessary because this amendment to the regulations provides only a technical change to update information and addresses, and is nonsubstantive.

## List of Subjects

*21 CFR Part 1*

Cosmetics, Drugs, Exports, Food labeling, Imports, Labeling, Reporting and recordkeeping requirements.

*21 CFR Part 25*

Environmental impact statements, Foreign relations, Reporting and recordkeeping requirements.

*21 CFR Part 26*

Animal drugs, Biologics, Drugs, Exports, Imports.

*21 CFR Part 99*

Administrative practice and procedure, Biologics, Drugs, Medical devices, Reporting and recordkeeping requirements.

*21 CFR Part 201*

Drugs, Labeling, Reporting and recordkeeping requirements.

*21 CFR Part 203*

Labeling, Prescription drugs, Reporting and recordkeeping requirements, Warehouses.

*21 CFR Part 206*

Drugs.

*21 CFR Part 310*

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

*21 CFR Part 312*

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

[2] See section 503(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(g)).

*21 CFR Part 314*

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

*21 CFR Part 600*

Biologics, Reporting and recordkeeping requirements.

*21 CFR Part 601*

Administrative practice and procedure, Biologics, Confidential business information.

*21 CFR Part 606*

Blood, Labeling, Laboratories, Reporting and recordkeeping requirements.

*21 CFR Part 607*

Blood.

*21 CFR Part 610*

Biologics, Labeling, Reporting and recordkeeping requirements.

*21 CFR Part 640*

Blood, Labeling, Reporting and recordkeeping requirements.

*21 CFR Part 660*

Biologics, Labeling, Reporting and recordkeeping requirements.

*21 CFR Part 680*

Biologics, Blood, Reporting and recordkeeping requirements.

*21 CFR Part 807*

Confidential business information, Imports, Medical devices, Reporting and recordkeeping requirements.

*21 CFR Part 822*

Medical devices, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act, and Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 1, 25, 26, 99, 201, 203, 206, 310, 312, 314, 600, 601, 606, 607, 610, 640, 660, 680, 807, and 822 are amended as follows:

## PART 1—GENERAL ENFORCEMENT REGULATIONS

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

**Authority:** 15 U.S.C. 1453, 1454, 1455; 19 U.S.C. 1490, 1491; 21 U.S.C. 321, 331, 332, 333, 334, 335a, 343, 350c, 350d, 352, 355, 360b, 362, 371, 374, 381, 382, 393; 42 U.S.C. 216, 241, 243, 262, 264.

■ 2. Section 1.101 is amended by revising paragraphs (d)(2)(i) and (d)(2)(ii) to read as follows:

### § 1.101 Notification and recordkeeping.

* * * * *

(d) * * *

(2) * * *

(i) For biological products and devices regulated by the Center for Biologics Evaluation and Research—Division of Case Management (HFM–610), Office of Compliance and Biologics Quality, Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448.

(ii) For human drug products, biological products, and devices regulated by the Center for Drug Evaluation and Research—Division of New Drugs and Labeling Compliance (HFD–310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

* * * * *

## PART 25—ENVIRONMENTAL IMPACT CONSIDERATIONS

■ 3. The authority citation for 21 CFR part 25 continues to read as follows:

**Authority:** 21 U.S.C. 321–393; 42 U.S.C. 262, 263b–264; 42 U.S.C. 4321, 4332; 40 CFR parts 1500–1508; E.O. 11514, 35 FR 4247, 3 CFR, 1971 Comp., p. 531–533 as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1978 Comp., p. 123–124 and E.O. 12114, 44 FR 1957, 3 CFR, 1980 Comp., p. 356–360.

### § 25.31 [Amended]

■ 4. Section 25.31 is amended in paragraph (f) by removing the words ''Center for Biologics Evaluation and Research'' and adding in their place the words ''Food and Drug Administration''.

## PART 26—MUTUAL RECOGNITION OF PHARMACEUTICAL GOOD MANUFACTURING PRACTICE REPORTS, MEDICAL DEVICE QUALITY SYSTEM AUDIT REPORTS, AND CERTAIN MEDICAL DEVICE PRODUCT EVALUATION REPORTS: UNITED STATES AND THE EUROPEAN COMMUNITY

■ 5. The authority citation for 21 CFR part 26 continues to read as follows:

**Authority:** 5 U.S.C. 552; 15 U.S.C. 1453, 1454, 1455; 18 U.S.C. 1905; 21 U.S.C. 321, 331, 351, 352, 355, 360, 360b, 360c, 360d, 360e, 360f, 360g, 360h, 360i, 360j, 360l, 360m, 371, 374, 381, 382, 383, 393; 42 U.S.C. 216, 241, 242l, 262, 264, 265.

### § 26.4 [Amended]

■ 6. Section 26.4 is amended in paragraph (b) by adding in the last sentence the words ''or Center for Drug Evaluation and Research'' after the words ''Center for Biologics Evaluation and Research''.

## PART 99—DISSEMINATION OF INFORMATION ON UNAPPROVED/NEW USES FOR MARKETED DRUGS, BIOLOGICS, AND DEVICES

■ 7. The authority citation for 21 CFR part 99 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 355, 360, 360c, 360e, 360aa–360aaa–6, 371, and 374; 42 U.S.C. 262.

■ 8. Section 99.201 is amended by revising paragraphs (c)(1) and (c)(2) to read as follows:

### § 99.201 Manufacturer's submission to the agency.

* * * * *

(c) * * *

(1) For biological products and devices regulated by the Center for Biologics Evaluation and Research, the Advertising and Promotional Labeling Staff (HFM–602), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448;

(2) For human drug products, biological products, and devices regulated by the Center for Drug Evaluation and Research, the Division of Drug Marketing, Advertising, and Communications (HFD–42), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; or

* * * * *

## PART 201—LABELING

■ 9. The authority citation for 21 CFR part 201 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360, 360b, 360gg–360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

### § 201.58 [Amended]

■ 10. Section 201.58 is amended in the first sentence by removing the zip code ''20587'' and adding in its place ''20857'', and by removing the words ''8800 Rockville Pike, Bethesda, MD 20892'' and adding in their place the words ''Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448''.

## PART 203—PRESCRIPTION DRUG MARKETING

■ 11. The authority citation for 21 CFR part 203 continues to read as follows:

**Authority:** 21 U.S.C. 331, 333, 351, 352, 353, 360, 371, 374, 381.

### § 203.12 [Amended]

■ 12. Section 203.12 is amended at the end of the last sentence by adding the words ''or the Office of Compliance

(HFD–300), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, depending on the Center responsible for regulating the product''.

■ 13. Section 203.37 is amended by revising paragraph (e) to read as follows:

**§ 203.37 Investigation and notification requirements.**

* * * * *

(e) *Whom to notify at FDA.* Notifications and reports concerning prescription human drugs and biological products regulated by the Center for Drug Evaluation and Research shall be made to the Division of Compliance Risk Management and Surveillance (HFD–330), Office of Compliance, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Notifications and reports concerning prescription human biological products regulated by the Center for Biologics Evaluation and Research shall be made to the Division of Inspections and Surveillance (HFM–650), Office of Compliance and Biologics Quality, Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852.

## PART 206—IMPRINTING OF SOLID ORAL DOSAGE FORM DRUG PRODUCTS FOR HUMAN USE

■ 14. The authority citation for 21 CFR part 206 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 355, 371; 42 U.S.C. 262.

■ 15. Section 206.7 is amended by revising paragraph (b)(1)(i) to read as follows:

**§ 206.7 Exemptions.**

* * * * *

(b) * * *

(1) * * *

(i) Exemption requests for products with approved applications shall be made in writing to the appropriate review division in the Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857 or the Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. If FDA denies the request, the holder of the approved application will have 1 year after the date of an agency denial to imprint the drug product.

* * * * *

## PART 310—NEW DRUGS

■ 16. The authority citation for 21 CFR part 310 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

**§ 310.4 [Amended]**

■ 17. Section 310.4 is amended in paragraph (b) by removing ''601.2(b)'' and adding in its place ''§ 601.2(a)''.

## PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

■ 18. The authority citation for 21 CFR part 312 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 353, 355, 371; 42 U.S.C. 262.

■ 19. Section 312.140 is revised to read as follows:

**§ 312.140 Address for correspondence.**

(a) A sponsor must send an initial IND submission to the Center for Drug Evaluation and Research (CDER) or to the Center for Biologics Evaluation and Research (CBER), depending on the Center responsible for regulating the product as follows:

(1) *For drug products regulated by CDER.* Send the IND submission to the Central Document Room, Center for Drug Evaluation and Research, Food and Drug Administration, 5901–B Ammendale Rd., Beltsville, MD 20705–1266.

(2) *For biological products regulated by CDER.* Send the IND submission to the CDER Therapeutic Biological Products Document Room, Center for Drug Evaluation and Research, Food and Drug Administration, 12229 Wilkins Ave., Rockville, MD 20852.

(3) *For biological products regulated by CBER.* Send the IND submission to the Document Control Center (HFM–99), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448.

(b) On receiving the IND, the responsible Center will inform the sponsor which one of the divisions in CDER or CBER is responsible for the IND. Amendments, reports, and other correspondence relating to matters covered by the IND should be directed to the appropriate Center and division. The outside wrapper of each submission shall state what is contained in the submission, for example, ''IND Application'', ''Protocol Amendment'', etc.

(c) All correspondence relating to export of an investigational drug under § 312.110(b)(2) shall be submitted to the International Affairs Staff (HFY–50), Office of Health Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

## PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG

■ 20. The authority citation for 21 CFR part 314 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 353, 355, 355a, 356, 356a, 356b, 356c, 371, 374, 379e.

■ 21. Section 314.440 is amended by revising paragraph (b) to read as follows:

**§ 314.440 Addresses for applications and abbreviated applications.**

* * * * *

(b) Applicants shall send applications and other correspondence relating to matters covered by this part for the drug products listed below to the Document Control Center (HFM–99), Center for Biologics Evaluation and Research, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, except applicants shall send a request for an opportunity for a hearing under § 314.110 or § 314.120 on the question of whether there are grounds for denying approval of an application to the Director, Center for Biologics Evaluation and Research (HFM–1), at the same address.

(1) Ingredients packaged together with containers intended for the collection, processing, or storage of blood and blood components;

(2) Plasma volume expanders and hydroxyethyl starch for leukapheresis;

(3) Blood component processing solutions and shelf life extenders; and

(4) Oxygen carriers.

## PART 600—BIOLOGICAL PRODUCTS: GENERAL

■ 22. The authority citation for 21 CFR part 600 continues to read as follows:

**Authority:** 21 U.S.C. 321, 351, 352, 353, 355, 360, 360i, 371, 374; 42 U.S.C. 216, 262, 263, 263a, 264, 300aa–25.

■ 23. Section 600.2 is added to subpart A to read as follows:

**§ 600.2 Mailing addresses.**

(a) *Licensed biological products regulated by the Center for Biologics Evaluation and Research (CBER).* Unless otherwise stated in paragraphs (c) or (d) of this section, or as otherwise prescribed by FDA regulation, all submissions to CBER referenced in parts 600 through 680 of this chapter, as applicable, must be sent to: Document Control Center (HFM–99), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville,

MD 20852–1448. Examples of such submissions include: Biologics license applications (BLAs) and their amendments and supplements, adverse experience reports, biological product deviation reports, fatality reports, and other correspondence. Biological products samples must not be sent to this address but must be sent to the address in paragraph (c) of this section.

(b) *Licensed biological products regulated by the Center for Drug Evaluation and Research (CDER).* Unless otherwise stated in paragraphs (b)(1), (b)(2), (b)(3), or (c) of this section, or as otherwise prescribed by FDA regulation, all submissions to CDER referenced in parts 600, 601, and 610 of this chapter, as applicable, must be sent to: CDER Therapeutic Biological Products Document Room, Center for Drug Evaluation and Research, Food and Drug Administration, 12229 Wilkins Ave., Rockville, MD 20852. Examples of such submissions include: BLAs and their amendments and supplements, and other correspondence.

(1) *Biological Product Deviation Reporting (CDER).* All biological product deviation reports required under § 600.14 must be sent to: Division of Compliance Risk Management and Surveillance (HFD–330), Office of Compliance, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

(2) *Postmarketing Adverse Experience Reporting (CDER).* All postmarketing reports required under § 600.80 must be sent to: Central Document Room, Center for Drug Evaluation and Research, Food and Drug Administration, 5901–B Ammendale Rd., Beltsville, MD 20705–1266.

(3) *Advertising and Promotional Labeling (CDER).* All advertising and promotional labeling supplements required under § 601.12(f) of this chapter must be sent to: Division of Drug Marketing, Advertising and Communication (HFD–42), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, rm. 8B45, Rockville, MD 20857.

(c) *Samples and Protocols for licensed biological products regulated by CBER or CDER.* (1) Biological product samples and/or protocols, other than radioactive biological product samples and protocols, required under §§ 600.13, 600.22, 601.15, 610.2, 660.6, 660.36, or 660.46 of this chapter must be sent by courier service to: Sample Custodian (ATTN: HFM–672), Food and Drug Administration, Center for Biologics Evaluation and Research, Bldg: NLRC–B, rm. 113, 5516 Nicholson Lane, Kensington, MD 20895. The protocol(s) may be placed in the box used to ship the samples to CBER. A cover letter should not be included when submitting the protocol with the sample unless it contains pertinent information affecting the release of the lot.

(2) Radioactive biological products required under § 610.2 of this chapter must be sent by courier service to: Sample Custodian (ATTN: HFM–672), Food and Drug Administration, Center for Biologics Evaluation and Research, Nicholson Lane Research Center, c/o Radiation Safety Office, National Institutes of Health, 21 Wilson Dr., rm. 107, Bethesda, MD 20892–6780.

(d) *Vaccine Adverse Event Reporting System (VAERS).* All VAERS reports as specified in § 600.80(c) must be sent to: Vaccine Adverse Event Reporting System (VAERS), P.O. Box 1100, Rockville, MD 20849–1100.

(e) Address information for submissions to CBER and CDER other than those listed in parts 600 through 680 of this chapter are included directly in the applicable regulations.

(f) Obtain updated mailing address information for biological products regulated by CBER at *http://www.fda.gov/cber/pubinquire.htm*, or for biological products regulated by CDER at *http://www.fda.gov/cder/biologics/default.htm*.

**§ 600.3 [Amended]**

■ 24. Section 600.3 is amended in paragraph (gg) by removing the words ''to the Director, Center for Biologics Evaluation and Research,''.

**§ 600.11 [Amended]**

■ 25. Section 600.11 is amended in paragraph (f)(6) by adding at the end of the paragraph the words ''or the Director, Center for Drug Evaluation and Research (see mailing addresses in § 600.2)''.

**§ 600.12 [Amended]**

■ 26. Section 600.12 is amended in paragraph (b)(2) by adding the words ''or the Director, Center for Drug Evaluation and Research'' after the words ''Director, Center for Biologics Evaluation and Research'', and in paragraph (b)(3) by adding the words ''or the Director, Center for Drug Evaluation and Research'' after the words ''Director, Center for Biologics Evaluation and Research''.

■ 27. Section 600.13 is amended by revising the last two sentences to read as follows:

**§ 600.13 Retention samples.**

* * * Samples retained as required in this section shall be in addition to samples of specific products required to be submitted to the Center for Biologics Evaluation and Research or the Center for Drug Evaluation and Research (see mailing addresses in § 600.2). Exceptions may be authorized by the Director, Center for Biologics Evaluation and Research or the Director, Center for Drug Evaluation and Research, when the lot yields relatively few final containers and when such lots are prepared by the same method in large number and in close succession.

■ 28. Section 600.14 is amended by revising paragraph (e) to read as follows:

**§ 600.14 Reporting of biological product deviations by licensed manufacturers.**

* * * * *

*(e) Where do I report under this section?*

(1) For biological products regulated by the Center for Biologics Evaluation and Research (CBER), send the completed Form FDA–3486 to the Director, Office of Compliance and Biologics Quality (HFM–600) (see mailing addresses in § 600.2), or an electronic filing through CBER's Web site at *http://www.fda.gov/cber/biodev/biodev.htm*.

(2) For biological products regulated by the Center for Drug Evaluation and Research (CDER), send the completed Form FDA–3486 to the Division of Compliance Risk Management and Surveillance (HFD–330) (see mailing addresses in § 600.2). CDER does not currently accept electronic filings.

(3) If you make a paper filing, you should identify on the envelope that a biological product deviation report (BPDR) is enclosed.

* * * * *

**§ 600.22 [Amended]**

■ 29. Section 600.22 is amended in paragraph (e) by adding the words ''or the Director, Center for Drug Evaluation and Research (see mailing addresses in § 600.2) after the words ''Director, Center for Biologics Evaluation and Research''.

■ 30. Section 600.80 is amended by revising paragraphs (c) introductory text and (f)(4) to read as follows:

**§ 600.80 Postmarketing reporting of adverse experiences.**

* * * * *

(c) *Reporting requirements.* The licensed manufacturer shall report to FDA adverse experience information, as described in this section. The licensed manufacturer shall submit two copies of each report described in this section for nonvaccine biological products to the Center for Biologics Evaluation and Research (HFM–210), or to the Center for Drug Evaluation and Research (see mailing addresses in § 600.2). Submit all vaccine adverse experience reports to: Vaccine Adverse Event Reporting

System (VAERS) (see mailing addresses in § 600.2). FDA may waive the requirement for the second copy in appropriate instances.

* * * * *

(f) * * *

(4) Copies of the reporting form designated by FDA (FDA–3500A) for nonvaccine biological products may be obtained from *http://www.fda.gov/medwatch/getforms.htm*. Additional supplies of the form may be obtained from the Consolidated Forms and Publications Distribution Center, 3222 Hubbard Rd., Landover, MD 20785. Supplies of the VAERS form may be obtained from VAERS by calling 1–800–822–7967.

* * * * *

■ 31. Section 600.81 is amended by revising the first sentence to read as follows:

**§ 600.81 Distribution reports.**

The licensed manufacturer shall submit to the Center for Biologics Evaluation and Research or the Center for Drug Evaluation and Research (see mailing addresses in § 600.2), information about the quantity of the product distributed under the biologics license, including the quantity distributed to distributors. * * *

## PART 601—LICENSING

■ 32. The authority citation for 21 CFR part 601 continues to read as follows:

**Authority:** 15 U.S.C. 1451–1561; 21 U.S.C. 321, 351, 352, 353, 355, 356b, 360, 360c–360f, 360h–360j, 371, 374, 379e, 381; 42 U.S.C. 216, 241, 262, 263, 264; sec. 122, Pub. L. 105–115, 111 Stat. 2322 (21 U.S.C. 355 note).

■ 33. Section 601.2 is amended by revising the first and fourth sentences and removing the sixth sentence of paragraph (a), by removing and reserving paragraph (b), and by revising paragraph (c)(2) to read as follows:

**§ 601.2 Applications for biologics licenses; procedures for filing.**

(a) *General*. To obtain a biologics license under section 351 of the Public Health Service Act for any biological product, the manufacturer shall submit an application to the Director, Center for Biologics Evaluation and Research or the Director, Center for Drug Evaluation and Research (see mailing addresses in § 600.2 of this chapter), on forms prescribed for such purposes, and shall submit data derived from nonclinical laboratory and clinical studies which demonstrate that the manufactured product meets prescribed requirements of safety, purity, and potency; with respect to each nonclinical laboratory study, either a statement that the study was conducted in compliance with the requirements set forth in part 58 of this chapter, or, if the study was not conducted in compliance with such regulations, a brief statement of the reason for the noncompliance; statements regarding each clinical investigation involving human subjects contained in the application, that it either was conducted in compliance with the requirements for institutional review set forth in part 56 of this chapter; or was not subject to such requirements in accordance with § 56.104 or § 56.105, and was conducted in compliance with requirements for informed consent set forth in part 50 of this chapter. * * * An application for a biologics license shall not be considered as filed until all pertinent information and data have been received by the Food and Drug Administration. * * *

(b) [Reserved]

(c) * * *

(2) To the extent that the requirements in this paragraph (c) conflict with other requirements in this subchapter, this paragraph (c) shall supersede other requirements.

* * * * *

**§ 601.4 [Amended]**

■ 34. Section 601.4 is amended in the first sentence of paragraph (a) by adding the words ''or the Director, Center for Drug Evaluation and Research'' after the words ''Director, Center for Biologics Evaluation and Research''.

■ 35. Section 601.6 is amended by revising paragraph (a)(2) to read as follows:

**§ 601.6 Suspension of license.**

(a) * * *

(2) Furnish to the Center for Biologics Evaluation and Research or the Center for Drug Evaluation and Research, complete records of such deliveries and notice of suspension.

* * * * *

**§ 601.9 [Amended]**

■ 36. Section 601.9 is amended in paragraph (a) by adding at the end of the paragraph the words ''or the Director, Center for Drug Evaluation and Research''.

■ 37. Section 601.12 is amended by revising the first sentence of paragraph (a)(1), by revising the second sentence of paragraph (d)(1), and by revising paragraph (f)(4) to read as follows:

**§ 601.12 Changes to an approved application.**

(a)(1) *General*. As provided by this section, an applicant must inform the Food and Drug Administration (FDA) (see mailing addresses in § 600.2 of this chapter) about each change in the product, production process, quality controls, equipment, facilities, responsible personnel, or labeling established in the approved license application(s). * * *

* * * * *

(d) * * *

(1) * * * The Director, Center for Biologics Evaluation and Research or the Director, Center for Drug Evaluation and Research, may approve a written request for an alternative date to combine annual reports for multiple approved applications into a single annual report submission.

* * * * *

(f) * * *

(4) *Advertisements and promotional labeling*. Advertisements and promotional labeling shall be submitted to the Center for Biologics Evaluation and Research or Center for Drug Evaluation and Research in accordance with the requirements set forth in § 314.81(b)(3)(i) of this chapter, except that Form FDA–2567 (Transmittal of Labels and Circulars) or an equivalent form shall be used.

* * * * *

■ 38. Section 601.15 is revised to read as follows:

**§ 601.15 Foreign establishments and products: samples for each importation.**

Random samples of each importation, obtained by the District Director of Customs and forwarded to the Director, Center for Biologics Evaluation and Research or the Director, Center for Drug Evaluation and Research (see mailing addresses in § 600.2 of this chapter) must be at least two final containers of each lot of product. A copy of the associated documents which describe and identify the shipment must accompany the shipment for forwarding with the samples to the Director, Center for Biologics Evaluation and Research or the Director, Center for Drug Evaluation and Research (see mailing addresses in § 600.2). For shipments of 20 or less final containers, samples need not be forwarded, provided a copy of an official release from the Center for Biologics Evaluation and Research or Center for Drug Evaluation and Research accompanies each shipment.

**§ 601.20 [Amended]**

■ 39. Section 601.20 is amended in paragraph (c) by adding the words ''or the Director, Center for Drug Evaluation and Research'' after the words ''Director, Center for Biologics Evaluation and Research''.

■ 40. Section 601.28 is amended by revising the introductory paragraph to read as follows:

**§ 601.28 Annual reports of postmarketing pediatric studies.**

Sponsors of licensed biological products shall submit the following information each year within 60 days of the anniversary date of approval of each product under the license to the Director, Center for Biologics Evaluation and Research or the Director, Center for Drug Evaluation and Research (see mailing addresses in § 600.2 of this chapter):

* * * * *

**§ 601.29 [Amended]**

■ 41. Section 601.29 is amended in paragraph (b) by removing the words ‘‘, 1401 Rockville Pike, Rockville, MD 20852–1448’’ and adding in their place ‘‘(see mailing addresses in § 600.2 of this chapter)’’.

**§ 601.43 [Amended]**

■ 42. Section 601.43 is amended in paragraph (b) by adding in the first sentence the words ‘‘or the Director of the Center for Drug Evaluation and Research’’ after the words ‘‘Director of the Center for Biologics Evaluation and Research’’.

**§ 601.51 [Amended]**

■ 43. Section 601.51 is amended in last sentence of paragraph (b) by removing the words ‘‘Director of the Center for Biologics Evaluation and Research’’ and adding in their place the words ‘‘Food and Drug Administration’’.

■ 44. Section 601.70 is amended by revising paragraph (d) to read as follows:

**§ 601.70 Annual progress reports of postmarketing studies.**

* * * * *

(d) *Where to report.* Submit two copies of the annual progress report of postmarketing studies to the Center for Biologics Evaluation and Research or Center for Drug Evaluation and Research (see mailing addresses in § 600.2 of this chapter).

* * * * *

■ 45. Section 601.92 is amended by revising the first sentence of paragraph (b) to read as follows:

**§ 601.92 Withdrawal procedures.**

* * * * *

(b) *Notice of opportunity for a hearing.* The Director of the Center for Biologics Evaluation and Research or the Director of the Center for Drug Evaluation and Research will give the applicant notice of an opportunity for a hearing on the proposal to withdraw the approval of an application approved under this subpart. * * *

* * * * *

## PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD AND COMPONENTS

■ 46. The authority citation for 21 CFR part 606 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 355, 360, 360j, 371, 374; 42 U.S.C. 216, 262, 263a, 264.

**§ 606.121 [Amended]**

■ 47. Section 606.121 is amended in the introductory text of paragraph (d), and paragraphs (d)(4) and (d)(5) by removing the mail code ‘‘(HFB–1)’’.

**§ 606.171 [Amended]**

■ 48. Section 606.171 is amended in the introductory text in paragraph (e) by removing the words ‘‘, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448’’ and adding in their place ‘‘(see mailing addresses in § 600.2 of this chapter)’’.

## PART 607—ESTABLISHMENT REGISTRATION AND PRODUCT LISTING FOR MANUFACTURERS OF HUMAN BLOOD AND BLOOD PRODUCTS

■ 49. The authority citation for 21 CFR part 607 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 355, 360, 371, 374, 381, 393; 42 U.S.C. 262, 264, 271.

**§ 607.7 [Amended]**

■ 50. Section 607.7 is amended in paragraphs (b) and (c) by removing the words ‘‘, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448’’ and adding in their place ‘‘(see mailing addresses in § 600.2 of this chapter)’’.

**§ 607.22 [Amended]**

■ 51. Section 607.22 is amended in the first sentence in paragraph (a) by removing the words ‘‘1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448’’ and adding in their place ‘‘(see mailing addresses in § 600.2 of this chapter)’’.

**§ 607.37 [Amended]**

■ 52. Section 607.37 is amended in the first sentence of paragraph (a), and in paragraph (b) by removing the words ‘‘, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448’’ and adding in their place ‘‘(see mailing addresses in § 600.2 of this chapter)’’.

## PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

■ 53. The authority citation for 21 CFR part 610 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 360c, 360d, 360h, 360i, 371, 372, 374, 381; 42 U.S.C. 216, 262, 263, 263a, 264.

■ 54. Section 610.2 is amended by revising the paragaph heading and first sentence of paragraph (a) and by revising the heading and paragraph (b) to read as follows:

**§ 610.2 Requests for samples and protocols; official release.**

(a) *Licensed biological products regulated by CBER.* Samples of any lot of any licensed product together with the protocols showing results of applicable tests, may at any time be required to be sent to the Director, Center for Biologics Evaluation and Research (see mailing addresses in § 600.2 of this chapter). * * *

(b) *Licensed biological products regulated by CDER.* Samples of any lot of any licensed product together with the protocols showing results of applicable tests, may at any time be required to be sent to the Director, Center for Drug Evaluation and Research (see mailing addresses in § 600.2) for official release. Upon notification by the Director, Center for Drug Evaluation and Research, a manufacturer shall not distribute a lot of a biological product until the lot is released by the Director, Center for Drug Evaluation and Research: *Provided*, That the Director, Center for Drug Evaluation and Research shall not issue such notification except when deemed necessary for the safety, purity, or potency of the product.

**§ 610.9 [Amended]**

■ 55. Section 610.9 is amended in paragraph (b) by removing the words ‘‘, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448’’ and adding in their place the words ‘‘or the Director, Center for Drug Evaluation and Research.’’

■ 56. Section 610.11 is amended by revising the first sentence in paragraphs (c)(2) and (c)(3), and by revising the first and last sentences of paragraph (g)(2) to read as follows:

**§ 610.11 General safety.**

* * * * *

(c) * * *

(2) *Freeze-dried product for which the volume of reconstitution is not indicated on the label.* The route of administration, test dose, and diluent shall be as approved in accordance with § 610.9. * * *

(3) *Nonliquid products other than freeze-dried product.* The route of administration, test dose, and diluent shall be as in accordance with § 610.9. * * *

(g)* * *

(2) For products other than those identified in paragraph (g)(1) of this section, a manufacturer may request from the Director, Center for Biologics Evaluation and Research or the Director, Center for Drug Evaluation and Research (see mailing addresses in § 600.2 of this chapter), an exemption from the general safety test. * * * The Director, Center for Biologics Evaluation and Research or the Director, Center for Drug Evaluation and Research, upon finding that the manufacturer's request justifies an exemption, may exempt the product from the general safety test subject to any condition necessary to assure the safety, purity, and potency of the product.

■ 57. Section 610.12 is amended by revising the last sentence of paragraph (e)(2)(i), by revising the first sentence of the text appearing after the table in paragraph (e)(2)(ii), and by revising paragraph (g)(4)(ii) to read as follows:

**§ 610.12 Sterility.**

* * * * *

(e) * * *

(2) * * *

(i)* * * When using a single batch of dehydrated culture medium, a manufacturer need not perform growth-promoting tests on each lot of prepared liquid medium, provided that a validation program exists for autoclaves used to sterilize the culture medium, and the manufacturer has received approval for this practice from the Director, Center for Biologics Evaluation and Research or the Director, Center for Drug Evaluation and Research.

(ii) * * *

ATCC strains of microorganisms described in this section are available from the American Type Culture Collection, 10801 University Blvd., Manassas, VA 20110. * * *

* * * * *

(g)* * *

(4)* * *

(ii) Where a manufacturer submits data which the Director, Center for Biologics Evaluation and Research or the Director, Center for Drug Evaluation and Research, finds adequate to establish that the mode of administration, the method of preparation, or the special nature of the product precludes or does not require a sterility test or that the sterility of the lot is not necessary to assure the safety, purity, and potency of the product, the Director may exempt a product from the sterility requirements of this section subject to any conditions necessary to assure the safety, purity, and potency of the product.

* * * * *

**§ 610.13 [Amended]**

■ 58. Section 610.13 is amended in the last sentence of paragraph (a)(1) by adding the words ''or the Director, Center for Drug Evaluation and Research'' after the words ''Director, Center for Biologics Evaluation and Research''.

**§ 610.15 [Amended]**

■ 59. Section 610.15 is amended in paragraph (a)(3) by adding at the end of the last sentence the words ''or the Director, Center for Drug Evaluation and Research (see mailing addresses in § 600.2 of this chapter)''.

**§ 610.18 [Amended]**

■ 60. Section 610.18 is amended in paragraph (c)(2) by adding at the end of the last sentence the words ''or the Director, Center for Drug Evaluation and Research''.

**§ 610.53 [Amended]**

■ 61. Section 610.53 is amended in paragraph (d) by adding at the end of the last sentence the words ''or the Director of the Center for Drug Evaluation and Research''.

## PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

■ 62. The authority citation for 21 CFR part 640 continues to read as follows:

**Authority:** 21 U.S.C. 321, 351, 352, 353, 355, 360, 371; 42 U.S.C. 216, 262, 263, 263a, 264.

**§ 640.55 [Amended]**

■ 63. Section 640.55 is amended by removing the words ''Food and Drug Administration,'' and adding in their place ''(HFM–407) (see mailing addresses in § 600.2 of this chapter)''.

## PART 660—ADDITIONAL STANDARDS FOR DIAGNOSTIC SUBSTANCES FOR LABORATORY TESTS

■ 64. The authority citation for 21 CFR part 660 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 360c, 360d, 360h, 360i, 371, 372; 42 U.S.C. 216, 262, 263, 263a, 264.

**§ 660.3 [Amended]**

■ 65. Section 660.3 is amended by adding the words ''(HFM–407) (see mailing addresses in § 600.2 of this chapter)'' after the words ''Center for Biologics Evaluation and Research''.

**§ 660.6 [Amended]**

■ 66. Section 660.6 is amended in paragraph (a)(2) by removing the words ''(HFB–1), 8800 Rockville Pike, Bethesda, MD 20892'' and adding in their place ''(see mailing addresses in § 600.2 of this chapter)''.

**§ 660.21 [Amended]**

■ 67. Section 660.21 is amended in paragraph (b) by removing the words ''(HFN–830), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892''.

**§ 660.22 [Amended]**

■ 68. Section 660.22 is amended in paragraph (b) by removing the words ''(HFN–890), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892'' and adding in their place ''(HFM–407) (see mailing addresses in § 600.2 of this chapter)''.

**§ 660.25 [Amended]**

■ 69. Section 660.25 is amended in the introductory paragraph and paragraph (a) introductory text by removing the words ''(HFN–830), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892''.

**§ 660.26 [Amended]**

■ 70. Section 660.26 is amended by removing the words ''(HFN–830), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892''.

**§ 660.28 [Amended]**

■ 71. Section 660.28 is amended in the first sentence of paragraph (a)(1) by removing the words ''(HFN–830), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892''.

**§ 660.36 [Amended]**

■ 72. Section 660.36 is amended in paragraph (a) by removing the words ''Office of Biological Product Review Sample Custodian (ATTN: HFB–215), Bldg. 29A, Rm. 1C02, Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892'' and adding in their place the words ''Center for Biologics Evaluation and Research Sample Custodian (ATTN: HFM–672) (see mailing addresses in § 600.2 of this chapter)''.

**§ 660.46 [Amended]**

■ 73. Section 660.46 is amended in paragraph (a)(2) introductory text by removing the words ''(HFB–1), 8800 Rockville Pike, Bethesda, MD 20892'' and adding in their place ''(see mailing addresses in § 600.2 of this chapter)''.

**§ 660.52 [Amended]**

■ 74. Section 660.52 is amended by removing the words ''(HFB–221), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892'' and adding in their place ''(HFM–407) (see mailing addresses in § 600.2 of this chapter)''.

**§ 660.53 [Amended]**

■ 75. Section 660.53 is amended by removing the words ''(HFB–1), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892''.

**§ 660.54 [Amended]**

■ 76. Section 660.54 is amended in the introductory paragraph by removing the words ''(HFB–1), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892''.

**§ 660.55 [Amended]**

■ 77. Section 660.55 is amended in the first sentence of paragraph (a)(3) by removing the mail code ''(HFB–1)''.

## PART 680—ADDITIONAL STANDARDS FOR MISCELLANEOUS PRODUCTS

■ 78. The authority citation for 21 CFR part 680 continues to read as follows:

**Authority:** 21 U.S.C. 321, 351, 352, 353, 355, 360, 371; 42 U.S.C. 216, 262, 263, 263a, 264.

**§ 680.1 [Amended]**

■ 79. Section 680.1 is amended in the last sentence of paragraph (b)(2)(iii), in paragraph (b)(3)(iv), and in the first sentence of paragraph (c) by removing the mail code ''(HFB–1)'' and adding in its place ''(see mailing addresses in § 600.2)'', and in paragraph (d)(1) by removing the mail code ''(HFB–1)''.

## PART 807—ESTABLISHMENT REGISTRATION AND DEVICE LISTING FOR MANUFACTURERS AND INITIAL IMPORTERS OF DEVICES

■ 80. The authority citation for 21 CFR part 807 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 360, 360c, 360e, 360i, 360j, 371, 374, 381, 393; 42 U.S.C. 264, 271.

■ 81. Section 807.90 is amended by revising the first sentence of paragraph (a)(2) to read as follows:

**§ 807.90 Format of a premarket notification submission.**

(a)* * *

(2) For devices regulated by the Center for Biologics Evaluation and Research, be addressed to the Document Control Center (HFM–99), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448; or for devices regulated by the Center for Drug Evaluation and Research, be addressed to the Central Document Room, Center for Drug Evaluation and Research, Food and Drug Administration, 5901–B Ammendale Rd., Beltsville, MD 20705–1266. * * *

* * * * *

## PART 822—POSTMARKET SURVEILLANCE

■ 82. The authority citation for 21 CFR part 822 continues to read as follows:

**Authority:** 21 U.S.C. 331, 352, 360i, 360l, 371, 374.

■ 83. Section 822.8 is amended by revising the second and third sentences to read as follows:

**§ 822.8 When, where, and how must I submit my postmarket surveillance plan?**

* * * For devices regulated by the Center for Biologics Evaluation and Research, send three copies of your submission to the Document Control Center (HFM–99), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. For devices regulated by the Center for Drug Evaluation and Research, send three copies of your submission to the Central Document Room, Center for Drug Evaluation and Research, Food and Drug Administration, 5901–B Ammendale Rd., Beltsville, MD 20705–1266. * * *

Dated: March 15, 2005.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 05–5780 Filed 3–23–05; 8:45 am]

BILLING CODE 4160–01–S

---

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 906

**[CO–033–FOR]**

## Colorado Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We are approving an amendment to the Colorado regulatory program (the ''Colorado program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Colorado proposed revisions to its rules concerning prime farmland, revegetation, hydrology, enforcement, topsoil, historic properties, bond release and permit requirements. The State intends to revise its program to be consistent with the corresponding Federal regulations, provide additional safeguards, clarify ambiguities, and improve operational efficiency.

**EFFECTIVE DATE:** March 24, 2005.

**FOR FURTHER INFORMATION CONTACT:** James F. Fulton, Telephone: (303) 844–1400, extension 1424; Internet address: *JFulton@osmre.gov.*

**SUPPLEMENTARY INFORMATION:**

I. Background on the Colorado Program
II. Submission of the Amendment
III. Office of Surface Mining Reclamation and Enforcement's (OSM) Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

### I. Background on the Colorado 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 State 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 Colorado program on December 15, 1980. You can find background information on the Colorado program, including the Secretary's findings, the disposition of comments, and conditions of approval in the December 15, 1980, **Federal Register** (45 FR 82173). You can also find later actions concerning Colorado's program and program amendments at 30 CFR 906.10, 906.15, 906.16, and 906.30.

### II. Submission of the Amendment

By letter dated March 27, 2003, Colorado sent us an amendment to its program (Administrative Record No. CO–696–1) under SMCRA (30 U.S.C. 1201 *et seq.*). Colorado sent the amendment in response to May 7, 1986, June 9, 1987, and March 22, 1990, letters that we sent to it in accordance with 30 CFR 732.17(c), as well as to include changes made at its own initiative. On April 4, 2003, Colorado sent us an addition to its March 27, 2003, amendment. Finally, Colorado submitted to us further revisions to its March 27, 2003, amendment on July 23, 2003.

We announced receipt of the proposed amendment in the June 3, 2003, **Federal Register** (68 FR 33032). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record No. CO–696–6). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on July 3, 2003. We did not receive any comments.

In the November 20, 2003, **Federal Register** (68 FR 65422), we reopened the public comment period to allow for comments on Colorado's July 23, 2003, additional submittal which is as follows: Colorado recently amended its Noxious Weed Act which necessitated a revision to proposed rules 4.15.1(5), Rule 1.04(78), and also amended for consistency the earlier version of the draft rules. In addition, the earlier proposed revision to Rule 4.15.4 adding (5) was withdrawn. We did not receive any comments on the additional submittal.

Then in the October 1, 2004, **Federal Register** (69 FR 58873), we reopened the public comment period again to allow comments on Colorado's July 23, 2003, additional submittal. We received comments from the Rocky Mountain Director of ''Public Employees for Environmental Responsibility'' (PEER).

The amendment concerns revegetation, prime farmland, hydrology, enforcement, topsoil, historic properties, and bond release requirements.

## 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.

### *A. Minor Revisions to Colorado's Rules*

Colorado proposed minor editorial changes to the following previously-approved rules.

1. 2.06.8(4)(a)(i) and (5)(b)(i), Alluvial Valley Floors;
2. 2.06.8(5)(b)(i), Permit approval or denial;
3. 2.07.6(1)(a)(ii), Permit review;
4. 2.07.6(2)(n), Criteria for permit approval or denial;
5. 2.08.4(6)(c)(iii), Minor revision;
6. 3.03.2(5)(a), Decision by the Division; and
7. 4.03.1(4)(e), Culverts and bridges.

Because these changes are minor, we find that they will not make Colorado's rules less effective than the corresponding Federal regulations.

### *B. Revisions to Colorado's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations*

Colorado proposed revisions to the following rules containing language that is the same as or similar to the corresponding sections of the Federal regulations.

1. Rule 2.06.6(2)(a) and (g), [30 CFR 785.17(c)((1)], Prime farmland soil survey;
2. Rule 3.03.2(1)(e), [30 CFR 800.40(a)(3)], Release of performance bonds;
3. Rule 4.05.2(2), [30 CFR 816/817.46(b)(5), Sedimentation pond removal;
4. Rule 4.15.7(2), [30 CFR 780.18(b)(5)(vi),780.13(b)(5)(vi)], Revegetation monitoring plan;
5. Rule 4.15.8(3)(a), [30 CFR 816/817.116(a)(2)], Ground cover standard;
6. Rule 4.15.8(4), [30 CFR 816/817.116(a)(2)], Production standard;
7. Rule 4.15.8(8), [30 CFR 816/817.116(b)(3)], Forestry success standards; and
8. Rule 4.25.2(4), [30 CFR 785.17(e)(5)], Prime Farmland issuance of permit.

Because these proposed rules contain language that is the same as or similar to the corresponding Federal regulations, we find that they are no less effective than the corresponding Federal regulations.

### *C. Revisions of Colorado's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations*

1. Rule 4.15.1(5), Revegetation—Weed Control and 1.04(78), Noxious Weeds

The Federal regulations at 30 CFR 816/817.111(b)(5) require that the reestablished plant species shall meet the requirements of applicable State and Federal seed, poisonous and noxious plant, and introduced species laws or regulations.

The Federal definition of noxious plants at 30 CFR 701.5 means species that have been included on official State lists of noxious plants for the State in which the surface coal mining and reclamation operation occurs.

Colorado is adding a new rule requiring a weed management plan. The plan is designed to deal with noxious weeds and other weed species that could threaten development of the desired vegetation.

While there is no direct Federal counterpart to the proposed rule, it implements the Federal requirement at 30 CFR 816/817.111(b)(5) and, as proposed, is no less effective than the Federal regulation.

2. Rule 4.15.7(1), Determining Revegetation Success

The Federal regulations at 30 CFR 816/817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved regulatory program. The proposed revision simply adds a reference to ''the techniques identified in these rules.''

By revising 4.15.7(1) as proposed, along with the other changes proposed in this amendment, Colorado is including standards for success and statistically valid sampling techniques for measuring success in its approved regulatory program. This is consistent with and no less effective than the Federal regulations. Specific standards and techniques are addressed in other Findings in this document.

3. Rule 4.15.7(3)(b), Use of Reference Areas

The Federal regulations at 30 CFR 816/817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved regulatory program.

The Federal regulations at 30 CFR 816/817.116(a)(2) require that standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking.

The Federal regulations at 30 CFR 816/817.116(b) require, in part, that (1) for areas developed for use as grazing land or pasture land, the ground cover and production of living plants on the revegetated area shall be at least equal to that of a reference area or such other success standards approved by the regulatory authority; and (2) for areas developed for use as cropland, crop production on the revegetated area shall be at least equal to that of a reference area or such other success standards approved by the regulatory authority.

In support of its proposal, Colorado proposes to reorganize and amend Rule 4.15.7(3)(b) to specify exceptions to the requirement that reference areas be demonstrated to be statistically comparable to equivalent pre-mine vegetation types in terms of vegetation cover and herbaceous production.

Rule 4.15.7(3)(b)(i) is proposed to be recodified to identify cropland post-mine land use as one exception to this requirement. The content of the existing rule is not changed by the recodification.

Rule 4.15.7(3)(b)(ii) is proposed to be added to identify situations in which the post-mining land use will be different than pre-mining land use as a second exception to the pre-mine equivalency requirement. This amendment is in recognition of the fact that when there is a change in land use, such as from forestry or wildlife habitat to pasture land or cropland, assumptions upon which the traditional reference area concepts are based may no longer be valid or applicable. Selection of a reference area that reflects the alternative post-mining land use and planned vegetation community structure may be a more practical approach in such cases, when suitable areas occur in the vicinity of the mine.

Rule 4.15.7(3)(b)(iii) is added to identify situations in which the planned post-mining vegetative community structure will differ significantly from the pre-mining vegetative community structure as a third exception to the pre-mining equivalency requirement. In such cases, Colorado does not require selection of separate reference areas representative of each plant community present within the area to be disturbed. In these situations, selection of a reference area that reflects the planned vegetation community structure may be more appropriate and practical than the traditional reference area approach when suitable areas are identified in the vicinity of the mine.

We concur with Colorado's proposal. The use of reference areas representative of unmined lands in the area as success standards is in compliance with the Federal regulations. The selection of reference areas that allow direct comparisons between communities with the same postmining land uses or similar plant community structures, rather than dissimilar communities, is appropriate and biologically and statistically valid. The use of multiple reference areas for developing weighted success standards based on relative premine ecological site acreages ensures restoration of premine capability. The provision requiring the permittee to demonstrate that management of the reference area will be under its control and will remain under its control throughout the period of extended liability, regardless of location, ensures the long-term protection of the reference areas. We have reviewed the proposed rule change and have determined it is consistent with and no less effective than the Federal regulations at 30 CFR 816/817.116(a)(2) and (b)(1) and (2).

4. Rule 4.15.7(3)(f), Reference Area Management

There is no Federal counterpart to this requirement.

The proposed change to this rule would require equivalent management of the reclaimed and reference areas in any year vegetation sampling will be conducted. In discussing this proposed change, Colorado indicated that rule 4.15.7(3)(f) was amended to be consistent with the proposed amendment to rule 4.15.7(5), which will allow vegetation sampling in two out of any four consecutive years beginning in year nine of the liability period.

This change is appropriate because it assures that similar management will be applied to both the reference and reclaimed areas during any year bond release evaluation of vegetation occurs. Moreover, the change maintains the statistical validity of any direct comparison. The proposed change is consistent with the intent of SMCRA and no less effective than the Federal regulations.

5. Rule 4.15.7(4), Use of Reference Areas

The Federal regulations at 30 CFR 816/817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved regulatory program.

The Federal regulations at 30 CFR 816/817.116(a)(2) require that standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking.

The Federal regulations at 30 CFR 816/817.116(b) require, in part, that (1) for areas developed for use as grazing land or pasture land, the ground cover and production of living plants on the revegetated area shall be at least equal to that of a reference area or such other success standards approved by the regulatory authority; and (2) for areas developed for use as cropland, crop production on the revegetated area shall be at least equal to that of a reference area or such other success standards approved by the regulatory authority. Essentially, the revisions to the rule simply address how reference areas may be used to determine revegetation success.

In other words, the proposed revisions to rule 4.15.7(4) provide additional guidance in the use of reference areas for the evaluation of revegetation success. In discussing the proposed revisions, Colorado stated that rule 4.15.7(4) is amended to address reference area comparison approaches applicable to each of the reference area types identified in proposed rule 4.15.7(3).

The inclusion of approaches for using established reference areas helps further define acceptable success standards for evaluating revegetation success. As proposed, the approaches represent valid methods for using reference areas. There is no direct Federal counterpart to the proposed rule. As proposed, the State rule is consistent with and no less effective than the Federal regulations. Therefore, we approve it.

6. Rule 4.15.7(5), Timeframes for Demonstration of Revegetation Success—Sections of the State Regulation Proposed for Amendment: 4.15.7(5) and 4.15.9 [30 CFR 816/817.116(c)(3)]

Colorado proposes in Rule 4.15.7(5) that revegetation success criteria shall be met for at least two of the last four years of the liability period and that sampling for final revegetation success shall not be initiated prior to year nine of the liability period. The responsibility period for Colorado is a minimum of ten years, the proposed rule thus allows for measurements to occur in any four year period beginning in year nine.

The Federal regulations at 30 CFR 816.116(c)(3), which are applicable for areas with less than 26 inches of annual precipitation, including Colorado, require that revegetation success standards be met during the last two consecutive years of the revegetation responsibility period. The major difference between the Federal regulations and Colorado's proposal is that Colorado's proposal would allow measurement in nonconsecutive years.

Originally the Federal regulations applicable for areas with greater than 26 inches of annual precipitation at 30 CFR 816.116(c)(2) required success standards to be met for the last two consecutive years of the responsibility period. These regulations were amended (53 FR 34636, September 7, 1988) to allow the standard to be met during any two years of the five year responsibility period excluding the first year. The change eliminated the requirement to measure revegetation success during the last two (consecutive) years of the responsibility period. The basis for the change was that measurements in nonconsecutive years avoid unduly penalizing the permittee for negative effects of climatic variability.

We previously approved New Mexico regulations stating ground cover and productivity shall equal the approved standard for at least two of the last four

years, starting no sooner than year eight of the responsibility period. New Mexico, like Colorado, experiences less than 26 inches of annual precipitation. We based our approval on the fact that the climatic variability of New Mexico was greater than that in areas with greater than 26 inches of precipitation. We stated that we believe it is appropriate to avoid penalizing permittees in New Mexico for the negative effects of climatic variability (the same reasoning used for areas receiving greater than 26 inches of precipitation). See New Mexico's approval at 65 FR 65770, November 2, 2000.

Similar to New Mexico, Colorado submitted climatic data. The Colorado mines are located in areas that represent variable precipitation ranges as shown on the table below. The data in the following table is from the monthly climate data, Colorado Climate Center at Colorado State University (*http://ccc.atmos.colostate.edu*), the Trapper Mine Annual Reclamation Report and the **Federal Register**: November 2, 2000 (Volume 65, Number 213), pages 65776–65777.

HISTORICAL PRECIPITATION

| Geographical area | Years of record | Precipitation range (inches) | Mean | Standard deviation | Coefficient of variation |
|---|---|---|---|---|---|
| Trapper Mine | 1980–2000 | ..... | 16.56 | 3.54 | 0.21 |
| Craig | 1937–1974 | 7.42–20.83 | 13.29 | 3.26 | 0.25 |
| Hayden | 1932–1999 | 10.89–26.40 | 16.38 | 3.39 | 0.21 |
| Trinidad | 1938–1999 | 5.42–22.24 | 13.42 | 3.36 | 0.25 |
| Grand Junction | 1963–1999 | 5.69–15.02 | 8.89 | 3.39 | 0.29 |
| Henderson, KY | 1978–1998 | 30.94–63.27 | 45.64 | 8.89 | 0.19 |

As seen in the table above, the coefficient of variation (a measure of the variability of the data) for the Colorado locations is greater than the Henderson, Kentucky location, which is representative of conditions in the east. Given the variability in precipitation, a dry year may present an obstacle to the second year of revegetation success sampling. Flexibility in sampling is needed to skip the drought year(s), and allow the operator to sample in one of the two following non-consecutive years. A demonstration of successful revegetation following a drought would clearly indicate the revegetation could withstand drought and the variable climatic conditions. Revegetation that is capable of meeting the performance standards both before and after a period of drought or pestilence would provide a better demonstration of resilience, effectiveness, and permanence than revegetation that could meet the standards during two consecutive (and fortuitous) years of more or less normal precipitation and damage. The likelihood of drought in Colorado needs to be recognized. The proposed rule changes ensure that performance standards will be met without undue costs or extensions of the ten-year liability period.

Colorado's proposed rules prohibit the inclusion of measurements taken during the first eight years of the responsibility period. This ensures that the plants will have the opportunity to become well established prior to any evaluation of the vegetation. This also provides the same level of flexibility in evaluating revegetation success provided by the Federal regulations for States receiving more than 26 inches of precipitation. Further, Colorado has asserted that if revegetation success were not demonstrated the second year of sampling, the operator would be required to take the necessary actions to achieve revegetation success. The liability period would then be reinitiated. The proposed rules do not affect the length of the extended period of responsibility, which is 10 years in Colorado. It should also be pointed out that because the proposed rules clearly state that the demonstration of success must be done for at least two of the last four years, the proposed rules provides the opportunity for requiring additional demonstrations as needed.

The current regulation at 30 CFR 816.116(c)(3)(i) pertaining to areas of 26 inches or less average precipitation does provide that success equal or exceed the approved success standard during the last two consecutive years of the responsibility period. However, the preamble to that rule published in the **Federal Register** on March 23, 1982, (47 FR 12600) does not provide rationale for measurement of revegetation success in consecutive years. OSM does state that for areas of less than 26 inches average annual precipitation, because of the greater variability in climatic conditions in these Western States, especially precipitation, it is difficult to base success on a single year's data. Thus, there is support for considering climatic variability in measuring revegetation success and for requiring two years of success, but not necessarily for consecutive years.

Colorado's proposed rules at 4.15.7(5) and 4.15.9 are as effective as the corresponding Federal regulations at 30 CFR 816.116(c)(3) in achieving the revegetation requirements of sections 515(b)(19) and (b)(20) of SMCRA.

7. Rule 4.15.7(5)(a)–(f), Normal Husbandry Practices [30 CFR 816/817.116(c)(4)]

The Federal regulations at 30 CFR 816.116(c)(1) require that the period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the regulatory authority in accordance with 30 CFR 816.116(c)(4). The Federal regulations at 30 CFR 816.116(c)(4) require that a State may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, provided it obtains prior approval from us that the practices are normal husbandry practices. In addition, a State may also approve selective husbandry practices, without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the post-mining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent vegetation success. Approved practices shall be normal husbandry practices within the region for unmined land having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control, and any pruning, reseeding, and transplanting specifically necessitated by such actions.

Colorado proposed to add rules identifying normal husbandry practices that will not be considered augmented practices and will not result in

restarting the responsibility period. In support of the proposed normal husbandry practices, Colorado indicated that several management practices are also addressed in this proposed rule. In rule 4.15.7(5)(a), repair of minor erosion (including revegetation) is allowed under certain conditions, to reflect the fact that minor erosion affecting limited areas is common during the early stages of reclamation, even when appropriate reclamation and stabilization measures are applied. The provision specifies that the operator's liability period for a reclaimed parcel subject to erosion repair extend for a minimum of five years after completion of such repair. This will allow the Colorado Division of Minerals and Geology (hereinafter DMG or Division) to determine that the repair has been successful in stabilizing the area prior to final bond release. Documentation of the repair work in the annual reclamation report will ensure accurate tracking for bond release purposes.

In Colorado's proposed rule at 4.15.7(5)(b), weed control measures are considered normal husbandry practices provided they are conducted in compliance with the Colorado Weed Management Act and the Division's Guidelines for Management of Noxious Weeds. A copy of the ''Colorado Noxious Weed Act'' [§ 5–5.5–115, C.R.S. (1996 Supp.)] and rules established pursuant thereto, and a copy of DMG's ''Guideline for the Management of Noxious Weeds on Coal Mine Permit Areas'' were included in the March 27, 2003, submission by Colorado (see Exhibits A and D).

Rules 4.15.7(5)(c), (d), and (e) identify specific practices recognized as normal husbandry practices for annual crop production, perennial cropland, and pasture land forage production, respectively. These land uses are characterized by more intensive management than is typical of rangeland or wildlife habitat. The Federal regulations require that all normal husbandry practices be identified in the approved State program.

Rule 4.15.7(5)(f) limits transplanting to a period within the first four years of the ten year liability period. The limitation on the number of trees or shrubs transplanted is 20 percent of the approved standard. These limitations will insure that transplanting to replace initial mortality loss during the liability period is of a limited nature and that artificially seeded or transplanted woody plants will have been in place for a minimum of six years prior to final bond release. Such limited transplanting is a normal husbandry practice associated with intensive woody plant establishment efforts such as wildlife plantings, windbreaks, etc. The U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) (formerly known as the Soil Conservation Service), the Colorado Soil Conservation Board, and the Colorado Division of Wildlife (DOW) submitted comments supporting this approach (Exhibit F to Colorado's March 27, 2003, State Program Amendment submission).

We consider, on a practice-by-practice basis, the administrative record supporting each normal husbandry practice proposed by a regulatory authority (53 FR 34641, September 7, 1988). We have also provided specific guidance concerning the repair of rills and gullies by stating that a regulatory authority could allow the repair of rills and gullies as a husbandry practice that would not restart the liability period if the general standards of 30 CFR 816.116(c)(4) are met, and after consideration of the normal conservation practices within the region (48 FR 40157, September 2, 1983).

In support of the proposed rule at 4.15.7(5)(a), allowing for the repair of rills and gullies, Colorado has provided a copy of a letter from the State Resource Conservationist with the NRCS. The letter clearly supports the repair of rills and gullies as a normal husbandry practice.

We reviewed the proposed normal husbandry practices and supporting documentation contained in Exhibit G of Colorado's March 27, 2003, submission for weed control, crop management and tree and shrub replanting. Exhibit G includes correspondence regarding normal husbandry practices and comments received from resource agencies.

Based on our review, we have determined that Colorado has provided sufficient supporting documentation to demonstrate that the normal husbandry practices described under rules 4.15.7(5)(a), (b), (c), (d), (e) and (f) are acceptable for unmined lands having land uses similar to the approved postmining land use of the disturbed area. In addition, in (a) and (b), Colorado limits the real extent of affordable repair of rills and gullies and weed control measures to no more than five percent of the acreage revegetated in any one year. If these limits are exceeded, the permittee would be required to restart the liability period.

We have determined that the proposed normal husbandry practices meet the criteria to be approved under 30 CFR 816/817.116(c)(4) and are no less effective than the Federal regulations.

8. Rule 4.15.7(5)(g), Normal Husbandry Practices—Interseeding [30 CFR 816/817.116(c)(4)]

Proposed rule 4.15.7(5) requires, in part, that the liability period shall re-initiate whenever augmented seeding, planting, fertilization, irrigation, or other augmentive work is required or conducted. Colorado proposes that management activities that are not augmentive, are approved as normal husbandry practices, and may be conducted without re-initiating the liability period.

At rule 4.15.7(5)(a), Colorado proposed that interseeding is considered a normal husbandry practice to enhance species or life form diversity on rangeland or wildlife habitat. Interseeding is not an allowable substitute for complete reseeding when a stand is dominated by species that do not support the approved post mine land use, or when vegetation cover is deficient and excessive erosion has resulted. Interseeding shall be permitted within the first four years of any ten-year liability period, upon approval by the Division. The nature, location and extent of the interseeding must be fully described in the annual reclamation report.

Colorado defines interseeding as a tool to enhance the diversity of established vegetation. Forb, shrub, and grass species native to the area are considered acceptable. The exact species to be used depends upon the post mining land use. Interseeding only applies to lands where vegetation is established and no other management tools are necessary. In contrast, augmented seeding is reseeding with fertilizer or irrigation, or is in response to an unsuccessful germination and establishment. If a reclaimed parcel is deficient in vegetative cover due to insufficient moisture, poor germination or improper planting methodologies, augmented seeding would be necessary and the ten-year liability period would be re-initiated.

The Federal regulations at 30 CFR 816.116(c)(1) require that the period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the regulatory authority in accordance with 30 CFR 816.116(c)(4). The Federal regulations at 30 CFR 816.116(c)(4) require that a State may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, provided it obtains prior approval from OSM that the practices are normal husbandry

practices without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the post-mining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent vegetation success. Approved practices shall be normal husbandry practices within the region for unmined land having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control, and any pruning, reseeding, and transplanting specifically necessitated by such actions.

In support of the proposed normal husbandry practice, Colorado states that interseeding on rangelands and wildlife habitat is a normal husbandry practice recommended by biologists and land managers to enhance established vegetation. In Rule 4.15.7(5)(g), the Division is proposing the use of interseeding. A. Perry Plummer, in ''Restoring Big Game Range in Utah'' (1968) states that ''interseeding (seeding directly into established vegetation usually with only partial reduction in competition) is a widely successful means of improving vegetative cover for game and livestock.'' He indicates that interseeding can be an effective means to establish shrubs and forbs in perennial grass stands and notes that the approach is especially useful on steep slopes where it is desirable to establish shrubs in predominantly herbaceous cover.

Many of the Conservation Reserve Program (CRP) lands in northwestern Colorado lack spatial, structural and vegetative diversity. To improve the diversity of some grass-dominated CRP lands for sharp-tailed grouse habitat, the DOW recommended, ''adding legumes and bunchgrasses and reducing sod-forming grasses within these fields to enhance the suitability for sharp-tailed grouse.'' Some reclaimed lands resemble CRP fields and interseeding is one of the tools DOW recommends to improve habitat diversity as documented in the DOW letter in Exhibit H of Colorado's March 27, 2003, State Program Amendment submission. To further implement this recommendation, the DOW assisted with the formation of the Habitat Partnership Program.

The Habitat Partnership Program is designed to protect and enhance the condition of public and private rangeland through the use of interseeding technology to modify species composition. Working cooperatively together in this program are representatives of the Rio Blanco Cooperative Extension Service, Douglas Creek Soil Conservation District, the White River Soil Conservation District, the DOW, and the NRCS.

Through funding made available by the DOW, an interseeding drill was purchased. The drill is available to landowners based on the priority list found in the Habitat Partnership Program Proposal. Of highest priority are wildlife forage improvement projects to improve wildlife habitat. The DMG believes that the use of interseeding on reclaimed lands can enhance the established vegetation similar to CRP lands and native rangelands to improve wildlife habitat.

Additional applicable references include Yoakum et. al. (1980), Monsen and Shaw (1983), Frischknecht (1983), and Soil Conservation Service (now known as NRCS) ''Range Seeding Standards and Specifications for Colorado'' (1987). In this latter reference, NRCS limits the practice to the eastern plains. Two coal mines on the eastern plains have successfully applied this practice to increase the warm season grass cover. Specifically, at the Bacon Mine and at the CCMC mine, warm season grasses were interseeded after it became apparent that the presence of those grasses was not as high as desired. Interseeding was a very effective technique for increasing the warm season grass component in the reclaimed community. Both of these mines have successfully achieved Phase III bond release criteria.

In rule 4.15.7(5)(g), Colorado defines interseeding as a tool used to enhance the diversity of established vegetation. Forb, shrub, and grass species native to the area will be considered acceptable. The exact species to be used will depend upon the post mining land use. Interseeding will only apply to lands where vegetation is established and no other management tools are necessary. In contrast, augmented seeding is reseeding with fertilizer or irrigation, or in response to an unsuccessful reclaimed parcel. If a reclaimed parcel is deficient in vegetative cover due to insufficient moisture, poor germination or improper planting methodologies, augmented seeding would be necessary.

Based on these references and practices, it is clear that in certain cases interseeding is desirable to increase the structural and vegetative diversity of the reclaimed lands for wildlife habitat and for rangeland improvement.

We consider, on a practice-by-practice basis, the administrative record supporting each normal husbandry practice proposed by a regulatory authority (53 FR 34641, September 7, 1988). In 1983, we considered and rejected the idea of allowing interseeding and supplemental fertilization during the first 5 years of the 10-year responsibility period. While allowing replanting of trees and shrubs ''to utilize the best technology available'' without extending the responsibility period, we determined that augmented seeding, fertilizing or irrigation are not allowed during the responsibility period. (*See* 48 FR 40156, September 2, 1983.)

However, in 1988 (53 FR 34641, September 7, 1988) we stated, in the context of the Federal regulation at 30 CFR 816.116(c)(4), that seeding, fertilization, or irrigation performed at levels that do not exceed those normally applied in maintaining comparable unmined land in the surrounding area would not be considered prohibited augmentative activities.

Further, in the response to comments received concerning an Ohio program amendment, OSM stated that ''[t]he legislative history of the Act [SMCRA] reveals no specific Congressional intent in the use of the term augmented seeding.'' Accordingly, our interpretation of augmented seeding is given deference so long as it has a rational basis (*see* 63 FR 51832, September 29, 1998).

Included in the proposal to allow interseeding as a normal husbandry practice are proposed definitions for ''augmented seeding'' and ''interseeding'' to distinguish the differences between them. Interseeding is clearly aimed at establishing species that require special conditions for germination and the establishment or altering of species composition. Colorado's discussion of interseeding as a normal husbandry practice in the ''Coal Mine Reclamation Program Vegetation Standards'' guidance document further clarifies that interseeding is done to enhance revegetation, rather than to augment revegetation. Colorado reiterates that interseeding is defined as a secondary seeding into established revegetation in order to improve diversity. In contrast, augmented seeding is reseeding with fertilization or irrigation, or in response to unsuccessful revegetation in terms of adequate germination or establishment or permanence. Thus, Colorado's goal for interseeding is not only to ensure that the reclaimed area will meet the success standards, but to go beyond the minimum standards of the regulations and improve the overall diversity of the reclaimed area.

Colorado also proposes to limit interseeding as a normal husbandry practice to the first four years of any ten year liability period. Such interseeding may consist of only native species and

approved introduced species contained in the original seed mix.

To support interseeding as a normal husbandry practice, Colorado submitted the documents identified above. Colorado also proposed interseeding as a method to improve wildlife habitat and grazing values. Further, all referenced publications support the use of interseeding as a normal husbandry practice.

We previously approved Indiana's definition of ''augmented seeding, fertilization, or irrigation'' as seeding, fertilizing, or irrigation in excess of normal agronomic practices within the region. Our approval was based on the concept that the proposed definition made a distinction between normal conservation practices that were not augmented seeding, fertilizing, irrigation or other work, and augmented husbandry practices (60 FR 53512, October 16, 1995).

We also previously approved the use of interseeding as a normal husbandry practice in New Mexico (65 FR 65770, November 2, 2000). The Colorado proposal is based on language in the approved New Mexico program.

Based on Colorado's proposed restrictions on ''interseeding,'' and the differentiation between ''interseeding'' and ''augmented seeding'' and the guidance provided for using interseeding as a normal husbandry practice, and other documentation and publications supporting interseeding as a normal husbandry practice in Colorado, we find that Colorado has demonstrated that the proposed use of interseeding is not augmented seeding. Because the use of interseeding proposed by Colorado clearly supports a key goal of SMCRA, which is the establishment of a permanent, diverse, and effective vegetative cover without compromising compliance of the State program with the Act, we also find that Colorado's proposed use of interseeding in rule 4.15.7(5)(g) is consistent with and no less effective than the Federal regulations at 30 CFR 816.116(c)(1) and (4).

9. Rules 4.15.11 and 4.15.8(7), Revegetation Sampling Methods and Statistical Demonstrations for Revegetation Success [30 CFR 816/817.116(a)(1)].

The Federal regulations at 30 CFR 816/817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved regulatory program.

The Federal regulations at 30 CFR 816/817.116(a)(2) require that standards for successes shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90-percent statistical confidence interval (*i.e.*, one-sided test with a 0.10 alpha error).

Colorado indicates that existing rule 4.15.8(7) is reorganized to correspond to proposed rule 4.15.11. Reference to a specific confidence level is deleted, and detailed statistical requirements including confidence levels are addressed in rule 4.15.11. Reference to a demonstration that ''woody plant density exceeds 90 percent * * *'' is added to allow for use of the ''reverse null'' approach to a success demonstration, an option further detailed in rule 4.15.11. The amended rules at 4.15.11(1)(b) require DOW consultation and approval for shrub plantings, address statistical approaches appropriate to woody plant density evaluation, and address the ''80/60'' requirement of 30 CFR 816/817.116(b)(3)(ii).

Colorado states that rule 4.15.8(7) also allows for a reverse null success demonstration based on the median for woody plant density, with a success threshold of ''70% of the approved technical standard.'' These changes correspond to the provisions of rule 4.15.11, and a detailed justification for use of the median-based reverse null approach, supported by data and analyses included in Exhibit I (found in the March 27, 2003, State Program Amendment submission), is presented within the statement of basis and purpose sections corresponding to pertinent provisions of rule 4.15.11. The current rule states that the ''establishment of woody plants shall be considered acceptable if the density is not less than 90% of the approved reference area or standard with 90% statistical confidence.'' This language is essentially identical to the Federal requirement at 30 CFR 816/817.116(a)(2). The ''not less than'' language implies use of the standard, or the traditional formulation of the null hypothesis, in which the inherent assumption is that reclamation has been successful for the parameter in question and the assumption of success must be upheld unless demonstrated to be false with statistical certainty. In this formulation, the ''burden of proof'' could be thought of as falling on the ''opponent'' of bond release. The current rule does not specify the use of the mean or median, but traditionally the population mean as estimated by the sample mean with associated confidence interval has been applied.

Colorado states that the amended rule allows for the traditional approach of the current rule, but would also allow for an alternative median-based reverse null approach for a woody plant density success demonstration (as specified in proposed rule 4.15.11(3)(a)). The reverse null approach is inherently more stringent than the traditional null formulation because the assumption is that reclamation has been unsuccessful for the parameter in question. The assumption of failure must be upheld unless demonstrated to be false with statistical certainty. In this formulation, the ''burden of proof'' falls on the ''proponent'' of bond release to demonstrate with statistical certainty that the reclaimed area parameter exceeds the specified success threshold. The median has certain advantages compared to the mean as a measure of central tendency, as the median is more stable or robust than the mean and it is impacted less by extreme data values. As a result, it is generally possible to estimate the population median with relatively high precision based on a relatively small sample size. However, as demonstrated by data included in Exhibit I, the median is a more stringent standard of success than the mean for woody plant density due to the typically skewed data distributions associated with woody plant samples on reclaimed lands. Because of the influence of a relatively small percentage of extremely high data values, the woody plant density mean almost always exceeds the woody plant density median by a substantial margin.

For woody plant density, the reverse null approach, combined with use of the median as a specified measure of central tendency, is more stringent than the Federal requirements at 30 CFR 816/817.116(a)(2), which allow for the traditional null formulation using the mean as the specified measure of central tendency. The increased stringency is due to the effects of both the reverse null formulation and use of the median. In order to offset this excess stringency, proposed rule 4.15.8(7) (in combination with proposed 4.15.11(3)(a)) allows for a success demonstration to be based on a threshold of 70% of a technical standard rather than 90% of the standard. Documentation in Exhibit I supports the reduction of the success threshold when the median is the specified parameter of comparison. The reduced stress threshold is further

justified by the requirement to employ the more stringent reverse null formulation to demonstrate success.

Colorado states that rule 4.15.11 is being added to be no less effective than 30 CFR 816/817.116(a)(1) and to specify the statistically valid sampling methods and testing techniques that operators must use in demonstrations of revegetation success. Acceptable sampling methods and approaches for estimates of vegetation cover, herbaceous production, and woody plant density are addressed in proposed rule 4.15.11(1).

We have reviewed rule 4.15.11(1). As proposed, this identifies the sampling methods that can be used to evaluate vegetation cover, herbaceous production and woody plant density. For vegetation cover, point intercept, line intercept or quadrat sampling are listed. For herbaceous production, quadrat sampling or total harvest are the identified methods. For woody plant density, identified methods include belt transects and circular or rectangular quadrats. Sampling can be either random or systematic. We have determined that these are all standard sampling techniques used throughout the country and have been previously approved in multiple State programs. Thus, subsection 4.15.11(1) is consistent with and no less effective than the requirements of 30 CFR 816.116(a) and therefore should be approved.

The State indicates that statistical testing and sample adequacy approaches acceptable for vegetation cover, herbaceous production, and woody plant density are addressed in proposed rule 4.15.11(2). The amended rule ensures that tests for success will employ a 90 percent confidence level (alpha error probability = .10) for ''standard null hypothesis-based'' demonstrations of success, and that tests will employ an 80 percent confidence level (alpha error probability = .20) for ''reverse null hypothesis-based'' demonstrations of success. Data and analyses in Exhibit I of the program amendment demonstrate that reverse null tests at the 80% level of confidence are no less effective (and in fact are more stringent) than standard null tests at the 90% level of confidence. Selected revegetation success standards are addressed in rules 4.15.7(2)(d), 4.15.7(3), 4.15.7(4), 4.15.8, 4.15.9, and 4.15.10. Justification for the 70% success threshold of proposed rule 4.15.11(3)(a) for woody plant density is provided in the discussion under Rule 4.15.8(7) above, and pursuant to associated amendments to Rule 4.15.8(7). Additional justification is included in Exhibit I.

Colorado states that proposed rule 4.15.11(2)(a) incorporates into its regulations the standard statistical sample adequacy formula and direct success comparison approach previously specified in DMG guidelines. A notable modification is that the rule allows for use of a precision level of 0.15, rather than 0.10, in the standard sample adequacy formula for woody plant density estimation. Larson (1980) used a precision level of 0.10 in example data sets, and that level of precision has subsequently been widely specified in State regulations and guidelines. However, no specific level of statistical precision is required by the Federal regulations in 30 CFR 816/817.116. In Colorado, we have found the 0.10 precision level to be appropriate and practicable in the majority of cases for statistical evaluation of cover and production success. However, due to the high variability and skewed distributions typical of reclaimed area woody plant density data, extremely large sample sizes are typically necessary to demonstrate sample adequacy for woody plant density at the 0.10 level of statistical precision. The time and expense associated with obtaining estimates of woody plant density that are precise to within 10% of the true mean are not justified for coal reclamation lands in Colorado. Colorado enclosed, as Exhibit I, a package containing woody plant density data from representative mine reclamation areas in the Yampa Basin and North Park, Colorado. The package includes detailed analyses of the data, and presents justification for use of a precision level of 0.15 in the standard sample adequacy formula for woody plant density estimation. Colorado asserts that use of the 0.15 precision level rather than 0.10 will significantly reduce required sample sizes for reclaimed area woody plant density estimates. In Colorado's judgment, the increased precision associated with use of 0.10 for woody plant density estimation is not critical, and the relatively small increase in precision comes at too high a price in terms of the time and effort associated with the additional data collection. Colorado also asserts that the use of a 0.15 precision level rather than 0.10 for demonstrating woody plant density success will negligibly affect the extent to which reclaimed shrublands provide desired wildlife cover and forage on reclaimed landscapes. In Colorado, woody plant density standards are set based on consultation with DOW personnel and reflect the consideration of a wide range of variables typically involving negotiation among DOW and DMG staff, operators and consultants. It is not an exact science and necessary or optimum levels of woody plant density to meet applicable habitat requirements are not precisely defined. Colorado believes that the application of such a high degree of precision to a standard that is based on professional recommendations and negotiation is unwarranted.

Our review affirms that rule 4.15.11(2) identifies the statistical analysis and sample adequacy procedures to be used in evaluating vegetative cover, herbaceous production and woody plant density. Rule 4.15.11(2)(a) gives the standard sample adequacy formula for use in direct comparisons when the value for the reclaimed area is greater than the standard, or when the reclaimed value is less than the standard but not significantly different. It sets sampling precision at 0.10 for vegetative cover and herbaceous production and 0.15 for woody plant density. In discussing the setting of precision levels, OSM indicates that it has not stated a level of sampling precision in the final rules but will instead evaluate on a case-by-case basis the adequacy of predetermined sample sizes or methods of sample size selection proposed for use in State programs (48 FR 40150, September 2, 1983). Colorado's proposal to set precision levels at 0.10 for vegetative cover and herbaceous production is consistent with previously approved precision levels used in States in the West. Colorado has also demonstrated that the proposal to use a precision level of 0.15 for woody plant density is appropriate given the high variability in shrub density across a reclaimed area. The proposed rule is consistent with and no less effective than the Federal requirements of 30 CFR 816.116(a) and should be approved.

We note that rule 4.15.11(2)(b) includes the standard method for comparing vegetative parameters from the reclaimed area to 90% of the success standard. This approach makes use of the classic null hypothesis, which is that the vegetation on the reclaimed land is equal to or greater than that of the success standard. Under this approach, the vegetation on the reclaimed area may be less than the success standard; but statistically, it is not significantly different and the null hypothesis is not rejected. The minimum sample size is 15 and all sampling must meet sample adequacy using the formula in Subsection 4.15.11(2)(a). This is the standard approach used by State Regulatory Authorities throughout the United States and is the approach discussed in

the 1983 preamble (48 FR 40152, September 2, 1983). As proposed, this subsection is consistent with and no less effective than the Federal regulations and should be approved.

As discussed in the State's supporting justification, subsection 4.15.11(2)(c) proposes to allow the use of the ''reverse null'' hypothesis when the vegetation parameter from the reclaimed area is greater than the success standard, but the number of samples taken is not sufficient to meet sample adequacy. The reverse null hypothesis states that vegetation on the reclaimed area is less than 90% of the success standard. OSM has previously approved use of the reverse null hypothesis in the New Mexico program. Under the Colorado proposal, the confidence interval is set at 80% (alpha = 0.20) and a minimum of 30 samples is required. The proposed alpha (error probability) of 0.20 is greater than the 0.10 in the Federal regulations. However, in order to demonstrate that the revegetation meets the success standard under the reverse null hypothesis, the operator must show that the vegetative parameter of concern is significantly greater than 90% of the success standard. That is, the mean value for a given parameter must be well above the success standard because to be significantly greater than the success standard, the lower tail of the 80% confidence interval must also be greater than 90% of the success standard. Therefore, even though the error probability is slightly larger under the State's proposal, the requirement to exceed the success standard ensures consistency with the Federal regulations. To support this approach, data in Exhibit I shows that a comparison of (1) statistical testing using the standard null hypothesis and a 90% confidence interval and (2) the reverse null hypothesis using an 80% confidence interval either gave the same results or the reverse null was more stringent. For this reason, the use of an 80% percent confidence interval with an alpha of 0.20 is consistent with and no less effective than the Federal regulations and should be approved.

In discussing rule 4.15.11(3), the State indicates that it allows for additional optional approaches for demonstrations of sample adequacy and revegetation success that are solely applicable to woody plant density. The approaches include (1) a median based reverse null confidence limit comparison, (2) a mean based pre-determined sample size direct comparison, and (3) an approach based on stabilization of the running sample mean. The range of options presented for woody plant density is warranted, due to the extremely large sample sizes that have frequently been necessary in order for operators to demonstrate success for this parameter using traditional statistical methods. Based on the discussion below, the approaches specified in rules 4.15.11(3)(a), (b), and (c) are no less effective than the applicable Federal requirements of 30 CFR 816.116(a)(1) and (a)(2). However, depending on characteristics of the data, the range of options may allow for operators to select a success demonstration approach that requires a less intensive sampling effort than would be required if limited to only one or two approaches.

Colorado included, in Exhibit I, data and arguments in support of these approaches.

Rules 4.15.8(7) and 4.15.11(3)(a) propose using the reverse null hypothesis and nonparametric rank-sum test to demonstrate that the median value for the reclaimed area is greater than 70% of the success standard using an 80% confidence interval. In discussing this proposal in Exhibit I, the State indicates that, based on the literature and its observations, woody plant density data from reclaimed lands are seldom normally distributed and typically exhibit lognormal or similar distributions with a strong skewness to the right. Parametric statistics based on means and standard deviations include the assumption that the data come from a normal distribution. This limits the use of normal statistics in these type of populations. The median is a relatively ''robust'' or ''resistant'' measure of central tendency. It is not influenced by a few extreme values and so it does not get pulled toward the right tail. As a result, in a right-skewed distribution, the median is always lower than the mean. Because reclaimed parcel woody plant density data sets typically exhibit right-skewed distributions, the requirement to demonstrate woody plant density success based on a comparison of the median to a technical standard is more stringent than a demonstration based on a comparison of the mean to the same technical standard. Review of the various data sets and summary statistics submitted by Colorado in Exhibit I indicates that, on average, the medians for data averaged less than 75% of the mean for those same data sets. Based on this information, it is reasonable to use 70% (*e.g.*, 90% of 75%) of the success standard when making comparisons to the median value of the reclaimed area. The fact that amended rule 4.15.11(3)(a) also requires a reverse null confidence limit comparison on the median adds an additional layer of stringency. To be judged successful, the one tailed 80% lower confidence interval on the sample median would have to exceed the success threshold.

Based on a review of the data submitted by the State, OSM has determined that proposed rules 4.15.8(7) and 4.15.11(3)(a) are consistent with the intent of SMCRA and no less effective than 30 CFR 816.116(a)(2) in establishing success standards and ensuring that statistically valid comparisons are made during the evaluation of revegetation success. Accordingly, the rule should be approved.

In discussing rule 4.15.11(3)(b)(i) in Exhibit I, Colorado indicates that an approach that may in certain situations allow for a smaller sample size than indicated by the standard sample adequacy formula, without a corresponding reduction in stringency, is a non-statistical predetermined (or maximum) sample size.

Rule 4.15.11(3)(b)(i) allows for an empirically derived, predetermined sample size of 75 that operators could use for a success demonstration in cases where sample adequacy has not been demonstrated by approved statistical formulas. In this approach, the woody plant density sample mean obtained from a sample of at least 75 100-square-meter quadrats is compared directly against the approved success threshold (90% of the approved standard) with no consideration of statistical error or confidence level). The specified quadrat size restriction is necessary because a high percentage of the data that comprise the basis for the proposed sample size of 75 were obtained using a 2-meter by 50-meter quadrat.

Again, the State has included in Exhibit I a review of several data sets to demonstrate that a sample size of 75 is generally adequate to ensure that the sample mean would be within the 90% confidence interval of a statistically adequate sample. The 75 sample size was no less effective than using the sample adequacy formula to determine sample size more than 90% of the time. It should also be noted that in the preamble to the Federal regulations at 30 CFR 816.116(a)(1), OSM stated that we will evaluate on a case-by-case basis the adequacy of predetermined sample sizes (48 FR 40150, September 2, 1983). Based on the information submitted as part of this program amendment, we determined that the use of a maximum of 75 samples to evaluate the success of woody plant density is consistent with the intent of SMCRA and no less effective than the Federal regulations.

Rule 4.15.11(3)(b)(ii) will allow the use of a sample adequacy calculation that is based on the variance of the

running mean, a minimum sample size of 40 samples, a precision of 0.03, and an alpha of 0.10. In Exhibit I of this amendment, Colorado evaluated the variance of the running mean sample adequacy approach based on a number of the data sets. The running mean approach results in drastically reduced sample sizes compared to the standard sample adequacy approach (as specified in 4.15.11(2)(a)), when the same level of precision is specified in the formulas. This is due to the fact that successive running mean values are much less variable than successive sample observations. As such, the variance of the sample mean is correspondingly smaller than the sample variance.

As discussed in Exhibit I of the amendment, Colorado compared three different levels of precision, 0.10, 0.05, and 0.03, to determine the effect on sample size and estimates of the mean and to ensure that reduced sample size will not weaken the ability of hypothesis testing to detect a true difference between the reclaimed area mean and the approved standard (success threshold). The two lower levels of precision (*i.e.*, 0.10 or 0.05) do not appear to result in reliable estimates of the mean when applied to the Colorado data, even when a minimum sample size of 40 is imposed. At the .03 level of statistical precision, and with a minimum sample size of 40, the modified sample adequacy formula provides for a modest reduction in average sample size compared to average sample size resulting from application of the standard sample adequacy formula with a 0.15 precision level. Further, success demonstration stringency is comparable when the modified standard deviation term is substituted in the t-test formula.

We have reviewed the proposed alternative sample adequacy formula, which can be used either in a direct comparison (*i.e.*, the mean from the reclaimed area is greater than 90% of the success standard) or using a t-test with the classic null hypothesis and an alpha of 0.10. Based on review of the data analysis used to support Colorado's proposal, OSM agrees with the State's conclusion that the modified sample adequacy approach based on the variance of the running mean, with a precision level of 0.03 and a minimum sample size of 40, is no less stringent than the standard sample adequacy approach with a precision level of 0.15. As discussed above in relation to Colorado's rule 4.15.11(2)(a) we have approved a precision level 0.15. There is no level of statistical precision required by Federal regulations. Its use with either direct comparisons or a t-test based on the classic null hypothesis is also appropriate. We have determined that the inclusion of a sample adequacy calculation that is based on the variance of the running mean, a minimum sample size of 40 samples, a precision of 0.03, and an alpha of 0.10 for establishing required sample sizes when sampling woody plants is consistent with and no less effective than the Federal regulations.

Finally, rule 4.15.11(3)(c) allows for the use of a t-test based on the classic null hypothesis and alpha of 0.10 to demonstrate success of woody plant density. This is the classic approach for demonstrating revegetation success and is consistent with and no less effective than the Federal regulations.

10. Rule 1.04(71)(f) and (g), Land Use—''Industrial or Commercial'' and ''Recreation'' [30 CFR 701.5]

Colorado proposes to revise its land use definitions to create two categories of recreation land use. The existing definition of a ''recreation'' land use would be revised to limit it to non-intensive uses such as hiking, canoeing, and other undeveloped recreational uses. The State then proposes to add a developed commercial recreation category to its ''industrial or commercial'' land use. Developed commercial recreation would be designated as including facilities such as amusement parks, athletic or recreational sports facilities, and other intensive use recreational facilities. This designation applies only to lands that are physically developed for intensive recreational use, and does not include adjacent lands that are not physically affected.

In support of this proposal, Colorado states that developed commercial recreation facilities are more similar in nature to commercial service facilities than to undeveloped recreational uses such as hiking, canoeing, and other leisure activities that do not depend on specialized man-made structures and facilities.

The Federal definition for a recreation land use is land used for public or private leisure-time activities, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses. The land use categories, as defined in the regulations, are used to determine if the postmining land use is different than the premining land use, thereby necessitating a land use change. They are also used to determine what the applicable revegetation success criteria would be. OSM has reviewed Colorado's proposed land use definitions for commercial or industrial and recreation. The proposed change would have no effect on determining if a land use change is proposed. The proposed change would affect the revegetation success standards that developed commercial recreation, as defined by the State, would be subject to. Because the revised definition of developed commercial recreation is included under industrial or commercial, revegetation would only be evaluated based on the Federal requirements of 30 CFR 816/817.116(b)(4), vegetative ground cover not less than that required to control erosion. Currently, areas with a land use of recreation are required to comply with the Federal requirements of 30 CFR 816.116(b)(3), which include criteria for woody plant stocking and a ground cover not less than that required to achieve the postmining land use. Under this rule, minimum stocking and planting arrangements are specified by the regulatory authority on the basis of local and regional conditions and after consultation with and approval by the State agencies responsible for the administration of forestry and wildlife programs.

OSM has evaluated the effect of Colorado's proposed revision to the definitions of ''industrial or commercial'' and ''recreation'' and determined there would be none. Developed commercial recreation would not be subject to stocking and planting requirements of the State agencies responsible for the administration of forestry or fish and wildlife programs because of the intensive development of these areas and the lack of authority over such commercial enterprises. And because developed commercial recreation is limited to lands that are physically developed for intensive recreational use, OSM believes that ground cover adequate to control erosion would achieve the postmining land use. The areas that would continue to fall under the recreation land use would continue to be evaluated in the same manner as is currently approved in the Colorado program.

Based on this OSM has determined that the proposed revisions to the land use definitions are no less effective than the Federal regulations and should be approved.

11. 4.06.1(2), Topsoil Storage [30 CFR 816/817.22(c)]

Colorado proposes to amend rule 4.06.1(2) to require that after removal, topsoil shall be immediately redistributed in accordance with rule 4.06.4, or stockpiled pending

redistribution in accordance with rule 4.06.3.

Federal regulations at 30 CFR 816/817.22(c)(1) require that materials removed under section 816/817.22(a) shall be segregated and stockpiled when it is impractical to redistribute such materials promptly on regraded areas.

In discussing the proposed revision, Colorado indicated that rule 4.06.1(2) was amended to be no less effective than 30 CFR 816/817.22(c). Alternative topsoil storage practices were deleted from the rule.

Item S–4 from OSM's May 7, 1986, 30 CFR part 732 letter required Colorado to provide that topsoil storage other than stockpiling may be used only when (1) stockpiling would be detrimental to the quantity or quality of the stored materials, (2) all stored materials are moved to an approved site within the permit area, (3) the alternative practice would not permanently diminish the capability of the soil of the host site, and (4) the alternative practice would maintain the stored materials in a condition more suitable for future redistribution than would stockpiling. In response, Colorado has eliminated the provision for allowing alternative practices for topsoil storage. The State now only allows the use of topsoil stockpiles. While the Federal regulations do allow the use of alternative practices for topsoil storage, it is only under limited circumstances. The lack of a State counterpart to this provision does not adversely affect the protection of salvaged topsoil or reduce the effectiveness of the State's program. Colorado's proposal is consistent with and no less effective than the Federal regulations. Therefore, we are approving it.

*D. Revisions to Colorado's Rules With No Corresponding Federal Regulation*

2.04.13(1)(e), Annual reclamation report.

There is no Federal counterpart to this requirement in Colorado's regulations that call for an annual reclamation report. Therefore, the requirement is more effective than the Federal regulations and more stringent than SMCRA. Therefore, we are approving it.

## IV. Summary and Disposition of Comments

*Public Comments*

We received comments in response to our notice in the **Federal Register** published October 1, 2004. We did not receive comments in response to notices published June 3, 2003, and November 20, 2003.

We received a letter via e-mail dated October 18, 2004, from the Rocky Mountain Director of Public Employees for Environmental Responsibility (PEER) (Administrative Record No. CO–696–11). On its Web page, PEER states that it is a national non-profit alliance of local, State and Federal scientists, law enforcement officers, land managers and other professionals dedicated to upholding environmental laws and values.

PEER comments address Colorado's proposed rules at 4.15.7(5), 4.15.7(5)(g), and 4.15.9. However only proposed changes to rules 4.15.1(5), 4.15.9 and 1.04(78) were the subject of the comment period established by OSM's notice published in the **Federal Register** on October 1, 2004 (69 FR 58873).

More specifically, PEER commented on changes to rule 4.15.7(5) amending general revegetation success requirements applicable to all postmining land uses and on the addition of proposed rule 4.15.7(5)(g) pertaining to interseeding versus augmented seeding. These proposed changes were included in the package submitted by Colorado on March 27, 2003, and subject to our comment period announced in the June 3, 2003, **Federal Register**. That comment period ended on July 3, 2003. Therefore, the changes proposed to rule 4.15.7(5) and 4.15.7(5)(g) are not subject to the instant comment period, and will not be discussed further herein.

In rule 4.15.9, Colorado proposes changes for areas used as cropland. Success of revegetation will be determined on the basis of crop production from the mined area as compared to approved reference areas or other approved standards. Crop production from the mined area will not be less than that of the approved reference area or standard for two of the last four years of the liability period established in rule 3.02.3. Crop production will not be considered prior to year nine of the liability period. This represents a change from Colorado's current rule requiring crop production to be considered during the last two years of the liability period.

PEER's comments on proposed rule 4.15.9 refer to an earlier version of the rule mistakenly submitted by Colorado. PEER objects that the proposed rule could allow measurement of revegetation success on cropland as early as year four after final augmented work if the crop is irrigated. In its submission dated July 23, 2003 (the subject of the instant comment period), Colorado states that wording from a previous version of the draft rules was inadvertently left in the proposed rule submitted to OSM on March 27, 2003. The submission made on July 23, 2003, contained the corrected version of proposed rule 4.15.9. The corrected version of proposed rule 4.15.9 was quoted in the **Federal Register** notice establishing the instant comment period. The corrected version contains no reference to measurement starting earlier than year nine. Nor is there any allowance for changing the applicable period of responsibility based on irrigation.

In its comments, PEER cites Federal regulations at 30 CFR 816.116(c)(3)(i) noting that for western States (meaning specifically in areas of 26.0 inches or less average precipitation) revegetation success is to be measured in the last two consecutive years of the responsibility period. PEER states that Colorado's proposal could allow measurement in year nine and again in year 11, and that this would not be consistent with the Federal rules requiring measurement in the last two consecutive years of the responsibility period. PEER states that the change will result in bond release being allowed under the Colorado program in cases when it would not be allowed under OSM's rules. On this basis, PEER states Colorado's proposal is less effective than OSM's rules in achieving the requirements of SMCRA.

As described below, the criteria for a State provision to be no less effective than the Federal regulations is not dependent on comparing resulting situations as described by PEER for year nine and 11 versus results for the last two consecutive years of the responsibility period. The focus of OSM's analysis is a State's capability to achieve the result prescribed in SMCRA. SMCRA at 515(b)(19) and (20), as interpreted by the Federal regulations at 30 CFR 816.116 (b)(2), require that for areas developed for use as cropland, crop production on the revegetated area shall be at least equal to that of a reference area or such other success standards approved by the regulatory authority. See preamble to 30 CFR 816.116 (b)(2) (47 FR 40152) published September 2, 1983.

PEER based comments against the proposed changes on three additional factors. The first factor is a legal argument. PEER states that Colorado in its statement of basis and purpose notes that OSM has approved a similar proposal in New Mexico. PEER states that approval in another State is not grounds to approve a proposal from Colorado that is less effective than OSM's rules. PEER also takes exception to the rationale OSM relied on to approve the New Mexico variation.

OSM's standard for review and consideration of a State's proposed rule in comparison to a counterpart Federal

regulation is at 30 CFR 730.5(b), whereby State laws and regulations must be no less effective than the Secretary's regulations in meeting the requirements of the Act. PEER takes exception to regulations proposed by Colorado that fall under the standard in 30 CFR 730.5(b). The preamble to 30 CFR 730.5(b) (see 46 FR 53376, 53377, October 28, 1981) makes it clear that States are not required to precisely adopt the Secretary's regulations; that within limits, they are free to develop and adopt regulations that meet their special needs. States are no longer required to demonstrate that each alternative is necessary because of local requirements or local environmental or agricultural conditions. A State program will, however, have to be no less effective than the Secretary's regulations in meeting the requirements of the Act in order to be approved. As discussed in more detail above, OSM has determined that Colorado's proposal meets the criteria of 30 CFR 730.5(b).

The second factor is biological. PEER states that the amount of precipitation is far more important than the variability of precipitation. PEER notes that SMCRA holds the dry western States to a more stringent standard than the eastern States precisely because of the relative lack of precipitation. More specifically, PEER states that SMCRA already holds operators in western states to a 10-year responsibility period, as opposed to only a five-year period in the east. PEER contends that any effort to allow a western State to use the less stringent eastern standard as ''no less effective'' than the more stringent western standard is ridiculous on its face. PEER further contends that revegetation is still difficult in the West because of the limited precipitation. PEER does not agree that Colorado's argument alleging that non-consecutive years actually provides a better demonstration of revegetation success. PEER states that measuring revegetation during a drought year would more clearly show its resilience and permanence than measuring after the drought has broken. It is also concerned that the proposed rule would allow operators to ''cherry pick'' the most successful years and submit only the best revegetation data.

OSM notes that neither 515(b)(19) or (20) of SMCRA specify when revegetation success must be evaluated; these sections only state the requirement to establish vegetation on regraded areas and affected lands, and establish the responsibility period for successful revegetation. The longer responsibility period for areas where the annual average precipitation is 26.0 inches or less is based on the concept that more time is necessary to establish vegetation under lower precipitation regimes.

The preamble to OSM's current Federal regulation at 30 CFR 816.116(c)(3)(i) pertaining to areas of 26.0 inches or less average precipitation published in the March 23, 1982, **Federal Register** (47 FR 12600) states that for areas of less than 26.0 inches average annual precipitation, because of the greater variability in climatic conditions, especially precipitation, it is difficult to base success on a single year's data. Thus, there is support for requiring two years of success, but not necessarily for consecutive years.

Additionally, SMCRA does not specify timeframes for actually evaluating revegetation success. OSM also concurs with Colorado's argument that recovery from a drought is an important demonstration of the success of revegetation in demonstrating compliance with 515(b)(19).

PEER's third factor for objecting to Colorado's proposed revision deals with the relevance of weather variability. PEER indicates that because Colorado generally uses reference areas rather than technical standards (the use of reference areas being less common in the East), weather variability is already taken into account. As noted above, weather variability is a factor for requiring two years of revegetation success, but is not necessarily a factor requiring two consecutive years of success.

PEER also contends that Colorado's proposal should be made to OSM in a petition for rulemaking. The procedure for petitioning for rulemaking is provided at 30 CFR 700.12. However, this does not preclude Colorado from proposing alternatives to OSM's rules under 30 CFR 730.5.

For the above reasons, notwithstanding PEER's comments, we are still approving Colorado's proposed changes to the rule at 4.15.9 pertaining to revegetation success criteria for cropland. A more detailed analysis of our reasoning is found under section C.6. above.

*Federal Agency Comments*

Under the Federal regulations at 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 Colorado program (Administrative Record No. CO–696–5). No comments were received.

*Environmental Protection Agency (EPA) Concurrence and Comments*

None of the revisions that Colorado proposed to make in this amendment pertain to air or water quality standards. Therefore we did not ask EPA to concur on this amendment.

*State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)*

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On May 2, 2003, we requested comments on Colorado's amendment (Administrative Record No. CO–696–3,4), but none were received.

## V. OSM's Decision

Based on the above findings, we approve Colorado's March 27, 2003, amendment, its April 4, 2003, addition, and its July 23, 2003, revisions.

We approve the rules as proposed by Colorado with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR part 906, which codify decisions concerning the Colorado 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 regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

## VI. Procedural Determinations

*Executive Order 12630—Takings*

This rule does not have takings implications. For most of the State provisions addressed, this determination is based on the analysis performed for the counterpart Federal regulation. For the remaining State provisions, this determination is based on the fact that the rule will not have impact on the use or value of private property and so does not result in significant costs to the government.

*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 (Regulatory Planning and Review).

*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 rule does not involve or affect Indian Tribes in any way.

*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.*) because it is largely 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 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 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. For the reason stated above, 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 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 regulations did not impose an unfunded mandate. For the portion of the State provisions that is not based on 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 906**

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 20, 2005.

**Allen D. Klein,**

*Regional Director, Western Regional Coordinating Center.*

■ For the reasons set out in the preamble, the Federal regulations at 30 CFR part 906 are amended as set forth below:

## PART 906—COLORADO

■ 1. The authority citation for part 906 continues to read as follows:

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

■ 2. Federal regulations at 30 CFR 906.15 are amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

**§ 906.15 Approval of Colorado regulatory program amendments**

* * * * *

| Original amendment submission date | Date of final publication | Citation/description |
|---|---|---|
| * | * | * * * * * * |
| 3/27/03 ..... | 3/24/05 ..... | 1.04(71)(f)&(g), 2.04.13(1)(e), 2.06.6(2)(a),(g), 2.06.8(4)(a)(i), 2.06.8(5)(b)(i), 2.07.6(1)(a)(ii), 2.07.6(2)(n), 2.08.4(6)(c)(iii), 3.03.2(1)(e), 3.03.2(5)(a), 4.03.1(4)(e), 4.05.2, 4.06.1(2), 4.15.1(5), 4.15.4(5), 4.15.7(1), 4.15.7(2), 4.15.7(3)(b), 4.15.7(3)(f), 4.15.7(4), 4.15.7(5), 4.15.7(5)(a), 4.15.7(5)(b), 4.15.7(5)(c), 4.15.7(5)(d), 4.15.7(5)(e), 4.15.7(5)(f), 4.15.7(5)(g), 4.15.8(3)(a), 4.15.8(4), 4.15.8(7), 4.15.8(8), 4.15.9, 4.15.11, 4.15.11(1)(a), 4.15.11(1)(b), 4.15.11(1)(c), 4.15.11(2), 4.15.11(3), 4.25.2(4). |

[FR Doc. 05–5807 Filed 3–23–05; 8:45 am]

BILLING CODE 4310–05–P

## DEPARTMENT OF EDUCATION

## 34 CFR Part 225

**RIN 1855–AA02**

## Credit Enhancement for Charter School Facilities Program

**AGENCY:** Office of Innovation and Improvement, Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary issues these final regulations to administer the Credit Enhancement for Charter School Facilities program, and its predecessor, the Charter School Facilities Financing Demonstration Grant program. Under this program, the Department provides competitive grants to entities that are non-profit or public or are consortia of these entities to demonstrate innovative credit enhancement strategies to assist charter schools in acquiring, constructing, and renovating facilities through loans, bonds, other debt instruments, or leases.

**DATES:** These regulations are effective April 25, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ann Margaret Galiatsos or Jim Houser, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W245, FB–6, Washington, DC 20202–6140. Telephone: (202) 205–9765 or via Internet, at: *charter.facilities@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact persons listed under **FOR FURTHER INFORMATION CONTACT.**

**SUPPLEMENTARY INFORMATION:**

### Background

These final regulations apply to both (a) the Credit Enhancement for Charter School Facilities program, which is authorized under title V, part B, subpart 2 of the Elementary and Secondary Education Act of 1965 (the Act), as amended by the No Child Left Behind Act of 2001 (Pub. L. 107–110, enacted January 8, 2002) and (b) its predecessor, the Charter School Facilities Financing Demonstration Grant program, as authorized by title X, part C, subpart 2 of the Act through the Department of Education Appropriations Act, 2001 as enacted by the Consolidated Appropriations Act, 2001. The purpose of this program is to assist charter schools in meeting their facilities needs. Under this program, funds are provided on a competitive basis to public and nonprofit entities, and consortia of these entities, to leverage other funds and help charter schools acquire school facilities through such means as purchase, lease, and donation. Grantees may also use grants to leverage other funds to help charter schools construct and renovate school facilities.

To help leverage funds for charter school facilities, grant recipients may, among other things: Guarantee and insure debt, including bonds, to finance charter school facilities; guarantee and insure leases for personal and real property; facilitate a charter school's facilities financing by identifying potential lending sources, encouraging private lending, and carrying out other, similar activities; and establish temporary charter school facilities that new charter schools may use until they can acquire a facility on their own.

Sections in these regulations that govern the management of grants apply to grants under both the Credit Enhancement for Charter School Facilities program and its predecessor, the Charter School Facilities Financing Demonstration Grant program. These two programs are virtually identical, and grants made under them will operate for several years. Sections related to grantee selection apply only to grant competitions conducted after fiscal year (FY) 2004.

### Discussion of Regulations

The primary purpose of these regulations is to establish selection criteria for this complex program's discretionary grant competitions after FY 2004. Since we seek to award grants to high-quality applicants with high-quality plans for use of their grant funds, these criteria essentially include assessments on the quality of the applicant and the quality of the applicant's plan. The criteria also assess how applicants propose to leverage private or public-sector funding and increase the number and variety of charter schools assisted in meeting their facilities needs. The selection criteria are similar to those we have used in the two previous competitions for this program. As noted in the *Background Section,* this regulation also includes several provisions that govern the ongoing management of the grants already awarded in preceding fiscal years.

### Analysis of Comments and Changes

On October 22, 2004, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (69 FR 62008). In response to the Secretary's invitation in the NPRM, four parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows. We discuss substantive issues under the subparts of the regulations to which

they pertain. Generally, we do not address technical and other minor changes.

*Subpart A—General*

*Comment:* A commenter thought that § 225.1 would be clearer if it explicitly mentioned that the purposes of the program included helping charter schools construct or renovate school buildings.

*Discussion:* The Department agrees that helping charter schools construct or renovate school buildings is an objective of the program.

*Change:* The regulations now reference construction and renovation under § 225.1(b)(1).

*Comment:* One commenter sought a change to how the Department is implementing 34 CFR 74.24 as it relates to guarantee fees assessed by program participants. The commenter sought to have the flexibility to use these fees for purposes other than just the four purposes of the reserve account described under section 5225 of the program statute, which are to—

- Guarantee and insure debt;
- Guarantee and insure leases;
- Facilitate lending; and
- Facilitate bonding.

*Discussion:* Guarantee fees based on the Federal grant funds are program income. Program income is income that is directly earned from the grant. If the Federal grant funds are being directly pledged as a guarantee to earn fees, these fees are directly earned by the grant.

Under most Federal grant programs, the size of the grant is typically reduced by the amount of any program income earned. Under this program, however, the statute specifies that grantees may use their grants to earn funds as long as the earned funds are placed in the reserve account and used for the designated four reserve account purposes.

Since the program's statutory authority does not authorize the Secretary to allow grantees to use reserve account earnings for purposes other than the four reserve account purposes, it is not permissible to implement the proposed change.

*Change:* None.

*Subpart B—How Does the Secretary Award a Grant?*

*Comment:* One commenter indicated that it supported the proposed selection criteria under §§ 225.11 and 225.12.

*Discussion:* The Department has made minor changes to clarify the selection criteria as noted below based on other comments. These changes are not substantive in nature.

*Change:* Some technical changes are made as noted below.

*Comment:* One commenter recommended that the selection criteria emphasize a preference for proposals that would make credit both more available and affordable to charter schools in their respective States through partnerships with State or local government entities. The commenter sought to enhance the long-term impact of this program by providing an incentive to State governments to provide financing to charter schools to obtain facilities.

*Discussion:* The Department believes that grant projects from public entities, such as State and local governments, that make facility financing more readily available and less expensive for charter schools is desirable. The program statute requires the Department to fund at least one grant application from a public entity, one from a non-profit, and another from a consortium, provided that each is of sufficient merit. The Department does not want to provide a preference for one of these three types of applicants over the other two because it seeks to fund those applications that will be of the greatest benefit to charter schools. The Department was unable to fund any applications from public entities under the first grant competition for this program, but it provided considerable technical assistance to public entities during the second grant competition and funded two grant applications from public entities in that competition.

In addition, the proposed selection criteria address making credit more available and affordable. Selection criterion § 225.11(b)(4) takes into account serving charter schools with the greatest need, thereby emphasizing the importance of increasing the availability of credit to charter schools that would otherwise lack it. Selection criterion § 225.11(a)(1) emphasizes providing better rates and terms on loans, which encourages grant applicants to provide affordable financing.

The program statute and the selection criteria already provide considerable incentive for a public entity to submit the type of grant application it seeks to promote. The Department will continue to provide technical assistance to public entities to encourage them to submit proposals that make facility financing more accessible and affordable to charter schools.

*Change:* None.

*Comment:* One commenter thought that the selection criteria encourage taxable financing rather than providing tax-exempt bonds, which may be more beneficial to borrowers. The commenter thought that the current selection criteria appear to favor applicants that have pre-existing relationships with financial institutions. The commenter indicated that tax-exempt bond financing by definition does not involve pre-identified investors because tax-exempt bond financing raises capital by selling bonds to investors enticed by the sellers' potential.

*Discussion:* The Department agrees that the program should promote tax-exempt bond financing for charter schools when practicable. The selection criterion § 225.11(a)(1) would help promote applications that provide tax-exempt bond financing, since charter schools would benefit from lower interest rates in the tax-exempt market.

The Department does not believe that the selection criteria harm applicants that cannot identify investors at the time they apply for their grant. For instance, one of the Department's current grantees successfully submitted a grant application indicating that it planned to credit-enhance tax-exempt bonds for charter schools. The grantee did so by demonstrating its ability to recruit financial institutions, including institutions with substantial experience in tax-exempt financing, that will work with charter schools. Consequently, the Department believes that an applicant proposing to provide tax-exempt bonds that demonstrate the ability to market bonds successfully to investors could also be successful.

*Change:* None.

*Comment:* A commenter was concerned that the reference to ''better rates'' under § 225.11(a)(1) might either—

- Inadvertently favor direct lending institutions that use their grants to credit-enhance their own charter school facility loans; or
- Cause charter school organizations with stronger credit histories that can qualify for ''better rates and terms'' to ''bump'' less credit worthy, including most new charter schools.

*Discussion:* This criterion is not designed to favor grant applicants using one type of model over applicants using other types. For instance, an applicant that does not make loans itself but instead works with a different lender on a loan-by-loan basis could help charter schools shop for the best rates and terms on facility financing among several investors.

The criterion is designed to reward applicants that can provide charter schools—whose students are the ultimate beneficiaries under the program—with good rates and terms on

facility financing. The term ''better rates and terms'' applies to both those charter schools that already have access to credit and those that do not. An applicant would not be providing better rates and terms to a low-risk charter school if it provided it with an interest rate and under the same terms that the school could obtain without assistance through the program. Furthermore, selection criterion § 225.11(b)(4) already addresses the risk level of charter schools to be served so that applicants will not try to achieve low interest rates and good loan terms by serving charter schools that already have access to attractive financing for facilities.

*Change:* None.

*Comment:* One commenter, a group consisting largely of institutions that directly lend funds to charter schools, objected to including the language regarding ''better rates and terms'' under § 225.11(a)(1), because it thought that—

- The primary purpose of the program should be to provide access to capital; and
- The criterion contradicts the goal to leverage funds under § 225.11(a)(6).

In addition, the commenter thought that ''better'' needed to be defined since some charter schools have no access to capital at all.

*Discussion:* The Department believes that the program should serve dual purposes—

- To provide access to capital; and
- To provide better rates and terms on charter school facility financing.

The Department believes that if an applicant proposed to (1) serve charter schools that already have access to capital; and (2) provide these schools with the same rates and terms charter schools can receive, absent assistance from a grantee, the applicant should justify why such an approach is in the best interest of charter schools. If an applicant proposed to provide financing to a charter school that would otherwise have no access to financing at all, the applicant would be providing better rates and terms to the charter school than it could otherwise obtain absent the program. However, the Department does not see the need to codify a definition of ''better'' and prefers to allow applicants to address how their proposals are beneficial to charter schools so that its external grant readers can determine if they are better than what charter schools can obtain absent assistance from the program.

The Department agrees that particularly low interest rates may require relatively high levels of credit enhancement that would result in low leveraging ratios. Applicants must determine how to best balance this trade-off in the interest of charter schools. Since the Department believes that providing charter schools access to capital addresses § 225.11(a)(1), it does not view this provision as encouraging applicants to lower their leveraging ratios.

*Change:* None.

*Comment:* One commenter thought that inserting the words ''more than they would'' in § 225.11(a)(6) would help clarify the meaning of the criterion.

*Discussion:* The Department concurs.

*Change:* Similar language is added.

*Comment:* One commenter thought that the program should support passage of strong charter school laws in the States. The commenter thought that the Department could accomplish this by focusing those grants on entities that will help enhance credit for charter schools that operate in States with strong charter school laws.

*Discussion:* The Department agrees that the program should help encourage States to pass strong charter school laws. The proposed regulations included a provision (§ 225.11(a)(7)) that would for the first time take into account the strength of these laws. The Department believes that the proposed regulation addressed the commenter's concern.

*Change:* None.

*Comment:* One commenter thought that the program should not include § 225.11(a)(7), which encourages applicants to serve States with strong charter school laws. The commenter thought that this would work against the Department's goal of serving charter schools in communities with the greatest need for school choice.

*Discussion:* The Department agrees that the program should help serve communities with the greatest need for school choice. The Department provides up to 15 points to grant applicants on this basis under § 225.12. Furthermore the Department encourages applicants to serve charter schools with the greatest need under the provision in § 225.11(b)(4). The Department, however, also wants to encourage States to pass strong charter school laws.

*Change:* None.

*Comment:* One commenter recommended that the selection criteria place a greater emphasis on and preference for proposals that offer new approaches that have not yet been demonstrated.

*Discussion:* The Department believes innovative projects that have not yet been demonstrated can be beneficial, as can projects that employ approaches that have already demonstrated that they successfully meet the needs of charter schools. Since the Department seeks to fund applications that will be of the greatest benefit to charter schools, it prefers not to favor one type of project over another.

*Change:* None.

*Comment:* One commenter recommended that the selection criteria more explicitly emphasize a preference for proposals that would help create permanent credit enhancement programs for charter schools that will extend beyond the life of the grant program and be replicable through State policies.

*Discussion:* The Department agrees that a grant proposal that exceeded the life of the grant program and that States could replicate could be of great benefit to charter schools. The Department also believes that a proposal that would create a permanent credit enhancement program would likely score high under the proposed selection criteria. These grants do not end until all of the grant funds are spent or the debt guaranteed by grant is no longer outstanding. The life span of the funded grants varies from about five years to over twenty years.

The program statute requires the Department to fund at least one grant application from a public entity, provided that it is of sufficient merit. Furthermore, selection criterion § 225.11(c)(7) emphasizes the extent to which States have or will meet charter schools' facility funding needs. In addition, selection criterion § 225.11(a)(4) addresses the extent to which proposed grant projects are replicable. The Department itself plans to evaluate its grantees and disseminate successful models that are replicable.

*Change:* None.

*Comment:* One commenter thought that the program has not always taken advantage of economies of scale and that the Department should give larger grants to fewer recipients in order to reduce interest rates for charter schools.

*Discussion:* The Department also wants to take advantage of economies of scale, when possible. The Education Department General Administrative Regulations (EDGAR) address how grants are funded under 34 CFR 75.217 and the Department does not believe that it would be appropriate to revise these criteria for this particular program.

*Change:* None.

*Comment:* One commenter wanted the selection criteria to reward applicants that have demonstrated—

- The ability to assist charter schools over a wide geographic area; and
- The willingness to credit-enhance charter school facility financing

transactions with the most risk, *i.e.*, guarantees for ''start-up'' and new charter schools, including leasehold improvement loans.

*Discussion:* One of the goals the Department set when establishing these selection criteria was to not restrict applicants from proposing innovative applications. One type of innovative application might be to establish a secondary market for charter school loans. A secondary market would likely be limited to several States so that investors could reasonably become familiar with the risk associated with serving charter schools in those particular States. If a selection criterion was added that encouraged applicants to serve a wide geographic area, it might discourage applicants from working with a given set of States to help develop a secondary loan market for charter schools.

The Department does not want to provide a preference for one type of application over other types because it seeks to fund those applications that will be of the greatest benefit to charter schools. In addition, defining what a wide geographic area means could prove difficult, since it potentially involves the distance between charter schools that would receive services from an applicant.

An applicant that had the ability to serve a geographically diverse area could propose to target States that are relatively underserved. This could enable the applicant to better target charter schools with the ''greatest demonstrated need'' under § 225.11(b)(4).

The selection criteria already take the risk level of charter schools into account under § 225.11(b)(4) by encouraging applicants to assist ''charter schools with a likelihood of success and the greatest demonstrated need for assistance under the program.'' This criterion is designed to encourage applicants to serve charter schools with the need for assistance, including new charter schools and schools seeking leasehold improvement loans. The criterion also includes the likelihood of success of a charter school since the Department would not want to encourage applicants to take unwarranted risk.

*Change:* None.

*Subpart C—What Conditions Must Be Met by a Grantee?*

*Comment:* One commenter thought that the Department should evaluate the Credit Enhancement for Charter School Facilities grants program, if possible by using national activity funds under the Charter Schools Program.

*Discussion:* The Department concurs and plans to evaluate the program using these funds. However, the Department does not generally promulgate regulations about what programs it evaluates and how it funds its evaluations.

*Change:* None.

*Comment:* A commenter thought that the term ''reserve account'' should be defined. The commenter noted that the list of definitions under § 225.4 does not reference a definition of the term in either EDGAR or in the statute.

*Discussion:* Neither EDGAR nor the program statute define this term. Section 5225 of the program statute, however, clearly indicates how the reserve account operates. The Department does not attempt to repeat the entire statute in these regulations and believes the statute provides sufficient clarification as to what is meant by a reserve account.

*Change:* None.

*Comment:* A commenter thought that § 225.21(b) could be interpreted as preventing grantees from paying contractors directly in the event of a default.

*Discussion:* The language does not prevent grantees from directly paying contractors in the event of a default. The section is not intended to provide an extensive list of impermissible uses of the funds or exceptions to the impermissible uses.

*Change:* The regulation now clearly indicates that contractors may be paid directly in the case of a default.

**Executive Order 12866**

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

*Summary of Potential Costs and Benefits*

We summarized the potential costs and benefits of these final regulations in the preamble to the NPRM (69 FR 62009). We include additional discussion of potential costs and benefits in the section of this preamble titled *Analysis of Comments and Changes.*

**Paperwork Reduction Act of 1995**

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. The collection of information in these final regulations has been approved by OMB under control number 1855–0007. This control number also is listed in the final regulations at the end of the affected sections in the final regulations.

**Intergovernmental Review**

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

**Electronic Access to This Document**

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

You may also view this document in PDF at the following site: *http://www.ed.gov/programs/charterfacilities/index.html.*

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.354A Credit Enhancement for Charter School Facilities Program)

The Secretary of Education has delegated authority to the Assistant Deputy Secretary for Innovation and Improvement to issue these amendments to 34 CFR chapter II.

**List of Subjects in 34 CFR Part 225**

Charter schools, credit enhancement, Education, Educational facilities, Elementary and secondary education, Grant programs-education, Reporting and recordkeeping requirements, Schools.

Dated: March 18, 2005.

**Michael J. Petrilli,**

*Acting Assistant Deputy Secretary for Innovation and Improvement.*

■ For the reasons discussed in the preamble, the Secretary amends title 34 of the Code of Federal Regulations by adding a new part 225 to read as follows:

## PART 225—CREDIT ENHANCEMENT FOR CHARTER SCHOOL FACILITIES PROGRAM

### Subpart A—General

Sec.
225.1 What is the Credit Enhancement for Charter School Facilities Program?
225.2 Who is eligible to receive a grant?
225.3 What regulations apply to the Credit Enhancement for Charter School Facilities Program?
225.4 What definitions apply to the Credit Enhancement for Charter School Facilities Program?

### Subpart B—How Does the Secretary Award a Grant?

225.10 How does the Secretary evaluate an application?
225.11 What selection criteria does the Secretary use in evaluating an application for a Credit Enhancement for Charter Schools Facilities grant?
225.12 What funding priority may the Secretary use in making a grant award?

### Subpart C—What Conditions Must Be Met by a Grantee?

225.20 When may a grantee draw down funds?
225.21 What are some examples of impermissible uses of reserve account funds?

**Authority:** 20 U.S.C. 7223, unless otherwise noted.

## Subpart A—General

### § 225.1 What is the Credit Enhancement for Charter School Facilities Program?

(a) The Credit Enhancement for Charter School Facilities Program provides grants to eligible entities to assist charter schools in obtaining facilities.

(b) Grantees use these grants to do the following:

(1) Assist charter schools in obtaining loans, bonds, and other debt instruments for the purpose of obtaining, constructing, and renovating facilities.

(2) Assist charter schools in obtaining leases of facilities.

(c) Grantees may demonstrate innovative credit enhancement initiatives while meeting the program purposes under paragraph (b) of this section.

(d) For the purposes of these regulations, the Credit Enhancement for Charter School Facilities Program includes grants made under the Charter School Facilities Financing Demonstration Grant Program.

(Authority: 20 U.S.C. 7223)

### § 225.2 Who is eligible to receive a grant?

The following are eligible to receive a grant under this part:

(a) A public entity, such as a State or local governmental entity;

(b) A private nonprofit entity; or

(c) A consortium of entities described in paragraphs (a) and (b) of this section.

(Authority: 20 U.S.C. 7223a; 7223i(2))

### § 225.3 What regulations apply to the Credit Enhancement for Charter School Facilities Program?

The following regulations apply to the Credit Enhancement for Charter School Facilities Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 81 (General Educational Provisions Act—Enforcement).

(7) 34 CFR part 82 (New Restrictions on Lobbying).

(8) 34 CFR part 84 (Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement)).

(10) 34 CFR part 97 (Protection of Human Subjects).

(11) 34 CFR part 98 (Student Rights in Research, Experimental Programs, and Testing).

(12) 34 CFR part 99 (Family Educational Rights and Privacy).

(b) The regulations in this part 225.

(Authority: 20 U.S.C. 1221e–3; 1232)

### § 225.4 What definitions apply to the Credit Enhancement for Charter School Facilities Program?

(a) *Definitions in the Act.* The following term used in this part is defined in section 5210 of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001:

Charter school

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Acquisition
Applicant
Application
Award
Department
EDGAR
Facilities
Grant
Grantee
Nonprofit
Private
Project
Public
Secretary

(Authority: 20 U.S.C. 7221(i)(1); 7223d)

## Subpart B—How Does the Secretary Award a Grant?

### § 225.10 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 225.11.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 7223; 1232)

### § 225.11 What selection criteria does the Secretary use in evaluating an application for a Credit Enhancement for Charter School Facilities grant?

The Secretary uses the following criteria to evaluate an application for a Credit Enhancement for Charter School Facilities grant:

(a) *Quality of project design and significance.* (35 points) In determining the quality of project design and significance, the Secretary considers—

(1) The extent to which the grant proposal would provide financing to charter schools at better rates and terms than they can receive absent assistance through the program;

(2) The extent to which the project goals, objectives, and timeline are clearly specified, measurable, and appropriate for the purpose of the program;

(3) The extent to which the project implementation plan and activities, including the partnerships established,

are likely to achieve measurable objectives that further the purposes of the program;

(4) The extent to which the project is likely to produce results that are replicable;

(5) The extent to which the project will use appropriate criteria for selecting charter schools for assistance and for determining the type and amount of assistance to be given;

(6) The extent to which the proposed activities will leverage private or public-sector funding and increase the number and variety of charter schools assisted in meeting their facilities needs more than would be accomplished absent the program;

(7) The extent to which the project will serve charter schools in States with strong charter laws, consistent with the criteria for such laws in section 5202(e)(3) of the Elementary and Secondary Education Act of 1965; and

(8) The extent to which the requested grant amount and the project costs are reasonable in relation to the objectives, design, and potential significance of the project.

(b) *Quality of project services.* (15 points) In determining the quality of the project services, the Secretary considers—

(1) The extent to which the services to be provided by the project reflect the identified needs of the charter schools to be served;

(2) The extent to which charter schools and chartering agencies were involved in the design of, and demonstrate support for, the project;

(3) The extent to which the technical assistance and other services to be provided by the proposed grant project involve the use of cost-effective strategies for increasing charter schools' access to facilities financing, including the reasonableness of fees and lending terms; and

(4) The extent to which the services to be provided by the proposed grant project are focused on assisting charter schools with a likelihood of success and the greatest demonstrated need for assistance under the program.

(c) *Capacity.* (35 points) In determining an applicant's business and organizational capacity to carry out the project, the Secretary considers—

(1) The amount and quality of experience of the applicant in carrying out the activities it proposes to undertake in its application, such as enhancing the credit on debt issuances, guaranteeing leases, and facilitating financing;

(2) The applicant's financial stability;

(3) The ability of the applicant to protect against unwarranted risk in its loan underwriting, portfolio monitoring, and financial management;

(4) The applicant's expertise in education to evaluate the likelihood of success of a charter school;

(5) The ability of the applicant to prevent conflicts of interest, including conflicts of interest by employees and members of the board of directors in a decision-making role;

(6) If the applicant has co-applicants (consortium members), partners, or other grant project participants, the specific resources to be contributed by each co-applicant (consortium member), partner, or other grant project participant to the implementation and success of the grant project;

(7) For State governmental entities, the extent to which steps have been or will be taken to ensure that charter schools within the State receive the funding needed to obtain adequate facilities; and

(8) For previous grantees under the charter school facilities programs, their performance in implementing these grants.

(d) *Quality of project personnel.* (15 points) In determining the quality of project personnel, the Secretary considers—

(1) The qualifications of project personnel, including relevant training and experience, of the project manager and other members of the project team, including consultants or subcontractors; and

(2) The staffing plan for the grant project. (Approved by the Office of Management and Budget under control number 1855–0007)

(Authority: 20 U.S.C. 7223; 1232)

### § 225.12 What funding priority may the Secretary use in making a grant award?

(a) The Secretary may award up to 15 additional points under a competitive priority related to the capacity of charter schools to offer public school choice in those communities with the greatest need for this choice based on—

(1) The extent to which the applicant would target services to geographic areas in which a large proportion or number of public schools have been identified for improvement, corrective action, or restructuring under Title I of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001;

(2) The extent to which the applicant would target services to geographic areas in which a large proportion of students perform below proficient on State academic assessments; and

(3) The extent to which the applicant would target services to communities with large proportions of students from low-income families.

(b) The Secretary may elect to—

(1) Use this competitive priority only in certain years; and

(2) Consider the points awarded under this priority only for proposals that exhibit sufficient quality to warrant funding under the selection criteria in § 225.11. (Approved by the Office of Management and Budget under control number 1855–0007)

(Authority: 20 U.S.C. 7223; 1232)

## Subpart C—What Conditions Must Be Met by a Grantee?

### § 225.20 When may a grantee draw down funds?

(a) A grantee may draw down funds after it has signed a performance agreement acceptable to the Department of Education and the grantee.

(b) A grantee may draw down and spend a limited amount of funds prior to reaching an acceptable performance agreement provided that the grantee requests to draw down and spend a specific amount of funds and the Department of Education approves the request in writing.

(Authority: 20 U.S.C. 7223d)

### § 225.21 What are some examples of impermissible uses of reserve account funds?

(a) Grantees must not use reserve account funds to—

(1) Directly pay for a charter school's construction, renovation, repair, or acquisition; or

(2) Provide a down payment on facilities in order to secure loans for charter schools. A grantee may, however, use funds to guarantee a loan for the portion of the loan that would otherwise have to be funded with a down payment.

(b) In the event of a default of payment to lenders or contractors by a charter school whose loan or lease is guaranteed by reserve account funds, a grantee may use these funds to cover defaulted payments that are referenced under paragraph (a)(1) of this section.

(Authority: 20 U.S.C. 7223d)

[FR Doc. 05–5810 Filed 3–23–05; 8:45 am]

BILLING CODE 4000–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 90

**[WT Docket No. 02–318; RM–10184; FCC 05–16]**

### Amendment of the Commission's Rules Concerning Airport Terminal Use Frequencies in the 450–470 MHz Band of the Private Land Mobile Radio Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document the Commission addresses comments received in response to a *Notice of Proposed Rulemaking*, released by the Commission on October 10, 2002, which sought comment on proposed revisions to the Commission's rules and policies regarding Airport Terminal Use (ATU) frequencies in the 450–470 MHz Private Land Mobile Radio (PLMR) Industrial Business (I/B) Pool. The *Notice of Proposed Rulemaking* was issued in response to a Petition for Rulemaking filed on June 25, 2001 by the Personal Communications Industry Association, Inc. (PCIA), an FCC-certified frequency coordinator. Generally, the *Notice of Proposed Rulemaking* considered PCIA's recommendations and proposed to revise the power limits on ATU frequencies in order to facilitate communications at large airports.

**DATES:** Effective April 25, 2005.

**FOR FURTHER INFORMATION CONTACT:** Thomas Eng, *Thomas.Eng@fcc.gov*, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418–0019, TTY (202) 418–7233.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission's *Report and Order*, FCC 05–16, adopted on January 18, 2005, and released on January 24, 2005. 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 FCC'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. As discussed below, the *Report and Order* (*R&O*) implements many of the proposals set forth in the *Notice of Proposed Rulemaking* (*NPRM*), as well as additional changes related to operations on ATU frequencies. The *R&O* furthers the public interest by improving spectrum efficiency, both in and around airports, and by allowing airport personnel and other licensees on ATU frequencies to communicate with fewer restrictions. Moreover, licensees will benefit from increased power limits, which should result in more reliable radio communication, with fewer dead spots and greater communications range. These improvements are important to the general public because airports depend on reliable communications for conducting safe and efficient ground operations, and because they ensure the safety of passengers and airport employees.

2. The major decisions in the *R&O* are as follows:

- We convert all power limits on ATU frequencies from transmitter power output (TPO) to effective radiated power (ERP).
- We increase the power limits for primary ATU mobile units operating at the 242 airports listed in § 90.35(c)(61)(iv) of our rules.
- We increase the power limits for mobile units operating on a secondary basis at locations more than fifty miles (eighty kilometers) from the 242 airports listed in part 90 of our rules.

3. The following chart summarizes the power limits for ATU frequencies based on the decisions in this *R&O*.

POWER LIMITS FOR ATU FREQUENCIES

| Service and status | Distance from protected airports | Power limits |
|---|---|---|
| ATU Primary | 0–10 miles (0–16 km) | 100 watts ERP for base stations (460 MHz side of pair).<br>40 watts ERP for mobile units (465 MHz side of pair). |
| I/B Secondary | 10–50 miles (16–80 km) | 10 watts ERP for base stations (460 MHz side of pair).<br>6 watts ERP for mobile units (465 MHz side of pair). |
| I/B Secondary | >50 miles (80 km) | 300 watts ERP for base stations (460 MHz side of pair).<br>120 watts ERP for mobile units (465 MHz side of pair). |

## I. Procedural Matters

### *A. Regulatory Flexibility Act Analysis*

4. As required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the expected impact on small entities of the proposals suggested in this document. The FRFA is set forth below.

### *B. Paperwork Reduction Act of 1995 Analysis*

5. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

### *C. Report to Congress*

6. The Commission will send a copy of this *Report and Order* 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).

## II. Final Regulatory Flexibility Analysis

7. As required by the Regulatory Flexibility Act of 1980 as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making* (*NPRM*). The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

### *Need for, and Objectives of, the Final Rules*

8. The rule changes implemented herein are needed in order to facilitate the communications needs of Airport Terminal Use (ATU) licensees in the 460–470 MHz band. We believe that certain rule modifications are in the public interest because they will enhance the efficient use of spectrum, permit greater efficiency in use of airport terminal communications, and

facilitate Homeland Security measures at airports. We further believe that certain modifications are in the public interest because they will enhance the efficient use of spectrum for mobile units at fifty miles or more from protected airports.

9. In this *Report and Order* (*R&O*), we convert all power limits on ATU frequencies from transmitter power output (TPO) to effective radiated power (ERP); we amend the maximum output power for ATU frequencies identified in 47 CFR 90.35(c)(48) to a 100-watt maximum ERP. We also amend the maximum output power for ATU frequencies identified in 47 CFR 90.35(c) and (68), from 3 watts TPO to 40 watts ERP; for ATU frequencies identified in 47 CFR 90.35(c)(11), we increase the power limit from 2 watts TPO to 120 watts ERP for mobile units operating on a secondary basis at locations more than fifty miles (eighty kilometers) from airports listed in 47 CFR 90.35(c)(61)(iv); we delay any increase or conversion in power on ATU frequencies subject to 47 CFR 90.35(c)(69) until the freeze on high-power applications for land mobile applications on 460–470 MHz band ''offset'' channels is lifted, in order to protect wireless medical telemetry systems (WMTS) that have yet to migrate out of the band; we delegate authority to the Wireless Telecommunications Bureau (WTB) to create new station class codes for the Universal Licensing System (ULS) that will identify primary ATU users; we will allow licensees to submit applications requesting the new ATU station class codes without requiring frequency coordination so long as no other modifications are made to the licenses; we grandfather stations authorized to operate on ATU frequencies at power levels in excess of our current rules; and we will allow licensees to submit applications voluntarily to convert power levels on licenses from TPO to ERP, but we require frequency coordination for such modifications.

*Summary of Significant Issues Raised by Public Comments in Response to the IFRA*

10. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

*Description and Estimate of the Number of Small Entities to Which the Final Rules Will Apply*

11. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''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 ''small business concern'' under the Small Business Act. A ''small business concern'' is one that: (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).

12. *Estimates for Private Land Mobile Radio (PLMR) Licensees.* PLMR systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed a definition of small entities specifically applicable to PLMR users, nor has the SBA developed any such definition. The SBA rules do, however, contain a definition for Cellular and Other Wireless Telecommunications, which has the small business size standard of no more than 1,500 employees. According to Census Bureau data for 1997, in this category there was a total of 977 firms that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional twelve firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small. Currently, the Commission's licensing database indicates that there are approximately 174,000 active licenses in the PLMR bands below 512 MHz.

13. *Equipment Manufacturers.* The SBA has established a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. Under this standard, business firms are considered small if they have 750 or fewer employees. Census data for 1997 indicate that, for that year, there were a total of 1,215 establishments in this category. Of those, there were 1150 that had employment under 500, and an additional 37 that had employment of 500 to 999. The percentage of broadcast equipment manufacturers to others in this category is approximately 22 percent, so we estimate that the number of broadcast equipment manufacturers with employment under 500 was actually closer to 253, with an additional eight establishments having employment of between 500 and 999.

*Description of Projected Reporting, Recordkeeping and Other Compliance Requirements*

14. No new reporting, recordkeeping, or other compliance requirements would be imposed on applicants or licensees as a result of the rules adopted in this proceeding.

*Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

15. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule or any part thereof, for such small entities.''

16. With respect to the conversion of units on power limits on ATU frequencies TPO to ERP, the Commission believes that small businesses will experience minimal impact and will benefit from improved frequency coordination. Licensees that choose to modify their licenses to take advantage of new power limits will need to report ERP values instead of TPO. Further, we require that applications for power modification on these channels be frequency coordinated, and this requirement will further minimize any impact our rule revisions impose on licensees. The combination of improved frequency coordination and new power limits will benefit both large and small businesses.

17. Admittedly, there may be some minor inconveniences during the transition to the new regulatory regime. First, we anticipate that small businesses may experience a minor inconvenience as a result of the change in power unit terminology. Second, small businesses may also view the modification as a minor administrative burden. Third, there may be a transition period where some licenses reflect TPO values while others reflect ERP.

18. Despite these inconveniences, we believe they are acceptable for the following reasons. We note that license modifications are voluntary. We encourage, but do not require, licensees to modify their licenses to take advantage of new power limits. We also note that modifications can be

performed at the time of license renewal to minimize administrative costs. The incentives for more licenses to have ERP power values on ATU frequencies are: a better overall frequency coordination process, and having a power limit that more accurately represents station power than does TPO. Improved frequency coordination results in better interference protection to all licensees, including small entities. We reject the alternative of leaving power limits in terms of TPO because the Commission noted that it generally favors ERP terminology and because TPO values can result in a variety of actual power levels due to a variety of antenna gains. We believe that TPO limits frustrate the frequency coordination process, and therefore incumbent licensees would not be assured of interference protection.

19. The next rule change we adopt herein increases the power limits for ATU primary users at the protected airports. Although increasing the power limits on these channels could decrease the number of operators possible in a given area, thereby potentially reducing opportunities for smaller entities, nevertheless we believe that regardless of the possible impact on smaller entities, the need for higher power on these channels outweighs the potential for reduction of the number of licensees. Maintaining the current power limits as an alternative to these rule changes is unacceptable because it maintains the current power restriction of 20 watts output power for base stations and 3 watts output power for mobile units at protected airports. Thus, to retain lower power levels disserves the public interest by restricting efficient radio communications by primary licensees at airports.

20. A second alternative to the increased power limits adopted herein for ATU primary base/mobile frequencies would be to implement the power limits of § 90.205 of the Commission's rules. We have considered but reject this option because § 90.205 of the Commission's rules lowers power limits to unacceptably low levels or raises power limits to exceptionally high levels, depending on the size of the designated service area of a station. For service area radii smaller than three kilometers (approximately two miles), § 90.205 of the Commission's rules limits power to 2 watts ERP, which is less than the 20 watts TPO that is currently authorized. Such a power reduction could further hamper the ability of airport personnel to communicate. Section 90.205 of the Commission's rules also allows 500 watts ERP for service areas between thirteen and sixteen kilometers (eight and ten miles). We believe that such a large power limit could subject secondary I/B users and small businesses to excessive interference at distances from ten to fifty miles from protected airports. We reject the implementation of § 90.205 of the Commission's rules in favor of the more moderate power limit changes adopted herein, which strike a balance between enhancing wireless communications and providing interference protection.

21. We note, however, that our decision to raise power levels involved consideration of other alternatives that could improve the communications capabilities of mobiles on the ATU frequencies, such as signal boosters and wireline connections. These alternatives, however, do not address the need, especially at large airports, for enhanced wireless communications. Moreover, as the Personal Communications Industry Association, Inc. (PCIA) stated in its comments, there are other problems with signal boosters, which are expensive and require extensive electrical conduit modifications. Further, no commenters supported signal boosters and wireline connections in favor of increasing wireless power limits.

22. The next rule change we adopt herein increases the power limit for Industrial/Business (I/B), secondary, mobile units operating on the forty ATU mobile channels at distances of fifty miles or more from protected airports. The mobile power limit increase from 3 watts TPO to 120 watts ERP lessens the incongruity with the power limit of base stations, which is 300 watts ERP. All licensees, including small businesses, will benefit from this mobile power limit increase because mobile units will have increased communications range within the service area footprint of their base stations. The power limit increase enables radio systems to make more efficient use of their assigned spectrum. At the same time, we anticipate little additional interference to primary ATU licensees and secondary non-ATU licensees within fifty miles of the protected airports because the base station power limit remains unchanged. The service area footprint is determined by the base station's ERP and antenna height. Maintaining the current mobile unit power limit as an alternative to this rule change is unacceptable because it maintains the current power restriction of 2 watts output power for mobile units at fifty miles or more from protected airports. Thus, to retain lower power levels disserves the public interest by restricting efficient radio communications by secondary licensees in designated areas around airports.

23. Our decision to delay the implementation date of the new rules on the ATU/wireless medical telemetry frequencies until thirty days after the lifting of the freeze on high power applications, scheduled for December 31, 2005, will protect wireless medical telemetry users in the 460–470 MHz band, which includes small businesses at hospitals and medical facilities. An alternative would be to implement the rules concurrently with the non-telemetry frequencies. However, we reject this alternative because it increases the risk of harmful interference to wireless medical telemetry users from the ATU primary and I/B secondary power limit increases.

24. We believe that the implementation of new station class codes is a benefit to all users that are licensed on ATU frequencies, including small businesses. We anticipate only a minor administrative burden in voluntarily modifying licenses to reflect new station class codes. We note that no fee will be charged and frequency coordination is not required for such modification. The station class codes will distinguish between primary ATU and secondary I/B licenses in ULS. The major benefits will be to allow licensees on ATU frequencies to take advantage of the appropriate new power limits and eliminate the ambiguity as to what rules apply to which licensees. The identification of ATU primary licenses through station class codes also facilitates the frequency coordination process and ensures interference protection to airport stations.

25. Our decision to grandfather stations authorized to operate on ATU frequencies at power levels in excess of our current rules will minimize the impact of our rules on such stations, including small entities. Such stations may continue to operate as usual and are not required to comply with the rules adopted herein. However, the Commission will investigate any reports of harmful interference from such stations and take appropriate action. Our decision allows such stations to avoid or defer the administrative burden of modifying their licenses. As discussed above, we do not require license modifications to take advantage of the new power limits. However, at such time when a grandfathered station desires to modify its license to take advantage of the power limits adopted herein, we will require compliance with the new rules, power levels in the form of ERP, and frequency coordination as discussed above. We have considered

the alternative to grandfathering, which is requiring the compliance of all licensees on ATU frequencies. We reject this alternative because it imposes immediate administrative burdens on stations and small entities that do not want license modification, and we are concerned that it may force such entities to discontinue operations.

*Report to Congress*

26. The Commission will send a copy of this *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of this *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of this *Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

## III. Ordering Clauses

27. Accordingly, pursuant to sections 4(i), 303(f), 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(f), 303(r) and 332, this Report and Order is adopted.

28. *It is further ordered* that part 90 of the Commission's rules is amended, effective April 25, 2005.

29. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the U.S. Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

## List of Subjects in 47 CFR Part 90

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

## Rule Changes

■ 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 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r) and 332(c)(7).

■ 2. Amend § 90.35 as follows:

■ a. Amend the table in paragraph (b)(3) by revising the Limitations entries in the Frequency or band entries 460.650 through 460.89375 and 465.650 through 465.89375;

■ b. Revise paragraph (c)(48);

■ c. Revise paragraph (c)(61)(i) through (c)(61)(iii) (The table following paragraph (c)(61)(iv) remains unchanged);

■ d. Add paragraph (c)(61)(v); and

■ e. Revise paragraph (c)(68).

**§ 90.35 Industrial/Business Pool.**

* * * * *

(b) * * *

(3) * * *

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE

| Frequency or band | Class of station(s) | Limitations | Coordinator |
|---|---|---|---|
| * * * | * * | * | * |
| 460.650 | do | 61, 62 | |
| 460.65625 | do | 33, 61, 62 | |
| 460.6625 | do | 30, 61, 62, 69 | |
| 460.66875 | do | 33, 61, 62 | |
| 460.675 | do | 61, 62 | |
| 460.68125 | do | 33, 61, 62 | |
| 460.6875 | do | 30, 61, 62, 69 | |
| 460.69375 | do | 33, 61, 62 | |
| 460.700 | do | 61, 62 | |
| 460.70625 | do | 33, 61, 62 | |
| 460.7125 | do | 30, 61, 62, 69 | |
| 460.71875 | do | 33, 61, 62 | |
| 460.725 | do | 61, 62 | |
| 460.73125 | do | 33, 61, 62 | |
| 460.7375 | do | 30, 61, 62, 69 | |
| 460.74375 | do | 33, 61, 62 | |
| 460.750 | do | 61, 62 | |
| 460.75625 | do | 33, 61, 62 | |
| 460.7625 | do | 30, 61, 62, 69 | |
| 460.76875 | do | 33, 61, 62 | |
| 460.775 | do | 61, 62 | |
| 460.78125 | do | 33, 61, 62 | |
| 460.7875 | do | 30, 61, 62, 69 | |
| 460.79375 | do | 33, 61, 62 | |
| 460.800 | do | 61, 62 | |
| 460.80625 | do | 33, 61, 62 | |
| 460.8125 | do | 30, 61, 62, 69 | |
| 460.81875 | do | 33, 61, 62 | |
| 460.825 | do | 61, 62 | |
| 460.83125 | do | 33, 61, 62 | |
| 460.8375 | do | 30, 61, 62, 69 | |
| 460.84375 | do | 33, 61, 62 | |
| 460.850 | do | 61, 62 | |
| 460.85625 | do | 33, 61, 62 | |
| 460.8625 | do | 30, 61, 62, 69 | |
| 460.86875 | do | 33, 61, 62 | |

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

| Frequency or band | Class of station(s) | Limitations | Coordinator |
|---|---|---|---|
| 460.875 | do | 61, 62 | |
| 460.88125 | do | 33, 61, 62 | |
| 460.8875 | do | 30, 61, 62, 69 | |
| 460.89375 | do | 33, 61, 62 | |
| * * * | * * | * | * |
| 465.650 | do | 62, 68 | |
| 465.65625 | do | 33, 62, 68 | |
| 465.6625 | do | 30, 62, 68, 69 | |
| 465.66875 | do | 33, 62, 68 | |
| 465.675 | do | 62, 68 | |
| 465.68125 | do | 33, 62, 68 | |
| 465.6875 | do | 30, 62, 68, 69 | |
| 465.69375 | do | 33, 62, 68 | |
| 465.700 | do | 62, 68 | |
| 465.70625 | do | 33, 62, 68 | |
| 465.7125 | do | 30, 62, 68, 69 | |
| 465.71875 | do | 33, 62, 68 | |
| 465.725 | do | 62, 68 | |
| 465.73125 | do | 33, 62, 68 | |
| 465.7375 | do | 30, 62, 68, 69 | |
| 465.74375 | do | 33, 62, 68 | |
| 465.750 | do | 62, 68 | |
| 465.75625 | do | 33, 62, 68 | |
| 465.7625 | do | 30, 62, 68, 69 | |
| 465.76875 | do | 33, 62, 68 | |
| 465.775 | do | 62, 68 | |
| 465.78125 | do | 33, 62, 68 | |
| 465.7875 | do | 30, 62, 68, 69 | |
| 465.79375 | do | 33, 62, 68 | |
| 465.800 | do | 62, 68 | |
| 465.80625 | do | 33, 62, 68 | |
| 465.8125 | do | 30, 62, 68, 69 | |
| 465.81875 | do | 33, 62, 68 | |
| 465.825 | do | 62, 68 | |
| 465.83125 | do | 33, 62, 68 | |
| 465.8375 | do | 30, 62, 68, 69 | |
| 465.84375 | do | 33, 62, 68 | |
| 465.850 | do | 62, 68 | |
| 465.85625 | do | 33, 62, 68 | |
| 465.8625 | do | 30, 62, 68, 69 | |
| 465.86875 | do | 33, 62, 68 | |
| 465.875 | do | 62, 68 | |
| 465.88125 | do | 33, 62, 68 | |
| 465.8875 | do | 30, 62, 68, 69 | |
| 465.89375 | do | 33, 62, 68 | |

* * * * *

(c) * * *

(48) Operation on this frequency is limited to a maximum output power of 20 watts.

* * * * *

(61) This frequency is available for assignment as follows:

(i) To persons furnishing commercial air transportation service or, pursuant to § 90.179, to an entity furnishing radio communications service to persons so engaged, for stations located on or near the airports listed in paragraph (c)(61)(iv) of this section. Stations will be authorized on a primary basis and may be used only in connection with servicing and supplying of aircraft. Operation on this frequency is limited to a maximum effective radiated power (ERP) of 100 watts at locations within 16 km (10 miles) of the coordinates of the listed airports.

(ii) To stations in the Industrial/Business Pool for secondary use at locations 80 km (approximately 50 miles) or more from the coordinates of the listed airports. Operation will be limited to a maximum ERP of 300 watts.

(iii) To stations in the Industrial/Business Pool for secondary use at locations greater than 16 km (approximately 10 miles) but less than 80 km (approximately 50 miles) from the coordinates of the listed airports. Operation will be limited to a maximum ERP of 10 watts. Use of this frequency is restricted to the confines of an industrial complex or manufacturing yard area. Stations licensed prior to April 25, 2005, may continue to operate with facilities authorized as of that date.

* * * * *

(v) Stations operating on the frequencies subject to the provisions of § 90.35(b)(69) will be limited to a maximum output power of 2 watts until January 30, 2006, which is thirty days after the December 31, 2005 lifting of the freeze on the filing of high powered applications for 12.5 kHz offset channels in the 460–470 MHz band.

* * * * *

(68) Each station authorized on this frequency will be classified and licensed as a mobile station. Any units of such a station, however, may provide the operational functions of a base station on a secondary basis to mobile service operations provided that the

vertical separation between control point or ground level and the center of the radiating portion of the antenna of any units so used does not exceed 8 meters (approximately 25 feet). This frequency is available for assignment as follows:

(i) To persons furnishing commercial air transportation service or, pursuant to § 90.179, to an entity furnishing radio communications service to persons so engaged, for stations located on or near the airports listed in paragraph (c)(61)(iv) of this section. Stations will be authorized on a primary basis and may be used only in connection with servicing and supplying of aircraft. Operation on this frequency is limited to a maximum effective radiated power (ERP) of 40 watts at locations within 16 km (approximately 10 miles) of the coordinates of the listed airports.

(ii) To stations in the Industrial/Business Pool for secondary use at locations 80 km (approximately 50 miles) or more from the coordinates of the listed airports. Operation will be limited to a maximum ERP of 120 watts. Wide area operation will not be permitted. The area of normal, day-to-day operations will be described in the application.

(iii) To stations in the Industrial/Business Pool for secondary use at locations greater than 16 km (approximately 10 miles) but less than 80 km (approximately 50 miles) from the coordinates of the listed airports. Operation will be limited to a maximum ERP of 6 watts. Use of this frequency is restricted to the confines of an industrial complex or manufacturing yard area. Stations licensed prior to April 25, 2005, may continue to operate with facilities authorized as of that date.

(iv) Stations operating on the frequencies subject to the provisions of § 90.35(b)(69) will be limited to a maximum output power of 2 watts until January 30, 2006, which is thirty days after the December 31, 2005 lifting of the freeze on the filing of high powered applications for 12.5 kHz offset channels in the 460–470 MHz band.

* * * * *

[FR Doc. 05–5843 Filed 3–23–05; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 041110318–5055–02; I.D. 110504E]**

**RIN 0648–AS00**

## Fisheries of the Exclusive Economic Zone Off Alaska; Revisions to Western Alaska Community Development Quota Program

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to revise regulations governing the Western Alaska Community Development Quota (CDQ) Program. These regulatory amendments will simplify the processes for making quota transfers, for authorizing vessels as eligible to participate in the CDQ fisheries, and for obtaining approval of alternative fishing plans. This action is necessary to improve NMFS's ability to effectively administer the CDQ Program. It is intended to further the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP).

**DATES:** Effective April 25, 2005.

**ADDRESSES:** Copies of the Categorical Exclusion and the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) and the Final Regulatory Flexibility Analysis (FRFA) prepared for this action may be obtained by mail from the Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Durall, or from the NMFS Alaska Region website at *www.fakr.noaa.gov*.

**FOR FURTHER INFORMATION CONTACT:** Obren Davis, 907–586–7228 or *obren.davis@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands Area (BSAI) are managed under the BSAI FMP. The North Pacific Fishery Management Council (Council) prepared the BSAI FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801, *et seq.* Regulations governing the BSAI FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

### Background and Need for Action

The existing management background and explanation of the need for this action were described in the preamble to the proposed rule published in the **Federal Register** on November 26, 2004 (69 FR 68865). In summary, the Council recommended simplifying certain administrative processes associated with CDQ transfers, prohibited species quota (PSQ) transfers, and alternative fishing plans (collectively, Issue 8) as part of its comprehensive recommendation for the eight separate issues comprising Amendment 71 to the BSAI FMP. This action will implement the particular changes recommended for Issue 8, as well as associated changes to the eligible vessel approval process that NMFS has determined are related in nature and scope to the Council's recommendations for alternative fishing plans.

### Elements of this Rule

This rule will make the following revisions to CDQ Program regulations at 50 CFR part 679:

1. Revise § 679.30(e) to allow CDQ groups to transfer groundfish CDQ and halibut CDQ by submitting transfer requests directly to NMFS and to remove the requirement that these transfers be made through amendments to CDQ groups' community development plans (CDPs). CDQ transfer requests will no longer have to be submitted to the State of Alaska (State) for review before being submitted to NMFS.

2. Revise § 679.30(e) to allow CDQ groups to transfer prohibited species quota (PSQ) by submitting transfer requests directly to NMFS and to remove the requirement that these transfers be made through amendments to the CDPs. PSQ transfer requests will no longer have to be submitted to the State for review before being submitted to NMFS. In addition, this action will allow the transfer of PSQ during any month of the year and allow transfers of PSQ without an associated transfer of CDQ. The CDQ and PSQ transfer process will become an in-season management function of NMFS.

3. Remove the requirements at § 679.30(a) that fishing plan forms and a list of eligible vessels be included in a group's CDP. Vessel eligibility requirements are added to redesignated and revised § 679.32(c) to require that: CDQ groups request and obtain eligibility approval from NMFS for all vessels groundfish CDQ fishing and for vessels equal to or greater than 60 feet (18.3 meters) length overall (LOA) that are halibut CDQ fishing before these

vessels participate in any CDQ fisheries; CDQ groups provide a copy of the NMFS-approved eligible vessel request to the vessel operator; vessel operators maintain a copy of the NMFS-approved request onboard the vessel at all times while harvesting, transporting, or offloading CDQ; and, CDQ groups must notify the vessel operator if the vessel is removed from eligibility to fish for CDQ. Vessel eligibility requirements and documentation are intended to provide a means for law enforcement personnel to verify whether vessels claiming to be participating in CDQ fisheries are eligible to do so, particularly if no other non-CDQ fisheries are open at a given time.

4. Remove the requirement at § 679.30(a) that a CDQ group obtain prior approval by the State and NMFS for all processors taking deliveries of groundfish CDQ.

5. Amend § 679.32(e) to allow CDQ groups to submit alternative fishing plans directly to NMFS rather than as amendments to a CDP. Such plans are used by CDQ groups to propose the use of different levels of observer coverage or different data sources for catch accounting than those required by regulation. An alternative fishing plan will be an attachment to an eligible vessel request. Additionally, CDQ groups will be required to provide a copy of the NMFS-approved alternative fishing plan to vessel operators who will be required to maintain a copy of the NMFS-approved alternative fishing plan onboard the vessel at all times while harvesting, transporting, or offloading CDQ.

6. Implement other minor revisions to the regulations at §§ 679.2, 679.5, 679.7, 679.22, 679.30, 679.32, and 679.50 to update wording, clarify definitions, and correct cross references in support of the primary regulatory amendments in this rule. The definitions for ''CDQ group number'' and ''groundfish CDQ fishing'' are revised to remove references to approval of eligible vessels and processors as part of a CDP. The definition for ''CDQ representative'' is revised to allow CDQ groups to authorize more than one staff person to sign and submit documents to NMFS. A new definition of ''eligible vessel'' is added to support the use of that term elsewhere in 50 CFR part 679.

7. Revise several paragraphs within §§ 679.7, 679.30, and 679.32 to remove requirements that a CDQ group must ensure its respective fishing and processing partners' compliance with regulations in 50 CFR part 679, as CDQ groups are not in a position to direct, control, or otherwise affect the operations or action of their partners. Specific revisions include:

- In § 679.7, remove paragraph (d)(24) which states that it is unlawful for a CDQ group to fail to ensure that all vessels and processors listed as eligible on the CDQ group's approved CDP comply with all regulations in this part while fishing for CDQ.
- In § 679.30(a), remove the sentence in the middle of the paragraph that reads ''In addition, the CDQ group is responsible to ensure that vessels and processors listed as eligible on the CDQ group's approved CDP comply with all requirements of this part while harvesting or processing CDQ species.''
- In § 679.30, remove paragraph (f)(6) which states that the CDQ groups are responsible for ensuring compliance by the CDQ harvesting vessels and CDQ processors of the activities listed.
- In § 679.32(a), revise the paragraph to include a more general statement of applicability for the entire section. The individual paragraphs within the section will include the specific applicability of each topic to CDQ groups, vessel operators, and processors.

**Response to Comments**

NMFS received three separate comment letters, containing a total of six unique comments, regarding the proposed rule. The comments are summarized and responded to below.

*Comment 1:* The wholesale allowance of overfishing should not be allowed.

*Response:* This action modifies administrative processes associated with the management of the CDQ Program and does not make any revisions to the amount of fish authorized to be harvested. The program allocates specific amounts of CDQ to eligible recipients, who in turn must harvest such quota in compliance with strict catch monitoring and reporting standards. Currently, no Alaska groundfish species are considered by NMFS to be overfished.

*Comment 2:* Law enforcement personnel need to monitor the catch and landing of all fish, since commercial fishermen bring in at least three times as much as they are allowed to catch. Commercial fishermen are lawbreakers who have been overfishing per the Pew Report and the United Nations Report on Overfishing, which are incorporated into the comments from this commentor.

*Response:* NMFS disagrees with the commentor's assertion that groundfish fishers systematically under-report their catch. The recordkeeping and reporting requirements in Alaska groundfish fisheries are comprehensive, and NMFS and U.S. Coast Guard law enforcement officers conduct numerous vessel boardings and seafood processor inspections each year. Catch and reporting violations occur, but are relatively infrequent. Such violations are prosecuted pursuant to the Magnuson-Stevens Act.

*Comment 3:* Marine sanctuaries should be established immediately and all vessels should be excluded from them.

*Response:* This action does not address the creation of marine sanctuaries. The concept of establishing marine reserves is explored in the draft environmental impact statement (EIS) for essential fish habitat, dated January 2004. Further information on this draft EIS may be found at the NMFS Alaska Region website at *www.fakr.noaa.gov*.

*Comment 4:* Regional fishery management councils do not meet the Federal Advisory Committee Act (FACA) rules of being balanced. Such councils are controlled by fishing profiteers, who dominate which quotas are allowed.

*Response:* This action does not address issues related to the membership of regional fishery management councils or the FACA. Furthermore, FACA does not apply to regional fishery management councils (16 U.S.C. 1852(i)(1)). Council members who are appointed by the Secretary must comply with financial disclosure requirements at 50 CFR 600.235(b) and are recused from voting on any Council decision that would have a significant and predictable effect on a financial interest disclosed in his or her report (50 CFR 600.235(c)).

*Comment 5:* Marine resources are not owned exclusively by commercial fishermen and the fish in the ocean belong to all U.S. citizens. Seals should have some fish to eat, too.

*Response:* This action does not make any revisions to the amount of fish that may be harvested. The groundfish fisheries off Alaska are managed within a structure of science-based conservation and management practices. NMFS limits the amount of fish that may be harvested in the groundfish fisheries off Alaska by setting annual catch limits based on the best scientific information available about each specific stock under consideration. In the course of considering both catch limits and regulatory changes, NMFS and the Council consider a broad range of alternatives to address biological, environmental, and economic concerns. This process also includes an examination of the potential impacts of alternatives on marine mammals, including seals.

*Comment 6:* We support the proposed changes. The proposed revisions will increase CDQ harvesting flexibility and decrease the administrative burden on the State of Alaska, NMFS, and the CDQ groups.

*Response:* NMFS agrees that these revisions will increase CDQ management flexibility and alleviate some portion of the management burden associated with submitting and reviewing CDQ and PSQ transfers, fishing plan forms, and alternative fishing plans.

**Changes from the Proposed Rule**

No substantive changes are made in this final rule from the proposed rule.

**Classification**

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

The NMFS prepared a final regulatory flexibility analysis (FRFA). The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS responses to those comments, and a summary of the analyses completed to support the action. A summary of the FRFA and how it addresses each of the requirements in 5 U.S.C. 604(a)(1)-(5) follows. A copy of this FRFA is available from NMFS (see **ADDRESSES**).

*Need for and Objectives of the Rule*

A description of the need for and objectives of this action is contained in the preamble to the proposed rule published in the **Federal Register** on November 26, 2004 (69 FR 68865), and in the preamble to this final rule.

*Summary of Significant Issues Raised in Public Comment*

None of the comments received specifically addressed the IRFA or the economic impacts of this action. Two letters of comments supporting the action were received from two CDQ groups, both of which are small entities under the RFA. The CDQ groups identified reduced reporting and administrative burdens, along with additional flexibility to maximize the harvest of target species, as the reasons for their support.

*Description and Estimate of Number of Small Entities to Which the Rule Will Apply*

The entities that will be directly regulated by this action are the 6 CDQ groups that represent the 65 western Alaska communities that currently participate in the CDQ Program, as well as the owners and operators of vessels harvesting CDQ on behalf of the CDQ groups. The CDQ groups include: Aleutian Pribilof Island Community Development Association, Bristol Bay Economic Development Corporation, Central Bering Sea Fishermen's Association, Coastal Villages Region Fund, Norton Sound Economic Development Corporation, and Yukon Delta Fisheries Development Association. Each of these groups is organized as a not-for-profit entity and none is dominant in its field. Consequently, each is a small entity under the Regulatory Flexibility Act (RFA). Many of the 83 vessels and at least 3 of the 10 shoreside processors participating in the groundfish CDQ fisheries are small entities.

*Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

All of this action's primary regulatory revisions are related to recordkeeping and reporting requirements. These requirements apply primarily to the CDQ groups, because these groups submit the CDQ and PSQ transfer request forms, the request for approval of an eligible vessel forms, and the alternative fishing plans to NMFS. The professional skills that are necessary to prepare and submit the forms required from a CDQ group and to provide a copy of the signed form and alternative fishing plan, if applicable, to vessel operators include: (1) the ability to read, write, and speak in English, (2) the ability to use computer and communications equipment, (3) knowledge of the CDQ group's fishing activities, including contractual arrangements with vessel operators and processing plants, and quota balances, and (4) the authority to sign and submit documents to NMFS on behalf of the CDQ group. These responsibilities generally are fulfilled by a member of the CDQ group's professional staff. The professional skills necessary for a vessel operator to maintain a copy of the signed authorization form and alternative fishing plan, if applicable, onboard the vessel include: (1) the ability to read or understand verbal instructions in English, and (2) the organizational skills necessary to receive a document from the CDQ group, maintain it in legible condition, and ensure it is accessible to U.S. Coast Guard or NMFS enforcement officers upon request.

*Steps Taken to Minimize Economic Impacts on Small Entities*

The FRFA evaluated two alternatives: (1) the status quo, and (2) the preferred alternative, which will modify certain administrative processes associated with quota transfers, eligible vessels, and alternative fishing plans. As part of the assessment of the CDQ Program's administrative issues considered under Amendment 71 to the BSAI FMP, the Council, NMFS, and the State evaluated current recordkeeping and reporting requirements and identified several areas where requirements could be reduced. This provided a basis for the preferred alternative implemented by this action. NMFS believes that this alternative meets the objective of the recordkeeping and reporting requirements of the CDQ Program by appropriately balancing the requirements for conservation and management of the groundfish CDQ fisheries under the Magnuson-Stevens Act, with the requirements to minimize economic burdens under both the Magnuson-Stevens Act National Standard 7 (minimize costs and avoid unnecessary duplication) and the Paperwork Reduction Act (minimize the economic burden of recordkeeping and reporting requirements).

**Small Entity Compliance Guide**

CDQ groups will be in compliance with this rule if they follow the revised submittal procedures for CDQ and PSQ transfers, eligible vessels, and alternative fishing plans. This includes: submitting both transfer requests and alternative fishing plans directly to NMFS; discontinuing the inclusion of fishing plan forms in CDPs; requesting approval from NMFS to designate vessels that are eligible to fish for CDQ; supplying vessel operators with copies of the NMFS-approved eligible vessel request form (and alternative fishing plans, if applicable); and, notifying vessel operators if their vessel's eligibility to fish for CDQ is removed. Vessel operators operating on behalf of CDQ groups will be in compliance with this rule if they maintain a legible copy of the NMFS-approved eligible vessel form (and alternative fishing plan, if applicable) aboard vessels while harvesting, transporting, or offloading CDQ. Copies of the final rule are available from NMFS (see **ADDRESSES**) and at the following website: *www.fakr.noaa.gov*.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648–0269. Public reporting burden is estimated to average: 520 hours for a Community Development Plan; 40 hours for a Substantial Amendment; 8 hours for a Technical Amendment; 30 minutes for a CDQ or PSQ Transfer Request; 1 hour

for a Request for Approval of an Eligible Vessel; and 4 hours for an Alternative Fishing Plan. The estimated time to respond to each requirement includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to *David_Rostker@omb.eop.gov*, or fax to 202–395–7285.

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

**List of Subjects in 50 CFR Part 679**

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: March 17, 2005.

**Rebecca Lent,**

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

■ For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

## PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; 16 U.S.C. 1540(f); Pub. L. 105–277, Title II of Division C; Pub. L. 106–31, Sec. 3027; and Pub. L.106–554, Sec. 209.

■ 2. In § 679.2, revise the definitions for ''CDQ group number,'' ''CDQ representative,'' and ''Groundfish CDQ fishing'' and add the definition for ''Eligible vessel,'' in alphabetical order, to read as follows:

### § 679.2 Definitions.

* * * * *

*CDQ group number* means a number assigned to a CDQ group by NMFS that must be recorded and is required in all logbooks and all reports submitted by the CDQ group, vessels harvesting CDQ, or processors taking deliveries of CDQ.

* * * * *

*CDQ representative* means any individual who is authorized by a CDQ group to sign documents submitted to NMFS on behalf of the CDQ group.

* * * * *

*Eligible vessel* means, for the purposes of the CDQ Program, a fishing vessel designated by a CDQ group to harvest part or all of its CDQ allocation and approved by NMFS under § 679.32(c).

* * * * *

*Groundfish CDQ fishing* means fishing by an eligible vessel that results in the catch of any groundfish CDQ species, but that does not meet the definition of halibut CDQ fishing.

* * * * *

■ 3. In § 679.5, add paragraphs (n)(3) and (n)(4) to read as follows:

### § 679.5 Recordkeeping and reporting (R&R).

* * * * *

(n) * * *

(3) *CDQ or PSQ transfer request*—(i) *Who must submit a CDQ or PSQ transfer request?* A CDQ group requesting transfer of CDQ or PSQ to or from another CDQ group must submit a completed CDQ or PSQ transfer request to NMFS.

(ii) *Information required*—(A) *Transferring CDQ group information.* For the group transferring CDQ, enter: the CDQ group name or initials; the CDQ group number as defined at § 679.2; and, the CDQ representative's telephone number, fax number, printed name, and signature.

(B) *Receiving CDQ group information.* For the group receiving CDQ, enter: the CDQ group name or initials; the CDQ group number as defined at § 679.2; and, the CDQ representative's telephone number, fax number, printed name, and signature.

(C) *CDQ amount transferred*—(*1*) *Species or Species Category.* For each species for which a transfer is being requested, enter the species name or species category.

(*2*) *Area.* Enter the management area associated with a species category, if applicable.

(*3*) Amount transferred. Specify the amount being transferred. For groundfish, specify transfer amounts to the nearest 0.001 mt. For halibut CDQ, specify the amount in pounds (net weight).

(D) *PSQ amount transferred*—(*1*) *Species or Species Category.* For each species for which a transfer is being requested, enter the species name or species category.

(*2*) *Crab zone.* For crab only, designate the appropriate zone for each PSQ being transferred, if applicable.

(*3*) *Amount transferred.* Specify the amount being transferred. For crab and salmon, specify transfer amounts in numbers of animals. For halibut, specify the amount to the nearest 0.001 mt.

(4) *Request for approval of an eligible vessel*—(i) *Who must submit a request for approval of an eligible vessel?* A CDQ group must submit a completed request for approval of an eligible vessel to NMFS for each vessel that will be groundfish CDQ fishing and for each vessel equal to or greater than 60 ft (18.3 m) LOA that will be halibut CDQ fishing. See § 679.32(c) for more information about this requirement.

(ii) *Information required*—(A) *Vessel information.* Enter the vessel name, Federal fisheries permit number, if applicable, ADF&G vessel registration number, and LOA. Indicate all the gear types that will be used to catch CDQ.

(B) *Vessel contact information.* Enter the name, mailing address, telephone number, and e-mail address (if available) of a contact person representing the vessel.

(C) *Method to determine CDQ and PSQ catch.* Select the method that will be used to determine CDQ and PSQ catch, either NMFS standard sources of data or an alternative method. If the selection is ''NMFS standard sources of data,'' select either ''all trawl vessels greater than or equal to 60 ft (18.3 m) LOA using non-trawl gear'' or ''catcher vessels greater than or equal to 60 ft (18.3 m) LOA using non-trawl gear.'' If the selection is ''catcher vessels greater than or equal to 60 ft (18.3 m) LOA using non-trawl gear,'' select either Option 1 or Option 2, described at § 679.32(e)(2)(iv). If an alternative method (fishing plan) is proposed, it must be attached to the request for approval of an eligible vessel.

(D) *Notice of submission and review.* Enter the name, telephone number, and fax number of the CDQ representative; the date submitted to NMFS; and signature of the CDQ representative.

* * * * *

### § 679.7 [Amended]

■ 4. In § 679.7, remove paragraph (d)(24) and redesignate paragraph (d)(25) as (d)(24).

■ 5. In § 679.30, remove paragraphs (f)(6), and (g)(4)(iv)(H); redesignate paragraph (f)(7) as (f)(6); and revise paragraph (a) introductory text, paragraphs (a)(5), (e), (g)(4)(ii), and (g)(4)(iv)(G) to read as follows:

### § 679.30 General CDQ regulations.

(a) *Application procedure.* The CDQ program is a voluntary program. Allocations of CDQ and PSQ are made to CDQ groups and not to vessels or processors fishing under contract with any CDQ group. Any vessel or processor harvesting or processing CDQ or PSQ on behalf of a CDQ group must comply

with all other requirements of this part. Allocations of CDQ and PSQ are harvest privileges that expire upon the expiration of the CDP. When a CDP expires, further CDQ allocations are not implied or guaranteed, and a qualified applicant must re-apply for further allocations on a competitive basis with other qualified applicants. The CDQ allocations provide the means for CDQ groups to complete their CDQ projects. A qualified applicant may apply for CDQ and PSQ allocations by submitting a proposed CDP to the State during the CDQ application period that is announced by the State. A proposed CDP must include the following information:

* * * * *

(5) *Harvesting plans.* A narrative description of how the CDQ group intends to harvest and process its CDQ allocations, including a description of the target fisheries, the types of vessels and processors that will be used, the locations and methods of processing, and the CDQ group's proposed partners.

* * * * *

(e) *Transfers*—(1) *Transfer of annual CDQ and PSQ.* CDQ groups may request that NMFS transfer CDQ or PSQ from one group to another group by each group submitting a completed transfer request as described in § 679.5(n)(3). NMFS will approve the transfer request if the CDQ group transferring quota to another CDQ group has sufficient quota available for transfer. If NMFS approves the request, NMFS will make the requested transfer(s) by decreasing the account balance of the CDQ group from which the CDQ or PSQ species is transferred and by increasing the account balance of the CDQ group receiving the transferred CDQ or PSQ species. NMFS will not approve transfers to cover overages of CDQ or PSQ. The CDQ or PSQ will be transferred as of the date NMFS approves the transfer request and is effective only for the remainder of the calendar year in which the transfer occurs.

(2) *Transfer of CDQ and PSQ allocation.* CDQ groups may request that some or all of one group's CDQ or PSQ allocation, as defined at § 679.2, be transferred by NMFS to another group by each group filing an amendment to its respective CDP through the CDP substantial amendment process set forth at paragraph (g)(4) of this section. The CDQ or PSQ allocation will be transferred as of January 1 of the calendar year following the calendar year NMFS approves the amendments of both groups and is effective for the duration of the CDPs. Transfers of CDQ and PSQ allocations must be in whole integer percentages.

* * * * *

(g) * * *

(4) * * *

(ii) NMFS will notify the State in writing of the approval or disapproval of the amendment within 30 days of receipt of both the amendment and the State's recommendation. Once a substantial amendment is approved by NMFS, the amendment will be effective for the duration of the CDP.

* * * * *

(iv) * * *

(G) Any transfer of a CDQ allocation or a PSQ allocation.

* * * * *

■ 6. In § 679.32, redesignate paragraph (d) as (e), and paragraph (c) as (d); revise paragraphs (a) and newly redesignated paragraph (e)(2) introductory text; and add new paragraphs (c) and (e)(3) to read as follows:

**§ 679.32 Groundfish and halibut CDQ catch monitoring.**

(a) *Applicability.* This section contains requirements for CDQ groups, operators of vessels, and managers of processors that harvest and/or process groundfish CDQ, including vessels equal to or greater than 60 ft (18.3 m) LOA that are halibut CDQ fishing.

* * * * *

(c) *Vessels eligible for groundfish and halibut CDQ fisheries.* The following information must be provided by the CDQ group for all vessels that are groundfish CDQ fishing and all vessels equal to or greater than 60 ft (18.3 m) LOA that are halibut CDQ fishing.

(1) *Request for approval of an eligible vessel.* Prior to a vessel participating in the CDQ fishery, a CDQ group must submit to NMFS a completed request for approval of an eligible vessel as described at § 679.5(n)(4). NMFS will approve all vessels for which a completed request is submitted. Once approved, a vessel will remain eligible until December 31 of the last year in the current CDQ allocation cycle under § 679.30(d), or until the CDQ group removes the vessel from eligibility under paragraph (c)(2) of this section. A list of eligible vessels for each CDQ group will be publicly available from the Alaska Regional Office or on the NMFS website at *http://www.fakr.noaa.gov.* The CDQ group must provide a copy of the NMFS-approved eligible vessel request to the operator of the approved vessel. The vessel operator must maintain a copy of the eligible vessel request approved by NMFS onboard the vessel at all times while harvesting, transporting, or offloading CDQ.

(2) *Removing a vessel from eligibility.* A CDQ group may remove a vessel from eligibility to harvest CDQ on its behalf by advising NMFS by letter of the removal. Removal of a vessel from eligibility to harvest CDQ will be effective on the date that NMFS approves the request and notifies the CDQ group of NMFS's approval. Upon receipt of notification of NMFS's approval, the CDQ group must notify the operator of the vessel of the vessel's removal from eligibility to harvest CDQ on behalf of the CDQ group.

* * * * *

(e) * * *

(2) *Verification of CDQ and PSQ catch reports.* CDQ groups may specify the sources of data listed below as the sources they will use to determine CDQ and PSQ catch on the CDQ catch report by specifying ''NMFS standard sources of data'' on their request for approval of an eligible vessel. In the case of a catcher vessel using nontrawl gear, the CDQ group must specify on their request for approval of an eligible vessel whether the vessel will be retaining all groundfish CDQ (Option 1) or discarding some groundfish CDQ species at sea (Option 2). CDQ species may be discarded at sea by these vessels only if the requirements of paragraph (d)(2)(ii)(B) of this section are met. NMFS will use the following sources to verify the CDQ catch reports, unless an alternative catch estimation procedure is approved by NMFS under paragraph (e)(3) of this section.

* * * * *

(3) *Alternative methods for verification of CDQ and PSQ catch.* The method to be used to determine CDQ and PSQ catch for each vessel must be listed by a CDQ group on the request for approval of an eligible vessel. A CDQ group may propose the use of an alternative method, such as using only one observer where normally two would be required, sorting and weighing of all catch by species on processor vessels, or using larger sample sizes than could be collected by one observer, by submitting an alternative fishing plan attached to its request for approval of an eligible vessel. NMFS will review the alternative fishing plan and approve it or notify the qualified applicant in writing if the proposed alternative does not meet the requirements listed under paragraphs (e)(3)(i) through (iv) of this section. The CDQ group must provide a copy of the approved alternative fishing plan to the operator of the approved vessel. A copy of the alternative fishing plan approved by NMFS must be maintained onboard

the vessel at all times while it is operating under the alternative fishing plan. Alternative fishing plans are valid for the remainder of the calendar year in which they are approved. Alternatives to the requirement for a certified scale or an observer sampling station will not be approved. NMFS will review the alternative fishing plan to determine if it meets all of the following requirements:

(i) The alternative proposed must provide equivalent or better estimates than use of the NMFS standard data source would provide and the estimates must be independently verifiable;

(ii) Each haul or set on an observed vessel must be able to be sampled by an observer for species composition;

(iii) Any proposal to sort catch before it is weighed must ensure that the sorting and weighing process will be monitored by an observer; and

(iv) The time required for the level 2 observer to complete sampling, data recording, and data communication duties must not exceed 12 hours in each 24-hour period and the level 2 observer must not be required to sample more than 9 hours in each 24-hour period.

* * * * *

**§§ 679.5, 679.7, 679.22, 679.32, and 679.50 [Amended]**

■ 7. In the table below, for each of the paragraphs shown under the ''Paragraph'' column, remove the phrase indicated under the ''Remove'' column and replace it with the phrase indicated under the ''Add'' column for the number of times indicated in the ''Frequency'' column.

| Paragraph(s) | Remove | Add | Frequency |
|---|---|---|---|
| § 679.5(n)(2)(iv) introductory text | (Option 1 in the CDP). | (Option 1 under § 679.32(d)(2)(ii)). | 1 |
| § 679.5(n)(2)(v) introductory text | (Option 2 in the CDP). | (Option 2 under § 679.32(d)(2)(ii)). | 1 |
| § 679.7(d)(4) | eligible vessel on an approved CDP for | eligible vessel for | 1 |
| § 679.7(d)(6) through (10) | eligible vessel listed on an approved CDP, use | eligible vessel, use | 1 |
| § 679.7(d)(11) | to an eligible processor listed on an approved CDP unless | to a processor unless | 1 |
| § 679.7(d)(21) | approved in the CDP to | approved by NMFS to | 1 |
| § 679.7(f)(3)(ii) | aboard, except as provided under an approved CDP. | aboard, unless fishing on behalf of a CDQ group and authorized under § 679.32(c). | 1 |
| § 679.22(a)(5)(ii) | it is operating under a CDP approved by NMFS. | it is directed fishing for pollock CDQ. | 1 |
| Newly redesignated § 679.32(d)(1)(i) | paragraph (c)(3) or (c)(4) of this section, | paragraph (d)(3) or (d)(4) of this section, | 1 |
| Newly redesignated § 679.32(d)(1)(ii) | paragraph (c)(4) of this section. | paragraph (d)(4) of this section. | 1 |
| Newly redesignated § 679.32(d)(2)(i)(A) | paragraph (c)(3) or (c)(4) of this section | paragraph (d)(3) or (d)(4) of this section | 1 |
| Newly redesignated § 679.32(d)(2)(ii)(A) | paragraph (c)(3) or (c)(4) of this section | paragraph (d)(3) or (d)(4) of this section | 1 |
| Newly redesignated § 679.32(d)(4)(iv) | for the vessel in the CDP. Each | for the vessel. Each | 1 |
| Newly redesignated § 679.32(e)(2)(i) | the vessel, delivered to a shoreside processor listed as eligible in the CDP, and sorted and weighed in compliance with paragraph (c)(3) of this section. | the vessel until delivered to a processor, and sorted and weighed in compliance with paragraph (d)(3) of this section. | 1 |
| Newly redesignated § 679.32(e)(2)(iii) | processor listed as eligible in the CDP, and sorted and weighed in compliance with paragraph (c)(3) of this section. | processor, and sorted and weighed in compliance with paragraph (d)(3) of this section. | 1 |
| Newly redesignated § 679.32(e)(2)(iv)(A) | paragraph (c)(3) of this section | paragraph (d)(3) of this section | 1 |
| § 679.32(f)(3) | paragraphs (b) through (d) of this section, including the retention of all groundfish CDQ, if option 1 under § 679.32(c)(2)(ii) is selected in the CDP. CDQ | paragraphs (b) through (e) of this section, including the retention of all groundfish CDQ, if Option 1 under § 679.32(d)(2)(ii) is selected. CDQ | 1 |
| § 679.50(c)(4)(ii) | unless NMFS approves a CDP authorizing | unless NMFS approves an alternative fishing plan under § 679.32(e)(3) authorizing | 1 |
| § 679.50(c)(4)(ii) | NMFS may approve a CDP authorizing | NMFS may approve an alternative fishing plan authorizing | 1 |
| § 679.50(c)(4)(ii) | NMFS will not approve a CDP that | NMFS will not approve an alternative fishing plan that | 1 |

| Paragraph(s) | Remove | Add | Frequency |
|---|---|---|---|
| § 679.50(c)(4)(v)(A) | described at § 679.32(c)(2)(ii)(A)) for | described at § 679.32(d)(2)(ii)(A)) for | 1 |
| § 679.50(c)(4)(v)(B) | described at § 679.32(c)(2)(ii)(B)) for | described at § 679.32(d)(2)(ii)(B)) for | 1 |
| § 679.50(d)(5)(ii)(B) | described at § 679.32(c)(2)(ii)(A)) for | described at § 679.32(d)(2)(ii)(A)) for | 1 |
| § 679.50(d)(5)(ii)(C) | described at § 679.32(c)(2)(ii)(B)) for | described at § 679.32(d)(2)(ii)(B)) for | 1 |

[FR Doc. 05–5755 Filed 3–23–05; 8:45 am]
**BILLING CODE 3510–22–S**

# Proposed Rules

Federal Register
Vol. 70, No. 56
Thursday, March 24, 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

### Food Safety and Inspection Service

### 9 CFR Parts 301, 303, 317, 318, 319, 320, 325, 331, 381, 417, and 430

**[Docket No. 04–001N]**

### Technical Meeting on Risk Assessments of *Salmonella* and of *Clostridium perfringens* in Ready-to-Eat Meat and Poultry Products; Notice of Availability and Public Meeting

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice of availability, announcement of public meeting, and request for comments.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is announcing the availability of, and requesting public comment on, two draft risk assessments. The first is a quantitative risk assessment of *Salmonella* in ready-to-eat (RTE) meat and poultry products. The second is a quantitative risk assessment of *Clostridium perfringens* in RTE and heat-treated, but not RTE, products. The Agency prepared the draft risk assessments to provide scientific information in support of lethality and stabilization performance standards that the Agency proposed for the processing of such products in a notice of proposed rulemaking published February 27, 2001 (66 FR 12590). FSIS is holding a public meeting to present and discuss these draft risk assessments.

**DATES:** The public meeting is scheduled for March 24, 2005, from 9 a.m. to 4 p.m. Submit written comments on the draft risk assessments on or before May 9, 2005.

**ADDRESSES:** The public meeting will be held at the Holiday Inn on the Hill, 415 New Jersey Avenue NW., Washington, DC 20001; telephone (202) 638–1616, Fax (202) 347–1813. A tentative agenda will be available in the FSIS docket room (address below) and on the FSIS Web site at *http://www.fsis.usda.gov/regulations_&_policies/2005_Notices_Index/index.asp.*

The draft risk assessments will be available by March 18, 2005 in the FSIS docket room (address below) and on the FSIS Web site at *http://www.fsis.usda.gov/Science/Risk_Assessments/index.asp.*

All comments and the official transcript of the meeting will be available for viewing in the FSIS docket room when they become available.

FSIS invites interested persons to submit comments:

On the two risk assessments, by any of the following methods:

- Mail, including floppy disks or CD–ROM's: Send to Dr. Neal Golden, Risk Analyst, Risk Assessment Division, Office of Public Health Science, 1400 Independence Avenue, SW., Room 333 Aerospace Center, Washington, DC 20250–3700.
- Hand-delivered or courier-delivered items: Dr. Neal J. Golden, Risk Analyst, RAD, OPHS, USDA, 901 D Street, SW., Rm. 333 Aerospace Center, Washington, DC 20024.
- Electronic mail, to: *Neal.golden@fsis.usda.gov.*

On other matters relating to the proposed performance standards for RTE products, by either of the following methods:

- Mail, including floppy disks or CD–ROM's, and hand-or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250.
- Electronic mail, to: *fsis.regulationscomments@fsis.usda.gov.*

All submissions received must include the Agency name and docket number 04–001N.

All comments submitted in response to this notice, as well as research and background information used by FSIS in developing the documents referred to, will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments also will be posted on the Agency's Web site at *http://www.fsis.usda.gov/regulations_&_policies/2005_Notices_Index/index.asp.*

**FOR FURTHER INFORMATION CONTACT:** Pre-registration for this meeting is encouraged. Please contact Diane Jones at (202) 720–9692 or *Diane.Jones@fsis.usda.gov.* Persons requiring a sign language interpreter should notify Ms. Jones as soon as possible.

**SUPPLEMENTARY INFORMATION:**

## Background

On February 27, 2001 (66 FR 12589), FSIS published the notice of proposed rulemaking (NPRM) ''Performance Standards for the Production of Processed Meat and Poultry Products.'' These proposed performance standards would require, among other things, that the processing methods, such as heat treatments, fermentation, drying, or salt-curing, used by each establishment that produces RTE meat or poultry products achieve specific levels of pathogen lethality, in terms of a very low probability that *Salmonella* organisms will survive or specific $\log_{10}$ reductions of *Salmonella* in the products. FSIS also proposed that each establishment that produces RTE or partially cooked meat or poultry products use product stabilization processes, such as cooling following a heat treatment, that limit multiplication of *C. perfringens* to no more than 1 $\log_{10}$ and ensure no multiplication of *C. botulinum.* Partly in response to comments received on the NPRM, FSIS decided to conduct scientific risk assessments of the proposed lethality and stabilization standards.

FSIS has recently completed a quantitative risk assessment of *Salmonella* in RTE meat and poultry products. The risk assessment provides important data that the Agency has been using in deciding whether to adopt a lethality performance standard for the processing of RTE products, and, if so, what the standard should be.

The Agency has also completed ''A Risk Assessment for *Clostridium perfringens* in Ready-to-Eat and Partially Cooked Foods'' to estimate the risk of diarrheal illness from *C. perfringens* growth during stabilization of the products. The relative growth of *C. botulinum* during stabilization was also evaluated. FSIS is using the information from this risk assessment to develop a stabilization performance standard for the processing of such products.

FSIS is making these risk assessments available to the public and requests comment on them. The Agency is also

making available in the docket room reference materials used in support of the risk assessments and additional data relating to the development of the proposed performance standards, as requested in comments on the NPRM.

**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 notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2005_Notices_Index/.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and recalls, as well as 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 electronic mail subscription service for industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader and more diverse audience.

In addition, FSIS offers an electronic mail subscription service which provides an automatic and customized notification when popular pages are updated, including **Federal Register** publications and related documents. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/* and allows FSIS customers to sign up for subscription options across eight categories. Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to protect their accounts with passwords.

Done at Washington, DC, on March 22, 2005.

**Barbara J. Masters,**

*Acting Administrator.*

[FR Doc. 05–5951 Filed 3–22–05; 2:28 pm]

**BILLING CODE 3410–DM–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## Office of Federal Housing Enterprise Oversight

## 12 CFR Part 1731

**RIN 2550–AA31**

## Mortgage Fraud Reporting

**AGENCY:** Office of Federal Housing Enterprise Oversight, HUD.

**ACTION:** Extension of public comment period.

**SUMMARY:** On February 25, 2005, the Office of Federal Housing Enterprise Oversight (OFHEO) published a notice of proposed rulemaking titled ''Mortgage Fraud Reporting'' in the **Federal Register** (70 FR 9255) that would set forth safety and soundness requirements with respect to mortgage fraud reporting in furtherance of the supervisory responsibilities of OFHEO under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

OFHEO has received requests from the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation for an extension of the current comment period deadline of March 28, 2005, to enable them to present their respective views in a manner that is as comprehensive and as helpful to OFHEO as possible. In recognition of the importance of obtaining fully developed and constructive comments as to the implications of this proposed rulemaking, OFHEO is extending the comment period for the proposed mortgage fraud reporting regulation from March 28, 2005, to April 4, 2005. The extension will ensure that all interested parties have ample opportunity to participate in the rulemaking process by providing meaningful comment in the development of the proposed regulation.

**DATES:** The comment period has been extended. Written comments on the proposed regulation must be received by April 4, 2005.

**ADDRESSES:** You may submit your comments on the proposed regulation and collection of information, identified by regulatory information number (RIN) 2550–AA31, by any of the following methods:

- U.S. Mail, United Parcel Post, Federal Express, or Other Mail Service: The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2550–AA31, Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.
- Hand Delivered/Courier: The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2550–AA31, Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- E-mail: *RegComments@OFHEO.gov.* Comments to Alfred M. Pollard, General Counsel, may be sent by e-mail at *RegComments@OFHEO.gov.* Please include RIN 2550–AA31 in the subject line of the message.

*Instructions:* OFHEO requests that comments to the proposed amendments include the reference RIN 2550–AA31. OFHEO further requests that comments submitted in hard copy also be accompanied by the electronic version in Microsoft® Word or in portable document format (PDF) on 3.5'' disk. Please see the section, Supplementary Information, below, for additional information on the posting and viewing of comments.

**FOR FURTHER INFORMATION CONTACT:** Isabella W. Sammons, Associate General Counsel, telephone (202) 414–3790 (not a toll-free number); Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** OFHEO invites comments on all aspects of the proposed regulation and will take all comments into consideration before issuing the final regulation. All comments received will be posted without change to *http://www.ofheo.gov,* including any personal information provided. Copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414–6924.

Dated: March 18, 2005.

**Armando Falcon Jr.,**

*Director, Office of Federal Housing Enterprise Oversight.*

[FR Doc. 05–5776 Filed 3–23–05; 8:45 am]

**BILLING CODE 4220–01–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA–2005–20515; Directorate Identifier 2005–CE–09–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Pilatus Aircraft Ltd. Model PC–6 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for all Pilatus Aircraft Ltd. (Pilatus) Model PC–6 airplanes. This proposed AD would require you to repetitively inspect the stabilizer-trim attachment and structural components for cracks, corrosion, and discrepancies and replace any defective part with a new part. This proposed AD would also require you to replace all Fairchild connecting pieces, part number 6232.0026.XX, with a Pilatus connecting piece. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. We are issuing this proposed AD to detect and correct defective stabilizer-trim attachments and surrounding structural components, which could result in failure of the stabilizer-trim attachment. This failure could lead to loss of control of the airplane.

**DATES:** We must receive any comments on this proposed AD by April 25, 2005.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To get the service information identified in this proposed AD, contact Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 6580; facsimile: +41 41 619 6576; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040.

To view the comments to this proposed AD, go to *http://dms.dot.gov.* This is docket number FAA–2005–20515; Directorate Identifier 2005–CE–09–AD.

**FOR FURTHER INFORMATION CONTACT:** Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

*How do I comment on this proposed AD?* We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include the docket number, ''FAA–2005–20515; Directorate Identifier 2005–CE–09–AD'' at the beginning of your comments. We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA–2005–20515; Directorate Identifier 2005–CE–09–AD. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

*Are there any specific portions of this proposed AD I should pay attention to?* We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

### Docket Information

*Where can I go to view the docket information?* You may view the AD docket that contains the proposal, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m. (eastern standard time), Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated in **ADDRESSES**. You may also view the AD docket on the Internet at *http://dms.dot.gov.* The comments will be available in the AD docket shortly after the DMS receives them.

### Discussion

*What events have caused this proposed AD?* The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on all Pilatus Model PC–6 airplanes. The FOCA reports that the lower attachment bracket of the horizontal stabilizer actuator broke on a PC–6 airplane. This resulted in an emergency landing outside the airport.

The FOCA reports two other instances of total failure of the stabilizer trim attachment on airplanes in-service.

*What is the potential impact if FAA took no action?* If not detected and corrected, defects in the stabilizer-trim attachment and surrounding structural components could cause the stabilizer-trim attachment to fail. This failure could lead to loss of control of the airplane.

*Is there service information that applies to this subject?* Pilatus has issued PC–6 Service Bulletin No. 53–001, dated February 16, 2005.

*What are the provisions of this service information?* The service bulletin includes procedures for:

—Inspecting the stabilizer-trim attachment and structural components (the fitting, the connecting piece, the bearing fork, the bearing support assembly, and the auxiliary frame, as applicable) for cracks and corrosion;

—Inspecting the diameters of the bolt holes on the actuator attachment, fittings, and connecting piece (as applicable);

—Replacing any cracked, corroded, or defective part with a new part; and

—Replacing all Fairchild connecting pieces with a Pilatus connecting piece.

*What action did the FOCA take?* The FOCA classified this service bulletin as mandatory and issued Swiss AD

Number HB–2005–080, effective date March 2, 2005, in order to ensure the continued airworthiness of these airplanes in Switzerland.

*Did the FOCA inform the United States under the bilateral airworthiness agreement?* These Pilatus PC–6 airplanes are manufactured in Switzerland and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Fairchild also manufactured these airplanes under a United States licensing agreement with Pilatus under the same type certificate.

Under this bilateral airworthiness agreement, the FOCA has kept us informed of the situation described above.

## FAA's Determination and Requirements of This Proposed AD

*What has FAA decided?* We have examined the FOCA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop on other Pilatus PC–6 airplanes of the same type design that are registered in the United States, we are proposing AD action to detect and correct defects in the stabilizer-trim attachment and surrounding structural components, which could result in failure of the stabilizer-trim attachment. This failure could lead to loss of control of the airplane.

*What would this proposed AD require?* This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

*How does the revision to 14 CFR part 39 affect this proposed AD?* On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

## Costs of Compliance

*How many airplanes would this proposed AD impact?* We estimate that this proposed AD affects 41 airplanes in the U.S. registry.

*What would be the cost impact of this proposed AD on owners/operators of the affected airplanes?* We estimate the following costs to do the proposed inspections:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| 11 work hours × $65 per hour = $715 | Not applicable | $715 | $715 × 41 = $29,315. |

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspections. We have no way of determining the number of airplanes that may need these replacements:

| Labor cost | Parts cost | Total cost per airplane to replace all parts |
|---|---|---|
| 10 work hours × $65 = $650 | $2,000 to replace all parts | $650 + $2,000 = $2,650. |

## Authority for This Rulemaking

*What authority does FAA have for issuing this rulemaking action?* Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

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

## Regulatory Findings

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

*Would this proposed AD involve a significant rule or regulatory action?* For the reasons discussed above, I certify that this proposed AD:

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

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

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

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket FAA–2005–20515; Directorate Identifier 2005–CE–09–AD'' in your request.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Pilatus Aircraft Ltd.:** Docket No. FAA–2005–20515; Directorate Identifier 2005–CE–09–AD.

**When Is the Last Date I Can Submit Comments on This Proposed AD?**

(a) We must receive comments on this proposed airworthiness directive (AD) by April 25, 2005.

**What Other ADs Are Affected by This Action?**

(b) None.

**What Airplanes Are Affected by This AD?**

(c) This AD affects Model PC–6 airplanes, all manufacturer serial numbers (MSN), that are certificated in any category.

**What Is the Unsafe Condition Presented in This AD?**

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. We are issuing this proposed AD to detect and correct cracks in the stabilizer-trim attachment and surrounding structural components, which could result in failure of the stabilizer-trim attachment. This failure could lead to loss of control of the airplane.

**What Must I Do to Address This Problem?**

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

| Actions | Compliance | Procedures |
|---|---|---|
| Inspect the following:<br>(i) the stabilizer-trim attachment and structural components (fitting, connecting piece, bearing fork, bearing support assembly, and auxiliary frame, as applicable) for cracks and corrosion; and<br>(ii) the diameters of the actuator attachment bolt holes on the fittings, auxiliary frame, and connecting piece (as applicable) for discrepancies. | Within the next 100 hours time-in-service (TIS) after the effective date of this AD. Repetitively inspect thereafter at intervals not-to-exceed 100 hours TIS even if the part is replaced. | Follow Pilatus PC–6 Service Bulletin No. 53–001, dated February 16, 2005. |
| (2) If cracks are found during any inspection required in paragraph (e)(1)(i) of this AD, replace the defective part with a new part. | Replace the defective part before further flight after the inspection in which cracks are found. After each replacement, continue with the repetitive inspection requirement in paragraph (e)(1) of this AD. | Follow Pilatus PC–6 Service Bulletin No. 53–001, dated February 16, 2005. |
| (3) If corrosion or discrepancies are found during any inspection required in paragraphs (e)(1)(i) and (e)(1)(ii) of this AD, do the following:<br>(i) replace the defective part with a new part if the corrosion or discrepancy is beyond the repairable limits stated in the service information; or<br>(ii) repair the defective part if the corrosion or discrepancy is within the repairable limits stated in the service information. | Replace or repair the defective part before further flight after the inspection in which corrosion or discrepancies are found. After each replacement or repair, continue with the repetitive inspection requirement in paragraph (e)(1) of this AD. | Follow Pilatus PC–6 Service Bulletin No. 53–001, dated February 16, 2005. |
| (4) Replace all Fairchild connecting pieces, part number (P/N) 6232.0026.XX, with a Pilatus connecting piece, P/N 6232.0026.XX. The Fairchild part has a rivet in the middle that is not on the Pilatus part. | Within the next 100 hours time-in-service (TIS) after the effective date of this AD. Repetitively inspect thereafter at intervals not-to-exceed 100 hours TIS. | Follow Pilatus PC–6 Service Bulletin No. 53–001. dated February 16, 2005. |
| (5) Do not install any Fairchild connecting piece, P/N 6232.0026.XX. The Fairchild part has a rivet in the middle that is not on the Pilatus part. | As of the effective date of this AD ..... | Follow Pilatus PC–6 Service Bulletin No. 53–001, dated February 16, 2005. |

**Note:** Even though not required in this AD, the FAA recommends that you send all defective parts to Pilatus at the address specified in paragraph (h) of this AD. With the part, include the aircraft serial number, flying hours, and cycles.

**May I Request an Alternative Method of Compliance?**

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

**Is There Other Information That Relates to This Subject?**

(g) Swiss AD HB–2005–080, effective date March 2, 2005, also addresses the subject of this AD.

**May I Get Copies of the Documents Referenced in This AD?**

(h) To get copies of the documents referenced in this AD, Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 6580; facsimile: +41 41 619 6576; or from Pilatus Business Aircraft Ltd., Product Support

Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov.* This is docket number FAA–2005–20515; Directorate Identifier 2005–CE–09–AD.

Issued in Kansas City, Missouri, on March 17, 2005.

**Sandra J. Campbell,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 05–5801 Filed 3–23–05; 8:45 am]

**BILLING CODE 4910–13–P**

---

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2004–18612; Airspace Docket No. 04–AWA–05]**

**RIN 2120–AA66**

## Proposed Modification of the Los Angeles Class B Airspace Area; CA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This proposal would modify the Los Angeles (LAX), CA, Class B airspace area. Specifically, this action proposes to expand the eastern boundary of the airspace to ensure containment of the LAX Standard Terminal Arrival Routes (STAR), and correct the inefficiencies of several existing areas identified during public meetings and Southern California TRACON (SCT) reviews of the airspace. The FAA is proposing this action to improve the flow of air traffic, enhance safety, and reduce the potential for midair collision in the LAX Class B airspace area, while accommodating the concerns of airspace users. Further, this effort supports the FAA's national airspace redesign goal of optimizing terminal and en route airspace areas to reduce aircraft delays and improve system capacity.

**DATES:** Comments must be received on or before May 23, 2005.

**ADDRESSES:** Send comments about this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must write FAA Docket No. FAA–2004–18612 and Airspace Docket No. 04–AWA–05, at the beginning of your comments. You may also submit comments through the Internet at *http://dms.dot.gov*.

**FOR FURTHER INFORMATION CONTACT:** Ken McElroy, Airspace and Rules, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2004–18612 and Airspace Docket No. 04–AWA–05) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Nos. FAA–2004–18612 and Airspace Docket No. 04–AWA–05.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Federal Register's Web page at *http://www.gpoaccess.gov/fr/index.html*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, CA 90261.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

### Background

In July 1971, the FAA issued a final rule establishing the LAX Terminal Control Area (TCA). This area was later renamed as Class B airspace as a result of the Airspace Reclassification Final Rule (56 FR 65638). Since its establishment, the LAX Class B airspace area has undergone several modifications. The current Class B airspace area was developed in the early 1990's and revised in 1996 (96 FR 66902). From January 2003 to February 2004, reviews were conducted by SCT and the results presented to the Southern California Airspace Users Working Group (SCAUWG) at regularly scheduled meetings. These reviews noted several areas where boundary locations and identification could be improved and identified areas in need of modification to ensure the containment of Standard Terminal Arrival Routes (STAR) within the LAX Class B airspace. The proposed LAX Class B airspace area modifications will address these matters.

### Public Input

As announced in the **Federal Register** (68 FR 64832), informal airspace meetings were held on January 20, 2004, at the Embassy Suites Hotel El Segundo, CA; January 22, 2004, at the James Monroe High School, North Hills, CA; January 27, 2004, at the Marriot Hotel, Riverside, CA; and January 29, 2004, at the Costa Mesa Neighborhood Community Center, Costa Mesa, CA. Interested airspace users had an opportunity to present their views and offer suggestions regarding planned modifications to the LAX Class B airspace area. All comments received during the informal airspace meetings and the subsequent comment period

was considered in developing this proposal.

**Analysis of Comments**

*Proposed Area N*

Five commenters suggested the FAA raise the floor of the proposed area N to 5,500 feet. They stated raising the floor of the proposed area N would allow easier VFR transition for southeast bound aircraft. They considered the 3,500 foot mandatory altitude of the Special Air Traffic Rules Area for southeasterly bound VFR aircraft to be too low, especially at night. Three other commenters suggested the FAA raise the floor of area N from the proposed 5,000 feet to 6,000 feet. They indicated raising the floor would provide additional terrain clearance for aircraft transitioning the Santa Monica Mountains to the southeast, and would also result in the benefit of additional altitudes in the Special Air Traffic Rules Area, which would provide controller workload relief.

The FAA does not agree with these comments. This proposal would not change existing arrival or departure routes or the altitudes used on these routes. Raising the floor of the proposed area N would not provide containment of LAX arrival traffic within the Class B airspace. Additionally, no changes to the Special Air Traffic Rules Area are associated with this proposal, therefore, comments addressing Special Air Traffic Rules Area changes are outside the scope of this proposal.

Several commenters recommended moving the northwestern boundary of proposed area N (originally proposed SMO 253 degree radial) further south to allow VFR flight along the shoreline off of Point Dume.

The FAA agrees. In response to comments requesting more room for VFR flight in the vicinity of Point Dume so that VFR aircraft can follow the shoreline, the proposed southern boundary of area N was moved south, and realigned along the Santa Monica (SMO) VOR 252 degree radial. As proposed, this will provide VFR aircraft the flexibility to navigate over the water along the shoreline near Point Dume.

*Proposed Area H*

One commenter requested that the FAA raise the 5,000 foot floor over Palos Verdes, to allow more GA access to and from Torrance (TOA) and Hawthorne (HHR) airports. Raising the floor would make some airspace revert to Class E airspace which means pilots would not have to be in contact with ATC. The commenter believes, raising the 5,000 foot floor south of LAX would provide more available altitudes in the Special Air Traffic Rules Area. The commenter maintains that a higher floor would prompt aircraft currently using the Hollywood Park Route to move to the Special Air Traffic Rules Area, where communication with ATC is not required. He believes this would reduce the workload for the controller in the Hollywood Park Route Sector. One commenter suggested that the FAA either re-route LAX turboprop departures landing at Santa Ana (SNA) or Ontario (ONT) around Palos Verdes, or raise the floor altitude of the proposed LAX Class B airspace southeast of LAX (area H) to increase the crossing altitude of turboprop aircraft that overfly Palos Verdes. Four other commenters suggested raising the 5,000 foot floor over the Palos Verdes Peninsula (area H) to 6,000 feet. The Mayor of Palos Verdes Estates requested that the FAA raise the floor of the Class B airspace over the Palos Verdes peninsula to 7,000 feet to reduce noise from turboprop aircraft over flights. Additionally, the Chairman of the Los Angeles Noise Roundtable requested the FAA determine if the 5,000 foot floor above the northern portion of the Palos Verdes Peninsula could be raised in an effort to help reduce noise from overflights of the community.

The FAA does not agree with these requests or suggestions for the following reasons. This proposal does not change existing arrival/departure routes or the altitudes used on these routes. No changes to the Special Air Traffic Rules Area, Hollywood Park Route, or LAX departure routes are associated with this proposal, therefore, comments addressing these items are outside the scope of this proposal. The FAA has reviewed the issue of raising the floor of the proposed area H and determined that such action would result in departure and arrival aircraft exiting the LAX Class B airspace area while in the LAX terminal area. This would not be consistent with safe and efficient management of air traffic in the LAX Class B airspace area. Additionally, the FAA believes the 5,000 foot floor of the LAX Class B in area H provides non-participating aircraft ample airspace for access to, from, or between the TOA and HRR airports, which have field elevations of 103 feet and 66 feet, respectively.

Several commenters suggested publishing airspace block ''ID letters'' (from the Class B legal description) on the Terminal Area Chart and publishing the VOR radials on the proposed Los Angeles Charted VFR Flyway Planning Routes portion of the Terminal Area Chart, the same as are currently shown on the San Diego Terminal Area Chart. Several commenters stated a preference for visual landmarks.

The FAA agrees with these suggestions, and will publish this information on the Los Angeles Terminal Area Chart and the Los Angeles Charted VFR flyway Planning Chart. Existing landmarks will be retained on the charts.

*Existing Areas E, F & G*

Numerous comments were received concerning the proposed description. Several commenters suggested using single north/south VOR radials to define the eastern edges of proposed areas E, F, and G, as opposed to the multiple north/south radials presented. Other commenters suggested the FAA simplify the east boundary of the Class B to just 7,000 and 8,000 feet as opposed to 7,000/8,000/9,000 feet as proposed. Another commenter pointed out that it may be difficult to navigate the eastern portion of the Class B on a VFR flight direct to Lake Arrowhead from SNA airport. Some suggested aligning the northern boundary of the Class B with a Pomona (POM) or Ventura (VTU) VOR radials. One comment suggests using a Seal Beach (SLI) radial to define the division south of Long Beach (LGB) as opposed to using the LGB runway 16R extended centerline.

The FAA reviewed the possibilities for using VOR radials to simplify the eastern Class B boundary lines, and agrees that re-alignment of area E, F, and G can be matched with El Toro (ELB) VOR radials. The ELB 332 and ELB 342 radials have been incorporated into the propose description to define areas E, F, and G. However, locations and useable parameters of the Ventura and Pomona VOR's do not allow for their use in defining the northern boundary of the Class B. Moving the western boundary of the proposed area J to match a SLI radial would not provide containment of LAX arrival traffic within the Class B airspace area. Simplifying the east boundary of the Class B to one large 7,000 or 8,000 foot area would take more airspace than needed, creating unnecessary airspace restrictions on non-participating aircraft.

One commenter suggested the FAA redefine easternmost boundaries of proposed, new, and existing areas as DME arcs. Another disagreed with the use of DME arcs and preferred visual landmarks.

The FAA does not agree with the comments concerning DME Arc's, but agrees with the use of visual landmarks to the extent practicable. Class B airspace designed using DME Arc's, exclusive of other options, would not be

compatible with operational requirements around LAX. Considering the unique requirements of the LAX terminal area, adopting a Class B design based on circles centered on the airport reference point would create more Class B airspace than necessary and have a negative impact on GA operations.

A commenter suggested modifying the southwest portion of area A, by raising the floor from the current surface to 2,000 feet or moving the area further offshore. Another commenter suggested lowering the ceiling of the LAX class B airspace from 10,000 to 8,000 feet to accommodate small aircraft that cannot climb above 10,000 feet.

The FAA does not agree. Raising the floor of area A, moving it further offshore, or lowering the ceiling of the entire Class B airspace area, would not provide for the containment of arrival or departure aircraft within the confines of the Class B airspace.

Seven comments were received in support of the proposal, the Aircraft Owners and Pilots Association (AOPA) cited the work of the Southern California Airspace User Working Group and the collaborative efforts of the FAA in developing this proposal. They pointed out that the overall modifications will prove beneficial to the general aviation community and result in a reduction of approximately 100 square miles of existing Class B airspace.

The FAA agrees with these comments. This proposal will result in an overall reduction of 100 square miles of existing Class B airspace.

**The Proposal**

The FAA is proposing an amendment to Title 14 Code of Federal Aviation Regulations (14 CFR) part 71 (part 71) to modify the LAX Class B airspace area. Specifically, this action (depicted on the attached chart) proposes to expand the eastern boundary to ensure the containment of the LAX STAR's within Class B airspace and reconfigure several existing areas, correcting areas of inefficiencies identified during public meetings and during reviews of the existing Class B airspace area by SCT. These proposed modifications reduce the overall size of the LAX Class B airspace area, improve the containment of turbo-jet aircraft within the airspace, and improve the alignment of lateral boundaries with VOR radials and visual landmarks for improved VFR navigation.

The following are the proposed revisions for each area of the LAX Class B airspace area:

*Area A:* The east/west line along the northwestern boundary will be aligned to the SMO 252(M)/267(T) radial to provide redundant reference for VFR navigation, and allow VFR aircraft to transition along the shoreline at Point Dume.

*Area B:* No change.

*Area C:* The east/west and northwest/southeast lines along the southern boundary will be aligned with the SLI 300(M)/315(T) radial and PDZ 252(M)/267(T) radial providing a redundant reference for VFR navigation.

*Area D:* The east/west line along the southern boundary to will be aligned with the PDZ 252(M)/267(T) radial to provide redundant reference for VFR navigation.

*Area E:* The east/west line along the southern boundary aligned with the PDZ 252(M)/267(T) radial, and the northern boundary aligned with the SMO 071(M)/086(T) radial. The eastern boundary will be aligned with the ELB 332(M)/347(T) radial. This modification will align the eastern boundary with existing VOR radials to provide redundant reference for VFR navigation, and lowers the floor to 7000 feet, ensuring containment of aircraft descending on the LAX profile.

*Area F:* The east/west line along the southern boundary will be aligned with the PDZ 252(M)/267(T) radial, and the northern boundary aligned with the SMO 071(M)/086(T) radial. The western boundary will be aligned with Block E of the Class B airspace area along ELB 332(M)/347(T) radial. The eastern boundary will be aligned with the ELB 342(M)/357(T) radial. These modifications will align the boundaries with existing VOR radials providing a redundant reference for VFR navigation, and lower the floor to 8000 feet, ensuring containment of aircraft descending on the LAX profile.

*Area G:* The east/west line along the southern boundary will be aligned with the PDZ 252(M)/267(T) radial, and the northern boundary will be aligned with the SMO 071(M)/086(T) radial. The western boundary will be aligned with Block F along ELB 342(M)/357(T) radial. The eastern boundary will be aligned with the ELB 352(M)/007(T) radial, and the POM 112(M)/127(T) radial. These modifications will align the boundaries with existing VOR radials providing a redundant reference for VFR navigation. This area will expand the existing LAX Class B airspace area slightly to ensure containment of aircraft descending on the LAX profile.

*Area H:* The east/west and northwest/southeast lines along the northern boundary will be aligned with the SLI 300(M)/315(T) radial and PDZ 252(M)/267(T) radial to provide a redundant reference for VFR navigation.

*Area I:* The east/west line along the northern boundary will be aligned with the PDZ 252(M)/267(T) radial to provide a redundant reference for VFR navigation.

*Area J:* The southern boundary will be aligned with the ELB 226(M)/241(T) radial. The eastern boundary will be shortened to end at the ELB 226(M)/241(T) radial. The western boundaries will be realigned to the LAX 127(M)/142(T) radial and the LGB extended runway 16R centerline. These modifications will align the boundaries with existing VOR radials where possible providing a redundant reference for VFR navigation.

*Area K:* The southern boundary will be aligned with the ELB 248(M)/263(T) radial to provide a redundant reference for VFR navigation, and the eastern boundary will be realigned with the LGB extended runway 16R centerline.

*Area L:* The southern boundary will be aligned with the ELB 248(M)/263(T) radial to provide a redundant reference for VFR navigation.

*Area M:* The northern boundaries will be aligned with the SMO 252(M)/267(T) radial andVNY 220(M)/235(T) radial to provide a redundant reference for VFR navigation.

*Area N:* The western boundary will be aligned with the VNY 220(M)/235(T) radial. The southern boundary aligned with the SMO 252(M)/267(T) radial. These modifications align the boundaries with existing VOR radials to provide a redundant reference for VFR navigation.

**Regulatory Evaluation Summary**

Changes to Federal Regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act requires agencies to analyze the economic effect of regulatory changes on small businesses and other small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this proposed rule: (1) Would generate benefits that justify its circumnavigation costs and is not a ''significant regulatory action'' as defined in the Executive Order; (2) is not significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; (4) would not constitute a barrier to

international trade; and (5) would not contain any Federal intergovernmental or private sector mandate. These analyses are summarized here in the preamble, and the full Regulatory Evaluation is in the docket.

This action would modify the LAX Class B airspace area. The proposed rule would reconfigure the area's lateral boundaries.

This action would generate benefits for system users and the FAA in the form of enhanced operational efficiency and simplified navigation in the LAX terminal area. These modifications would impose some circumnavigation costs on operators who want to remain outside the Class B airspace area. Although the overall impact of our proposal would be to reduce one hundred square miles of the Class B airspace in the eastern most sectors of the Class B airspace there would be some increase Class B airspace where we have proposed to raise the ceiling. Some pilots may choose to circumnavigate the eastern sectors. However, the cost of circumnavigation in the ''E'' sector is considered to be small. Moreover, the overall impact will reduce circumnavigation costs because of the reduction in the ''N'' sector. We're also proposing to reduce that sector both laterally and vertically. Thus, the FAA has determined this proposed rule would be cost-beneficial.

**Initial Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This proposed rule may impose some circumnavigation costs on individuals operating in the LAX terminal area; but the proposed rule would not impose any costs on small business entities. Operators of general aviation aircraft are considered individuals, not small business entities and are not included when performing a regulatory flexibility analysis. Flight schools are considered small business entities. However, the FAA assumes that they provide instruction in aircraft equipped to navigate in Class B airspace given they currently provide instruction in the LAX terminal area. Air taxis are also considered small business entities, but are assumed to be properly equipped to navigate Class B airspace because it is part of their current practice. Therefore, these small entities should not incur any additional costs as a result of the proposed rule. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies this rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments from affected entities with respect to this finding and determination.

**International Trade Impact Assessment**

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

The proposed rule is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

**Unfunded Mandates Assessment**

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 0104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for these small governments to provide input in the development of regulatory proposals.

This proposed rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this action.

**Conclusion**

In view of the minimal or zero cost of compliance of this action and the enhancements to operational efficiency, the FAA has determined that this action would be cost-beneficial.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

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

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

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

*Paragraph 3000 Subpart B–Class B Airspace.*

* * * * *

**AWP CA B Los Angeles, CA [Revised]**

Los Angeles International Airport (Primary Airport)
(Lat. 33°56′55″ N., long. 118°24′49″ W.)

Area A. That airspace extending upward from the surface to 10,000 feet MSL beginning at
Lat. 33°59′50″ N., long. 118°44′43″ W.
Lat. 34°00′23″ N., long. 118°32′33″ W.
Lat. 33°57′42″ N., long. 118°27′23″ W. Ballona Creek/Pacific Ocean
Lat. 33°57′42″ N., long. 118°22′10″ W. Manchester/405 Fwy
Lat. 34°01′00″ N., long. 118°15′00″ W.
Lat. 33°55′48″ N., long. 118°13′52″ W. SLI 300(M/315(T)10 DME
Lat. 33°55′51″ N., long. 118°26′05″ W. Imperial Hwy/Pacific Ocean
Lat. 33°45′34″ N., long. 118°27′01″ W. LIMBO intersection
Lat. 33°45′14″ N., long. 118°32′29″ W. INISH intersection to point of beginning.

Area B. That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL beginning at
Lat. 34°01′00″ N., long. 118°15′00″ W.
Lat. 34°00′01″ N., long. 118°07′58″ W. Garfield Washington Blvd
Lat. 33°56′10″ N., long. 118°07′21″ W. Stonewood Center
Lat. 33°55′48″ N., long. 118°13′52″ W. SLI 300(M)/315(T) 10 DME to point of beginning.

Area C. That airspace extending upward from 2,500 feet MSL to and including 10,000 feet MSL beginning at
Lat. 33°57′42″ N., long. 118°22′10″ W. Manchester/405 Fwy
Lat. 34°00′20″ N., long. 118°23′05″ W. West Los Angeles College
Lat. 34°02′49″ N., long. 118°21′48″ W.
Lat. 34°06′00″ N., long. 118°14′24″ W. Railroad Freight Yard
Lat. 34°06′00″ N., long. 118°11′23″ W. Ernest E. Debs Regional Park
Lat. 34°02′03″ N., long. 118°03′39″ W. Legg Lake
Lat. 33°58′40″ N., long. 118°01′49″ W. Whittier College
Lat. 33°53′44″ N., long. 118°01′52″ W. PDZ 252(M)/267(T) 25.1
Lat. 33°53′17″ N., long. 118°10′50″ W. Dominguez High School
Lat. 33°55′48″ N., long. 118°13′52″ W. SLI 300(M)/315(T) 10 DME
Lat. 33°56′10″ N., long. 118°07′21″ W. Stonewood Center
Lat. 34°00′01″ N., long. 118°07′58″ W. Garfield/Washington Blvd
Lat. 34°01′00″ N., long. 118°15′00″ W. to point of beginning.

Area D. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL beginning at
Lat. 34°06′00″ N., long. 118°11′23″ W. Ernest E. Debs Regional Park
Lat. 34°00′45″ N., long. 117°54′03″ W.
Lat. 33°57′40″ N., long. 117°53′35″ W.
Lat. 33°54′04″ N., long. 117°54′35″ W. Brea Municipal Golf Course
Lat. 33°53′44″ N., long. 118°01′52″ W. PDZ 252(M)/267(T) 25.1
Lat. 33°58′40″ N., long. 118°01′49″ W. Whittier College
Lat. 34°02′03″ N., long. 118°03′39″ W. Legg Lake to the point of beginning.

Area E. That airspace extending upward from 7,000 feet MSL to and including 10,000 feet MSL beginning at
Lat. 33°54′04″ N., long. 117°54′35″ W. Brea Municipal Golf Course
Lat. 33°54′23″ N., long. 117°47′42″ W.
Lat. 34°02′42″ N., long. 117°50′00″ W. Mt. San Antonio College
Lat. 34°02′22″ N., long. 117°59′23″ W.
Lat. 34°00′45″ N., long. 117°54′03″ W.
Lat. 33°57′40″ N., long. 117°53′35″ W.
Lat. 33°54′04″ N., long. 117°54′35″ W. Brea Municipal Golf Course to point of beginning.

Area F. That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL beginning at
Lat. 33°54′23″ N., long. 117°47′42″ W. PDZ 252(M)/267(T) ELB 332(M)/347(T)
Lat. 33°54′31″ N., long. 117°44′45″ W. PDZ 252(M)/267(T) ELB 342(M)/357(T)
Lat. 34°02′57″ N., long. 117°45′16″ W. SMO 071(M)/086(T) ELB 342(M)/357(T)
Lat. 34°02′42″ N., long. 117°50′00″ W. SMO 071(M)/086(T) Mt. San Antonio College to point of beginning.

Area G. That airspace extending upward from 9,000 feet MSL to and including 10,000 feet MSL beginning at
Lat. 33°54′31″ N., long. 117°44′45″ W.
Lat. 33°54′39″ N., long. 117°41′48″ W.
Lat. 34°00′44″ N., long. 117°40′54″ W.
Lat. 34°02′59″ N., long. 117°44′29″ W.
Lat. 34°02′57″ N., long. 117°45′16″ W. to point of beginning.

Area H. That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL beginning at
Lat. 33°53′44″ N., long. 118°01′52″ W. PDZ 252(M)/267(T) 25.1
Lat. 33°47′00″ N., long. 118°03′17″ W. Seal Beach VORTAC Los Alamitos AFRC
Lat. 33°46′40″ N., long. 118°08′53″ W. SLI 251(M)/266(T) 4.7
Lat. 33°45′34″ N., long. 118°27′01″ W. LIMBO Intersection/SLI 251(M)/266(T)
Lat. 33°55′51″ N., long. 118°26′05″ W. Imperial Hwy/Pacific Ocean
Lat. 33°55′48″ N., long. 118°13′52″ W. SLI 300(M)/315(T) 10 DME
Lat. 33°53′17″ N., long. 118°10′50″ W. Dominguez High School to point of beginning.

Area I. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning at
Lat. 33°54′04″ N., long. 117°54′35″ W. Brea Municipal Golf Course
Lat. 33°47′23″ N., long. 117°57′40″ W. Garden Grove Mall
Lat. 33°47′00″ N., long. 118°03′17″ W. Seal Beach VORTAC/Los Alamitos AFRC
Lat. 33°53′44″ N., long. 118°01′52″ W. PDZ 252(M)/267(T) 25.1 to point of beginning.

Area J. That airspace extending upward from 7,000 feet MSL to and including 10,000 feet MSL beginning at
Lat. 33°47′23″ N., long. 117°57′40″ W. Garden Grove Mall
Lat. 33°35′52″ N., long. 117°53′59″ W. Newport Bay
Lat. 33°31′34″ N., long. 118°03′11″ W.
Lat. 33°37′56″ N., long. 118°09′04″ W. LAX 127(M)/142(T) 22.7
Lat. 33°46′40″ N., long. 118°08′53″ W. SLI 251(M)/266(T)) 4.7
Lat. 33°47′00″ N., long. 118°03′17″ W. Seal Beach VORTAC/Los Alamitos AFRC to point of beginning.

Area K. That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL beginning at
Lat. 33°37′56″ N., long. 118°09′04″ W. LAX 127(M)/142(T) 22.7
Lat. 33°36′09″ N., long. 118°25′38″ W. ELB 249(M)/264(T) 35.1
Lat. 33°45′34″ N., long. 118°27′01″ W. LIMBO Intersection
Lat. 33°46′40″ N., long. 118°08′53″ W. SLI 251(M)/266(T) 4.7 to point of beginning.

Area L. That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL beginning at
Lat. 33°36′09″ N., long. 118°25′38″ W. ELB 249(M)/264(T) 35.1
Lat. 33°35′11″ N., long. 118°34′31″ W. ELB 248(M)/263(T) 42.6
Lat. 33°44′27″ N., long. 118°42′23″ W. SLI 251(M)/266(T) 32.7
Lat. 33°45′14″ N., long. 118°32′29″ W. INISH Intersection
Lat. 33°45′34″ N., long. 118°27′01″ W. LIMBO Intersection to point of beginning.

Area M. That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL beginning at
Lat. 33°44′27″ N., long. 118°42′23″ W. SLI 251(M)/266(T) 32.7
Lat. 33°58′48″ N., long. 118°54′27″ W. VNY 220(M)/235(T) 25.3
Lat. 33°59′26″ N., long. 118°53′23″ W.
Lat. 33°59′50″ N., long. 118°44′43″ W.
Lat. 33°45′14″ N., long. 118°32′29″ W. INISH Intersection to point of beginning.

Area N. That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL beginning at
Lat. 33°59′26″ N., long. 118°53′23″ W.
Lat. 34°06′00″ N., long. 118°42′12″ W.
Lat. 34°06′00″ N., long. 118°14′24″ W. Railroad Freight Yard
Lat. 34°02′49″ N., long. 118°21′48″ W.
Lat. 34°00′20″ N., long. 118°23′05″ W. West Los Angeles College
Lat. 33°57′42″ N., long. 118°22′10″ W. Manchester/405 Hwy
Lat. 33°57′42″ N., long. 118°27′23″ W. Ballona Creek/Pacific Ocean
Lat. 34°00′23″ N., long. 118°32′33″ W. SMO 252(M)/267(T) 4.3
Lat. 33°59′50″ N., long. 118°44′43″ W. to point of beginning.

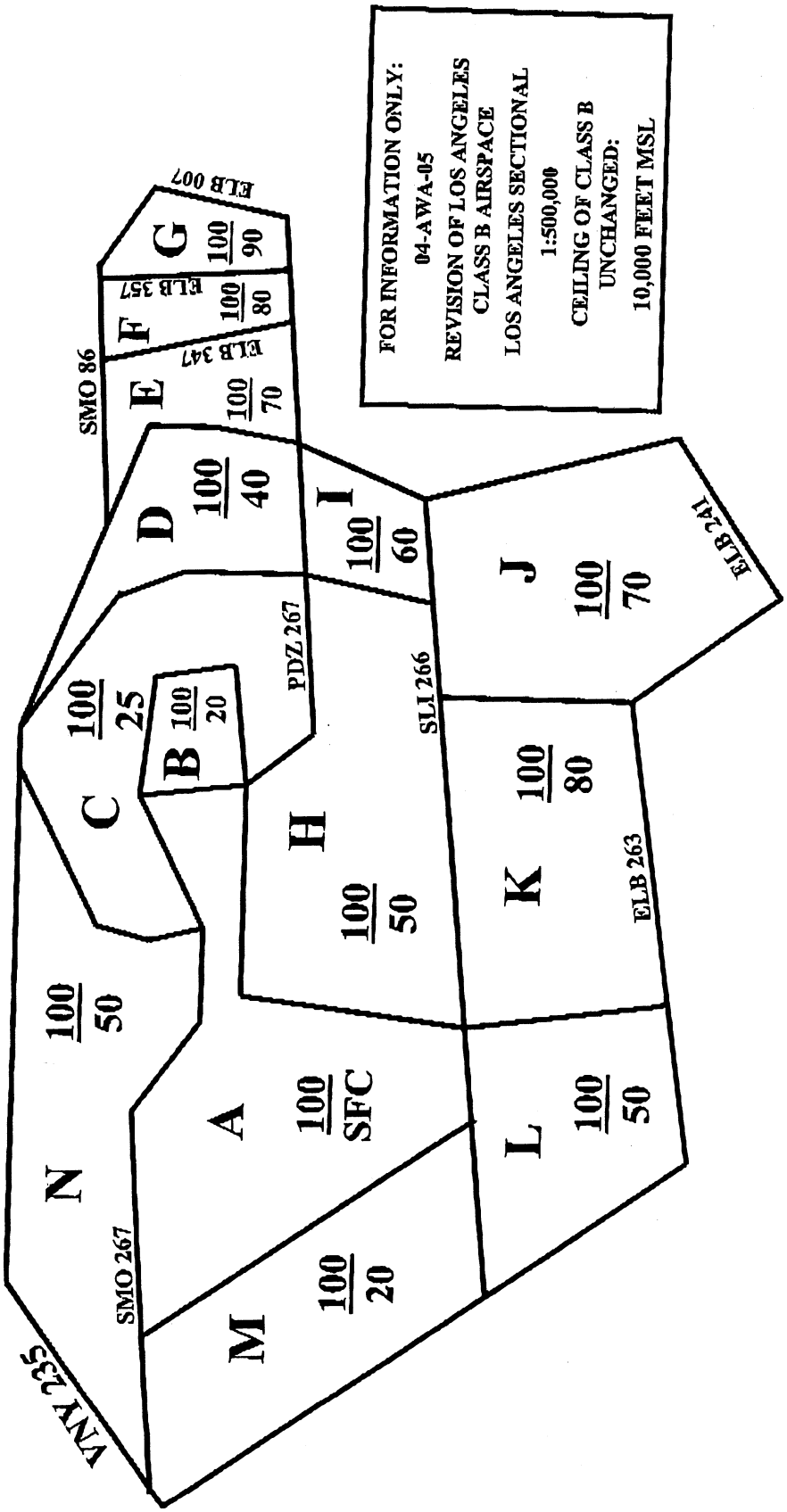
* * * * *

Issued in Washington DC, on March 3, 2005.

**Edith V. Parish,**

*Acting Manager, Airspace and Rules.*

BILLING CODE 4910–13–P




[FR Doc. 05–5095 Filed 3–23–05; 8:45 am]

BILLING CODE 4910–13–C

## DEPARTMENT OF TRANSPORTATION

### Saint Lawrence Seaway Development Corporation

### 33 CFR Part 402

**[Docket No. SLSDC 2005–20518]**

**RIN 2135–AA21**

## Tariff of Tolls

**AGENCY:** Saint Lawrence Seaway Development Corporation, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Tariff of Tolls in their respective jurisdictions. The Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the SLSDC and the SLSMC. The SLSDC will be revising its regulations to reflect the fees and charges levied by the SLSMC in Canada starting in the 2005 navigation season, which are effective only in Canada. The SLSDC also proposes an amendment to increase the charge per pleasure craft per lock transited for full or partial transit of the Seaway. Since this latter proposed amendment would apply in the United States, comments are invited on this amendment only. (See **SUPPLEMENTARY INFORMATION**.)

**DATES:** Any party wishing to present views on the proposed amendment may file comments with the Corporation on or before April 25, 2005.

**ADDRESSES:** You may submit comments [identified by DOT DMS Docket Number SLSDC 2005–20518] by any of the following methods:

- Web Site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

*Instructions:* All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

*Docket:* For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Craig H. Middlebrook, Acting Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–0091.

**SUPPLEMENTARY INFORMATION:** The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Tariff of Tolls (Schedule of Fees and Charges in Canada) in their respective jurisdictions.

The Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the SLSDC and the SLSMC. The SLSDC is proposing to revise 33 CFR 402.8, ''Schedule of Tolls'', to reflect the fees and charges levied by the SLSMC in Canada beginning in the 2005 navigation season. With one exception, the changes affect the tolls for commercial vessels and are applicable only in Canada. The collection of tolls by the SLSDC on commercial vessels transiting the U.S. locks is waived by law (33 U.S.C. 988a(a)). Accordingly, no notice or comment is necessary on these amendments.

The SLSDC also proposes to amend 33 CFR 402.8 to increase the charge per pleasure craft per U.S. lock transited from $20 to $25 U.S., or $30 Canadian. This increase is needed due to higher operating costs at the locks. The per lock charge for pleasure craft transiting the Canadian locks will remain $20 Canadian, to be collected in Canadian dollars.

### Regulatory Notices

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our 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 DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

### Regulatory Evaluation

This proposed regulation involves a foreign affairs function of the United States and therefore Executive Order 12866 does not apply and evaluation under the Department of Transportation's Regulatory Policies and Procedures is not required.

### Regulatory Flexibility Act Determination

I certify this proposed regulation will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Regulations and Rules primarily relate to commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

### Environmental Impact

This proposed regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et seq.*) because it is not a major Federal action significantly affecting the quality of the human environment.

### Federalism

The Corporation has analyzed this proposed rule under the principles and criteria in Executive Order 13132, dated August 4, 1999, and has determined that this proposal does not have sufficient federalism implications to warrant a federalism assessment.

### Unfunded Mandates

The Corporation has analyzed this proposed rule under Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48) and determined that it does not impose unfunded mandates on State, local, and tribal governments and the private sector requiring a written statement of economic and regulatory alternatives.

### Paperwork Reduction Act

This proposed regulation has been analyzed under the Paperwork Reduction Act of 1995 and does not contain new or modified information collection requirements subject to the Office of Management and Budget review.

### List of Subjects in 33 CFR Part 402

Vessels, Waterways.

Accordingly, the Saint Lawrence Seaway Development Corporation proposes to amend 33 CFR part 402, Tariff of Tolls, as follows:

## PART 402—TARIFF OF TOLLS

1. The authority citation for part 402 would continue to read as follows:

**Authority:** 33 U.S.C. 983(a), 984(a)(4) and 988, as amended; 49 CFR 1.52.

2. § 402.8 would be revised to read as follows:

**§ 402.8 Schedule of tolls.**

| Column 1: item no./description of charges | Column 2: rate ($) Montreal to or from Lake Ontario (5 locks) | Column 3: rate ($) Welland Canal—Lake Ontario to or from Lake Erie (8 locks) |
|---|---|---|
| 1. Subject to item 3, for complete transit of the Seaway, a composite toll, comprising: | | |
| (1) a charge per gross registered ton of the ship, applicable whether the ship is wholly or partially laden, or is in ballast, and the gross registered tonnage being calculated according to prescribed rules for measurement in the United States or under the International Convention on Tonnage Measurement of Ships, 1969, as amended from time to time. | 0.0928 | 0.1507 |
| (2) a charge per metric ton of cargo as certified on the ship's manifest or other document, as follows: | | |
| (a) bulk cargo | 0.9624 | 0.6376 |
| (b) general cargo | 2.3187 | 1.0204 |
| (c) steel slab | 2.0985 | 0.7305 |
| (d) containerized cargo | 0.9624 | 0.6376 |
| (e) government aid cargo | n/a | n/a |
| (f) grain | 0.5912 | 0.6376 |
| (g) coal | 0.5681 | 0.6376 |
| (3) a charge per passenger per lock | 1.3680 | 1.3680 |
| (4) a charge per lock for transit of the Welland Canal in either direction by cargo ships: | | |
| (a) loaded | n/a | 509.22 |
| (b) in ballast | n/a | 376.23 |
| 2. Subject to item 3, for partial transit of the Seaway | 20 per cent per lock of the applicable charge under items 1(1) and (2) plus the applicable charge under items 1(3) and (4).. | 13 per cent per lock of the applicable charge under items 1(1) and (2) plus the applicable charge under items 1(3) and (4). |
| 3. Minimum charge per ship per lock transited for full or partial transit of the Seaway | 20.00 | 20.00 |
| 4. A rebate applicable to the rates of item 1 to 3 | n/a | n/a |
| 5. A charge per pleasure craft per lock transited for full or partial transit of the Seaway, including applicable Federal taxes [1]. | 20.00 | 20.00 |
| 6. In lieu of item 1(4), for vessel carrying new cargo or returning ballast after carrying new cargo, a charge per gross registered ton of the ship, the gross registered tonnage being calculated according to item 1(1): | | |
| (a) loaded | n/a | 0.1500 |
| (b) in ballast | n/a | 0.1100 |

[1] The applicable charge at the Saint Lawrence Seaway Development Corporation's locks (Eisenhower, Snell) for pleasure craft is $25 U.S., or $30 Canadian per lock. The applicable charge under item 3 at the Saint Lawrence Seaway Development Corporation's locks (Eisenhower, Snell) will be collected in U.S. dollars. The other amounts are in Canadian dollars and are for the Canadian Share of tolls. The collection of the U.S. portion of tolls for commercial vessels is waived by law (33 U.S.C. 988a(a)).

Saint Lawrence Seaway Development Corporation.

Issued at Washington, DC on March 11, 2005.

**Albert S. Jacquez,**

*Administrator.*

[FR Doc. 05–5794 Filed 3–23–05; 8:45 am]

BILLING CODE 4910–61–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Chapter I

**[CC Docket No. 01–92; FCC 05–33]**

### Developing a Unified Intercarrier Compensation Regime

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** By this document, the Commission seeks comment on plans and principles submitted by telecommunications industry groups, and on alternative measures, for comprehensive reform of the current intercarrier compensation system. The Commission seeks comment on the legal issues, network interconnection issues, cost recovery issues and implementation issues related to these plans and alternative measures in order to transition to a unified intercarrier compensation regime.

**DATES:** Submit comments on or before May 23, 2005. Submit reply comments on or before June 22, 2005.

**ADDRESSES:** You may submit comments, identified by CC DOCKET NO. 01–92, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fcc.gov*. Follow the instructions for submitting comments on the Electronic Comment Filing System (ECFS)/*http://www.fcc.gov/cgb/ecfs/*.
- E-mail: To *victoria.goldberg@fcc.gov*. Include CC Docket 01–92 in the subject line of the message.
- Fax: To the attention of Victoria Goldberg at 202–418–1587. Include CC Docket 01–92 on the cover page.
- Mail: All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary,

Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Parties should also send a copy of their filings to Victoria Goldberg, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5–A266, 445 12th Street, SW., Washington, DC 20554.

• Hand Delivery/Courier: The Commission's contractor, Natek, Inc., 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.

*Instructions:* All submissions received must include the agency name and docket number. All comments received will be posted without change to *http://www.fcc.gov/cgb/ecfs/*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Comment Filing Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Victoria Goldberg, Wireline Competition Bureau, Pricing Policy Division, (202) 418–7353.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Further Notice of Proposed Rulemaking in CC Docket No. 01–92, adopted on February 10, 2005 and released on March 3, 2005. The complete text of this Further Notice of Proposed Rulemaking is available for public inspection Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. in the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554. The complete text is also available on the Commission's Internet site 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. The complete text of the Further Notice of Proposed Rulemaking (FNPRM) may be purchased from the Commission's duplicating contractor, Best Copying and Printing, Inc., Room CY–B402, 445 Twelfth Street, SW., Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or e-mail at *http://www.bcpiweb.com*.

**Synopsis of Further Notice of Proposed Rulemaking**

1. In 2001, the Commission issued a Notice of Proposed Rulemaking to begin the process of intercarrier compensation reform, *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket 01–92, Notice of Proposed Rulemaking, 66 FR 28410, May 23, 2001 (*Intercarrier Compensation NPRM*). The Commission received extensive comment on the *Intercarrier Compensation NPRM* including several proposals for comprehensive reform of the existing intercarrier compensation regime submitted by industry groups. With this FNPRM, the Commission continues the process of intercarrier compensation reform by seeking comment on the industry proposals, and on other matters raised in response to the *Intercarrier Compensation NPRM*.

2. The record in this proceeding shows that the three basic principles underlying existing intercarrier compensation regimes must be re-examined in light of significant market developments since the adoption of the access charge and reciprocal compensation rules. First, the existing compensation regimes are based on jurisdictional and regulatory distinctions that are not tied to economic or technical differences between services. These artificial distinctions distort the telecommunications markets at the expense of healthy competition. Moreover, the availability of bundled service offerings and novel services blur the traditional industry and regulatory distinctions that serve as the foundation of the current rules. Second, the existing compensation regimes are predicated on the recovery of average costs on a per-minute basis. Advancements in telecommunications infrastructure affect the way carrier costs are incurred and call into question to use of per-minute pricing. Third, under the existing regimes, the calling party's carrier, whether local exchange carrier (LEC), interexchange carrier (IXC), or commercial mobile radio service (CMRS) provider, compensates the called party's carrier for terminating the call. Developments in the ability of consumers to manage their own telecommunications services undermine the premise that the calling party is the sole cost causer and should be responsible for all the costs of a call. There are a number of additional criteria the commission must consider in assessing whether a particular proposal will help achieve its policy goals. For example, any proposal for reform of compensation mechanisms should address the impact of such changes on network interconnection rules. In addition, any reform proposal should explain the Commission's legal authority to adopt it.

3. Acknowledging that significant reform might be needed, the Commission requested comment in the *Intercarrier Compensation NPRM* on the appropriate goals of intercarrier compensation regulation in a competitive market and discussed specific goals that should be considered in evaluating a new regime. Based on the record, the Commission agrees with commenters that any new approach should promote economic efficiency. Preservation of universal service is another priority under the Act and the Commission recognizes that fulfillment of this mandate must be a consideration in the development of any intercarrier compensation regime. The Commission also agrees that any new intercarrier compensation approach must be competitively and technologically neutral.

4. Having concluded that there is an urgent need to reform the existing intercarrier compensation rules, the Commission now turns to the question of what reforms best serve the goals identified. In the *Intercarrier Compensation NPRM*, the Commission re-evaluated the rationale for the traditional calling party network pays (CPNP) regimes and identified new approaches to intercarrier compensation, including a bill-and-keep approach. Under a bill-and-keep approach, neither of the interconnecting networks charges the other network for terminating traffic that originates on the other carrier's network.

5. Attached as an appendix to the FNPRM is an analysis of comments filed regarding bill-and-keep in response to the *Intercarrier Compensation NPRM*. The views expressed in this staff analysis do not represent the views of, and are not endorsed by, the Commission.

6. In parallel with the Commission's consideration of the record developed in response to the *Intercarrier Compensation NPRM*, various industry groups have been negotiating proposals for comprehensive reform of federal and state intercarrier compensation mechanisms. These negotiations have resulted in proposals from a number of groups—the Intercarrier Compensation Forum (ICF), the Expanded Portland

Group (EPG), the Alliance for Rational Intercarrier Compensation (ARIC), the Cost-Based Intercarrier Compensation Coalition (CBICC), and two rural LECs, Home Telephone Company and PBT Telecom (Home/PBT). In addition, the Commission discusses a statement of principles submitted by CTIA as well as a specific reform proposal filed by Western Wireless. The Commission also discusses a proposal by the National Association of State Utility Consumer Advocates (NASUCA) that would reduce certain intercarrier compensation rates. Moreover, the National Association of Regulatory Utility Commissioners (NARUC) has developed a set of principles that it believes should guide any consideration of intercarrier compensation reform.

**Description of Industry Proposals**

7. *Intercarrier Compensation Forum (ICF).* The ICF is a diverse group of nine carriers that represent different segments of the telecommunications industry. The ICF has developed a comprehensive plan for reforming current network interconnection, intercarrier compensation, and universal service rules. With respect to network interconnection, the ICF plan establishes default technical and financial rules that generally require an originating carrier to deliver traffic to the ''Edge'' of a terminating carrier's network. With respect to compensation, the ICF plan would reduce per-minute termination rates from existing levels to zero over a six-year period. Revenue eliminated as a result of the transition to bill-and-keep under the ICF plan would be replaced by a combination of end-user charges and a new universal service support mechanism.

8. *Expanded Portland Group (EPG).* The EPG is a group of small and mid-sized rural LECs that came together to develop a proposal distinct from a bill-and-keep mechanism. Stage one of the EPG proposal is intended to address more immediate issues arising under the current regimes, including unidentified or ''phantom'' traffic, the scope of the ESP exemption, and the termination of traffic in the absence of agreements between carriers. In the second stage of the EPG plan, all per-minute rates would be set at the level of interstate access charges and a new Access Restructure Charge would be implemented to make up any revenue shortfall.

9. *Alliance for Rational Intercarrier Compensation (ARIC)—Fair Affordable Comprehensive Telecom Solution (FACTS).* ARIC is comprised of small telecommunications companies providing service in rural, high-cost areas. The FACTS plan developed by ARIC calls for a unified per-minute rate for all types of traffic that would be capped at a level based on a carrier's unseparated, interoffice embedded costs. In addition to more uniform rates, the FACTS plan calls for local retail rate rebalancing to benchmark levels established by state commissions, and includes a joint process by which the Commission and the states review the procedures and data to determine the appropriate unified rates.

10. *Cost-Based Intercarrier Compensation Coalition (CBICC).* The CBICC is a coalition of competitive LECs. Under the CBICC proposal, carriers would adopt a single termination rate in each geographic area that would apply to all types of traffic. The rate would be based on the incumbent LEC's cost of providing tandem switching, transport, and end office switching, calculated using the Commission's total element long-run incremental cost (TELRIC) methodology.

11. *Home Telephone Company and PBT Telecom (Home/PBT).* Home Telephone Company and PBT Telecom are rural LECs that developed an alternative proposal to those advanced by the larger groups discussed above. Under this proposal, all carriers offering service to customers that make telecommunications calls would be required to connect to the public switched telephone network (PSTN) and obtain numbers for assignment to customers. The plan would replace existing per-minute access charges and reciprocal compensation with connection-based intercarrier charges.

12. *Western Wireless Proposal.* Western Wireless is a wireless carrier that has been designated as an eligible telecommunications carrier (ETC) in 14 states and the Pine Ridge Indian reservation. On December 1, 2004, Western Wireless submitted a reform plan based on a unified bill-and-keep system for all forms of traffic. This plan would reduce per-minute compensation rates to bill-and-keep in equal steps using targeted reductions over a four-year period, with a longer transition period for small rural incumbent LECs.

13. *National Association of State Utility Consumer Advocates (NASUCA) Principles.* NASUCA advocates a minimalist approach that addresses the disparity among some existing intercarrier compensation rates and reduces certain rate levels over a five-year period. Under the NASUCA plan, the Commission would establish a target rate in each year of a five-year transition down to a rate of $0.0055 per minute. State commissions would be encouraged to match the target rate for intrastate rates, but they would retain authority concerning how to reach that rate. In addition to its proposal, NASUCA urges the Commission to reject efforts to guarantee current revenue streams, such as access revenues.

14. *NARUC Principles.* In an effort to create a vehicle for evaluating the various reform proposals developed by the industry, a group of NARUC commissioners and staff developed a set of principles addressing the design and functioning of any new intercarrier compensation plan, as well as prerequisites for implementation of any plan. Among other things, NARUC favors the application of a unified regime to all companies that exchange traffic over the Public Switched Telephone Network.

15. *CTIA—The Wireless Association (CTIA) Principles.* CTIA submitted a statement of principles for the Commission to consider as part of its review of any proposals to reform intercarrier compensation. CTIA supports a bill-and-keep approach to intercarrier compensation reform under which carriers would have the flexibility to design their rate structures to recover a larger portion of costs from end-user customers—while ensuring that end-user rates remain affordable. In terms of universal service reform, CTIA supports the creation of a single, unified universal service support mechanism that calculates support based on the forward-looking economic costs of serving customers.

16. The Commission commends all the industry parties that have been involved in the process of developing these proposals for their substantial efforts to reach agreement on these complicated issues. The Commission also commends the work done by NARUC in developing a set of principles that can be used in evaluating these proposals. Many of the principles identified by NARUC are consistent with the policy goals the Commission has identified above. Given the extensive negotiations that formed the basis for some of these proposals, the Commission asks parties to comment on whether it is preferable for the Commission to adopt a single proposal in its entirety, rather than adopting a modified version of any particular proposal or attempting to combine different components from individual plans. The Commission seeks comment on implementation and transition issues if it were to adopt one proposal or combine different components of the plans.

**Legal Issues**

17. As the Commission considers the record developed in response to the *Intercarrier Compensation NPRM* and the specific proposals recently filed in this proceeding, it is mindful of its obligation to comply with the statutory provisions governing intercarrier compensation, such as sections 251(b)(5) and 252(d)(2) of the Telecommunications Act of 1996, Public Law No. 104–104, 110 Stat. 96 (1996) (codified at 47 U.S.C. 151 *et seq.*) (Act). In addition, the Commission recognizes that any unified regime requires reform of intrastate access charges, which are subject to state jurisdiction. In this section, the Commission asks parties to consider these and other legal issues associated with comprehensive reform efforts.

18. Section 252(d)(2) of the Act sets forth an ''additional cost'' standard for reciprocal compensation under section 251(b)(5). The Commission interpreted the ''additional cost'' standard of section 252(d)(2) to permit the use of the TELRIC cost standard that was established for interconnection and unbundled elements. In this section, the Commission solicits comment on whether this standard is, or could be, satisfied by the various reform proposals. Additionally, if the Commission decides to retain the current TELRIC methodology for reciprocal compensation, the Commission asks parties to address whether it should define more precisely what costs are traffic-sensitive, and thus recoverable through reciprocal compensation charges, and what costs are non-traffic-sensitive, and not recoverable through reciprocal compensation charges. Also, the Commission invites comment on the proposition that digital switching costs no longer vary with minutes of use due to increased processor capacity. Additionally, the Commission solicits comment on which components of a wireless network should be considered traffic sensitive. Once the Commission identifies the traffic-sensitive costs, it must determine whether those costs should be recovered on a per-minute or flat-rated capacity basis.

19. The statutory pricing standard for reciprocal compensation (''additional cost'') is not the same as the statutory pricing standard for unbundled network elements (UNEs) (cost plus a reasonable profit) set forth in the Act. The Commission's experience suggests that TELRIC is not necessarily consistent with the ''additional cost'' standard. Specifically, TELRIC measures the *average* cost of providing a function, which is not necessarily the same as the *additional* cost of providing that function. The Commission solicits comment on whether a true incremental cost methodology is more appropriate for establishing ''additional costs'' under section 252(d)(2).

20. The Commission seeks comment on whether it could use its authority under section 10 of the Act to forbear from certain aspects of the compensation requirement of section 251(b)(5) as part of any intercarrier compensation reform effort. The Commission assumes that, if any forbearance were needed to support a bill-and-keep regime, such forbearance would apply only with respect to the compensation requirement of section 251(b)(5) and not to the requirement to enter into reciprocal arrangements for the transport and termination of traffic. The Commission also seeks comment on whether the bar to forbearance contained in section 10(d) precludes exercise of forbearance in this case. Assuming that it can forbear from imposing section 251(b) obligations, the Commission solicits comment on whether it also should forbear from enforcing the compensation requirement contained in section 271(c)(2)(B)(xiii).

21. Because access charges for intrastate traffic historically have been an area within the exclusive jurisdiction of state commissions, any proposal that includes reform of intrastate mechanisms must address the Commission's legal authority to implement such reform. Accordingly, the Commission seeks comment on alternative legal theories under which it could reform intrastate access charges. The Commission also solicits comment on whether it should refer any of the issues related to intrastate access charges to a Federal-State Joint Board, and whether any of the issues addressed in this FNPRM fall within the scope of the mandatory referral requirement of section 410(c) of the Act. Additionally, the Commission seeks comment on the legal analysis presented by the reform proposals concerning the Commission's authority over intrastate access reform, and specifically whether the changes wrought by the 1996 Act give the Commission the power to assert authority over the intrastate charges at issue in this proceeding.

22. In section 254(g) of the Act, Congress codified the Commission's pre-existing geographic rate averaging and rate integration policies. The Commission implemented section 254(g) by adopting two requirements. First, providers of interexchange telecommunications services are required to charge rates in rural and high-cost areas that are no higher than the rates they charge in urban areas. This is known as the geographic rate averaging rule. Second, providers of interexchange telecommunications services are required to charge rates in each state that are no higher than those in any other state. This is known as the rate integration rule.

23. Absent some further reform of the access charge regime, the Commission is concerned that the rate averaging and rate integration requirements eventually will have the effect of discouraging IXCs from serving rural areas. These requirements may place IXCs that serve rural areas at a competitive disadvantage to those that focus on serving urban areas. The Commission asks parties to comment on the relationship between the rate averaging and rate integration requirements and the access charge reform proposals described above. Do any of the proposals ease concerns about the disparate impact of rate averaging and rate integration requirements on nationwide IXCs? If not, are there additional steps the Commission should take to address these concerns?

**Network Interconnection Issues**

24. Under section 251(c)(2)(B), an incumbent LEC must allow a requesting telecommunications carrier to interconnect at any technically feasible point. The Commission has interpreted this provision to mean that competitive LECs have the option to interconnect at a single point of interconnection (POI) per local access transport area (LATA). In addition, the Commission's rules preclude a LEC from charging carriers for traffic that originates on the LEC's network. In the *Intercarrier Compensation NPRM*, the Commission solicited comment on whether an incumbent LEC should be obligated to bear its own costs of delivering traffic to a single POI when that POI is located outside the calling party's local calling area.

25. In response to the *Intercarrier Compensation NPRM*, most competitive LECs and CMRS providers urge the Commission to maintain the single POI per LATA rule. Other commenters suggest that the interconnecting carrier selecting the POI be responsible for some portion of the transport costs to a POI located outside the local calling area, or that the interconnecting carrier establish additional POIs once certain criteria are met.

26. The comments confirm that issues related to the location of the POI and the allocation of transport costs are some of the most contentious issues in interconnection proceedings. In

particular, the record suggests that there are a substantial number of disputes related to how carriers should allocate interconnection costs, particularly when the physical POI is located outside the local calling area where the call originates or when carriers are indirectly interconnected.

27. In this FNPRM, the Commission solicits additional comment on changes to its network interconnection rules to accompany proposed changes to the intercarrier compensation regimes. The Commission asks parties to comment on the network interconnection proposals in the record and on the ICF's proposed default network interconnection rules. The Commission also seeks comment on whether it should consider different network interconnection rules for small incumbent LECs or rural LECs, and whether changing its pricing methodology for reciprocal compensation will have any effect on the incentives of competitive carriers, including CMRS providers, to establish multiple POIs. Finally, the Commission asks parties to address whether any additional rule changes are needed to harmonize the network interconnection rules that apply to section 251(b)(5) traffic with the rules that apply to access traffic.

**Cost Recovery Issues**

28. Many of the reform proposals include mechanisms by which some carriers will be permitted to offset revenues previously recovered through interstate access charges. Other proposals question the need to offset revenues and oppose proposals that include revenue guarantees or assumptions concerning revenue neutrality. The Commission solicits comment on whether these mechanisms, or something comparable, must be adopted if it reduces or eliminates the ability of LECs to impose interstate switched access charges on IXCs. The Commission asks parties to comment on whether it should rely solely on end-user charges, or whether it also should rely on universal service support mechanisms (new or existing) to offset revenues no longer recovered through interstate access charges.

29. Additionally, if a cap on federal subscriber charges is needed, the Commission asks parties to comment on the level at which the cap should be set if the jurisdictionally interstate costs of providing switched access no longer are recovered from IXCs through access charges. The Commission also asks parties to discuss what type of findings it must make before using additional universal service funding to offset lost access charge revenues. Commenters should also address the competitive neutrality of any new proposed universal service mechanism with respect to competitive eligible telecommunications carriers, and should comment on alternative approaches that would give LECs the opportunity to recover costs previously recovered from IXCs through interstate access charges. The Commission also asks parties to comment on the impact on consumers of replacing access charges with additional subscriber charges and/or universal service support.

30. As compared to price cap LECs, rate-of-return LECs derive a much greater share of their revenue from access charges. Because many rate-of-return LECs depend so heavily on access charge revenue, some of the proposals submitted in this proceeding include special provisions for these carriers. The Commission seeks comment on the extent to which it should give rate-of-return LECs the opportunity to offset lost access charge revenues with additional universal service funding, additional subscriber charges, or some combination of the two. To the extent it decides that additional universal service support also is necessary, the Commission seeks comment on how much additional support it must provide and how such support should be distributed.

31. If the Commission concludes that additional universal service funding is necessary, one possible approach would be to provide such funding through the interstate common line support (ICLS) mechanism. Under such a methodology, ICLS would be expanded to include not just common line costs, but also switching and transport costs. Alternatively, the Commission could create a new interstate access support mechanism. With respect to any proposed support methodologies, commenters should provide a detailed explanation as to how support should be calculated and the administrative burdens involved. Commenters should also address the competitive neutrality of any new proposed universal service mechanisms with respect to competitive eligible telecommunications carriers.

32. If the Commission acts to reduce or eliminate intrastate switched access charges, it may be necessary to give price cap and rate-of-return LECs the opportunity to offset those revenue losses with alternative cost recovery mechanisms. As with interstate access charges, the two primary mechanisms for doing this are increased subscriber charges and increased universal service funding. The Commission asks parties to comment on how these mechanisms should be structured to give LECs the opportunity to offset lost intrastate access charge revenue. The Commission asks parties to address the same questions concerning cost recovery of interstate access charges as they relate to intrastate access charges. The Commission also seeks comment on whether it should create a federal mechanism to offset any lost intrastate revenues, or whether the states should be responsible for establishing alternative cost recovery mechanisms for LECs within the intrastate jurisdiction.

**Implementation Issues**

33. Under the Commission's access charge regime, the rates, terms and conditions under which carriers provide interstate access services are generally contained in tariffs filed with the Commission. In contrast, the exchange of traffic under section 251(b)(5) is governed by interconnection agreements. The Commission seeks comment on how to reconcile these two approaches if it moves to a unified rate for all types of traffic. The Commission asks parties to identify any unique obstacles that may arise for rate-of-return LECs in connection with a regime based solely on agreements and to propose solutions to overcome those obstacles.

34. Given the substantial changes that are possible in this rulemaking, the Commission seeks comment on what type of transition would be needed for a new regime. Parties also should address whether there are any adverse consequences associated with transitioning rate-of-return LECs toward a new unified regime at a slower pace than price cap LECs.

35. Additionally, if the Commission moves to reduce, and possibly eliminate, the imposition of access charges by rate-of-return LECs, is there any reason for states to prohibit them from providing toll services? Parties should discuss the benefits that might accrue to rural customers if all rate-of-return LECs were permitted to provide interexchange services.

**Transit Service Issues**

36. Transiting occurs when two carriers that are not directly interconnected exchange non-access traffic by routing the traffic through an intermediary carrier's network. Typically, the intermediary carrier is an incumbent LEC and the transited traffic is routed from the originating carrier through the incumbent LEC's tandem switch to the terminating carrier. Although many incumbent LECs, mostly Bell Operating Companies (BOCs),

currently provide transit service pursuant to interconnection agreements, the Commission has not had occasion to determine whether carriers have a duty to provide transit service. In the *Intercarrier Compensation NPRM*, the Commission sought comment on issues that arise under the current intercarrier compensation rules when calls involve a transit service provider, and how a bill-and-keep regime might affect such calls. In this section, the Commission solicits further comment on whether there is a statutory obligation to provide transit services under the Act, and, if so, what rules the Commission should adopt to advance the goals of the Act.

37. The Commission seeks comment on its legal authority to impose transiting obligations. Assuming that it has the necessary legal authority, the Commission solicits comment on whether it should exercise that authority to require the provision of transit service. If rules regarding transit service are warranted, the Commission seeks comment on the scope of such regulation. The Commission also seeks comment on the need for rules governing the terms and conditions for transit service offerings. Further, if the Commission determines that rules governing transit service are warranted, it seeks additional comment on the appropriate pricing methodology, if any, for transit service.

38. Finally, the Commission recognizes that the ability of the originating and terminating carriers to determine the appropriate amount and direction of payments depends, in part, on the billing records generated by the transit service provider. Thus, the Commission asks carriers to comment on whether the current rules and industry standards create billing records sufficiently detailed to permit the originating and terminating carriers to determine the appropriate compensation due.

**CMRS Issues**

39. The Commission has previously stated that traffic to or from a CMRS network that originates and terminates within the same Major Trading Area (MTA) is subject to reciprocal compensation obligations under section 251(b)(5), rather than interstate or intrastate access charges. *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket Nos. 96–98 and 95–185, First Report and Order*, 61 FR 45467, August 8, 1996. The Commission reasoned that, because wireless license territories are federally authorized and vary in size, the largest FCC-authorized wireless license territory, *i.e.*, the MTA, would be the most appropriate local service area for CMRS traffic for purposes of reciprocal compensation under section 251(b)(5).

40. Given the goal of moving toward a more unified regime, the Commission seeks comment on whether it should eliminate the intraMTA rule. The Commission further invites commenters to discuss how parties should determine which LEC–CMRS calls are subject to reciprocal compensation in the absence of the intraMTA rule.

**CMRS Issues**

41. CMRS providers typically interconnect indirectly with smaller LECs via a BOC tandem. While many CMRS providers express willingness to enter into compensation agreements, they also assert that the cost of engaging in a negotiation and arbitration process with small incumbent LECs is often prohibitive due to the small amount of traffic at issue in each individual negotiation. The Commission seeks comment on what measures it might adopt to reduce the costs associated with establishing compensation arrangements.

42. It is standard industry practice for telecommunications carriers to compare the NPA/NXX codes of the calling and called party to determine the proper rating of a call. It may be possible for an originating LEC to change its switch translations so that a call to an NPA/NXX assigned to a rate center that is local to the originating rate center must be dialed on a 1+ basis and rated as a toll call, rather than a local call. A LEC may have the incentive to engage in this practice for a variety of reasons, including increased access revenue, reduced reciprocal compensation payments, and less significant transport obligations. Alternatively, LECs may engage in such practices pursuant to a state requirement.

43. The Commission seeks comment on whether it should modify any part of the existing rating obligations of carriers. Are there any rating issues unique to CMRS providers or is this a concern for other types of competitive carriers? The Commission recognizes that attempts to address some of the rating issues may raise the question of whether preemption of state commission jurisdiction over the retail rating of intrastate calls and the definition of local calling areas is necessary. Parties supporting preemption should comment on the source of the Commission's authority to preempt and the reasons why preemption of retail rating is warranted in this context.

**Supplemental Initial Regulatory Flexibility Analysis**

44. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Intercarrier Compensation NPRM.* The Commission sought written public comment on reforming the existing intercarrier compensation regime, on alternate approaches to reforming that regime, on whether those alternate approaches will encourage efficient use of and investment in the telecommunications network, on whether they will solve interconnection problems, and on the extent to which they are administratively feasible. The *Intercarrier Compensation NPRM* also sought comment on the IRFA. The Commission received extensive comment in response to the *Intercarrier Compensation NPRM*, including several comments addressing the IRFA directly.

45. With this FNPRM, the Commission continues the process of intercarrier compensation reform. The Commission has prepared this present Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this FNPRM. This Supplemental IRFA conforms to the RFA. Written public comments are requested on this Supplemental IRFA. Comments must be identified as responses to the Supplemental IRFA and must be filed by the deadlines for comments established in the FNPRM. To the extent that any statement in this Supplemental IRFA is perceived as creating ambiguity with respect to Commission rules or statements made in sections of this FNPRM that precede this Supplemental IRFA, the rules and statements set forth in those preceding sections are controlling. The Commission will send a copy of this entire FNPRM, including this Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and the Supplemental IRFA (or summaries thereof) will be published in the **Federal Register**.

**Need for, and Objectives of, the Proposed Rules**

46. The Commission's goal in this proceeding is to reform the current intercarrier compensation regimes and create a more uniform regime that

promotes efficient facilities-based competition in the marketplace. As discussed above, the Commission believes that this goal will be served by creating a technologically and competitively neutral intercarrier compensation regime that is consistent with network developments. It is also critical that this regime be implemented in a manner that will provide regulatory certainty, limit the need for regulatory intervention, and preserve universal service.

47. The current intercarrier compensation system is governed by a complex set of federal and state rules. This system applies different cost methodologies to similar services based on traditional regulatory distinctions that may have no bearing on the cost of providing service, are not tied to economic or technical differences between services, and are increasingly difficult to maintain. These regulatory distinctions provide an opportunity for regulatory arbitrage activities, and distort the telecommunications markets at the expense of healthy competition.

48. The current intercarrier compensation system also does not take into account recent developments in service offerings, including bundled local and long distance services, and voice over Internet Protocol (VoIP) services. These developments blur traditional industry and regulatory distinctions among various types of services and service providers, making it increasingly difficult to enforce the existing regulatory regimes. Additionally, the current intercarrier compensation system does not account for recent developments in telecommunications infrastructure. The existing intercarrier compensation regimes are based largely on the recovery of switching costs through per-minute charges. As a result of developments in telecommunications infrastructure, it appears that most network costs, including switching costs, result from connections to the network rather than usage of the network itself. Finally, developments in consumer control over telecommunications services bring into question the assumption that calling parties receive 100 percent of the benefits from a telephone call, a fundamental premise of the current intercarrier compensation regimes.

49. The Commission received several intercarrier compensation reform proposals in response to the NPRM. In this FNPRM, the Commission seeks comment on numerous legal issues it must consider as part of intercarrier compensation reform, whether it adopts one of these proposals or develops a separate approach. Specifically, the Commission seeks comment on whether the cost standards proposed satisfy the requirements of the Act, on the possible exercise of its forbearance authority, and on the appropriate role of state regulation in the intercarrier compensation reform process. The Commission also seeks comment on proposed changes to current interconnection rules.

50. Further, the Commission seeks comment on its obligation to provide cost-recovery mechanisms, the need, if any, for new cost-recovery mechanisms, the appropriate level of different types of cost recovery mechanisms including end-user charges and universal service, and on the impact of replacing access charges with other types of cost recovery mechanisms. The Commission also seeks comment on whether price cap and rate-of-return LECs must be treated equally with regard to cost recovery mechanisms, whether such treatment would be competitively neutral, and the appropriate role for state cost recovery mechanisms. Additionally, the Commission seeks comment on how best to transition from the current regime to unified intercarrier compensation regime. Finally, the Commission seeks comment on additional issues stemming from intercarrier compensation reform including transit service obligations, the appropriate treatment of intraMTA CMRS traffic, interconnection agreement negotiation obligations, and routing and rating of CMRS calls.

**Legal Basis**

51. The legal basis for any action that may be taken pursuant to this FNPRM is contained in sections 1–5, 7, 10, 201–05, 207–09, 214, 218–20, 225–27, 251–54, 256, 271, 303, 332, 403, 405, 502 and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151–55, 157, 160, 201–05, 207–09, 214, 218–20, 225–27, 251–54, 256, 271, 303, 332, 403, 405, 502, and 503 and sections 1.1, 1.421 of the Commission's rules, 47 CFR 1.1, 1.421.

**Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply**

52. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by rules adopted herein. The RFA generally defines the term ''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 that: (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). 5 U.S.C. 632.

53. In this section, the Commission further describes and estimates the number of small entity licensees and regulatees that may also be indirectly affected by rules adopted pursuant to this FNPRM. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its Trends in Telephone Service report. The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers, Paging, and Cellular and Other Wireless Telecommunications. Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, the Commission discusses the total estimated numbers of small businesses that might be affected by its actions.

54. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year. Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

55. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,310 carriers reported that they were incumbent local exchange service providers. Of these 1,310 carriers, an estimated 1,025 have 1,500 or fewer employees and 285 have more than 1,500 employees. In addition, according to Commission data, 563 companies reported that they were engaged in the provision of either competitive access provider services or

competitive local exchange carrier services. Of these 563 companies, an estimated 472 have 1,500 or fewer employees and 91 have more than 1,500 employees. In addition, 37 carriers reported that they were ''Other Local Exchange Carriers.'' Of the 37 ''Other Local Exchange Carriers,'' an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service, competitive local exchange service, competitive access providers, and ''Other Local Exchange Carriers'' are small entities that may be affected by the rules and policies adopted herein.

56. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 281 companies reported that they were interexchange carriers. Of these 281 companies, an estimated 254 have 1,500 or fewer employees and 27 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by the rules and policies adopted herein.

57. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year. Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

58. *Incumbent Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,337 carriers reported that they were engaged in the provision of local exchange services. Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted herein.

59. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), and ''Other Local Exchange Carriers.''* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive exchange services or to competitive access providers or to ''Other Local Exchange Carriers,'' all of which are discrete categories under which TRS data are collected. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 609 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 companies, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees. In addition, 35 carriers reported that they were ''Other Local Service Providers.'' Of the 35 ''Other Local Service Providers,'' an estimated 34 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and ''Other Local Exchange Carriers'' are small entities that may be affected by the rules and policies adopted herein.

60. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 261 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 261 companies, an estimated 223 have 1,500 or fewer employees and 38 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by the rules and policies adopted herein.

61. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to operator service providers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 23 companies reported that they were engaged in the provision of operator services. Of these 23 companies, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of operator service providers are small entities that may be affected by the rules and policies adopted herein.

62. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to payphone service providers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 761 companies reported that they were engaged in the provision of payphone services. Of these 761 companies, an estimated 757 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by the rules and policies adopted herein.

63. *Prepaid Calling Card Providers.* The SBA has developed a size standard for a small business within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 37 companies reported that they were engaged in the provision of prepaid calling cards. Of these 37 companies, an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by the rules and policies adopted herein.

64. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 133 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 127 have 1,500 or fewer employees and six

have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by its action.

65. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 625 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 590 have 1,500 or fewer employees and 35 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by its action.

66. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to ''Other Toll Carriers.'' This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission's data, 92 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these 92 companies, an estimated 82 have 1,500 or fewer employees and ten have more than 1,500 employees. Consequently, the Commission estimates that most ''Other Toll Carriers'' are small entities that may be affected by the rules and policies adopted herein.

67. *Paging.* The SBA has developed a small business size standard for Paging, which consists of all such firms having 1,500 or fewer employees. According to Census Bureau data for 1997, in this category there was a total of 1,320 firms that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional seventeen firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

68. *Cellular and Other Wireless Telecommunications.* The SBA has developed a small business size standard for Cellular and Other Wireless Telecommunication, which consists of all such firms having 1,500 or fewer employees. According to Census Bureau data for 1997, in this category there was a total of 977 firms that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional twelve firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

69. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.'' These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Based on this information, the Commission concludes that the number of small broadband PCS licenses will include the 90 winning C Block bidders, the 93 qualifying bidders in the D, E, and F Block auctions, the 48 winning bidders in the 1999 re-auction, and the 29 winning bidders in the 2001 re-auction, for a total of 260 small entity broadband PCS providers, as defined by the SBA small business size standards and the Commission's auction rules. The Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

70. *Narrowband Personal Communications Services.* The Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order,* 65 FR 35875, June 6, 2000. A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future actions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's rules. The Commission assumes, for purposes of this analysis, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

71. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable to ''Cellular and Other Wireless Telecommunications'' companies. This standard provides that such a company is small if it employs no more than 1,500 persons. According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional

12 firms had employment of 1,000 employees or more. If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard.

72. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order,* 62 FR 15978, April 3, 1997, the Commission adopted a small business size standard for ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

73. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards ''small entity'' and ''very small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the previous calendar years. The SBA has approved these size standards. The Commission awards ''small entity'' and ''very small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz bands to firms that had revenues of no more than $40 million in each of the three previous calendar years, or that had revenues of no more than $15 million in each of the previous calendar years. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities. The Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

74. *Private and Common Carrier Paging.* In the *Paging Third Report and Order,* 62 FR 16004, April 3, 1997, the Commission developed a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these size standards. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service,* 471 carriers reported that they were engaged in the provision of either paging and messaging services or other mobile services. Of those, the Commission estimates that 450 are small, under the SBA business size standard specifying that firms are small if they have 1,500 or fewer employees.

75. *700 MHz Guard Band Licensees.* In the *700 MHz Guard Band Order,* 65 FR 3139, January 20, 2000, the Commission adopted a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

76. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). The Commission uses the SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

77. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. The Commission will use SBA's small

business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small under the SBA small business size standard.

78. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of evaluations in this analysis, the Commission estimates that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards.

79. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. The Commission noted, however, that the common carrier microwave fixed licensee category includes some large entities.

80. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for ''Cellular and Other Wireless Telecommunications'' services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

81. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A ''small business'' is an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' is an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these small business size standards. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as ''very small business'' entities, and one that qualified as a ''small business'' entity. The Commission concludes that the number of geographic area WCS licensees affected by this analysis includes these eight entities.

82. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for ''very small business'' is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and policies adopted herein.

83. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, the Commission concluded that the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers.

84. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no

more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order*, 64 FR 59656, November 3, 1999, the Commission established a small business size standard for a ''small business'' as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years. The SBA has approved these size standards. The Commission cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under its rules in future auctions of 218–219 MHz spectrum.

85. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of ''Cellular and Other Wireless Telecommunications'' companies. This category provides that such a company is small if it employs no more than 1,500 persons. According to Census Bureau data for 1997, there were 977 firms in this category that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, the Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is the Commission's understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

86. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for ''small business'' is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million. ''Very small business'' in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to the future auction, if held.

87. *Satellite Service Carriers.* The SBA has developed a size standard for small businesses within the category of Satellite Telecommunications. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 31 carriers reported that they were engaged in the provision of satellite services. Of these 31 carriers, an estimated 25 have 1,500 or fewer employees and six, alone or in combination with affiliates, have more than 1,500 employees. Consequently, the Commission estimates that there are 31 or fewer satellite service carriers which are small businesses that may be affected by the rules and policies proposed herein.

88. *Cable and Other Program Distribution.* This category includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. The SBA has developed small business size standard for this census category, which includes all such companies generating $12.5 million or less in revenue annually. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein.

89. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs ''provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity.'' Under the SBA size standard, such a business is small if it has average annual receipts of $21 million or less. According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year. Of these, 2,659 firms had annual receipts of under $10 million, and an additional 67 firms had receipts of between $10 million and $24,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by its action.

90. *All Other Information Services.* This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives). The Commission notes that, in this FNPRM, it has described activities such as e-mail, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is $6 million or less in average annual receipts. According to Census Bureau data for 1997, there were 195 firms in this category that operated for the entire year. Of these, 172 had annual receipts of under $5 million, and an additional nine firms had receipts of between $5 million and $9,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by its action.

**Description of Projected Reporting, Recordkeeping and Other Compliance Requirements for Small Entities**

91. This supplemental IRFA seeks comment on several rule changes and intercarrier compensation reform proposals under consideration that may affect reporting, recordkeeping and other compliance requirements for small entities. The types of rule changes under consideration are described below.

92. Any intercarrier compensation reform measures that achieve the Commission's goal of moving toward a more unified regime will relieve small entities of some administrative, recordkeeping, and other compliance requirements, but may also create new burdens. As discussed within this FNPRM, the Commission is considering, and seeks comment on, several options for moving to a unified intercarrier compensation regime. Each of these options relieves certain compliance burdens that exist under the current system, but no option under consideration would be burden-free. Consequently, in this Supplemental IRFA the Commission seeks comment on burdens to small entities associated with each reform proposal under consideration.

93. Small entities face significant recordkeeping and compliance burdens under the current intercarrier compensation system, including determining the appropriate regulatory category for all traffic they send or receive, measuring the quantity of each

type of traffic, and maintaining administrative systems and processes for intercarrier payments. Additionally, small entities must devote considerable resources to resolving disputes arising due to ambiguities in the rules defining the current intercarrier compensation regimes. A unified intercarrier compensation system with clear rules would reduce the need for small entities to devote resources to these tasks.

**Bill-and-Keep**

94. Some of the intercarrier compensation reform proposals received in this proceeding are based on a bill-and-keep approach. Under a bill-and-keep approach, carriers would look to their own customers, rather than to other carriers, to recover costs. Carriers, including small entities, might have to modify their systems and processes to reflect this change in cost recovery. These modifications may present a compliance burden to small entities. Any compliance burden, however, may be outweighed by the reduction in burdens associated with the elimination of intercarrier charges. Additionally, carriers, including small entities, already have systems and processes designed to bill customers with which they have a retail relationship. While these systems and processes may have to be modified, these modifications should be similar to those that occur in the normal course of business already.

95. If a bill-and-keep approach were adopted, the current network interconnection rules may have to be revised or replaced. Carriers would have to ensure that their agreements or arrangements with other carriers comply with any new network interconnection rules. Complying with any new or modified interconnection rules may impose a compliance burden on all carriers, including small entities. This burden may be offset by streamlined operation under new interconnection rules that resolve or eliminate the potential for the types of interconnection disputes that arise under the current rules.

96. The bill-and-keep plans under consideration include new universal service mechanisms. Under these plans, carriers will have to determine their costs and demonstrate a shortfall between their costs and revenues in order to qualify for funding from cost recovery mechanisms. Further, some types of carriers, including small entities, may not be eligible for some of the cost recovery mechanisms included in some of the plans. Determining costs, determining eligibility under any new universal service plan, and administration related to any new universal service plan may represent significant burdens to small entities under a bill-and-keep plan.

**Unified Calling Party Network Pays (CPNP)**

97. The Commission is considering several unified CPNP plans submitted by industry groups comprised of small and medium sized rural LECs and CLECs. Although these proposals are designed to reduce the overall compliance burdens associated with each compensation regime by applying the same rate to all types of traffic, they may cause certain specific compliance burdens to increase.

98. Under any CPNP approach, carriers would continue to look to other carriers to recover a portion of their costs, and would have to maintain systems and processes to bill other carriers for these new charges. The cost standard that would be used to determine the rates varies with each plan. Under plans that apply a TELRIC or embedded cost methodology, carriers may need to perform cost studies using a methodology they have not previously used. Such cost calculations potentially represent a significant compliance and recordkeeping burden for small entities. Moreover, some of the unified CPNP plans under consideration in this proceeding propose rates that would vary by carrier and/or by state. If such plans were adopted, carriers would have to design and implement administrative systems that track the origin and destination of traffic and account for differing state or carrier rates. Developing and implementing such administrative systems may present a significant compliance burden for small entities.

99. The FNPRM seeks comment on the need for new or revised network interconnection rules. Some of the CPNP plans submitted for consideration in this proceeding retain the current network interconnection rules. Varying and inconsistent interpretations of these interconnection rules have led to numerous disputes and uncertainty about how the rules are to be applied. A CPNP plan that retains the current network interconnection rules will inherit this uncertainty surrounding the existing rules. Any changes in such rules also could result in new burdens for some carriers.

100. Adoption of a unified CPNP plan may necessitate changes in interconnection agreements. Interconnection agreements may be premised on rates that would be modified under a unified CPNP plan. Similarly, any change in interconnection rules could lead to renegotiation of agreements. Carriers, including small entities, would likely seek to renegotiate their existing interconnection agreements as a result of any new regime. Renegotiation of existing interconnection agreements may present a significant burden to small entities under a CPNP approach.

101. Each of the unified CPNP plans under consideration assumes revenue neutrality for incumbent LECs with significant funding coming from universal service mechanisms. Some of the plans also include new universal service mechanisms. Under some plans, carriers will have to determine their costs and demonstrate a shortfall between their costs and revenues in order to qualify for funding from cost recovery mechanisms. Further, some types of carriers, including small entities, may not be eligible for some of the cost recovery mechanisms included in some of the plans. Determining costs, determining eligibility under any new universal service plan, and administration related to any new universal service plan may represent significant burdens to small entities under a unified CPNP plan.

**Other Issues**

102. In this FNPRM, the Commission seeks comment on several issues related to transit service. If, as a result of this FNPRM, new rules related to transit service come into existence, these rules may impose burdens on some entities. Rules imposing transit service obligations would likely have no significant impact on ILECs already providing, or carriers already using transit service. For carriers that would be affected, the burdens may include determining the price of transit service purchased or provided, and developing additional administrative capabilities to account for providing or receiving transit service.

103. The Commission also seeks comment regarding possible changes to the intraMTA rule, negotiation of CMRS interconnection agreements, and rating of CMRS traffic, as discussed in this FNPRM. If the Commission changes the intraMTA rule, or otherwise changes parties' obligations, the new rules will likely relieve some burdens, including lowering the level of resources carriers must devote to resolving disputes arising from ambiguities in the current rules. Carriers may also experience burdens associated with bringing operations and interconnection agreements into compliance with the new rules.

**Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

104. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

105. In this FNPRM, the Commission seeks comments on a variety of intercarrier compensation reform plans submitted in the record in this proceeding, as well as on other issues related to reform of the existing intercarrier compensation system. The Commission is aware that some of the proposals under consideration may create burdens for small entities. Consequently, the Commission seeks comments on alternatives that will minimize burdens, discussed below.

106. Several commenters have expressed a preference for maintaining a CPNP regime, and have submitted plans to replace or reform the current intercarrier compensation system with a more unified CPNP approach. For instance, the ARIC plan includes a single rate based on embedded costs for each carrier. The EPG plan uses current interstate access rates as a cost standard. The CBICC plan uses the TELRIC costs of ILEC tandem switching to determine the intercarrier compensation rate. The Commission seeks comment on the economic impact on small entities of these plans relative to other plans contained in the record, and to a bill-and-keep approach.

107. One non-unified option under consideration for intercarrier compensation system reform is to maintain a CPNP based system without immediately adopting a unified approach. For instance, NASUCA recommends a plan that reduces intrastate access charges over a five-year transition period, and then moves to more unified rates.

108. Another non-unified approach the Commission is considering includes use of an incremental cost methodology to meet the section 252(d) ''additional cost'' standard for reciprocal compensation. The Commission seeks comment on the economic impact of such a plan relative to other plans contained in the record, and to a bill-and-keep approach.

109. Throughout this proceeding, the Commission has recognized the unique needs and interests of small entities. In this FNPRM the Commission seeks comment on several issues and measures under consideration that are uniquely applicable to small entities. Specifically, the Commission seeks comment on whether any intercarrier compensation reform measures adopted should be revenue neutral. The Commission also seeks comment on the impact of reduced intercarrier revenues to small entities in the event that a bill-and-keep approach is adopted.

110. The Commission also seeks comment on whether separate network interconnection rules are necessary or appropriate for small entities, such as rate-of-return carriers. Parties responding to this supplemental IRFA supporting such an approach should explain how separate rules would be structured, and what criteria would be used to determine whether an entity qualified to use the separate rules.

111. Additionally, the Commission seeks comment on whether separate cost recovery mechanisms unique to small entities are necessary or appropriate. Parties responding to this Supplemental IRFA in support of separate cost recovery mechanisms for small entities should explain how the separate cost recovery mechanisms would operate, how they would be funded, and what criteria would be used to determine what entities qualify for funding from the separate mechanisms. Further, the Commission seeks comment on the feasibility of retaining an intercarrier compensation mechanism for small entities only, while moving to another system (*e.g.* bill-and-keep) for all other entities. Parties advocating this approach should explain how a system of intercarrier payments available only to small entities would be integrated with another intercarrier compensation mechanism, such as a bill-and-keep system, that is in place for other carriers.

112. Finally, the Commission seeks comment on whether separate consideration for small entities is necessary or appropriate for each of the following issues previously discussed in this FNPRM: The potential impact of rules imposing transit service obligations; the potential impact of rules related to negotiation of CMRS interconnection; and the potential impact of rules related to rating and routing of CMRS traffic.

**Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules**

113. Implementation of any of the rule changes the Commission is considering in this FNPRM may require extensive modifications to existing Federal Rules. The need for modifications does not necessarily mean that the new rules duplicate, overlap, or conflict with existing rules. Rather, amendments to the existing rules would be necessary to codify the policies the Commission adopts. The sections of the Commission's rules that would likely have to be amended include, without limitation, the following: Part 32: Uniform System of Accounts for Telecommunications Companies; Part 36: Jurisdictional Separations Procedures; Standard Procedures for Separating Telecommunications Property Costs, Revenues, Expenses, Taxes, and Reserves for Telecommunications Companies; Part 51: Interconnection; Part 54: Universal Service; Part 61: Tariffs; and Part 69: Access Charges.

**Comment Filing Procedures**

114. Pursuant to sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments by May 23, 2005 and reply comments by June 22, 2005. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/cgb/ecfs/*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of the proceeding, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, in this case, CC Docket No. 01–92. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in reply. 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, commenters must submit two additional

copies for each additional docket or rulemaking number.

115. 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 the Commission continues to experience delays in receiving U.S. Postal Service mail). Parties are strongly encouraged to file comments electronically using the Commission's ECFS.

116. The Commission's contractor, Natek, Inc., 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 mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

117. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Parties should also send a copy of their filings to Victoria Goldberg, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5–A266, 445 12th Street, SW., Washington, DC 20554, or by e-mail to *victoria.goldberg@fcc.gov.* Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, or via e-mail to *fcc@bcpiweb.com.*

118. Documents in CC Docket No. 01–92 are available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th St. SW., Room CY–A257, Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, e-mail *fcc@bcpiweb.com.*

**Initial Paperwork Reduction Act Analysis**

119. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any proposed ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

**Ordering Clauses**

120. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1–5, 7, 10, 201–05, 207–09, 214, 218–20, 225–27, 251–54, 256, 271, 303, 332, 403, 405, 502 and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151–155, 157, 160, 201–05, 207–09, 214, 218–20, 225–27, 251–54, 256, 271, 303, 332, 403, 405, 502, and 503 and sections 1.1, 1.421 of the Commission's rules, 47 CFR 1.1, 1.421, *notice is hereby given* of the rulemaking and *comment is sought* on those issues.

121. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Further Notice of Proposed Rulemaking, including the Supplemental Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 05–5859 Filed 3–23–05; 8:45 am]

**BILLING CODE 6712–01–P**

---

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

**[DA 05–654; MB Docket No. 05–102; RM–10630]**

## Radio Broadcasting Services; Akron and Denver, CO

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rulemaking filed by Akron Broadcasting Company (''Petitioner''), seeking to amend the FM Table of Allotments by allotting Channel 279C1 at Akron, Colorado, as the community's first local aural transmission service. Petitioner's proposal also requires the reclassification of Station Station KRFX(FM), Denver, Colorado, Channel 287C to specify operation on Channel 278C0.KURB(FM), Channel 253C, Little Rock, Arkansas 253C0 pursuant to the reclassification procedures adopted by the Commission. *See* Second Report and Order in MM Docket 98–93 (1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules) 65 FR 79773 (2000). An Order to Show Cause was issued to Jacor Broadcasting of Colorado, Inc. (''Jacor''), licensee of Station KRFX(FM), Denver, Colorado, affording it 30 days to express in writing an intention to seek authority to upgrade its technical facilities to preserve Class C status, or otherwise challenge the proposed action (RM–10630). Channel 279C1 can be allotted at Akron, Colorado, at Petitioner's requested site 24.5 kilometers (15.2 miles) southeast of the community at coordinates 40–03–28 NL and 102–57–35 WL.

**DATES:** Comments must be filed on or before May 5, 2005, and reply comments on or before May 20, 2005. Any counterproposal filed in this proceeding need only protect Station KRFX(FM), Denver, Colorado as a Class C0 allotment.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the Petitioner, and Station KRFX's licensee as follows: John M. Pelkey, Esq., Garvey, Schubert Barer, 1000 Potomac Street, NW., Washington, DC 20007 (Counsel to Akron Broadcasting Company). Jacor Broadcasting of Colorado, Inc., c/o Marissa G. Repp, Esq., Hogan & Hartson L.L.P., Columbia Square, 555 13th St., NW., Washington, DC 20004–1109.

**FOR FURTHER INFORMATION CONTACT:** Victoria McCauley, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 05–102, adopted March 9, 2005, and released March 14, 2005. As noted, an Order to Show Cause was issued to Jacor Broadcasting of Colorado, Inc., licensee of Station KRFX(FM), Denver, Colorado, affording it 30 days to express in writing an intention to seek authority to upgrade its technical facilities to preserve Class C status, or otherwise challenge the proposed action. Jacor responded and filed the necessary application (File No. BPH–20030424AAO) which was granted and then rescinded. *See Public Notice*, Report No. 25498 (June 3, 2003). On November 9, 2004, that application (File No. BPH–20030424AAO) was dismissed. *See Letter to Marissa G. Repp, Esq.*, BPH–20030424AAN, *et al.*, Reference 1800B3 (Chief, Audio Div.

November 9, 2004). That action remains pending on reconsideration and any action taken herein is subject to the outcome of that proceeding.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

## PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Colorado is amended by adding Akron, Channel 279C1, and by removing Channel 278C and adding Channel 278C0 at Denver.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 05–5844 Filed 3–23–05; 8:45 am]

BILLING CODE 6712–01–P

---

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 05–653; MB Docket No. 05–101; RM–11159]**

### Radio Broadcasting Services; Jackson, WY

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rulemaking filed by Jackson Hole Community Radio proposing to amend the FM Table of Allotments, Section 73.202(b) of the rules, to allot Channel 294C2 at Jackson, Wyoming, and reserve it for noncommercial educational use. *See* Reexamination of the Comparative Standards for Noncommercial Educational Applicants (''NCE Report and Order''). 65 FR 36375 (June 8, 2000). Petitioner's proposal warrants consideration because the allotment could provide Jackson with its second NCE service. A preliminary staff engineering analysis of the proposal confirms that Channel 294C2 as proposed could provide a second NCE service to significantly more than 10 percent of the population within its 1 mV/m service area. In addition, our analysis confirms that there are no channels available in the FM reserved band. Channel *294C2 can be allotted at Jackson without a site restriction at coordinates 43–28–42 NL and 110–45–42 WL.

**DATES:** Comments must be filed on or before May 5, 2005, and reply comments on or before May 20, 2005.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, and Station KURB as follows: Jackson Hole Community Radio, Inc., c/o Henry A. Solomon, Esq., Garvey Schubert Barer, 1000 Potomac Street, NW., Fifth Floor, Washington, DC 20007–3501.

**FOR FURTHER INFORMATION CONTACT:** Victoria McCauley, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 05–101, adopted March 9, 2005, and released March 14, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

## PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Wyoming is amended by adding Channel *294C2 at Jackson.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 05–5848 Filed 3–23–05; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 05–651; MB Docket No. 05–100; RM–11181]**

### Radio Broadcasting Services; Encino, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rulemaking filed by Linda Crawford requesting the allotment of Channel 250A at Encino, Texas, as its second local service. Channel 250A can be allotted to Encino consistent with the minimum distance separation requirements of the Commission's rules at city reference coordinates, 26–56–09 NL and 98–08–06 WL.

**DATES:** Comments must be filed on or before May 5, 2005, and reply comments on or before May 20, 2005.

**ADDRESSES:** Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Linda Crawford, 3500 Maple Avenue, No. 1320, Dallas, Texas 75205.

**FOR FURTHER INFORMATION CONTACT:** Rolanda F. Smith, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 05–100, adopted March 9, 2005, and released March 14, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

## PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 250A at Encino.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 05–5849 Filed 3–23–05; 8:45 am]

**BILLING CODE 6712–01–P**

---

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 05–652; MB Docket No. 05–97, RM–11186; MB Docket No. 05–98, RM–11187]**

### Radio Broadcasting Services; Milano, TX and Wheatland, WY

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Audio Division requests comment on a petition filed by Charles Crawford proposing the allotment of Channel 274A at Milano, Texas, as its first local aural transmission service. Channel 274A can be allotted to Milano in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.2 kilometers (5.7 miles) southwest to avoid a short-spacing to the license site of FM Station KBRQ, Channel 273C1, Hillsboro, Texas. The reference coordinates for Channel 274A at Milano are 30–38–30 North Latitude and 96–55–00 West Longitude. The Audio Division requests comments on a petition filed by Mitchell Beranek proposing the allotment of Channel 298A at Wheatland, Wyoming, as the community's fourth FM commercial broadcast service. Channel 298A can be allotted to Wheatland in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.3 kilometers (1.4 miles) north of the community. The reference coordinates for Channel 298A at Wheatland are 42–04–28 North Latitude and 104–56–51 West Longitude.

**DATES:** Comments must be filed on or before May 5, 2005, and reply comments on or before May 20, 2005

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205 and Mitchell Beranek, 7607 Schrader Lane, Cheyenne, Wyoming 82009.

**FOR FURTHER INFORMATION CONTACT:** Rolanda F. Smith, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 05–97, 05–98, adopted March 9, 2005 and released March 14, 2005. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

## PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Milano, Channel 274A.

3. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by adding Channel 298A at Wheatland.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 05–5850 Filed 3–23–05; 8:45 am]

BILLING CODE 6712–01–P

---

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 05–650; MB Docket No. 05–99; RM–11180]**

### Radio Broadcasting Services; Lake Charles, LA and Sour Lake, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed by Cumulus Licensing LLC (''Petitioner''), licensee of Station KYKZ(FM), Channel 241C1, Lake Charles, Louisiana. Petitioner requests that the Commission reallot Channel 241C1 from Lake Charles, Louisiana to Sour Lake, Texas. The coordinates for Channel 241C1 at Sour Lake, Texas are 30–04–42 NL and 93–54–35 WL, with a site restriction of 48.8 kilometers (30.3 miles) east of Sour Lake.

**DATES:** Comments must be filed on or before May 5, 2005, and reply comments on or before May 20, 2005.

**ADDRESSES:** Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve Petitioner's counsel, as follows: Mark N. Lipp, Esq. and Scott Woodworth, Esq., Vinson & Elkins L.L.P., 1455 Pennsylvania Ave., NW., Suite 600, Washington, DC 20004–1008.

**FOR FURTHER INFORMATION CONTACT:** R. Barthen Gorman, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 05–99, adopted March 9, 2005 and released March 14, 2005. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR § 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR §§ 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

## PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, and 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 241C1 at Lake Charles.

3. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Sour Lake, Channel 241C1.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 05–5852 Filed 3–23–05; 8:45 am]

BILLING CODE 6712–01–P

---

## FEDERAL COMMUNICATIONS COMMISSION.

### 47 CFR Part 73

**[DA 05–662; MB Docket No. 05–104; RM–10837, RM–10838]**

### Radio Broadcasting Services; Black Rock, Cave City and Cherokee Village, AR, and Thayer, MO

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on two conflicting petitions for rulemaking. The first petition was jointly filed by KFCM, Inc. and Bragg Broadcasting, Inc., proposing the substitution of Channel 252C2 for Channel 252C3 at Cherokee Village, Arkansas, the reallotment of Channel 252C2 from Cherokee Village to Black Rock, Arkansas, and the modification of Station KFCM(FM)'s license accordingly; and the reallotment of Channel 222C2 from Thayer, Missouri to Cherokee Village, Arkansas, and the modification of Station KSAR(FM)'s license accordingly (RM–10837). The second petition was filed by Charles Crawford proposing the allotment of Channel 254A at Cave City, Arkansas, as the community's first local commercial FM transmission service. To accommodate the allotment, Crawford also proposes the reclassification of Station KURB(FM) at Little Rock, Arkansas from 253C to 253C0, pursuant to the Commission's reclassification procedures (RM–10838). Channel 252C2

can be reallotted to Black Rock in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.0 kilometers (3.1 miles) southwest at joint petitioners' requested site. The coordinates for Channel 252C2 at Black Rock are 36–05–25 North Latitude and 91–08–55 West Longitude. *See* **SUPPLEMENTARY INFORMATION**, *infra.*

**DATES:** Comments must be filed on or before May 5, 2005, and reply comments on or before May 20, 2005. Any counterproposal filed in this proceeding need only protect Station KURB(FM), Little Rock, Arkansas, as a Class C0 allotment.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the following: Jason Roberts, Esq., Irwin, Campbell & Tennenwald, P.C., 1730 Rhode Island Ave., NW., Suite 200, Washington, DC 20036–3101 (Counsel for KFCM, Inc. and Bragg Broadcasting, Inc.); and Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205 (Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 05–104, adopted March 9, 2005, and released March 14, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Additionally, Channel 222C2 can be reallotted to Cherokee Village at Station KSAR(FM)'s presently licensed site. The coordinates for Channel 222C2 at Cherokee Village are 36–21–58 North Latitude and 91–28–35 West Longitude. Moreover, Channel 254A can be allotted to Cave City with a site restriction of 1.0 kilometers (0.6 miles) southwest to avoid a short-spacing to the licensed site of Station WJZN(FM), Channel 255C1, Munford, Tennessee. The coordinates for Channel 254A at Cave City are 35–56–11 North Latitude and 91–33–27 West Longitude. Channel 253C0 can be reclassified at Little Rock at Station KURB(FM)'s presently licensed site. The coordinates for Channel 253C0 at Little Rock are 34–47–56 North Latitude and 92–29–44 West Longitude. Pursuant to Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 252C2 at Black Rock, Arkansas, or the use of Channel 222C2 at Cherokee Village, Arkansas, or require the joint petitioners to demonstrate the existence of an equivalent class channel for use of other interested parties.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

## PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Cherokee Village, Channel 252A and adding Black Rock, Channel 253C2; by adding Cave City, Channel 254A; and by removing Channel 253C and adding Channel 253C0 at Little Rock.

3. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 222C2 at Thayer.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 05–5855 Filed 3–23–05; 8:45 am]

**BILLING CODE 6712–01–P**

---

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 76

**[MB Docket No. 05–89; FCC 05–49]**

### Implementation of Section 207 of the Satellite Home Viewer Extension and Reauthorization Act of 2004, Reciprocal Bargaining Obligations

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In this document, the Commission seeks comment on the implementation of Section 207 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (''SHVERA''). Section 207 extends section 325(b)(3)(C) of the Communications Act until 2010 and amends that section to impose good faith retransmission consent bargaining obligations on multichannel video programming distributors (''MVPDs''). The Commission tentatively concludes that it should amend its existing good faith retransmission consent bargaining rules to apply equally to both broadcasters and MVPDs. The Commission also seeks comment on appropriate good faith retransmission consent negotiating standards for out-of-market significantly viewed television broadcast stations.

**DATES:** Comments for this proceeding are due on or before April 25, 2005; reply comments are due on or before May 9, 2005. Written comments on the proposed information collection requirements contained in the NPRM must be submitted by the public, the Office of Management and Budget (OMB), and other interested parties on or before May 23, 2005.

**ADDRESSES:** You may submit comments, identified by [docket number and/or rulemaking number], by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Federal Communications Commission's Web site: *http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format

documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** For additional information on this proceeding, contact Steven Broeckaert, *Steven.Broeckaert@fcc.gov* of the Media Bureau, Policy Division, (202) 418–2120. For additional information concerning the Paperwork Reduction Act information collection requirements contained in the *NPRM*, contact Cathy Williams, Federal Communications Commission, 445 12th St, SW., Room 1–C823, Washington, DC 20554, or via the Internet to *Cathy.Williams@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM), FCC 05–49, adopted on March 2, 2005, and released on March 7, 2005. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

## Initial Paperwork Reduction Act of 1995 Analysis

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198; *see* 44 U.S.C. 3506(c)(4).

## Summary of the Notice of Proposed Rulemaking

1. In the *NPRM* we seek comment on the implementation of Section 207 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (''SHVERA''). Section 207 extends section 325(b)(3)(C) of the Communications Act until 2010 and amends that section to impose reciprocal good faith retransmission consent bargaining obligations on multichannel video programming distributors (''MVPDs''). This section alters the bargaining obligations created by the Satellite Home Viewer Improvement Act of 1999 (''SHVIA'') which imposed a good faith bargaining obligation only on broadcasters. As discussed below, because the Commission has in place existing rules governing good faith retransmission consent negotiations and because Congress did not instruct us through the SHVERA to modify those rules in any substantive way, we tentatively conclude that the most faithful and expeditious implementation of the amendments contemplated in section 207 of the SHVERA is to extend to MVPDs the existing good faith bargaining obligation imposed on broadcasters under our rules.

## Discussion

### *The Good Faith Provisions of SHVIA*

2. Section 325(b)(3)(C) of the Communications Act, as enacted by the SHVIA, instructed the Commission to commence a rulemaking proceeding to revise the regulations by which television broadcast stations exercise their right to grant retransmission consent; *see* 47 U.S.C. 325(b)(3)(C). Specifically, that section required that the Commission, until January 1, 2006:

> Prohibit a television broadcast station that provides retransmission consent from engaging in exclusive contracts for carriage or failing to negotiate in good faith, and it shall not be a failure to negotiate in good faith if the television broadcast station enters into retransmission consent agreements containing different terms and conditions, including price terms, with different multichannel video programming distributors if such different terms and conditions are based on competitive marketplace considerations; *see* 47 U.S.C. 325(b)(3)(C)(ii).

The Commission issued a Notice of Proposed Rulemaking seeking comment on how best to implement the good faith and exclusivity provisions of the SHVIA; *see* 14 FCC Rcd 21736 (1999). After considering the comments received in response to the notice, the Commission adopted rules implementing the good faith provisions and complaint procedures for alleged rule violations; *see* 15 FCC Rcd 5445 (2000), 16 FCC Rcd 15599 (2001).

3. The *Good Faith Order* determined that Congress did not intend to subject retransmission consent negotiation to detailed substantive oversight by the Commission; *see* 15 FCC Rcd at 5450. Instead, the order found that Congress intended that the Commission follow established precedent, particularly in the field of labor law, in implementing the good faith retransmission consent negotiation requirement; *see* 15 FCC Rcd at 5453–54. Consistent with this conclusion, the *Good Faith Order* adopted a two-part test for good faith. The first part of the test consists of a brief, objective list of negotiation standards; *see* 15 FCC Rcd at 5457–58. First, a broadcaster may not refuse to negotiate with an MVPD regarding retransmission consent. Second, a broadcaster must appoint a negotiating representative with authority to bargain on retransmission consent issues. Third, a broadcaster must agree to meet at reasonable times and locations and cannot act in a manner that would unduly delay the course of negotiations. Fourth, a broadcaster may not put forth a single, unilateral proposal. Fifth, a broadcaster, in responding to an offer proposed by an MVPD, must provide considered reasons for rejecting any aspects of the MVPD's offer. Sixth, a broadcaster is prohibited from entering into an agreement with any party conditioned upon denying retransmission consent to any MVPD. Finally, a broadcaster must agree to execute a written retransmission consent agreement that sets forth the full agreement between the broadcaster and the MVPD; *see* 47 CFR 76.65(b)(1)(i) through (vii).

4. The second part of the good faith test is based on a totality of the circumstances standard. Under this standard, an MVPD may present facts to the Commission which, even though they do not allege a violation of the specific standards enumerated above, given the totality of the circumstances constitute a failure to negotiate in good faith; *see* 47 CFR 76.65(b)(2).

5. The *Good Faith Order* provided examples of negotiation proposals that presumptively are consistent and inconsistent with ''competitive marketplace considerations;'' *see* 15 FCC Rcd at 5469–70. The *Good Faith Order* found that it is implicit in section 325(b)(3)(C) that any effort to further anti-competitive ends through the negotiation process would not meet the good faith negotiation requirement; *see* 15 FCC Rcd at 5470. The order stated

that considerations that are designed to frustrate the functioning of a competitive market are not ''competitive marketplace considerations.'' Further, conduct that is violative of national policies favoring competition—that, for example, is intended to gain or sustain a monopoly, an agreement not to compete or to fix prices, or involves the exercise of market power in one market in order to foreclose competitors from participation in another market—is not within the competitive marketplace considerations standard included in the statute; *see* 15 FCC Rcd at 5470.

6. Finally, the *Good Faith Order* established procedural rules for the filing of good faith complaints pursuant to section 76.7 of the Commission's rules; *see* 47 CFR 76.65(c), 47 CFR 76.7. The burden of proof is on the complainant to establish a good faith violation and complaints are subject to a one year limitations period; *see* 47 CFR 76.65(d) and (e).

*The Reciprocal Bargaining Obligations of SHVERA*

7. In enacting the SHVERA good faith negotiation obligation for MVPDs, Congress used language identical to that of the SHVIA imposing a good faith obligation on broadcasters, requiring the Commission, until January 1, 2010, to:

> Prohibit a multichannel video programming distributor from failing to negotiate in good faith for retransmission consent under this section, and it shall not be a failure to negotiate in good faith if the distributor enters into retransmission consent agreements containing different terms and conditions, including price terms, with different broadcast stations if such different terms and conditions are based on competitive marketplace considerations; *see* 47 U.S.C. 325(b)(3)(C)(iii).

Congress did not instruct the Commission to amend its existing good faith rules in any way other than to implement the statutory extension and impose the good faith obligation on MVPDs. Accordingly, we believe that Congress did not intend that the Commission revisit the findings and conclusions that were reached in the SHVIA rulemaking. The little legislative history directly applicable to Section 207 supports this approach and, in pertinent part, provides:

> In light of evidence that retransmission negotiations continue to be contentious, the Committee chose to extend these obligations, and also to begin applying the good-faith obligations to MVPDs. The Committee intends the MVPD good-faith obligations to be analogous to those that apply to broadcasters, and not to affect the ultimate ability of an MVPD to decide not to enter into retransmission consent with a broadcaster.

We believe that the implementation of section 207 most consistent with the apparent intent of Congress is to amend our existing rules to apply equally to both broadcasters and MVPDs. We tentatively conclude that we should amend sections 76.64(l) and 76.65 as set forth on Appendix A of the *NPRM.* We seek comment on this proposal and any other reasonable implementation of Section 207.

8. We note that the original SHVIA good faith provision by its terms applied to ''television broadcast stations.'' Similarly, the SHVERA good faith provision applies to ''multichannel video programming distributors.'' We seek comment whether, under the statute, the good faith negotiating standards may be any different for carriage of significantly viewed television broadcast stations outside of their designated market area (''DMA'') (A DMA is a geographic market designation created by Nielsen Media Research that defines each television market exclusive of others, based on measured viewing patterns. Essentially, each county in the United States is allocated to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, both over-the-air and cable television viewing are included.) Significantly viewed television broadcast stations do not have carriage rights outside of their DMA and carriage of their signals by out-of-market MVPDs is permissive. We seek comment as to whether the Commission has discretion under section 325(b)(3)(C) to distinguish this situation. For example, if a television broadcast station from DMA X is significantly viewed in DMA Y and seeks carriage on an MVPD located in DMA Y, must the MVPD in DMA Y negotiate retransmission consent in good faith with the broadcaster from DMA X in exactly the same way that it negotiates with broadcasters that are located in DMA Y? Should the same good faith negotiation standard apply to broadcasters and MVPDs regardless of the DMA in which they reside? Should a different standard apply, and if so what standard? Should the good faith retransmission consent negotiation obligation apply only to MVPDs and broadcasters located in the same DMA? We seek comment on this issue.

**Procedural Matters**

*Ex Parte Rules*

9. Permit-But-Disclose. This proceeding will be treated as a ''permit-but-disclose'' proceeding subject to the ''permit-but-disclose'' requirements under section 1.1206(b) of the Commission's rules; see 47 CFR 1.1206(b), 47 CFR 1.1202, 1.1203. *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required; *see* 47 CFR 1.1206(b)(2). Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

10. Comments may be filed electronically using the Internet by accessing the the Commission's Electronic Comment Filing System (''ECFS''): *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments. 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. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov,* and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503, via the Internet to *Kristy_L. LaLonde@omb.eop.gov,* or via fax at 202–395–5167.

**Ordering Clauses**

11. Accordingly, *it is ordered* that pursuant to section 207 of the Satellite Home Viewer Extension and Reauthorization Act of 2004, and sections 1, 4(i) and (j), and 325 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j),

and 325, *notice is hereby given* of the proposals and tentative conclusions described in this Notice of Proposed Rulemaking.

12. *It is further ordered* that the Reference Information Center, Consumer and Governmental Affairs Bureau, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

## Proposed Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 76 as follows:

## PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.64 is amended by revising paragraph (l) to read as follows:

### § 76.64 Retransmission consent.

* * * * *

(l) Exclusive retransmission consent agreements are prohibited. No television broadcast station shall make or negotiate any agreement with one multichannel video programming distributor for carriage to the exclusion of other multichannel video programming distributors. This paragraph shall terminate at midnight on December 31, 2009.

* * * * *

3. Section 76.65 is revised to read as follows:

### § 76.65 Good faith and exclusive retransmission consent complaints.

(a) *Duty to negotiate in good faith.* Television broadcast stations and multichannel video programming distributors shall negotiate in good faith the terms and conditions of retransmission consent agreements to fulfill the duties established by section 325(b)(3)(C) of the Act; provided, however, that it shall not be a failure to negotiate in good faith if:

(1) The television broadcast station proposes or enters into retransmission consent agreements containing different terms and conditions, including price terms, with different multichannel video programming distributors if such different terms and conditions are based on competitive marketplace considerations; or

(2) The multichannel video programming distributor enters into retransmission consent agreements containing different terms and conditions, including price terms, with different broadcast stations if such different terms and conditions are based on competitive marketplace considerations. If a television broadcast station or multichannel video programming distributor negotiates in accordance with the rules and procedures set forth in this section, failure to reach an agreement is not an indication of a failure to negotiate in good faith.

(b) *Good faith negotiation.* (1) *Standards.* The following actions or practices violate a broadcast television station's or multichannel video programming distributor's (the ''negotiating entity'') duty to negotiate retransmission consent agreements in good faith:

(i) Refusal by a negotiating entity to negotiate retransmission consent;

(ii) Refusal by a negotiating entity to designate a representative with authority to make binding representations on retransmission consent;

(iii) Refusal by a negotiating entity to meet and negotiate retransmission consent at reasonable times and locations, or acting in a manner that unreasonably delays retransmission consent negotiations;

(iv) Refusal by a negotiating entity to put forth more than a single, unilateral proposal.

(v) Failure of a negotiating entity to respond to a retransmission consent proposal of the other party, including the reasons for the rejection of any such proposal;

(vi) Execution by a negotiating entity of an agreement with any party, a term or condition of which requires that such negotiating entity not enter into a retransmission consent agreement with any other television broadcast station or multichannel video programming distributor; and

(vii) Refusal by a negotiating entity to execute a written retransmission consent agreement that sets forth the full understanding of the television broadcast station and the multichannel video programming distributor.

(2) *Totality of the circumstances.* In addition to the standards set forth in paragraph (b)(1) of this section, a Negotiating Entity may demonstrate, based on the totality of the circumstances of a particular retransmission consent negotiation, that a television broadcast station or multichannel video programming distributor breached its duty to negotiate in good faith as set forth in paragraph (a) of the section.

(c) *Good faith negotiation and exclusivity complaints.* Any television broadcast station or multichannel video programming distributor aggrieved by conduct that it believes constitutes a violation of the regulations set forth in this section or paragraph (l) of § 76.64 may commence an adjudicatory proceeding at the Commission to obtain enforcement of the rules through the filing of a complaint. The complaint shall be filed and responded to in accordance with the procedures specified in § 76.7.

(d) *Burden of proof.* In any complaint proceeding brought under this section, the burden of proof as to the existence of a violation shall be on the complainant.

(e) *Time limit on filing of complaints.* Any complaint filed pursuant to this paragraph must be filed within one year of the date on which one of the following events occurs:

(1) A complainant enters into a retransmission consent agreement with a television broadcast station or multichannel video programming distributor that the complainant alleges to violate one or more of the rules contained in this paragraph; or

(2) A television broadcast station or multichannel video programming distributor engages in retransmission consent negotiations with a complainant that the complainant alleges to violate one or more of the rules contained in this subpart, and such negotiation is unrelated to any existing contract between the complainant and the television broadcast station or multichannel video programming distributor; or

(3) The complainant has notified the television broadcast station or multichannel video programming distributor that it intends to file a complaint with the Commission based on a request to negotiate retransmission consent that has been denied, unreasonably delayed, or unacknowledged in violation of one or more of the rules contained in this paragraph.

(f) *Termination of rules.* This section shall terminate at midnight on December 31, 2009.

[FR Doc. 05–5851 Filed 3–23–05; 8:45 am]

BILLING CODE 6712–01–P

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018–AI41**

## Endangered and Threatened Wildlife and Plants; Reclassifying the American Crocodile Distinct Population Segment in Florida From Endangered to Threatened and Initiation of a 5-Year Review

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule and initiation of a 5-year review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to reclassify the American crocodile (*Crocodylus acutus*) distinct vertebrate population segment (DPS) in Florida from its present endangered status to threatened status under the authority of the Endangered Species Act of 1973, as amended (Act). We believe that the endangered designation no longer correctly reflects the current status of this taxon within this DPS due to a substantial improvement in the species' status. Since its listing in 1975, the American crocodile population in Florida has more than doubled, and its distribution has expanded. Land acquisition has also provided protection for many important nesting areas. We have determined that the American crocodile in its range in Florida meets the criteria of a DPS as stated in our policy of February 17, 1996. If this proposal is finalized, the American crocodile DPS in Florida will continue to be federally protected as a threatened species. The American crocodile throughout the remainder of its range as described in our December 18, 1979, final rule would remain endangered. Because a status review is also required for the 5-year review of listed species under section 4(c)(2)(A) of the Act, we are electing to prepare these reviews simultaneously. We are seeking data and comments from the public on this proposal.

**DATES:** Comments from all interested parties must be received by May 23, 2005. Public hearing requests must be received by May 9, 2005.

**ADDRESSES:** Written comments and materials may be submitted to us by any one of the following methods:

1. You may submit written comments and information to Cindy Schulz, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, FL 32960.

2. You may hand-deliver written comments and information to our South Florida Ecological Services Office, at the above address, or fax your comments to (772) 562–4288.

3. You may send comments by electronic mail (e-mail) to *cindy_schulz@fws.gov.* For directions on how to submit electronic filing of comments, see the ''Public Comments Solicited'' section.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Cindy Schulz, at the above address (telephone (772) 562–3909, extension 305, facsimile (772) 562–4288).

**SUPPLEMENTARY INFORMATION:**

### Public Comments Solicited

We are requesting information for both the proposed rule and the 5-year review, as we are conducting these reviews simultaneously.

We intend that any final action resulting from this proposed reclassification will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning this proposal. We particularly seek comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of the American crocodile within the extent of its range covered by this proposed rule;

(3) Additional information concerning the range, distribution, and population size of this species in Florida;

(4) Current management plans or anticipated plan development that incorporates actions that will benefit or impact the American crocodile in Florida;

(5) Current or planned activities within the geographic area addressed by this proposal and their potential impact on this species; and

(6) Whether the current status of this population of the American crocodile is more appropriately described as ''recovered,'' threatened due to similarity of appearance,'' or in some other way different than the proposal made here.

Please submit electronic comments in ASCII file format and avoid the use of special characters and encryption. Please also include ''Attn: [RIN 1018–AI41]'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our South Florida Ecological Services Office (see **ADDRESSES** section).

Our practice is to make all comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold also from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

### Background

The American crocodile is a large greenish-gray reptile. It is one of two native crocodilians (the other being the American alligator (*Alligator mississippiensis*)) that occur in the continental United States, and is limited in distribution in the United States to the southern tip of mainland Florida and the upper Florida Keys (Kushlan and Mazzotti 1989a). At hatching, crocodiles are yellowish-tan to gray in color with vivid dark bands on the body and tail. As they grow older, their overall coloration becomes more pale and uniform and the dark bands fade. All adult crocodiles have a hump above the eye, and tough, asymmetrical armor-like scutes (scale-like plates) on their backs. The American crocodile is distinguished from the American alligator by a relatively narrow, more pointed snout and by an indentation in the upper jaw that leaves the fourth tooth of the lower jaw exposed when the mouth is closed. In Florida, the American crocodile ranges in size from 26.0 centimeters (cm) (10.3 inches (in)) at hatching, to an upper length of 3.8 meters (m) (12.5 feet (ft)) (Moler 1991a). Larger specimens in Florida were reported in the 1800s (Moler 1991a), and individuals as large as 6 to 7 m (19.7 to 23.0 ft) have been reported outside the United States (Thorbjarnarson 1989).

The American crocodile occurs in coastal regions of both the Atlantic and Pacific coasts, in southern Mexico,

Central America, and northern South America, as well as the Caribbean islands (Thorbjarnarson 1989). It reaches the northern extent of its range in the southern tip of Florida (Kushlan and Mazzotti 1989a, Thorbjarnarson 1989). The species occurs within the jurisdictional boundaries of many different governments in the western hemisphere, including Belize, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Florida (USA), Guatemala, Haiti, Honduras, Jamaica, Nicaragua, Mexico, Panama, Peru, and Venezuela.

The first documented occurrence of a crocodile in the United States resulted from the collection of a crocodile in 1869 in the Miami River off Biscayne Bay, though crocodiles were earlier suspected to occur there (Kushlan and Mazzotti 1989a). Within the United States, the historic core geographic range of crocodiles includes Miami-Dade, Broward, and Monroe Counties in Florida, but reports indicate that they occupied areas as far north as Indian River County on the east coast (Kushlan and Mazzotti 1989a). Crocodiles were probably never common on the west coast of Florida, but credible reports suggest that they occurred at least periodically as far north as Sanibel Island and Sarasota County (Kushlan and Mazzotti 1989a). The primary historic nesting area was on the mainland shore of Florida and Biscayne Bays, including many of the small islands near shore, in what is today Everglades National Park (Kushlan and Mazzotti 1989a). Nesting was also historically well-documented in the upper Keys from Key Largo south to Lower Matecumbe Key (Kushlan and Mazzotti 1989a). Reports of crocodile nests on Little Pine Key (Ogden 1978), and occurrences on Key West (Ogden 1978) suggest that crocodiles were once more common in the Keys than they are today.

In 1976, the American crocodile population in Florida was estimated to be between 200 and 300 individuals (40 FR 58308), with only 10 to 20 breeding females estimated in 1975 (40 FR 44149). Most of the remaining animals and known nesting activity during this time were concentrated in a small portion of their historic range in northeastern Florida Bay (Kushlan and Mazzotti 1989a).

Today, the population of American crocodiles in Florida has grown to an estimated 500 to 1,000 individuals, not including hatchlings (P. Moler, Florida Fish and Wildlife Conservation Commission (FWC), personal communication 2004; F. Mazzotti, University of Florida (UF), personal communication 2004). This estimate, developed by two established American crocodile experts, is based on a demographic characteristic that has proven true for both Nile crocodiles and American alligators. The characteristic is based on a generality from crocodilian research, that breeding females make up 4 to 5 percent of the non-hatchling population size. This estimate exhibits a large range, because the researchers used a range of 40 to 50 crocodile nests existing in Florida to do their calculations (P. Moler, FWC, personal communication 2004; F. Mazzotti, UF, personal communication 2004). We believe this is a reasonable but conservative estimate, because as stated below nesting has increased to 61 documented nests in 2003 and not all mature females breed and nest each year.

The nesting range has also expanded on both the east and west coasts of the State, and crocodiles are frequently being seen throughout most of their historical range. Nesting has extended back into Biscayne Bay on Florida's east coast, and now commonly occurs at the Turkey Point Nuclear Plant (Brandt *et al.* 1995, Gaby *et al.* 1985). During 2003, 61 crocodile nests were discovered in south Florida (S. Klett, Service, personal communication 2003; M. Cherkiss, personal communication 2003; J. Wasilewski, Natural Selections Inc., personal communication 2003), and nesting has been increasing for several years (Ogden 1978, Brandt *et al.* 1995, Kushlan and Mazzotti 1989b, Moler 1991b, Mazzotti *et al.* 2000, Mazzotti and Cherkiss 2001, and Mazzotti *et al.* 2002). Approximately 75 percent of reproductively mature females breed and nest each year (F. Mazzotti, personal communication 2001), suggesting that the actual number of nesting females may be higher than the 61 nests recorded. Surveys detect approximately 80 to 90 percent of nests (F. Mazzotti, personal communication 2001; J. Wasilewski, personal communication 2002), and surveyors are generally unable to distinguish those nests that contain more than one clutch of eggs from different females without researchers excavating the nests. We believe this situation lends to a possible underestimation of nests or females, because on occasion 2 females lay eggs in the same nest.

The breeding range of the American crocodile today is still restricted relative to its reported historic range (Kushlan and Mazzotti 1989a), with most breeding occurring on the mainland shore of Florida Bay between Cape Sable and Key Largo (Mazzotti *et al.* 2002). Crocodiles no longer regularly occur in the Keys south of Key Largo (P. Moler, personal communication 2002, Jacobsen 1983), though individuals have occasionally been observed in the lower Keys in recent years. An American crocodile was also observed for the first time near Fort Jefferson in the Dry Tortugas in May 2002 (O. Bass, Everglades National Park, personal communication 2002). We believe that these occasional observations may indicate that crocodiles are expanding their range back into the Keys, but Key Largo is the only nesting area currently known in the Florida Keys.

Crocodiles live primarily in the sheltered, fresh, or brackish waters of mangrove-lined bays, mangrove swamps, creeks, and inland swamps (Kushlan and Mazzotti 1989b). Prolonged exposure to salinities similar to that of seawater (35 parts per thousand (ppt) of sodium) may lead to reduced growth rates, particularly for young crocodiles (Dunson 1982, Dunson and Mazzotti 1989, Mazzotti et al. 1986). Availability of fresh water is a primary factor affecting growth and survival in young crocodiles (Dunson and Mazzotti 1989).

American crocodiles are shy and secretive, and remain solitary for most of the year (Mazzotti 1983); however, they are usually tolerant of other crocodiles in the same general area. Individuals may travel widely throughout their range, but they are generally concentrated around the major nesting areas (Kushlan and Mazzotti 1989b, Mazzotti 1983). Prior to nesting season, males become more territorial, and dominant males may mate with several females (Thorbjarnarson 1989).

Females do not become reproductively active until they reach a total length of approximately 2.3 m (7.4 ft) (Mazzotti 1983), and this generally corresponds to an age of 10 to 13 years (LeBuff 1957, Moler 1991a). Females construct earthen nests (mounds or holes) on elevated, well-drained sites near the water, such as ditch-banks and beaches. Nests have been reported in sand, marl, and organic peat soils, and the nests constructed in these different soils may be susceptible to different environmental conditions and different threats (Lutz and Dunbar-Cooper 1984, Moler 1991b). Female crocodiles will only nest one time per year and may not nest every year after they reach sexual maturity. They lay an average of 38 eggs (Kushlan and Mazzotti 1989b), which will hatch after an incubation period of approximately 90 days (Mazzotti 1989). Flooding, over-drying, and raccoon predation all pose threats to nests and developing eggs (Mazzotti *et al.* 1988, Mazzotti 1999), and suitable nest sites

that are protected from these threats may be limited. The reported percent of nests from which eggs successfully hatch in any one year range from 33 to 78 percent (Ogden 1978, Kushlan and Mazzotti 1989b, Moler 1991b, Mazzotti *et al.* 2000, Mazzotti and Cherkiss 2001). Typically, a nest was considered successful if at least one hatched eggshell or hatchling crocodile was documented. However, Moler (19991b) classified a nest as successful if ''it appeared to have been opened by an adult crocodile. In all but one case, hatchling crocodiles were tagged near each successful nest.''

Unlike alligators, female crocodiles do not defend nest sites (Kushlan and Mazzotti 1989b). However, females remain near their nest sites and must excavate young from the nest after hatching (Kushlan and Mazzotti 1989b). Kushlan (1988) reported that females may be very sensitive to disturbance at the nest site; most females that were disturbed near their nests did not return to excavate their young after hatching. Female crocodiles show little parental care, and young are generally independent shortly after hatching. Hatchlings disperse from nest sites to nursery habitats that are generally more sheltered, have lower salinity (1 to 20 ppt), shallower water (generally), and more vegetation cover, shortly after hatching, where they remain until they grow larger. Growth during the first year can be rapid, and crocodiles may double or triple in size (Moler 1991a). Growth rates in hatchling crocodiles depend primarily on the availability of fresh water and food in the nursery habitat they occupy and may also be influenced by temperature (Mazzotti *et al.* 1986).

Adult crocodiles have few natural enemies, but hatchlings and young crocodiles are regularly eaten by a variety of wading birds, crabs, mammals, and reptiles, including larger crocodiles. As crocodiles grow, their former predators become prey. The diet of American crocodiles at all ages is varied, and crocodiles forage opportunistically. Fish, crabs, snakes, turtles, and a variety of other small prey compose the majority of their diet. Crocodiles are usually active at night, which is the primary time when they pursue prey.

Land acquisition efforts by many agencies have continued to provide protection for crocodile habitat in south Florida. Crocodile Lake NWR was acquired in 1980 to provide over 2,205 ha (5,000 acres) of crocodile nesting and nursery habitat. In 1980, Everglades National Park established a crocodile sanctuary in northeastern Florida Bay. A total of 46 public properties (including Crocodile Lake NWR and Everglades National Park), owned and managed by Federal, State, or county governments, as well as 3 privately-owned properties (including Turkey Point Nuclear Power Plant) are managed at least partially or wholly for conservation purposes and contain potential crocodile habitat within the coastal mangrove communities in south Florida. For example, in the early 1980s, Everglades National Park plugged canals which allowed crocodiles to begin nesting on the canal berms. In 1976 the C–107 canal was completed and provides habitat for crocodiles at the Turkey Point Nuclear Power Plant. Approximately 95 percent of nesting habitat for crocodiles in Florida is under public ownership (F. Mazzotti, personal communication 2001).

**Previous Federal Action**

We proposed listing of the United States population of the American crocodile as endangered on April 21, 1975 (40 FR 17590). The proposed listing stated that only an estimated 10 to 20 breeding females remained in Florida, mostly concentrated in northern Florida Bay. The primary threats cited included development pressures, lack of adequate protection of crocodiles and their habitat, and the risk of extinction inherent to a small, isolated population. Comments on the proposed rule were received from 14 parties including representatives of the State of Florida, and all supported listing the American crocodile as endangered in Florida. We published a final rule on September 25, 1975, listing the United States population of the American crocodile as endangered (40 FR 44149).

On December 16, 1975, we published a proposal to designate critical habitat for the American crocodile (40 FR 58308). The proposed critical habitat included portions of Biscayne Bay south of Turkey Point, northeast Florida Bay, including the Keys, and the mainland extending as far west as Flamingo. We published a final rule designating critical habitat on September 24, 1976 (41 FR 41914). The final rule expanded the critical habitat to include a portion of Everglades National Park and northern Florida Bay to the west of the previously proposed area. The additional area lies entirely within Everglades National Park.

On April 6, 1977, we published a proposed rule to list as endangered all populations of the American crocodile with the exception of those in Florida and all populations of the saltwater (estuarine) crocodile (*Crocodylus porosus*) due to their similarity in appearance to the American crocodile in Florida (42 FR 18287). Under the similarity of appearance clause of Section 4 of the Act, a species may be treated as endangered or threatened for the purposes of commerce or taking if it so closely resembles an endangered species that law enforcement personnel will be unable to distinguish between the listed and unlisted species. We did not finalize this proposed rule.

On February 5, 1979, we provided notice in the **Federal Register** that a status review was being conducted for the American crocodile (outside of Florida) and the saltwater crocodile (*Crocodylus porosus*). The notice specified that we had information to suggest that the American crocodile and the saltwater crocodile may have experienced population declines and extensive habitat loss during the previous decade (44 FR 7060).

On July 24, 1979, we published a proposed rule (44 FR 43442) that recommended listing the American and saltwater crocodiles as endangered throughout their ranges outside of Papua New Guinea, citing widespread loss of habitat and extensive poaching for their hides. The Florida population of the American crocodile was not included because it was previously listed as endangered. Saltwater crocodiles were not listed within the jurisdictional boundaries of Papua New Guinea due to strict government control of crocodile farming and assurances that wild populations there were not being threatened.

We listed the American crocodile, with the exception of the previously-listed population in Florida, and the saltwater crocodile throughout its range, with the exception of the Papua New Guinea population, as endangered on December 18, 1979 (44 FR 75074). This action provided protection to these crocodilians worldwide.

Since the Florida population of the American crocodile was listed as endangered, we have conducted numerous consultations under section 7 of the Act for actions that may affect crocodiles. Most potential conflicts have been resolved early in the informal consultation process, resulting in our concurrence with a determination of ''not likely to adversely affect.''

One Federal prosecution occurred in the late 1970s for a dredge-and-fill permit violation that affected crocodile habitat on Key Largo within the boundaries of the then-proposed Crocodile Lake National Wildlife Refuge (*U.S.* v. *Joseph R. Harrison, Jr.* Civil Action No. 84–1465, Judge E.B. Davis, Final Consent Judgment on September

22, 1984). This case was settled prior to trial.

**Distinct Vertebrate Population Segment Analysis**

The Act defines ''species'' to include ''* * * any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' On February 7, 1996, we published in the **Federal Register** our Policy Regarding the Recognition of Distinct Vertebrate Population Segments (DPS Policy) (61 FR 4722). For a population to be listed under the Act as a distinct vertebrate population segment, three elements are considered—(1) The discreteness of the population segment in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing (*i.e.*, is the population segment endangered or threatened?). The best available scientific information supports recognition of the Florida population of the American crocodile as a distinct vertebrate population segment. We discuss the discreteness and significance of the DPS within this section; the remainder of the document discusses the species' status within the Florida DPS.

*Discreteness:* The DPS policy states that vertebrate populations may be considered discrete if they are markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors; and/or they are delimited by international governmental boundaries within which significant differences exist in control of exploitation, management of habitat, conservation status, or regulatory mechanisms.

The Florida population segment represents the northernmost extent of the American crocodile's range (Kushlan and Mazzotti 1989a, Thorbjarnarson 1989). It is spatially separated by approximately 90 miles of open ocean from the nearest adjacent American crocodile population in Cuba (Kushlan 1988). The Gulf Stream, or the Florida Current (the southernmost leg of the Gulf Stream), flows through this 90-mile gap. This strong current makes it unlikely that crocodiles would regularly, or even occasionally, move between Florida and Cuba. Behaviorally, American crocodiles are not predisposed to travel across open ocean. They prefer calm waters with minimal wave action, and most frequently occur in sheltered, mangrove-lined estuaries (Mazzotti 1983). No evidence is available to suggest that crocodiles have crossed the Florida Straits. There are no other American crocodile populations in close proximity to Florida (Richards 2003) that would allow direct interaction of animals. The Florida DPS is effectively isolated from other American crocodile populations and functions as a single demographic unit. Consequently, we conclude that the Florida population of American crocodiles is separated from other American crocodile populations as a consequence of physical or behavioral factors.

The genetic makeup of the Florida population of the American crocodile also is recognizably distinct from populations in other geographic areas within its range (M. Forstner, Southwest Texas State University, unpublished data), despite reported evidence of the introduction of genetic material from foreign crocodile populations (M. Forstner, personal communication 2002). Analysis of mitochondrial DNA suggests that the Florida DPS may be genetically more closely related to American crocodile populations in Central and South America than to those in Cuba and the Bahamas (M. Forstner, unpublished data). However, the Florida DPS remains genetically distinct and geographically distant from American crocodiles in central and south America.

In addition to the effective spatial isolation of the Florida population, the regulatory mechanisms providing protection for the crocodile and the level of enforcement of protections are substantially different outside of Florida, across international government boundaries. The first listing of the American crocodile under the Act only included the Florida population, and protection under the Act was extended to populations outside of the United States several years later (see ''Previous Federal Actions'' section). Florida supports the only population of the American crocodile that is subject to the full jurisdiction of the Act. Though the American crocodile is protected from international commerce by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), other countries have distinctly different regulatory mechanisms in place that do not provide the same level of protection from exploitation, disturbance, or loss of habitat within their jurisdictional boundaries for the American crocodile. Cuban laws provide protection to both crocodiles and crocodile habitat (Soberon 2000), and enforcement of those laws is reported to be good (P. Ross, International Union for the Conservation of Nature, Crocodile Specialists Group, personal communication 2002). However, the threats to crocodiles in Cuba are different than in the United States, with most human-caused mortality resulting from subsistence hunting due to a depressed economy. In the Dominican Republic, Jamaica, and Haiti, a wide variety of threats, conservation regulations, and levels of enforcement make the level of protection within these countries difficult to quantify or evaluate. Threats to American crocodile populations vary substantially throughout their range in Central and South America, with threats including malicious killing, illegal subsistence hunting in areas with a depressed economy, incidental mortality during legal caiman hunting, killing by fishermen, and incidental mortality in fishing nets (Ross 1998, Soberon 2000, Platt and Thorbjarnarson 2000, P. Ross personal communication, 2002). Therefore, significant differences do exist in control of exploitation, management of habitat, conservation status, or regulatory mechanisms in areas of the American crocodile's range outside of Florida.

*Significance:* The DPS policy states that populations that are found to be discrete will then be examined for their biological or ecological significance. This consideration may include evidence that the loss of the population would create a significant gap in the range of the taxon. The Florida population of the American crocodile represents the northernmost portion of its range in the world (Kushlan and Mazzotti 1989a, Thorbjarnarson 1989) and the only U.S. population. Loss of this population would result in a significant reduction of the extent of the species' range. Maintaining a species throughout its historic and current range is important to ensure its genetic diversity and population viability. While it is difficult to determine to what degree the Florida population of the American crocodile contributes substantially to the security of the species as a whole, the apparent isolation and evidence of genetic uniqueness (M. Forstner, Southwest Texas State University, unpublished data) suggest that the Florida population substantially contributes to the overall diversity within the species and is biologically or ecologically significant.

**Recovery Accomplishments**

The first recovery plan for the American crocodile was approved on February 12, 1979 (Service 1979). The recovery plan was revised on February

2, 1984 (Service 1984). The recovery plan for the American crocodile was revised again and included as part of the South Florida Multi-Species Recovery Plan (MSRP) (Service 1999). The recovery plan for the crocodile in the MSRP, which was approved in May 1999, represents the current recovery plan for this species.

The MSRP identifies 10 primary recovery actions for the American crocodile. Species-focused recovery actions include: (1) Conduct surveys to determine the current distribution and abundance of American crocodiles; (2) protect and enhance existing colonies of American crocodiles; (3) conduct research on the biology and life history of crocodiles; (4) monitor the south Florida crocodile population; and (5) inform the public about the recovery needs of crocodiles. Habitat-focused recovery actions include: (1) Protect nesting, basking, and nursery habitat of American crocodiles in south Florida; (2) manage and restore suitable habitat of American crocodiles; (3) conduct research on the habitat relationships of the American crocodile; (4) continue to monitor crocodile habitat; and (5) increase public awareness of the habitat needs of crocodiles. All of these primary recovery actions have been initiated since the 1999 MSRP.

American crocodile nest surveys and subsequent hatchling crocodile surveys around nest sites are conducted in all areas where crocodiles nest (Mazzotti *et al.* 2000, Mazzotti and Cherkiss 2003). Nest monitoring has been conducted nearly continuously at each of the primary nesting areas since 1978. Without these data, we would have little evidence to support reclassification. In addition, detailed surveys and population monitoring have been conducted annually since 1996 throughout the American crocodile's range in Florida. These surveys documented distribution, habitat use, population size, and age class distribution of crocodiles. During both crocodile surveys and nest monitoring, crocodiles of all age classes are captured and marked (Mazzotti and Cherkiss 2003). These marked individuals continue to provide information on survival, longevity, growth, and movements (Mazzotti and Cherkiss 2003). All captured individuals are marked by clipping tail scutes in a prescribed manner so that each crocodile is given an individual identification number (Mazzotti and Cherkiss 2003). In addition, hatchlings at Turkey Point are marked with microchips placed under the skin.

Several ecological studies have been initiated or continued in recent years. Study has continued on the effects of salinity on growth rate and survival of American crocodiles in the wild. Previous laboratory studies provided a general relationship, but field data have improved our understanding of this relationship. In addition, analysis of contaminants in crocodile eggs has been conducted recently at Rookery Bay, and these analyses contribute to a record of contaminants data as far back as the 1970s.

Protection and enhancement of nesting habitat within each of the three primary American crocodile nesting areas has also been ongoing for many years. Turkey Point Nuclear Plant has implemented management actions to minimize disturbance to crocodiles and their nesting habitat. This includes the designation of nesting ''sanctuaries'' where access and maintenance activities are minimized. Habitat management in these areas includes exotic vegetation control and encouraging the growth of low-maintenance native vegetation. On Crocodile Lake National Wildlife Refuge, management has focused on maintaining suitable nesting substrate. The organic soils that compose the nesting substrate have subsided over time, leading to the potential for increased risk of flooding or unfavorable microclimate. Nesting substrate has been augmented near nesting areas. Encroaching vegetation in nesting areas has also been removed. In Everglades National Park, management has included minimizing disturbance to crocodiles resulting from public use, and relocation of crocodile nests that were placed in recently-excavated spoil material subject to disturbance and inhospitable environmental conditions.

Signs have been in place for several years along highways to alert motorists to the presence of crocodiles in the areas where most crocodile road kills have occurred. Fences were also erected along highways to prevent crocodiles from crossing, although several of these fences were later removed because they were ineffective. The remaining sections of fence are intended to funnel crocodiles to culverts where they can cross underneath roads without risk. Other efforts to reduce human-caused mortality include law enforcement actions and signs that inform the public about crocodiles in areas where crocodiles and people are likely to encounter each other, such as at fish cleaning stations along Biscayne Bay.

The FWC established a standard operating protocol in 1988 to manage crocodile-human interactions. This protocol established a standard procedure that included both public education to encourage tolerance of crocodiles and translocation of crocodiles in situations that may threaten the safety of either crocodiles or humans. While the protocol has led to the successful resolution of many complaints, many of the large crocodiles that have been translocated under the protocol have shown strong site fidelity and have returned to the areas from which they were removed (Mazzotti and Cherkiss 2003). Translocation appears to be effective with small crocodiles (generally < 6 ft total length), but may not completely resolve human-crocodile conflicts involving larger, older animals. Developing an effective, proactive protocol to address human-crocodile conflicts is necessary to ensure the safety of crocodiles of all age groups near populated areas and to help maintain a positive public perception of crocodiles and crocodile conservation. We are working closely with FWC to continue development of an effective human-crocodile conflict management plan and to improve our understanding of how crocodiles respond to translocation.

**Recovery Plan Provisions**

The MSRP (Service 1999) specifies a recovery objective of reclassifying the species to threatened, and lists recovery criteria as:

> ''Previous recovery efforts identified the need for a minimum of 60 breeding females within the population before reclassification could be considered. Since these criteria were developed, new information, based on consistent surveys, has indicated that the total number of nesting females has increased substantially over the last 20 years, from about 20 animals to about 50, and that nesting has remained stable at the major nesting areas. Based on the fact that the population appears stable, and that all of the threats as described in the original listing have been eliminated or reduced, reclassification of the crocodile will be possible, provided existing levels of protection continue to be afforded to crocodiles and their habitat, and that management efforts continue to maintain or enhance the amount and quality of available habitats necessary for all life stages.''

Based on the criteria outlined in the MSRP, we can consider the American crocodile for reclassification to threatened status in Florida at this time, because crocodiles and their habitat are still protected and management efforts continue to maintain or enhance the amount and quality of available habitat. In addition, for several reasons, we believe that we have surpassed what prior recovery plans outlined as necessary to reclassify the American crocodile: The nesting range has expanded on both the east and west coasts of the State; crocodiles are

frequently being seen throughout most of their historical range; nesting has extended back into Biscayne Bay on Florida's east coast and now commonly occurs at the Turkey Point Nuclear Plant; nesting has been increasing for several years; and during 2003, 61 crocodile nests were discovered in south Florida. The level of protection currently afforded to the species and its habitat, as well as the status of habitat management, are outlined in the ''Summary of Factors Affecting the Species'' section of this proposed rule.

**Summary of Factors Affecting the Species**

Section 4(a)(1) of the Act and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth five criteria to be used in determining whether to add, reclassify, or remove a species from the list of threatened and endangered species. These factors and their application to the American crocodile are as follows:

*A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*

The original listing proposal (40 FR 17590) identified intensive human development and subsequent loss of American crocodile habitat as a primary threat to crocodiles. Since listing, much of the nesting habitat in Florida for crocodiles remains and has been afforded some form of protection. In addition, nesting activity that was concentrated in a small portion of the historic range in northeastern Florida Bay at the time of listing now occurs on the eastern, southern, and southwestern portions of the Florida peninsula. The primary nesting areas in northern Florida Bay that were active at the time of listing in 1975 remain protected and under the management of Everglades National Park, which has consistently supported the largest number of nests and the largest population of American crocodiles in Florida. The habitat in Everglades National Park is protected and maintained for crocodiles, and ongoing hydrologic restoration efforts may improve the quality of the habitat in the Park. Park managers emphasize maintaining a high-quality natural habitat that includes natural crocodile nesting areas. Restoration of disturbed sites, hydrologic restoration, and the removal of exotic vegetation like Australian pine and Brazilian pepper have improved crocodile nesting sites, nursery habitat, and other areas frequented by crocodiles.

Since the original listing, we have acquired and protected an important nesting area for crocodiles, Crocodile Lake National Wildlife Refuge on Key Largo. The acquisition of the Crocodile Lake National Wildlife Refuge in 1980 provided protection for over 2,205 ha (5,000 acres) of crocodile nesting and nursery habitat on Key Largo. The habitat on Crocodile Lake National Wildlife Refuge is protected and managed to support the local crocodile population. All of the nesting on Key Largo occurs within Crocodile Lake National Wildlife Refuge on artificial substrates composed of spoil taken from adjacent ditches that were dredged prior to acquisition of the property. These sites and the surrounding high-quality nursery habitat consistently support five to eight successful crocodile nests each year. The artificial substrate at nesting sites on the Refuge has begun to settle, and in an effort to continue maintenance of crocodile nesting habitat, the Refuge staff recently has augmented the substrate at certain sites to bring it back to its original elevation. Nesting has been documented at both of the elevated mounds. In order for these areas to remain as nesting and nursery sites, they need to be cleared of invasive exotics. Encroachment of native and exotic plants along the levies needs to be controlled in order for them to remain suitable for nesting crocodiles and their young. In general, Crocodile Lake National Wildlife Refuge is closed to public access. Access is granted by special use permit only. Both of these sites (Crocodile Lake NWR and Everglades National Park) have already implemented programs that provide for maintenance of natural conditions that will benefit the crocodile and are in the process of preparing management plans that will formalize ongoing management actions and further protect crocodile habitat (S. Klett, Service, personal communication 2002, Skip Snow, Everglades National Park, personal communication 2002). A management plan as defined here and throughout this proposal is not regulatory. These plans are developed by the property owners, and they outline strategies and alternatives believed to be necessary to conserve important habitat and in some cases species on the property. Implementation of the plan is not mandatory, but it should be updated on a regular basis so managers and staff on site have available the latest information and guidance for crocodile management.

In addition to these two primary core sites of publicly owned active nesting habitat for crocodiles, additional nesting habitat has been created within the historic range of the crocodile, but on a site that may not have historically supported nesting. The Turkey Point Nuclear Power Plant site, owned and operated by Florida Power and Light (FPL), contains an extensive network of cooling canals (built in 1974) that appear to provide good crocodile habitat in Biscayne Bay. The site is approximately 1,214 ha (3,000 acres), and the majority is considered crocodile habitat. The number of nests at this site has risen from 1 to 2 per year between 1978 and 1980 (Gaby *et al.* 1985) to 10 to 15 nests per year in the late 1990s (Brandt *et al.* 1995, Cherkiss 1999, J. Wasilewski personal communication 2002). This property now supports the second largest breeding aggregation of American crocodiles in Florida. The Turkey Point Nuclear Power Plant site, privately owned by FPL, has developed and implemented a management plan for their property that specifically addresses crocodiles for many years. Turkey Point is also closed to access other than personnel who work at the facility. FPL personnel maintain the canals and crocodile habitat at Turkey Point, by activities like exotic vegetation control and planting of low-maintenance native vegetation. They also have supported an extensive crocodile monitoring program since 1976. Operation of the Turkey Point Nuclear Power Plant is licensed by the Nuclear Regulatory Commission through 2032, and FPL plans to continue crocodile management and monitoring while the plant is in operation (J. Wasilewski, FPL, personal communication 2003).

FPL has also developed the Everglades Mitigation Bank along the western shore of Biscayne Bay and immediately adjacent to the Turkey Point Nuclear Power Plant, which may help bolster the crocodile population in Biscayne Bay in coming years. This site is a wetlands mitigation bank, approximately 5,665 ha (14,000 acres) in size, of which about 5,050 ha (10,000 acres) is crocodile habitat. To date, crocodile nesting has not been recorded on this site (J. Wasilewski, personal communication 2002); however, habitat restoration and management actions intended to improve nesting habitat may provide three additional nesting areas, each capable of supporting multiple nests (J. Wasilewski, personal communication 2002). It is difficult to estimate in advance how many potential nesting sites will occur in these three nesting areas, but we believe that it will be roughly equivalent to the Turkey Point Nuclear Power Plant site. This area will be protected in perpetuity and may help offset any loss of the artificial habitat at Turkey Point Nuclear Power

Plant if that site is modified after the current operating license expires in 2032. Even though the nesting habitat at Turkey Point has been created and all of the nesting at Crocodile Lake National Wildlife Refuge and some areas of Everglades National Park is on artificial or created substrate, crocodiles have successfully moved into and used this habitat. We believe that it is important to continue to provide protection for the artificial habitats that crocodiles opportunistically use within their current range.

Outside of these areas that now comprise the core of nesting habitat for American crocodiles in Florida, land acquisitions have also provided protection to many other areas of potential habitat for crocodiles. A total of 44 different public properties, owned and managed by Federal, State, or county governments, as well as 2 different privately owned properties managed at least partially or wholly for conservation purposes, contain potential habitat for crocodiles in Florida. A total of 35 of the publicly-owned or private conservation lands operate under current management plans (e.g., Florida Department of Natural Resources 1991). All of the plans prescribe management actions that will provide conditions beneficial for crocodiles and maintain or improve crocodile habitat and potential nesting sites. A common action called for in many of the plans is exotic vegetation control. Sites including Rookery Bay National Estuarine Research Reserve, Collier-Seminole State Park, and others list goals to restore the natural freshwater flow patterns through hydrological restoration (e.g., Florida Department of Environmental Protection 2000). The 44 other public properties contain about 28,330 ha (70,000 acres) of potential crocodile habitat, whereas together Everglades National Park and Crocodile Lake National Wildlife Refuge contain alone about 131,120 ha (324,000 acres). A total of approximately 166,000 ha (410,000 acres) of mangrove-dominated vegetation communities are currently present in south Florida on public and private lands that are managed at least partially for conservation purposes. Approximately 10,117 ha (25,000 acres) of mangrove habitat occurs in south Florida outside of public or privately-owned conservation lands. Only a small fraction (< 5 percent) of known nests currently occur on unprotected sites (F. Mazzotti, personal communication 2001), and these sites are probably less secure than sites on properties under public ownership.

Construction and development within coastal areas continues to grow, and still poses a threat to remaining crocodile habitat that is not protected. However, each year only a few nests may occur on privately-owned, unprotected sites (F. Mazzotti, personal communication 2001). With virtually all known crocodile habitat under protection for conservation purposes, the total Florida crocodile population now believed to be estimated between 500 and 1,000 individuals (not including hatchlings), the expansion of the crocodile's nesting range to both the east and west coast of Florida, and with crocodiles frequently being seen throughout most of their historical range, we believe that the amount and quality of crocodile habitat in south Florida will continue to be maintained or enhanced sufficiently in order to provide protection for all life stages of the existing crocodile population. We also believe that available habitat can support population growth and expansion.

*B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

Prior to listing in 1975, crocodiles were frequently collected for museums and zoos, and at least occasionally shot for sport. Though it is difficult to estimate the magnitude of collection and sport hunting, several lines of evidence suggest that they may have significantly impacted the Florida population prior to listing. Moore (1953) reported on a collector who advertised that he would pay for any live crocodiles anywhere in south Florida; these were added to his collection at a zoological garden. This collector claimed to have the largest collection of American crocodiles in the United States. Shooting for sport was also common, as was both incidental and intentional killing by fishermen in Florida Bay (Moore 1953). At the time of listing in 1975, our final rule stated that poaching for skins and eggs still sometimes occurred and crocodiles were occasionally shot for sport from passing boats. Ogden (1978) reported that half of the human-caused crocodile deaths recorded between 1971 and 1975 resulted from shooting.

Since listing in 1975, collection of wild American crocodiles has ceased, and few shootings have been reported (Kushlan 1988, Moler 1991a, P. Moler personal communication 2001). Kushlan (1988) reported that only 3 of 13 human-caused mortalities between 1975 and 1984 resulted from shooting (approximately 23 percent). Moler (1991a) reported 27 recorded human-caused mortalities from 1980 to 1991. During this period, only one shooting was reported (approximately 4 percent of human-caused mortalities). Since 1991, no crocodile mortalities resulting from shooting have been recorded. This declining trend in the number of recorded shootings suggests reduced risk to crocodiles from this threat. The few legal cases involving take of crocodiles in south Florida have been publicized and may have deterred poaching and killing of crocodiles. Stories in newspapers and other popular press, as well as radio and television reports and documentaries, have aided in informing residents and visitors about the status and legal protection of American crocodiles.

We receive no to few requests for recovery permits during a given year for commercial or scientific purposes related to the crocodile in Florida. We have no reason to believe that trade or any other type of current or future utilization pose a risk to the American crocodile population in Florida.

*C. Disease or Predation*

Depredation of American crocodile nests by raccoons was cited in the original listing of crocodiles as a threat to the population. However, predation on nests by raccoons at Turkey Point Nuclear Power Plant or Crocodile Lake NWR has not been observed (F. Mazzotti, personal communication 2004). Predation on nests has been caused by fire ants in Everglades National Park (one nest) and Turkey Point Nuclear Power Plant (several nests) (F. Mazzotti, personal communication 2004). Monitoring of nest sites throughout the range of the crocodile in Florida has shown that depredation is not a major cause of nest loss. On average, 20.1 percent (range 2.8 to 45.0 percent) of nest failures resulted from depredation (Kushlan and Mazzotti 1989b, Mazzotti 1989, Moler 1991b, Mazzotti *et al.* 2000, Mazzotti and Cherkiss 2001).

Predation on nests in Everglades National Park has been variable with an increasing trend that has not been tested for statistical significance (F. Mazzotti, personal communication 2004). For example, the majority of nests near Little Madeira Bay, within Everglades National Park, have been depredated by raccoons in recent years (Mazzotti and Cherkiss 2001). While a few years ago, most of the predation in Everglades National Park was on nests in artificial substrates, now most of the predation is on nests at beach nest sites which are historically the most productive in Everglades National Park (F. Mazzotti, personal communication 2004). This is of concern as these are the only nests on

natural habitat left in the U.S. Nest depredation may become an increasing problem as the density of crocodile nests increases, allowing for raccoons and other nest predators to become specialized in locating nests (Mazzotti 1999). However, localized efforts to control raccoons may boost productivity rates in areas where raccoon depredation has become problematic.

There is no evidence of disease in the American crocodile population in Florida. Therefore, disease does not present a known threat to the crocodile in Florida.

*D. The Inadequacy of Existing Regulatory Mechanisms*

The Act currently provides protection for the American crocodile as an endangered species, and these protections would not be significantly reduced if it were reclassified to threatened. A more complete discussion of applicable Federal regulations is included below (see ''Available Conservation Measures'' section). In addition to the Federal regulations described below, the National Park Service has established regulations for general wildlife protection in units of the National Park System that prohibit the taking of wildlife; the feeding, touching, teasing, frightening or intentional disturbing of wildlife nesting, breeding, or other activities; and possessing unlawfully taken wildlife or portions thereof (36 CFR 2.2).

The State of Florida provides legal protection for the American crocodile within the State. In 1967, the State of Florida listed the crocodile as ''protected.'' This status was revised in 1972, when the American crocodile was listed as ''endangered'' under Chapter 68A–27 of the Florida Wildlife Code. Chapter 68A–27.003 of the Florida Code, entitled ADesignation of endangered species; prohibitions; permits' specifies that Ano person shall pursue, molest, harm, harass, capture, possess, or sell'' any of the endangered species that are listed. Violation of these prohibited acts can be considered a third degree felony, and is punishable by up to 5 years in prison and a $10,000 fine (Florida Statute 372.0725). At this time, the FWC has no immediate plans to change the American crocodile's status, regardless of whether or not the Service reclassifies the species to threatened (P. Moler, FWC, personal communication 2004). The FWC also currently operates under a cooperative agreement with us under section 6 of the Act that formalizes a cooperative approach to the development and implementation of programs and projects for the conservation of threatened and endangered species.

On June 28, 1979, the American crocodile was added to Appendix II of CITES. This designation reflected that the species, while not currently threatened with extinction, may become so without trade controls. On June 6, 1981, the American crocodile was moved to Appendix I, indicating that it was considered to be threatened with extinction. Generally, no commercial trade is allowed for Appendix I species. CITES is a treaty established to monitor international trade to prevent further decline in wild populations of plant or animal species. CITES permits may not be issued if import or export of the species may be detrimental to the species' survival, or if specimens are not legally acquired. CITES does not regulate take or domestic trade, so it would not apply to take within Florida or the United States. Reclassification of the American crocodile in Florida from endangered to threatened will not affect the species' CITES status.

Several other Federal regulations may provide protection for American crocodiles or their habitat. Section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*) requires the issuance of a permit from the U.S. Army Corps of Engineers (Corps) for the discharge of any dredged or fill material into waters of the United States. The Corps may deny the issuance of a permit if the project might adversely affect wildlife and other natural resources. Also, sections 401 and 403 of the Rivers and Harbors Act (33 U.S.C. 304 *et seq.*) prohibit the construction of bridges, roads, dams, docks, weirs, or other features that would inhibit the flow of water within any navigable waterway. The Rivers and Harbors Act ensures the protection of estuarine waters from impoundment or development and indirectly protects natural flow patterns that maintain crocodile habitat. In addition, the Federal agencies responsible for ensuring compliance with the Clean Water Act and the Rivers and Harbors Act are required to consult with us if the issuance of a permit may affect endangered species or their designated critical habitat, under section 7(a)(1) of the Endangered Species Act (see ''Available Conservation Measures'' section below). This requirement remains the same whether a species is listed as endangered or threatened.

The Fish and Wildlife Coordination Act of 1958 (as amended), codified at 16 U.S.C. 661 *et seq.* requires equal consideration and coordination of wildlife conservation with other water resources development. This statute allows us and State fish and game agencies to review proposed actions and address ways to conserve wildlife and prevent loss of or damage to wildlife resources. The Fish and Wildlife Coordination Act allows us to help ensure that American crocodiles and their habitat are not degraded by water development projects and allows us to incorporate improvements to habitat whenever practicable.

*E. Other Natural or Manmade Factors Affecting Its Continued Existence*

As explained in the original listing (40 FR 44149), crocodile nest sites were vulnerable to disturbance from increasing human activity because of the remoteness and difficulty of patrolling nesting areas. Human disturbance of crocodiles can cause them to abandon suitable habitat or disrupt reproduction activities (i.e., females abandoning their nest sites). As the American crocodile population and the human population in south Florida both grow, the number of human-crocodile interactions has increased (Tim Regan, FWC, personal communication 2002). However, ongoing acquisition of important nesting and nursery sites and other additional crocodile habitat by Federal, State, or local governments and implementation of management plans on these publicly-owned properties have improved protection to crocodile nests.

Of the three core properties that support crocodile nesting (Everglades National Park, Crocodile Lake National Wildlife Refuge, and Turkey Point Nuclear Power Plant), only Turkey Point has a management plan in place that specifically addresses the American crocodile. This plan calls for activities like road maintenance, vehicle access, and construction to be conducted in important crocodile habitat only at certain times or locations based on the crocodile's activity in order to reduce human disturbance at Turkey Point. In addition, Turkey Point is closed to access other than personnel who work at the facility. Both Everglades National Park and Crocodile Lake National Wildlife Refuge, even without species-specific management plans, have established rules that provide protection from disturbance to benefit the crocodile. At Everglades National Park, protection from disturbance is based on guidelines for general public use, such as instructions to stay on marked trails. Crocodile Lake National Wildlife Refuge is generally closed to public access. However, personnel conduct necessary activities on the property in consideration of crocodiles to reduce disturbance. Activities conducted on or near the nesting sites are conducted

during the non-breeding season in order to minimize crocodile disturbance. Both Crocodile Lake National Wildlife Refuge and Everglades National Park are preparing management plans that will formalize ongoing actions and more specifically address American crocodiles (S. Klett, personal communication 2002, Skip Snow, Everglades National Park, personal communication 2002). In addition, Everglades National Park has been preparing a draft wilderness plan that will benefit the crocodile mostly by general prescribed changes in public use in portions of the Park.

In addition to these core nesting sites, approximately 44 public properties, managed as conservation lands by Federal, State, or county governments, provide potential habitat for crocodiles in south Florida. In addition, two other privately-owned sites that are maintained as conservation lands or that conduct natural lands management provide potential crocodile habitat. A total of 35 of these 46 properties operate under current management plans. Only two specifically mention management actions intended to benefit the American crocodile. However, other actions mentioned in management plans that will reduce disturbance to crocodiles include restrictions on public use, implementation of boat speed limits (including areas of no-wake zones), and prohibition of wildlife harassment. Managing potential human'crocodile conflicts remains an important factor in providing adequate protection for and reducing disturbance to crocodiles.

The original proposed listing cites the risk of a hurricane or another natural disaster as a serious threat to the American crocodile population (40 FR 17590). Hurricanes and freezing temperatures may also kill some adult crocodiles (Moler 1991a), but their susceptibility to mortality from extreme weather is poorly documented. These events still have the potential to threaten the historically restricted nesting distribution of the American crocodile in south Florida. However, increased nesting activity in western Florida Bay, Cape Sable, and Turkey Point Nuclear Power Plant have broadened the nesting range. Nesting now occurs on the eastern, southern, and southwestern portions of the Florida peninsula. While a single storm could still easily affect all portions of the population, it is less likely now that the impact to all population segments would be severe.

The original listing rule cited the restriction of the flow of freshwater to the Everglades because of increasing human development as a potential threat to the American crocodile population in Florida. Ongoing efforts to restore the Everglades ecosystem and restore a more natural hydropattern to south Florida will affect the amount of freshwater entering the estuarine systems. Because growth rates of hatchling crocodiles are closely tied to the salinity in the estuaries, restoration efforts will affect both quality and availability of suitable nursery habitat. Decreased salinity should increase growth rates and survival among hatchling crocodiles. Proposed restoration activities in and around Taylor Slough and the C–111 canal are projected to increase the amount of fresh water entering the estuarine system, and extend the duration of freshwater flow into Florida Bay (T. Dean, H. McSarry, P. Pitts, Service, personal communication 2004). The addition of fresh water will also occur throughout many of the tributaries and small natural drainages along the shore of Florida Bay, instead of primarily from the mouth of the C–111 canal (T. Dean, H. McSarry, P. Pitts, Service, personal communication 2004). Salinities in nesting areas, including Joe, Little Madeira, and Terrapin Bays, are projected to be lower for longer periods than they currently are within this area (based on alternative D13R hydrologic plan simulation—U.S. Army Corps of Engineers and South Florida Water Management District 1999). This restoration project should increase the amount and suitability of crocodile habitat in northern Florida Bay, and increase juvenile growth rates and survival (Mazzotti and Brandt 1995).

Hydrological restoration may also affect crocodile habitat in Biscayne Bay. Reductions in freshwater discharge will occur in the Miami River, Snake Creek, and central and south Biscayne Bay (H. McSharry, Service, personal communication 2004). These projected changes would appear to reduce habitat quality in a portion of Biscayne Bay. Consequently, the effect of the proposed hydrological modifications on the crocodile population in Biscayne Bay is likely negative. However, over the entire range of crocodile habitat that will be affected by Everglades restoration, we expect a benefit to the species.

Mortality of crocodiles on south Florida roads has consistently been the primary source of adult mortality, and this trend has not changed (Mazzotti and Cherkiss 2003). Road kills have occurred throughout the crocodile's range in Florida, but most have occurred on Key Largo and around Florida Bay, especially around Card and Barnes Sounds (Mazzotti and Cherkiss 2003). Many of the recorded crocodile road kills are of adults, which may result from the increased likelihood of large individuals being reported. We cannot accurately estimate the proportion of road-killed crocodiles that are reported. Therefore, it is difficult to accurately estimate the magnitude of this source of mortality or its effect on the population. However, all segments of the crocodile population in Florida have continued to grow despite this continuing mortality factor. Signs cautioning drivers of the risk of colliding with crocodiles have been posted along the major highways throughout crocodile habitat in south Florida. As discussed above, measures that have been identified to help reduce road kill mortality include installing fencing in appropriate places to prevent crocodiles from entering roadways and installation of box culverts under roadways so that crocodiles can safely cross roads.

As the MSRP details, the success of American crocodile nesting is largely dependent on the maintenance of suitable egg cavity moisture throughout incubation, and flooding may also affect nest success. On Key Largo and other islands, failure of crocodile nests is typically attributed to desiccation due to low rainfall (Moler 1991b). Data compiled by Mazzotti and Cherkiss (2003) document an average of 47.5 percent nest success from 1978 through 1999 (excluding 1991 and 1992 due to lack of data) at Crocodile Lake NWR on north Key Largo. Nest failures on the mainland may be associated with flooding or desiccation (Mazzotti *et al.* 1988, Mazzotti 1989). In certain areas, flooding and over-drying affect nest success. Data compiled by Mazzotti and Cherkiss (2003) document an average of 64.4 percent nest success from 1970 through 1999 at Everglades National Park (excluding 1975, 1976, 1983, 1984, and 1996 due to lack of data) and 98 percent nest success from 1978 through 1999 at Turkey Point Nuclear Power Plant (excluding 1980 and 1982 due to lack of data). However, overall, the crocodile population in Florida has more than doubled its size since it was listed to an estimated 500 to 1,000 individuals and appears to be compensating for these potential threats.

The final rule listing crocodiles did not reference contaminants as a potential threat. However, several studies have shown that contaminants occur in American crocodiles in south Florida (Hall *et al.* 1979, Stoneburger and Kushlan 1984, Mazzotti unpublished data). Though we have no evidence that contaminants have affected the crocodile population, we recognize that contaminants have been

documented in crocodile eggs. Contaminants such as pesticides and heavy metals may pose a threat to crocodiles in south Florida at some levels, but we have not yet detected them at the population level. A variety of organochlorine pesticide residues (DDT, DDE, and Dieldrin, among others), and PCBs have been documented in crocodile eggs collected from south Florida (Hall *et al.* 1979). Acute exposure to pesticides and heavy metals may result in death, while prolonged exposure to lower concentrations of organochlorines include liver damage, reproductive failure, behavioral abnormalities, or deformities. Despite the fact that contaminants have been documented in crocodile eggs in south Florida, the crocodile population and nesting are increasing. Little information is known at this time about what constitutes dangerous levels of these contaminants in crocodiles or other crocodilians.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the American crocodile in Florida in determining this proposed rule. Based on this evaluation, we have determined that the American crocodile in its range in Florida meets the criteria of a DPS as stated in our policy of February 17, 1996 (61 FR 4722), and in regard to its status, the preferred action is to reclassify the American crocodile in the Florida DPS from an endangered species to a threatened species. The recovery plan for the crocodile states that, ''Based on the fact that the population appears stable, and that all of the threats as described in the original listing have been eliminated or reduced, reclassification of the crocodile will be possible, provided existing levels of protection continue to be afforded to crocodiles and their habitat, and that management efforts continue to maintain or enhance the amount and quality of available habitats necessary for all life stages.'' We believe based on our evaluation that the criteria for downlisting the American crocodile in the Florida DPS have been met because:

(1) The amount and quality of crocodile habitat in Florida will continue to be maintained or enhanced sufficiently in order to provide protection for all life stages of the existing crocodile population and available habitat can support population growth and expansion; and

(2) Acquisition of important nesting and nursery sites and other additional crocodile habitat by Federal, State, or local governments and implementation of management on these publicly-owned properties have improved protection to crocodiles and crocodile nests.

**Available Conservation Measures**

Two of the three primary nesting areas for American crocodiles in Florida occur on Federal conservation lands and are consequently afforded protection from development and large-scale habitat disturbance. Crocodiles also occur on a variety of State-owned properties, and existing State and Federal regulations provide protection on these sites. The fact that American crocodile habitat is primarily wetlands also assures the opportunity for conference or consultation on most projects that occur in crocodile habitat under the authorities described below.

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing increases public awareness of threats to the American crocodile, and promotes conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the State, and requires that recovery actions be carried out. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to the American crocodile and its designated critical habitat (41 FR 41914). Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. If a Federal action may affect the American crocodile or its designated critical habitat, the responsible Federal agency must enter into formal consultation with us. Federal agency actions that may require consultation with us include Corps of Engineers involvement in projects such as residential development that requires dredge/fill permits, the construction of roads and bridges, and dredging projects. Power plant development and operation under license from the Federal Energy Regulatory Commission/ Nuclear Regulatory Commission may also require consultation with respect to licensing and re-licensing.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. The prohibitions, codified at 50 CFR 17.21 and 50 CFR 17.31, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, and pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and agents of State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in the course of otherwise lawful activities. For threatened species, permits also are available for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to Cindy Schulz of the South Florida Ecological Services Office (see **ADDRESSES** section). Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services Division, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (telephone 404/679–4176, facsimile 404/679–7081).

This proposed rule recommends a change in status of the American crocodile at 50 CFR 17.11, from endangered to threatened. If made final, this rule would formally recognize that this species is no longer in imminent danger of extinction throughout all or a significant portion of its range in Florida. However, this reclassification would not significantly change the protection afforded this species under the Act. Anyone taking, attempting to take, or otherwise possessing an American crocodile, or parts thereof, in violation of section 9 would still be subject to a penalty under section 11 of the Act. Section 7 of the Act would still continue to protect the American crocodile from Federal actions that might jeopardize its continued existence or destroy or adversely modify its critical habitat.

If the crocodile is listed as threatened, recovery actions directed at the crocodile would continue to be implemented as outlined in the MSRP.

The MSRP identifies actions that will result in the recovery of the American crocodile, including—(1) Determining the current distribution and abundance; (2) protecting and enhancing existing crocodile colonies; (3) conducting research on the American crocodile's biology and life history; (4) monitoring the south Florida crocodile population; and (5) informing the public about the recovery needs of crocodiles. The MSRP also outlines restoration activities that should be undertaken to adequately restore the mangrove community that the crocodile occupies. These actions include—(1) Protecting crocodile nesting, basking, and nursery habitat; (2) managing and restoring suitable crocodile habitat; (3) conducting research on the habitat relationships of the crocodile; (4) continuing to monitor crocodile habitat; and (5) increasing public awareness of the habitat needs of the crocodile.

Finalization of this proposed rule would not constitute an irreversible commitment on our part. Reclassification of the American crocodile in Florida to endangered status would be possible if changes occur in management, population status, and habitat or other actions detrimentally affect the population or increase threats to its survival.

## Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of this review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the comment period, on the specific assumptions and conclusions regarding the proposed reclassification of the American crocodile in Florida.

The final decision on this proposed rule will take into consideration the comments and any additional information we receive, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for one or more public hearings on this proposal, if requested. We must receive requests within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be sent to the South Florida Ecological Services Office, 1339 20th Street, Vero Beach, FL 32960.

## Executive Order 12866

Executive Order 12866 requires agencies to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand including answers to the following: (1) Is the discussion in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposal?; (2) does the proposal contain technical language or jargon that interferes with its clarity?; (3) does the format of the proposal (grouping and order of sections, use of headings, etc.) aid or reduce its clarity; and (4) what else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to the Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C St., NW., Washington, DC 20240.

## Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information for which Office of Management and Budget Approval is required under the Paperwork Reduction Act. 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. For additional information concerning permit and associated requirements for threatened species, see 50 CFR 17.72.

## National Environmental Policy Act

We have determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

## References Cited

A complete list of all references cited in this document, as well as others, is available upon request from the South Florida Ecological Services Office (see **ADDRESSES** section).

## Author

The primary author of this document is Tylan Dean, Fish and Wildlife Biologist (see **ADDRESSES** section).

## List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

## Proposed Regulation Promulgation

We propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

## PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by revising the entry in the List of Endangered and Threatened Wildlife for ''Crocodile, American'' under REPTILES to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| * | * | * | * | * | * | | * |
| REPTILES | | | | | | | |
| * | * | * | * | * | * | | * |
| Crocodile, American .. | *Crocodylus acutus* ... | U.S.A. (FL), Mexico, Caribbean, Central and South America. | Entire, except in U.S.A. (FL). | E | 10, 87, __ | NA | NA |

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| Do | do | do | U.S.A. (FL) | T | 10, 87, __ | 17.95(c) | NA |
| * | * | * | * | * | * | | * |

Dated: January 28, 2005.

**Marshall P. Jones,**

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 05–5640 Filed 3–23–05; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[I.D. 031705E]**

**RIN 0648–AS90**

## Fisheries of the Exclusive Economic Zone Off Alaska; License Limitation Program for the Scallop Fishery

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

**ACTION:** Proposed rule; availability of an amendment to a fishery management plan; request for comments.

**SUMMARY:** The North Pacific Fishery Management Council (Council) has submitted Amendment 10 to the Fishery Management Plan for the Scallop Fishery off Alaska (FMP) for review by the Secretary of Commerce (Secretary). Amendment 10 would modify the gear endorsements under the license limitation program (LLP) for the scallop fishery to increase the dredge size allowed on vessels that qualify for the gear restriction endorsement. This action is necessary to allow increased participation by LLP license holders in the scallop fisheries off Alaska. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMP, and other applicable laws.

**DATES:** Written comments on the amendments must be received on or before May 23, 2005.

**ADDRESSES:** Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

- E-mail to *Scallop10–NOA–0648–AS90@noaa.gov*. Include in the subject line the following document identifier: Scallop 10. E-mail comments, with or without attachments, are limited to 5 megabytes;
- Webform at the Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions at that site for submitting comments;
- Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, AK;
- Mail to P.O. Box 21668, Juneau, AK 99802; or
- Fax to 907–586–7557.

Copies of Amendment 10 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for this action may be obtained from the NMFS Alaska Region at the address above or from the Alaska Region website at *http://www.fakr.noaa.gov/*.

**FOR FURTHER INFORMATION CONTACT:** Gretchen Harrington, phone: 907–586–7228 or e-mail: *gretchen.harrington@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Act requires that each regional fishery management council submit any FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment.

Beginning in 2001, NMFS required a Federal scallop LLP license on board any vessel deployed in the scallop fisheries in Federal waters off Alaska. The LLP was implemented through approval of Amendment 4 to the FMP by the Secretary on June 8, 2000, and the final rule implementing Amendment 4 was published December 14, 2000 (65 FR 78110). The LLP was established to limit harvesting capacity in the Federal scallop fishery off Alaska. NMFS issued a total of nine LLP licenses. Licenses were issued to holders of either Federal or state moratorium permits who used their moratorium permits to make legal landings of scallops in each of any two calendar years during the period beginning January 1, 1996, through October 9, 1998. The licenses authorize their holders to catch and retain scallops in all waters off Alaska that are open for scallop fishing.

Licenses based on the legal landings of scallops harvested only from Cook Inlet (State Registration Area H) during the qualifying period have a gear restriction endorsement that limited allowable gear to a single 6–foot (1.8 m) dredge when fishing for scallops in any area. NMFS issued two licenses with this gear endorsement. The purpose of this gear restriction was to prevent expansion in overall fishing capacity by not allowing relatively small operations in Cook Inlet to increase their fishing capacity. The other seven licenses, based on the legal landings of scallops harvested from other areas outside Cook Inlet during the qualifying period, have no gear endorsement, but are limited to two 15–foot (4.5 m) dredges under existing state regulations.

Since the LLP was implemented, the Council found that the gear restriction endorsement may create a disproportionate economic hardship for those two LLP license holders with the endorsement when they fish in Federal waters, especially in light of the state's observer requirements and their associated costs. In February 2004, the Council developed a problem statement and four alternatives for analysis of modifying or eliminating the gear restriction for the two licenses affected by the gear restriction.

In October 2004, the Council voted unanimously to recommend Amendment 10 to change the single 6–foot (1.8 m) dredge restriction endorsement to a gear restriction endorsement of two dredges with a combined width of no more that 20–foot (6.096 m). This change would allow the two LLP license holders with the current gear endorsement to fish in Federal waters outside Cook Inlet with larger dredges. The Council recommended this change because it found that it is not economically viable for vessels to operate outside Cook Inlet with the existing gear restrictions. The Council also concluded that, because of changes to the fleet after the LLP was implemented due to the formation of a voluntary fishing cooperative, these two vessels could increase their capacity

and enhance economic viability in statewide waters outside Cook Inlet without increasing overall fishing effort to the extent that it would jeopardize the total fleet's ability to operate at a sustainable and economically viable level. Amendment 10 would provide the two vessels with a larger share of the total catch that could better offset their observer costs and enhance their economic viability.

An EA/RIR/IRFA was prepared for Amendment 10 that describes the management background, the purpose and need for action, the management alternatives, and the environmental and socio-economic impacts of the alternatives (see **ADDRESSES**).

Written public comments are being solicited on proposed Amendment 10 through the end of the comment period stated (see **DATES**). All comments received by the end of the comment period on the amendment will be considered in the approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the amendment. To be considered, comments must be received not just postmarked or otherwise transmitted by the close of business on the last day of the comment period. NMFS will soon publish the proposed regulations to implement Amendment 10.

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

Dated: March 18, 2005.

**Alan D. Risenhoover,**

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

[FR Doc. 05–5860 Filed 3–23–05; 8:45 am]

**BILLING CODE 3510–22–S**

# Notices

Federal Register

Vol. 70, No. 56

Thursday, March 24, 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

### Agricultural Marketing Service

**[Doc. No. FV–04–303]**

### United States Standards for Grades of Field Grown Leaf Lettuce

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice; request for public comment.

**SUMMARY:** The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is soliciting comments on its proposal to create a new voluntary U.S. Standard for Grades of Field Grown Leaf Lettuce. This action is being taken at the request of the Fruit and Vegetable Industry Advisory Committee, which asked AMS to identify commodities that needed grade standards developed to facilitate commerce. The proposed standards would provide industry with a common language and uniform basis for trading, thus promoting the orderly and efficient marketing of field grown leaf lettuce.

**DATES:** Comments must be received by May 23, 2005.

**ADDRESSES:** Interested persons are invited to submit written comments to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 1661, South Building, Stop 0240, Washington, DC 20250–0240, fax (202) 720–8871, e-mail *FPB.DocketClerk@usda.gov.* Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

The proposed U.S. Standards for Grades of Field Grown Leaf Lettuce are available either from the above address or the Fresh Products Branch **Federal Register** notices page at: *http://www.ams.usda.gov/fv/fpbdocketlist.htm.*

**FOR FURTHER INFORMATION CONTACT:** David L. Priester, at the above address or call (202) 720–2185, e-mail *David.Priester@usda.gov.*

**SUPPLEMENTARY INFORMATION:** Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture ''to develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices * * *.'' AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables that are not requirements of Federal Marketing Orders or U.S. Import Requirements, no longer appear in the Code of Federal Regulations, but are maintained by USDA, AMS, Fruit and Vegetable Programs.

AMS is proposing to establish voluntary U.S. Standards for Grades of Field Grown Leaf Lettuce using the procedures that appear in part 36 title 7 of the Code of Federal Regulations (7 CFR part 36).

#### Background

AMS previously published a notice in the **Federal Register** (68 FR 68858), on December 10, 2003, soliciting comments on the possible development of U.S. Standards for Grades of Field Grown Leaf Lettuce. One comment was received from a fruit and vegetable trade association with 3,000 members. The commenter surveyed its members and found that there was no clear consensus to support development of the standards. However, the commenter noted that many of its members were of the view that it was important to establish new standards. Based on the comments received and information gathered, AMS has developed proposed grade standards for field grown leaf lettuce. This proposal would establish the following grades, as well as a tolerance for each grade: U.S. Fancy, U.S. No. 1 and U.S. No. 2. In addition, there are proposed ''Tolerances,'' ''Application of Tolerances'' and ''Size'' sections. AMS is proposing to define ''Injury,'' ''Damage,'' and ''Serious Damage,'' along with specific basic requirements and definitions for defects. AMS is soliciting comments on the proposed U.S. Standards for Grades of Field Grown Leaf Lettuce and the probable impact on growers, processors, and distributors.

Production figures have shown a steady increase in the consumption of field grown leaf lettuce over the past 10 years. Many members of the Western Growers Association, a trade association that represents over one half of the nation's fresh produce production, as well as the Fruit and Vegetable Industry Advisory Committee have expressed the need for U.S. standards for field grown leaf lettuce, which would provide a uniform basis for trading.

The adoption of these proposed standards would provide the field grown leaf lettuce industry with U.S. grade standards similar to those extensively in use by the fresh produce industry to assist in orderly marketing of other commodities.

**Authority:** 7 U.S.C. 1621–1627.

Dated: March 18, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05–5813 Filed 3–23–05; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Notice of Meeting

**AGENCY:** Resource Advisory Committee, Sundance, Wyoming, USDA, Forest Service.

**SUMMARY:** Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Black Hills National Forests' Crook County Resource Advisory Committee will meet Monday, April 19, 2005 in Sundance, Wyoming for a business meeting. The meeting is open to the public.

**SUPPLEMENTARY INFORMATION:** The business meeting on April 19, begins at 6:30 p.m., at the US Forest Service, Bearlodge Ranger District office, 121

South 21st Street, Sundance, Wyoming. Agenda topics will include: Discussion and determination of project proposals, update on re-authorization of Pub. L. 106–393, and an update on the nomination process for membership to committee for next FY. A public forum will begin after the regular business meeting.

**FOR FURTHER INFORMATION CONTACT:** Steve Kozel, Bearlodge District Ranger and Designated Federal Officer, at (307) 283–1361.

Dated: March 17, 2005.

**Steve Kozel,**

*Bearlodge District Ranger*

[FR Doc. 05–5798 Filed 3–23–05; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 16–2005]**

### Proposed Foreign-Trade Zone—Dane County, WI; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by Dane County, Wisconsin, to establish a general-purpose foreign-trade zone at sites in Dane County, Wisconsin, adjacent to the Milwaukee 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 March 17, 2005. The applicant is authorized to make the proposal under Wisconsin Statutes 01–02, Section 182.50. The proposed zone would be the second general-purpose zone in the Milwaukee, Wisconsin, Customs port of entry. The existing zone is as follows: FTZ 41, Milwaukee, Wisconsin (Grantee: Foreign-Trade Zone of Wisconsin, Ltd., Board Order 136, 9/29/78).

The proposed zone would consist of 5 sites covering 648 acres in the Madison, Wisconsin, area: *Site 1* (3 parcels, 123 acres)—Dane County Regional Airport, 4000 International Lane, Madison; *Site 2* (5 parcels, 47 acres)—Capital Warehousing Corporation, 4461 Duraform Lane, Windsor; *Site 3* (2 parcels, 213 acres)—Arlington Prairie Industrial Park, Arlington; *Site 4* (6 parcels, 139 acres)—Center for Industry & Commerce, U.S. Hwy 51 and Hoepker Rd and Hanson Rd, Madison; *Site 5* (2 parcels, 126 acres)—MadCap1 and CapWin19 industrial lots, 4355 Duraform Lane, DeForest.

The application indicates a need for zone services in the Madison, Wisconsin, area. Several firms have indicated an interest in using for zone procedures for warehousing/distribution activities for such products as frozen foods and consumer goods. 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 this investigation, the Commerce examiner will hold a public hearing on April 20, 2005, at 10 a.m., at the Dane County Regional Airport, 4000 International Lane, Robert B. Skuldt Conference Room, Madison, Wisconsin.

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 May 23, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to June 7, 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 at the Office of the County Executive, City-County Building, Room 421, 210 Martin Luther King, Jr. Boulevard, Madison, Wisconsin 53703–3345.

Dated: March 17, 2005.

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 05–5836 Filed 3–23–05; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–878]**

### Saccharin From the People's Republic of China: Notice of Extension of Time Limit for Preliminary Results of Antidumping Administrative Review

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

**EFFECTIVE DATE:** March 24, 2005.

**FOR FURTHER INFORMATION CONTACT:** Blanche Ziv or Steve Williams, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4207 or (202) 482–4619, respectively.

**Background**

On August 30, 2004, the Department of Commerce (''the Department'') published a notice of initiation of administrative review of the antidumping duty order on saccharin from the People's Republic of China for nine exporters, covering the period December 27, 2002, through June 30, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 69 FR 52857 (August 30, 2004). The preliminary results for this review are currently due no later than April 2, 2005.

**Extension of Time Limits for Preliminary Results**

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), provides that the Department will issue the preliminary results of an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act provides further that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

The Department has determined that it is not practicable to complete the preliminary results by the current deadline of April 2, 2005. In particular, we require additional time to issue supplemental questionnaires, review the responses, and conduct the analysis of the valuation of the factors of production. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is fully extending the time limit for the preliminary results until no later than August 1, 2005, which is the next business day after 365 days from the last day of the anniversary month.

The final results continue to be due 120 days after publication of the preliminary results.

We are issuing this notice in accordance with section 751(a)(3)(A) of the Act.

Dated: March 18, 2005.

**Barbara E. Tillman,**

*Acting Deputy Assistant Secretary for Import Administration.*

[FR Doc. E5–1296 Filed 3–23–05; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 031705F]**

### Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Fisheries Management in the Bering Sea and Aleutian Islands Management Area and the Gulf of Alaska

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

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The North Pacific Fishery Management Council (Council) has submitted for Secretary of Commerce (Secretary) review Amendment 83 to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI) and Amendment 75 to the FMP for Groundfish of the Gulf of Alaska (GOA). If approved, the amendments would provide housekeeping revisions to the FMPs. The proposed revisions would update harvest, ecosystem, and socioeconomic information, consolidate text, and reorganize the documents. The intent of this action is to provide more recent information in the FMPs and to make them easier to read. This action will promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMPs, and other applicable laws. Comments from the public are welcome.

**DATES:** Written comments on Amendments 83 and 75 must be received by May 23, 2005.

**ADDRESSES:** Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

- Mail to P.O. Box 21668, Juneau, AK 99802;
- Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, AK;
- FAX to 907–586–7557; or
- E-mail to *8375noa@noaa.gov*.

Include in the subject line the following document identifier: 83–75 NOA. E-mail comments, with or without attachments, are limited to 5 megabytes.

Copies of Amendments 83 and 75 may be obtained from the NMFS Alaska Region at the address above or from the Alaska Region website at *http://www.fakr.noaa.gov*.

**FOR FURTHER INFORMATION CONTACT:** Melanie Brown, phone: 907–586–7228 or e-mail: *melanie.brown@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Act requires that the Council submit any FMP amendment it prepares to the Secretary for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that the Secretary, upon receiving an FMP amendment, immediately publish a notice in the **Federal Register** that the amendment is available for public review and comment.

The Council prepared and the Secretary approved the FMP for Groundfish of the GOA in 1978 and the FMP for Groundfish of the BSAI in 1981. Both FMPs have been amended numerous times.

Amendments 83 and 75 were unanimously recommended by the Council in December 2004. If approved by the Secretary, these amendments would: (1) update harvest, ecosystem, and socioeconomic information, (2) consolidate text, and (3) reorganize the documents. The intent of this action is to provide more recent information in the FMPs and to make them easier to read.

The Council also recommended revising the harvest specifications process set forth in the FMPs to be consistent with Amendments 81 and 74 to the FMPs (69 FR 31091, June 2, 2004). These amendments were approved by the Secretary in August 2004. Amendments 81 and 74 added new policy objectives to the FMPs, including the objective to adopt conservative harvest levels for multi-species and single species fisheries. Amendments 83 and 75 would amend the FMPs' description of the harvest specifications process by adding the provision that total allowable catch for species or species groups be set equal to or less than the acceptable biological catch. This revision would ensure that harvest levels are set conservatively and consistent with the FMP management policy and objectives to prevent overfishing.

Public comments are being solicited on proposed Amendments 83 and 75 through the end of the comment period stated (see **DATES**). All comments received by the end of the comment period on the amendments will be considered in the approval/partial approval/disapproval decision. Comments received after that date will not be considered in the approval/partial approval/disapproval decision on the amendments. To be considered, written comments must be received not just postmarked or otherwise transmitted by the close of business on the last day of the comment period.

Dated: March 18, 2005.

**Alan D. Risenhoover,**

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

[FR Doc. 05–5858 Filed 3–23–05; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[Docket No. 040113014–5064–02; I.D. 031705C]**

### Oceans and Human Health Initiative; External Grants Program

**AGENCY:** Center for Sponsored Coastal Ocean Research (CSCOR), National Centers for Coastal Ocean Science (NCCOS), National Ocean Service (NOS), National Ocean and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Notice of availability of funds.

**SUMMARY:** The purpose of this document is to advise the public that NOS/CSCOR is soliciting proposals for the Oceans and Human Health Initiative External Grants Program. This funding opportunity is offered as part of NOAA's new Oceans and Human Health Initiative (OHHI), established by the Oceans and Human Health Act passed by Congress in November 2004. The OHHI is a competitive suite of programs designed to enhance understanding of the connections between the oceans and human health, with the goal of providing useful research and predictive information to NOAA, public health officials, and natural resource managers. For the purposes of this announcement, ''oceans'' are defined as inclusive of the Great Lakes, estuaries, and the ocean.

**DATES:** Proposals must be received at NOAA's CSCOR office by 3 p.m. eastern time on April 26, 2005.

**ADDRESSES:** Applications submitted in response to this announcement are strongly encouraged to be submitted through the Grants.gov Web site. Electronic access to the full funding announcement for this program is available via the Grants.gov Web site: *http://www.grants.gov.* The announcement will also be available at the NOAA Web site *http://www.ofa.noaa.gov/%7Eamd/SOLINDEX.HTML* or by contacting the program official identified below.

Paper applications (a signed original and two copies) should be submitted to the Oceans and Human Health Initiative, Center for Sponsored Coastal Ocean Research, National Oceanic and Atmospheric Administration, 1305 East West Highway, SSMC 4, 8th floor Station 8243, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** *Program Management Information:* Hal Stanford, NCCOS HQ, (301) 713–3020/ext. 135, Internet: *Hal.Stanford@noaa.gov. Business Management Information:* Leslie McDonald, NCCOS/CSCOR Grants Administrator, (301) 713–3338/ext. 155, Internet: *Leslie.Mcdonald@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Background

### *Summary Description*

The OHHI is designed to enhance NOAA's capability in oceans and human health through partnerships with academia, the private sector, and other Federal, State, and local agencies. Toward that end, this funding opportunity is intended to engage the non-federal research community in research across the physical, chemical, biological, medical, public health, and social sciences on priority issues for the OHHI. The OHHI has several priority areas described below by focus questions and specific areas of interest; these can be examined individually or in combination:

1. *Pathogens:* The risk of human disease occurrence as a function of exposure to pathogens in marine and coastal environments (including water contact recreation and consumption of fish, shellfish, and other marine organisms).

2. *Marine Biotoxins:* The risk of human disease as a function of exposure to marine biotoxins in the environment, and how do the effects of specific environmental stressors (*e.g.,* changes in habitats, nutrient enrichment, environmental pollutants, climate, extreme events, land use, etc.) affect the risk of human exposure to biotoxins.

3. *Chemical Pollutants:* The ecological and human health risks from contaminants in the marine and Great Lakes.

4. *Seafood and Public Health:* The potential for seafood to be a vector for chemical contaminants, biotoxins, and microbial pathogens to humans.

5. *Sentinel and Model Species:* How investigations of sentinel species (living in or dependent upon estuarine, coastal, Great Lake or oceanic ecosystems) can better inform our understanding of risks to human health or inform our understanding of ocean health as it relates directly or indirectly to changes in risk for human or public health.

6. *Marine Natural Products, Pharmaceuticals, and Biomedical Research:* The biomedical value of marine natural products (including, but not limited to, providing pharmaceuticals, medical devices, molecular probes, nutritional supplements, diagnostics and pigments).

All research proposals should include appropriate outreach and education components that facilitate the transfer of research findings to such user groups as public health officials and natural resource managers at local, State and Federal levels. Ideally, these user groups would be engaged early in the research process, with their documented interest in the outcome of the proposed research included in the proposal.

A non-federal partner should lead the proposal. Participation of Federal scientist(s) on the team is allowed but no Federal expenses will be covered. Applicants are encouraged to collaborate with the NOAA Oceans and Human Health Centers of Excellence *http://www.ogp.noaa.gov/mpe/ohi/index.htm*, the National Science Foundation (NSF)/National Institute for Environmental Health sciences (NIEHS) Centers of Excellence in Oceans and Human Health, and NOAA scientists and other Federal and non-federal researchers working on OHHI or related issues as described in this announcement. Applicants will be required to provide a plan for management and submission of data to NOAA, to participate in an annual OHHI research meeting, and to provide information for the development of an annual OHHI report required by Congress.

### *Electronic Access*

As has been the case since October 1, 2004, applicants can access, download and submit electronic grant applications, including the full funding announcement, for NOAA Programs at the Grants.gov Web site: grants. gov. The announcement will also be available at the NOAA Web site *http://www.ofa.noaa.gov/%7Eamd/SOLINDEX.HTML* or by contacting the program officials identified above.

The closing date will be the same as for the paper submissions noted in this announcement. NOAA strongly recommends that you do not wait until the application deadline date to begin the application process through Grants.gov.

If Internet access is unavailable, hard copies of proposals will also be accepted—a signed original and two copies at time of submission. This includes color or high-resolution graphics, unusually sized materials, or otherwise unusual materials submitted as part of the proposal. For color graphics, submit either color originals or color copies. Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

### *Funding Availability*

Funding is contingent upon availability of Federal appropriations. This solicitation announces that funding totaling approximately $5,880 million is available to support proposed projects, which may have durations from 1–3 years. Approximately 5–20 awards are expected from this announcement. It is anticipated that the funding instruments for most of the awards will be grants; however, in some cases, if NOAA will be substantially involved in the implementation of an individual project, the funding instrument may be a cooperative agreement.

There is no guarantee that sufficient funds will be available to make awards for all qualified projects. If one incurs any costs prior to receiving an award agreement signed by an authorized NOAA official, one would do solely at one's own risk of these costs not being included under the ward.

*Authority:* Public Law 108–447.

*CFDA:* 11.478.

### *Eligibility*

Eligible applicants are institutions of higher education, hospitals, other non-profit institutions, commercial organizations, State and local governments, and Indian tribal governments.

Federal agencies are not eligible to receive Federal assistance under this notice.

*Cost Sharing Requirements:* None.

*Intergovernmental Review:* Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

*Evaluation and Selection Procedures*

Once a full application has been received by NOAA, an initial administrative review is conducted to determine compliance with requirements and completeness of the application. All proposals will be evaluated and scored individually in accordance with the assigned weights of the evaluation criteria by independent peer mail review and/or by independent peer panel review. Both Federal and non-Federal experts in the field may be used in this process. The peer mail reviewers will be individuals with expertise in the subjects addressed by particular proposals. Each mail reviewer and independent peer panel reviewer will score proposals on a scale of five to one, where scores represent respectively: Excellent (5), Very Good (4), Good (3), Fair (2), Poor (1).

The peer panel will be comprised of 10 to 20 individuals, with each individual having expertise in a separate area, so that the panel, as a whole, covers a range of scientific expertise. If the decision is made to perform a mail review, the peer review panel will use the mail reviews in discussion and evaluation of the entire slate of proposals. All proposals will be evaluated and scored individually. The peer panel shall rate the proposals using the evaluation criteria and scores provided in the notice. The individual peer panelist scores shall be averaged for each application and presented to the program officers. No consensus advice will be given by the independent peer mail review or the review panel.

The program officers will neither vote nor score proposals as part of the independent peer panel nor participate in discussion of the merits of the proposal. Those proposals receiving an average panel score of ''Fair'' or ''Poor'' will not be given further consideration, and proposers will be notified of non-selection.

Proposals rated by the panel as either ''Excellent,'' ''Very Good,'' or ''Good'' will be ranked according to average panel ratings, and/or by applying the project selection factors listed below. Program officers will determine the total duration of funding for each proposal and determine the amount of funds available for each proposal subject to the availability of fiscal year funds. In addition, proposals rated by the panel as either ''Excellent,'' ''Very Good,'' or ''Good'' that are not funded in the current fiscal period, may be considered for funding in another fiscal period without having to repeat the competitive review process.

Recommendations for funding are then forwarded to the selecting official, the Assistant Administrator (AA) of NOS, for the final funding decision. In making the final selections, the AA will award in rank order unless the proposal is justified to be selected out of rank order based on the selection factors listed below.

Investigators may be asked to modify objectives, work plans or budgets, and provide supplemental information required by the agency prior to the award. When a decision has been made (whether an award or declination), verbatim anonymous copies of reviews and summaries of review panel deliberations, if any, will be made available to the proposer upon applicant request. Declined applications will be held in the NCCOS/CSCOR or the required three years in accordance with the current retention requirements, and then destroyed.

*Evaluation Criteria:* Proposals will be evaluated on the basis of the following evaluation criteria at the indicated weights:

1. *Importance and/or relevance and applicability of proposed project to the program goals:* This ascertains whether there is intrinsic value in the proposed work and/or relevance to NOAA, Federal, regional, State, or local activities (30 percent).

2. *Technical/scientific merit:* This assesses whether the approach is technically sound and/or innovative, if the methods are appropriate, and whether there are clear project goals and objectives. (30 percent).

3. *Overall qualifications of applicants:* This ascertains whether the applicant possesses the necessary education, experience, training, facilities, and administrative resources to accomplish the project (20 percent).

4, *Project costs:* The Budget is evaluated to determine if it is realistic and commensurate with the project needs and time-frame (10 percent).

5. *Outreach and education:* NOAA assesses whether this project provides a focused and effective education and outreach strategy reading NOAA's mission to protect the Nation's natural resources. (10 percent).

*Selection Factors:* The merit review ratings shall provide a rank order to the Selecting Official for final funding recommendations. A program officer may first make recommendations to the Selecting Official applying the selection factors below. The Selecting Official shall award in the rank order unless the proposal is justified to be selected out of rank order based upon one or more of the following factors:

1. Availability of funding.

2. Balance/distribution of funds:
a. Geographically.
b. By type of institutions.
c. By type of partners.
d. By research areas.
e. By project types.

3. Whether this project duplicates other projects funded or considered for funding by NOAA or other Federal agencies.

4. Program priorities and policy factors set forth in sections I.A. and B. and IV.B of the Full Funding Opportunity.

5. Applicant's prior award performance.

6. Partnerships and/or Participation of targeted groups.

7. Adequacy of information necessary for NOAA to make a NEPA determination and draft necessary documentation before recommendations for funding are made to the Grants Officer.

**National Endowment Policy Act (NEPA)**

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA Federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA Web site: *http://www.nepa.noaa.gov/*, including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216_6_TOC.pdf*, and the Council on Environmental Quality implementation regulations, *http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm*).

Consequently, as part of the applicants' package and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (*e.g.,* the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems).

In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying and implementing feasible measures to reduce or avoid any identified adverse

environmental impacts of their proposal. The failure to do so shall be grounds for the denial of an application.

**Pre-Award Notification Requirements for Grants and Cooperative Agreements**

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389) are applicable to this solicitation.

*Limitation of Liability*

In no event will NOAA or the Department of commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds. Recipients and sub recipients are subject to all Federal laws and agency policies, regulations and procedures applicable to Federal financial assistance awards.

**Administrative Procedure Act/ Regulatory Flexibility Act**

Prior notice and an opportunity for public comment are not required by the Administrative procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comments are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared, and none has been prepared. It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Dated: March 21, 2005.

**Richard W. Spinrad,**

*Assistant Administrator, National Oceanic and Atmospheric Administration, National Ocean Service.*

[FR Doc. 05–5834 Filed 3–23–05; 8:45 am]

**BILLING CODE 3510–JS–M**

## DEPARTMENT OF EDUCATION

### Office of Innovation and Improvement; Overview Information; Credit Enhancement for Charter School Facilities Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

*Catalog of Federal Domestic Assistance (CFDA) Number:* 84.

*Dates: Applications Available:* March 28, 2005.

*Date of Pre-Application Meeting:* May 6, 2005.

*Deadline for Transmittal of Applications:* May 31, 2005.

*Deadline for Intergovernmental Review:* August 1, 2005.

*Eligible Applicants:* (A) A public entity, such as a State or local governmental entity; (B) A private, nonprofit entity; or (C) A consortium of entities described in (A) and (B).

**Note:** The Secretary will make, if possible, at least one award in each of the three categories of eligible applicants.

*Estimated Available Funds:* $36,940,000. Contingent upon the availability of funds and the quality of applications, we may make additional awards in future years from the list of unfunded applications from this competition.

*Estimated Range of Awards:* $2,500,000–$15,000,000.

*Estimated Average Size of Awards:* $9,235,000.

*Estimated Number of Awards:* 3–5.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* From the start date indicated on the grant award document until the Federal funds and earnings on those funds have been expended for the grant purposes or until financing facilitated by the grant has been retired, whichever is later.

**Full Text of Announcement**

*I. Funding Opportunity Description*

*Purpose of Program:* This program will provide grants to eligible entities to permit them to enhance the credit of charter schools so that they can access private-sector and other non-Federal capital to acquire, construct, and renovate facilities at a reasonable cost. Grant projects awarded under this program will be of sufficient size, scope, and quality to enable the grantees to implement effective strategies.

*Priority:* In accordance with 34 CFR 75.105(b)(2)(ii), this priority is from the regulations for this program (34 CFR 225.12), which are published elsewhere in this issue of the **Federal Register**.

*Competitive Preference Priority:* For FY 2005 this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 15 points to an application, depending on how well the application meets this priority.

This priority is:

The capacity to offer public school choice in those communities with the greatest need for school choice based on—

(1) The extent to which the applicant would target services to geographic areas in which a large proportion or number of public schools have been identified for improvement, corrective action, or restructuring under Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001;

(2) The extent to which the applicant would target services to geographic areas in which a large proportion of students perform below proficient on State academic assessments; and

(3) The extent to which the applicant would target services to communities with large proportions of students from low-income families.

*Program Authority:* 20 U.S.C. 7223–7223j.

*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. (b) The regulations for this program in 34 CFR part 225, which are published elsewhere in this issue of the **Federal Register**.

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

*II. Award Information*

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* $36,940,000. Contingent upon the availability of funds and the quality of applications, we may make additional awards in future years from the list of unfunded applications from this competition.

*Estimated Range of Awards:* $2,500,000–$15,000,000.

*Estimated Average Size of Awards:* $9,235,000.

*Estimated Number of Awards:* 3–5.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* From the start date indicated on the grant award document until the Federal funds and earnings on those funds have been expended for the grant purposes or until financing facilitated by the grant has been retired, whichever is later.

*III. Eligibility Information*

1. *Eligible Applicants:* (A) A public entity, such as a State or local governmental entity; (B) A private, nonprofit entity; or (C) A consortium of entities described in (A) and (B).

**Note:** The Secretary will make, if possible, at least one award in each of the three categories of eligible applicants.

2. *Cost Sharing or Matching:* This program does not require any cost sharing or matching.

3. *Other:* The charter schools that a grantee selects to benefit from this program must meet the definition of a charter school, as defined in the Charter Schools Program authorizing statute in section 5210(1) of the ESEA, as amended.

*IV. Application and Submission Information*

1. *Address To Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.354A.

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 persons listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contacts).

In addition, applications will be available at *http://www.ed.gov/programs/charterfacilities/applicant.html.*

2. *Content and Form of Application Submission:* Each Credit Enhancement for Charter School Facilities program application must include the following specific elements:

(a) A statement identifying the activities proposed to be undertaken with grant funds (the ''grant project'') including how the applicant will determine which charter schools will receive assistance, and how much and what types of assistance these schools will receive.

(b) A description of the involvement of charter schools in the application's development and in the design of the proposed grant project.

(c) A description of the applicant's expertise in capital markets financing. (Consortium applicants must list information for each of the participating organizations.)

(d) A description of how the proposed grant project will leverage the maximum amount of private-sector and other non-Federal capital relative to the amount of Credit Enhancement for Charter School Facilities program funding used and how the proposed grant project will otherwise enhance credit available to charter schools.

(e) A description of how the eligible entity possesses sufficient expertise in education to evaluate the likelihood of success of a charter school program for which facilities financing is sought.

(f) In the case of an application submitted by a State governmental entity, a description of current and planned State funding actions and other forms of financial assistance to ensure that charter schools receive the funding they need to have adequate facilities.

Additional requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

*Page Limit:* We have found that reviewers are able to conduct the highest-quality review when applications are concise and easy to read. Applicants are encouraged to limit their applications to no more than 50 double-spaced pages (not including the required forms and tables), to use a 12-point or larger-size font with one-inch margins at the top, bottom, and both sides, and to number pages consecutively. Furthermore, applicants are strongly encouraged to include a table of contents that specifies where each required part of the application is located.

3. *Submission Dates and Times:*

*Applications Available:* March 28, 2005.

*Date of Pre-Application Meeting:* May 6, 2005.

*Deadline for Transmittal of Applications:* May 31, 2005.

Applications for grants under this program may be submitted by mail or hand delivery. For information (including dates and times) about how to submit your application by mail or hand delivery, please refer to section IV. 6. Other Submission Requirements in this notice.

We do not consider an application that does not comply with the deadline requirements.

*Deadline for Intergovernmental Review:* August 1, 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:*

(a) *Reserve accounts.* Grant recipients, in accordance with State and local law, must deposit the grant funds received under this program (other than funds used for administrative costs) in a reserve account established and maintained by the grantee for this purpose. Amounts deposited in such account shall be used by the grantee for one or more of the following purposes in order to assist charter schools in accessing private-sector and other non-Federal capital:

(1) Guaranteeing, insuring, and reinsuring bonds, notes, evidences of debt, loans, and interests therein.

(2) Guaranteeing and insuring leases of personal and real property.

(3) Facilitating financing by identifying potential lending sources, encouraging private lending, and other similar activities that directly promote lending to, or for the benefit of, charter schools.

(4) Facilitating the issuance of bonds by charter schools or by other public entities for the benefit of charter schools, by providing technical, administrative, and other appropriate assistance (such as the recruitment of bond counsel, underwriters, and potential investors and the consolidation of multiple charter school projects within a single bond issue).

Funds received under this program and deposited in the reserve account must be invested in obligations issued or guaranteed by the United States or a State, or in other similarly low-risk securities. Any earnings on funds, including fees, received under this program must be deposited in the reserve account and be used in accordance with the requirements of this program.

(b) *Charter school objectives.* An eligible entity receiving a grant under this program must use the funds deposited in the reserve account to assist charter schools in accessing capital to accomplish one or both of the following objectives:

(1) The acquisition (by purchase, lease, donation, or otherwise) of an interest (including an interest held by a third party for the benefit of a charter school) in improved or unimproved real property that is necessary to commence or continue the operation of a charter school.

(2) The construction of new facilities, or the renovation, repair, or alteration of existing facilities, necessary to commence or continue the operation of a charter school.

(c) *Other.* Grantees must ensure that all costs incurred using funds from the reserve account are reasonable. The full faith and credit of the United States are *not* pledged to the payment of funds under such obligation.

Applicants that are selected to receive an award must enter into a written Performance Agreement with the Department prior to drawing down funds, unless the grantee receives written permission from the Department in the interim to draw down a specific limited amount of funds. Grantees must maintain and enforce standards of conduct governing the performance of their employees, officers, directors, trustees, and agents engaged in the selection, award, and administration of contracts or agreements related to this grant. The standards of conduct must mandate disinterested decision-making.

A grantee may use not more than 0.25 percent (one quarter of one percent) of the grant funds for the administrative costs of the grant.

The Secretary, in accordance with chapter 37 of title 31, United States Code, will collect all of the funds in the reserve account established with grant funds (including any earnings on those funds) if the Secretary determines that the grantee has permanently ceased to use all or a portion of the funds in such account to accomplish the purposes described in the authorizing statute and the Performance Agreement or, if not earlier than two years after the date on which the entity first receives these funds, the entity has failed to make substantial progress in undertaking the grant project.

The charter schools that a grantee selects to benefit from this program must meet the definition of a charter school, as defined in the Public Charter Schools Program authorizing statute in section 5210(1) of the ESEA, as amended.

(d) We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted in paper format by mail or hand delivery.

a. *Submission of Applications by Mail.*

If you submit your application by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and three 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 84.354A), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

*By mail through a commercial carrier:* U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.354A), 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.

b. *Submission of Applications by Hand Delivery.*

If you submit your application by hand delivery, you (or a courier service) must deliver the original and three 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 84.354A), 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 Application for Federal Education Assistance (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 34 CFR 225.11.

2. *Review and Selection Process:* Additional factors we consider in selecting an application for an award are in 34 CFR 225.12.

*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 Notice (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:* Applicants selected for funding will be required to submit the following reports to the Department:

(a) An annual report that includes the information from section 5227(b) of the ESEA and any other information the Secretary may require in the performance report.

(b) A semiannual report that includes internal financial statements and other information as the Secretary may require.

Grantees must also cooperate and assist the Department with any periodic financial and compliance audits of the grantee, as determined necessary by the Department. The specific Performance Agreement between the grantee and the Department may contain additional reporting requirements.

(c) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary.

4. *Performance Measures:* The performance measures for this program are: (1) The amount of funding grantees leverage for charter schools to acquire, construct, and renovate school facilities and (2) the number of charter schools served. Grantees must provide this information as part of their annual performance reports.

*VII. Agency Contacts*

**FOR FURTHER INFORMATION CONTACT:** Ann Margaret Galiatsos or Jim Houser, U.S.

Department of Education, 400 Maryland Avenue, SW., room 4W245, Washington, DC 20202–6140. Telephone: (202) 205–9765 or by e-mail: *charter.facilities@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact persons listed in this section.

*VIII. Other Information*

*Electronic Access to This Document:* You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: March 18, 2005.

**Michael J. Petrilli,**

*Acting Assistant Deputy Secretary for Innovation and Improvement.*

[FR Doc. 05–5809 Filed 3–23–05; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services; Special Education—State Personnel Development Grants Program

**ACTION:** Notice inviting applications for new awards for FY 2004 (to be awarded in FY 2005); Correction.

**SUMMARY:** On March 3, 2005, we published in the **Federal Register** (70 FR 10380) a notice inviting applications for new awards under the Office of Special Education and Rehabilitative Services; Special Education—State Personnel Development Grants Program authorized under the Individuals with Disabilities Education Act (IDEA).

On pages 10380 and 10384, second column, the Deadline for Transmittal of Applications is corrected to read ''May 17, 2005'' and the Deadline for Intergovernmental Review is corrected to read ''July 18, 2005.''

**FOR FURTHER INFORMATION CONTACT:** Larry Wexler, U.S. Department of Education, 400 Maryland Avenue, SW., room 4019, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7571.

If you use a telecommunications device for the deaf (TTD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: March 21, 2005.

**John H. Hager,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 05–5857 Filed 3–23–05; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### National Advisory Committee on Institutional Quality and Integrity, (National Advisory Committee); Meeting

**AGENCY:** National Advisory Committee on Institutional Quality and Integrity, Department of Education.

**What Is the Purpose of This Notice?**

The purpose of this notice is to announce the public meeting of the National Advisory Committee and invite third-party oral presentations before the Committee. This notice also presents the proposed agenda and informs the public of its opportunity to attend this meeting. The notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

**When and Where Will the Meeting Take Place?**

We will hold the public meeting on Monday, June 13, 2005 from 8 a.m. until approximately 4 p.m. in the Washington Room at the Hotel Washington, Pennsylvania Avenue at 15th Street, NW., Washington, DC 20004. You may call the hotel on (202) 638–5900 to inquire about rooms.

**What Assistance Will Be Provided to Individuals With Disabilities?**

The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.*, interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

**Who Is the Contact Person for the Meeting?**

Please contact Ms. Bonnie LeBold, the Executive Director of the National Advisory Committee on Institutional Quality and Integrity, if you have questions about the meeting. You may contact her at the U.S. Department of Education, room 7007, MS 7592, 1990 K St., NW., Washington, DC 20006, telephone: (202) 219–7009, fax: (202) 219–7008, e-mail: *Bonnie.LeBold@ed.gov*.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339.

**What Is the Authority for the National Advisory Committee?**

The National Advisory Committee on Institutional Quality and Integrity is established under Section 114 of the Higher Education Act (HEA) as amended, 20 U.S.C. 1011c.

**What Are the Functions of the National Advisory Committee?**

The Committee advises the Secretary of Education about:

- The establishment and enforcement of the criteria for recognition of accrediting agencies or associations under subpart 2 of part H of Title IV, HEA.
- The recognition of specific accrediting agencies or associations.
- The preparation and publication of the list of nationally recognized accrediting agencies and associations.
- The eligibility and certification process for institutions of higher education under Title IV, HEA.
- The development of standards and criteria for specific categories of vocational training institutions and institutions of higher education for which there are no recognized accrediting agencies, associations, or State agencies in order to establish the interim eligibility of those institutions to participate in Federally funded programs.
- The relationship between: (1) Accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.
- Any other advisory functions relating to accreditation and institutional eligibility that the Secretary may prescribe.

**What Items Will Be on the Agenda for Discussion at the Meeting?**

Agenda topics will include the review of agencies that have submitted petitions for renewal of recognition, an agency that has submitted an interim report, and an agency that has submitted a progress report.

**What Agencies Will the Advisory Committee Review at the Meeting?**

The following agencies will be reviewed during the June 13, 2005 meeting of the Advisory Committee:

**Nationally Recognized Accrediting Agencies**

*Petitions for Renewal of Recognition*

1. Commission on English Language Program Accreditation (Current and requested scope of recognition: the accreditation of postsecondary, non-degree-granting English language programs and institutions in the United States.)

2. Council on Naturopathic Medical Education (Current and requested scope of recognition: the accreditation and pre-accreditation throughout the United States of graduate-level, four-year naturopathic medical education programs leading to the Doctor of Naturopathic Medicine (N.M.D.) or Doctor of Naturopathy (N.D.).)

3. National Accrediting Commission of Cosmetology Arts and Sciences (Current scope of recognition: the accreditation of postsecondary schools and departments of cosmetology arts and sciences and massage therapy.) (Requested scope of recognition: the accreditation throughout the United States of postsecondary schools and departments of cosmetology arts and sciences and massage therapy.) NOTE: The requested scope differs from that listed in the February 1, 2005 **Federal Register** notice that invited third-party written comments. The agency has withdrawn its request for an expansion of scope to encompass the accreditation of occupational associate degree programs in cosmetology and related fields.

4. Teacher Education Accreditation Council, Accreditation Committee (Current scope of recognition: the accreditation of professional teacher education programs in institutions offering baccalaureate and graduate degrees for the preparation of K–12 teachers.) (Requested scope of recognition: The accreditation and preaccreditation throughout the United States of professional teacher education programs in institutions offering baccalaureate and graduate degrees for the preparation of K–12 teachers.)

*Interim Report* (An interim report is a follow-up report on an accrediting agency's compliance with specific criteria for recognition that was requested by the Secretary when the Secretary granted renewed recognition to the agency.)

1. Association of Theological Schools in the United States and Canada, Commission on Accrediting

*Progress Report* (A report describing the agency's implementation of its new standards and accreditation process.)

1. Southern Association of Colleges and Schools, Commission on Colleges

**State Agency Recognized for the Approval of Public Postsecondary Vocational Education**

*Petition for Renewal of Recognition*

1. New York State Board of Regents (Public Postsecondary Vocational Education)

**Who Can Make Third-Party Oral Presentations at This Meeting?**

We invite you to make a third-party oral presentation before the National Advisory Committee concerning the recognition of any agency published in this notice.

**How Do I Request To Make an Oral Presentation?**

You must submit a written request to make an oral presentation concerning an agency listed in this notice to the contact person *so that the request is received via mail, fax, or e-mail no later than May 23, 2005.* Your request (*no more than 6 pages maximum*) must include:

1. The names, addresses, phone and fax numbers, and e-mail addresses of all persons seeking an appearance,

2. The organization they represent, and

3. A brief summary of the principal points to be made during the oral presentation.

If you wish, you may attach documents illustrating the main points of your oral testimony. Please keep in mind, however, that *any attachments are included in the 6-page limit.*

Please do not send materials directly to Committee members. Only materials submitted by the deadline to the contact person listed in this notice and in accordance with these instructions become part of the official record and are considered by the Committee in its deliberations. Documents received after the May 23, 2005 deadline will not be distributed to the Advisory Committee for their consideration. Individuals making oral presentations may not distribute written materials at the meeting.

*If I Cannot Attend the Meeting, Can I Submit Written Comments Regarding an Accrediting Agency in Lieu of Making an Oral Presentation?*

This notice requests third-party oral testimony, not written comment. Requests for written comments on agencies that are being reviewed during this meeting were published in the **Federal Register** on February 1, 2005. The Advisory Committee will receive and consider only written comments submitted by the deadline specified in the above-referenced **Federal Register** notice.

**How Do I Request to Present Comments Regarding General Issues Rather Than Specific Accrediting Agencies?**

At the conclusion of the meeting, the Committee, at its discretion, may invite attendees to address the Committee briefly on issues pertaining to the functions of the Committee, which are listed earlier in this notice. If you are interested in making such comments, you should inform Ms. LeBold before or during the meeting.

**How May I Obtain Access to the Records of the Meeting?**

We will record the meeting and make a transcript available for public inspection at the U.S. Department of Education, 1990 K St., NW, Washington, DC 20006 between the hours of 9 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. It is preferred that an appointment be made in advance of such inspection.

**How May I Obtain Electronic Access to This Document?**

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/index.html.*

**Authority:** 5 U.S.C. Appendix 2.

Dated: March 16, 2005.

**Sally L. Stroup,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 05–5796 Filed 3–23–05; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Office of Science, Fusion Energy Sciences Advisory Committee

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Fusion Energy Sciences Advisory Committee. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Thursday, April 7, 2005, 8 a.m. to 6 p.m., Friday, April 8, 2005, 8 a.m. to 12 p.m.

**ADDRESSES:** The Holiday Inn, 2 Montgomery Village Avenue, Gaithersburg, Maryland 20879.

**FOR FURTHER INFORMATION CONTACT:** Albert L. Opdenaker, Office of Fusion Energy Sciences, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1290; telephone: 301–903–4927.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Meeting:* The purposes of the meeting include hearing final reports from the Panel dealing with Program Priorities and the Committee of Visitors that examined the management processes involved with managing the Confinement and Basic Plasma Sciences programs. FESAC will also hear a report on the status of the ITER project in the U.S., a briefing on the International Tokamak Physics Activity, and a discussion of program performance measures. This notice is being published less than 15 days before the date of the meeting due to programmatic issues.

*Tentative Agenda:*

**Thursday, April 7, 2005**

- Office of Science Perspective.
- Office of Fusion Energy Sciences Perspective.
- Presentation by the Priority Panel on its findings and recommendations.
- Public Comments.

**Friday, April 8, 2005**

- ITER Project Status.
- Performance Measures Update.
- Adjourn.

*Public Participation:* The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Albert L. Opdenaker at 301–903–8584 (fax) or *albert.opdenaker@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

*Minutes:* We will make the minutes of this meeting available for public review and copying within 30 days at the Freedom of Information Public Reading Room, IE–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on March 18, 2005.

**Carol Matthews,**

*Acting Advisory Committee Officer.*

[FR Doc. 05–5833 Filed 3–23–05; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EG05–53–000, et al.]**

### Blue Canyon Windpower II LLC, et al.; Electric Rate and Corporate Filings

March 16, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

**1. Blue Canyon Windpower II LLC**

[Docket No. EG05–53–000]

Take notice that on March 14, 2005, Blue Canyon Windpower II LLC (Blue Canyon II) tendered for filing an application for a determination of exempt wholesale generator status, pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended, (PUHCA), 15 U.S.C. 79z–5a(a)(1) (2000), and subchapter T, part 365 of the regulations of the Federal Energy Regulatory Commission, 18 CFR part 365 (2004).

Blue Canyon II states that it is a limited liability company organized and existing under the laws of the State of Texas that will construct, own and operate an approximately 150-megawatt wind farm located in southwestern Oklahoma. Blue Canyon II further states that it will be engaged directly, or indirectly through one or more affiliates as defined in section 2(a)(11)(B) of PUHCA, and exclusively in the business of owning an eligible facility, and selling electric energy at wholesale.

*Comment Date:* April 4, 2005.

**2. American Electric Power Service Corporation Behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Collectively, the "AEP Companies"; Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.; The Dayton Power and Light Company**

[Docket No. EL05–74–000]

Take notice that on March 8, 2005, American Electric Power Service Corporation, Commonwealth Edison Company and Commonwealth Edison

Company of Indiana, Inc., and Dayton Power and Light Company (collectively, Companies) filed an application pursuant to section 206 of the Federal Power Act to recover PJM Expansion Expenses under the PJM Open Access Transmission Tariff. The Companies request an order accepting the proposed Schedule 13—Expansion Cost Recovery Charges—effective May 1, 2005.

*Comment Date:* 5 p.m. Eastern Time on March 29, 2005.

**3. Southern Indiana Gas and Electric Company**

[Docket Nos. ER96–2734–004, ER05–412–002]

Take notice that on March 11, 2005, Southern Indiana Gas and Electric Company (Southern Indiana), tendered for filing supplemental information regarding its application for renewal of its market-based rate authority filed December 10, 2004 in Docket No. ER96–2734–003 and the revised tariff sheets to its market-based rate tariff filed December 10, 2004, as amended on January 28, 2005, in Docket Nos. ER05–412–000 and ER05–412–001.

Southern Indiana states that copies of the filing were served upon the official service list and the Indiana Utility Regulatory Commission.

*Comment Date:* 5 p.m. Eastern Time on April 1, 2005.

**4. California Independent System Operator Corporation**

[Docket No. ER02–1656–024]

Take notice that on March 14, 2005, the California Independent System Operator Corporation (ISO) submitted a filing to comply with the Commission's February 10, 2005 Order in Docket No. ER02–1656–021, 110 FERC ¶ 61,113. The ISO states that it has provided additional information to allow the Commission and the parties to evaluate the ISO's ''perfect hedge'' proposal which is an element of the ISO's proposed treatment of existing contracts under the ISO's Market Redesign and Technology Upgrade.

The ISO states that this filing has been served upon all parties on the official service list in this proceeding and in addition has posted this filing on the ISO Home Page.

*Comment Date:* 5 p.m. Eastern Time on April 4, 2005.

**5. ISO New England Inc.**

[Docket No. ER02–2330–035]

Take notice that on March 14, 2005, ISO New England Inc. (ISO), submitted a compliance filing providing a status report on the implementation of Standard Market Design in as required in *New England Power Pool, et al.*, 100 FERC ¶ 61,287 (2002), *New England Power Pool and ISO New England Inc.*, 101 FERC ¶ 61,344 (2002) and *New England Power Pool*, 102 FERC ¶ 61,112 (2003).

ISO states that copies of the filing were served on parties on the official service list and that electronic copies of the filing were served on all NEPOOL Participants Committee members.

*Comment Date:* 5 p.m. Eastern Time on April 4, 2005.

**6. ISO New England Inc., et al.**

[Docket No. ER05–374–004]

Take notice that, on March 14, 2005, ISO New England Inc., (ISO) and the New England transmission owners (consisting of Bangor Hydro-Electric Company; Central Maine Power Company; New England Power Company; Northeast Utilities Service Company on behalf of its operating companies: The Connecticut Light and Power Company, Western Massachusetts Electric Company, Public Service Company of New Hampshire, Holyoke Power and Electric Company, and Holyoke Water Power Company; NSTAR Electric & Gas Corporation on behalf of its operating affiliates: Boston Edison Company, Commonwealth Electric Company, Canal Electric Company, and Cambridge Electric Light Company; The United Illuminating Company; Vermont Electric Power Company, Inc.; Fitchburg Gas and Electric Light Company; and Unitil Energy Systems, Inc.) submitted a report in compliance with the Commission's order issued February 10, 2005, 109 FERC ¶ 61,147 (2005).

ISO states that copies of the filing have been served on all parties to this proceeding, on all Governance Participants (electronically), non-Participant Transmission Customers, and the governors and regulatory agencies of the six New England states.

*Comment Date:* 5 p.m. Eastern Time on April 4, 2005.

**7. Virginia Electric and Power Company**

[Docket No. ER05–700–000]

Take notice that on March 14, 2005, Virginia Electric and Power Company (VEPCO) tendered for filing an Appendix E–3 to the service agreement for Network Integration Transmission Service between Dominion North Carolina Power (Dominion) and North Carolina Electric Membership Corporation (NCEMC), under VEPCO's Open Access Transmission Tariff, FERC Electric Tariff Second Revised Volume No. 5. VEPCO states that the amended service agreement adds charges to reimburse Dominion for costs associated with the installation of Morrisburg Delivery Point for Edgecombe-Martin County Electric Membership Corporation. VEPCO requests an effective date of April 13, 2005.

VEPCO states that copies of the filing were served upon NCEMC, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

*Comment Date:* 5 p.m. Eastern Time on April 4, 2005.

**8. Virginia Electric and Power Company**

[Docket No. ER05–701–000]

Take notice that on March 14, 2005, Virginia Electric and Power Company (VEPCO) tendered for filing copies of a letter agreement between the Dominion Virginia Power and Virginia Municipal Electric Association No. 1 (VMEA). VEPCO states that the letter agreement, dated December 17, 2004, provided for a temporary delivery point requested by VMEA to the Agreement for the Purchase of Electricity for Resale between Dominion and VMEA, First Revised Rate Schedule FERC No. 109. VEPCO requested an effective date of March 15, 2005.

Dominion states that copies of the filing were served upon VMEA, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

*Comment Date:* 5 p.m. Eastern Time on April 4, 2005.

**9. Deseret Generation & Transmission Co-operative, Inc.**

[Docket No. ER05–702–000]

Take notice that on March 14, 2005 Deseret Generation & Transmission Co-operative, Inc. (Deseret) tendered for filing a rate filing and request for certain waivers relating to: (i) The Bonanza-Mona Transmission Entitlement Purchase and Sale Wheeling Service Agreement, dated March 21, 1990, by and between Deseret and Utah Associated Municipal Power Systems (UAMPS), designated as Rate Schedule FERC No. 21; and (ii) the Bonanza-Mona Operating Agreement, dated March 21, 1990, by and between Deseret and UAMPS, designated as Rate Schedule FERC No. 22.

Deseret states that copies of this filing have been served upon UAMPS.

*Comment Date:* 5 p.m. Eastern Time on April 4, 2005.

**10. Public Service Electric and Gas Company, PSEG Energy Resources & Trade LLC**

[Docket No. ER05–703–000]

Take notice that on March 14, 2005, Public Service Electric and Gas Company (PSE&G) and PSEG Energy Resources & Trade LLC (PSEG ER&T) submitted for filing a request for: (1) Waiver of the Commission's rules and their market-based rate tariffs and codes of affiliate conduct; and (2) authorization for sales of power by PSEG ER&T to PSE&G, in order for PSEG ER&T provide power to PSE&G under contracts resulting from the 2005 auction for Basic Generation Service approved by the New Jersey Board of Public Utilities.

PSE&G states that a copy of this filing has been served upon the New Jersey Board of Public Utilities.

*Comment Date:* 5 p.m. Eastern Time on April 4, 2005.

**11. Michigan Electric Transmission Company, LLC**

[Docket No. ER05–704–000]

Take notice that on March 14, 2005, Michigan Electric Transmission Company, LLC (METC) submitted a Letter Agreement between Wolverine Power Supply Cooperative, Inc. (Wolverine) and METC to establish the terms and conditions for engineering and related activities to be performed by METC in connection with a proposed interconnection to the METC transmission system by Wolverine.

*Comment Date:* 5 p.m. Eastern Time on April 4, 2005.

**12. Wisconsin Electric Power Company**

[Docket No. ER05–705–000]

Take notice that on March 14, 2005, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a service agreement with GEN–SYS Energy, designated as Service Agreement No. 63, under Wisconsin Electric's FERC Electric Tariff, Original Volume No. 8. Wisconsin Electric requests an effective date of April 1, 2005.

Wisconsin Electric states that copies of the filing have been served on GEN–SYS Energy, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

*Comment Date:* 5 p.m. Eastern Time on April 4, 2005.

**13. Carolina Power & Light Company**

[Docket No. ER05–706–000]

Take notice that on March 14, 2005, Carolina Power & Light Company (CP&L) tendered for filing Notices of Cancellation of FERC Electric Rate Schedule No. 50 with the City of Camden, SC; FERC Electric Rate Schedule No. 129 with the City of Fayetteville, NC; FERC Electric Rate Schedule No. 130 with the Town of Waynesville, NC; and FERC Electric Rate Schedule No. 131 with French Broad Electric Membership Corporation. CP&L has requested an effective date of May 15, 2005 for the cancellations.

CP&L states that a copy of this filing was served upon the affected customers and the North Carolina Utilities Commission and the South Carolina Public Service Commission.

*Comment Date:* 5 p.m. Eastern Time on April 4, 2005.

**14. Maine Public Service Company**

[Docket No. ER05–707–000]

Take notice that on March 11, 2005, Maine Public Service Company (MPS), pursuant to section 2.7 of the Settlement Agreement filed on February 28, 2001 in Docket No. ER01–1344–000 and accepted by Commission letter order issued on April 13, 2001, submitted an informational filing setting forth the changed loss factor effective March 1, 2005 together with back-up materials.

MPS states that copies of this filing were served on the parties to the Settlement Agreement, the Northern Maine Independent System Administrator, Inc., the Maine Public Utilities Commission, Commission Trial Staff, the Maine Public Advocate, and current MPS open access transmission tariff customers.

*Comment Date:* 5 p.m. Eastern Time on April 1, 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 email 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. E5–1290 Filed 3–23–05; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER04–902–001, et al.]**

### Oklahoma Gas and Electric Company, et al.; Electric Rate and Corporate Filings

March 17, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

**1. Oklahoma Gas and Electric Company**

[Docket Nos. ER04–902–001]

Take notice that on March 11, 2005, Oklahoma Gas and Electric Company (OG&E) submitted Rate Schedule No. 126, a rate schedule for service to the Oklahoma Municipal Power Authority. OG&E states that Rate Schedule 126 was inadvertently cancelled by the Commission in a letter order issued February 17, 1999 in Docket No. ER99–1376–000. OG&E's filing also contained a motion for reconsideration of the letter order issued February 17, 1999 in Docket No. ER99–1376–000 and a motion to reinstate the cancelled Rate Schedule.

OG&E states that copies of the filing were served upon the parties in Docket Nos. ER99–1376–000 and ER04–902–000.

*Comment Date:* 5 p.m. Eastern Time on April 1, 2005.

**2. New England Power Pool**

[Docket No. ER05–52–001]

Take notice that on March 14, 2005, the New England Power Pool (NEPOOL) Participants Committee and ISO New England, Inc. (the ISO) jointly filed

amended Hydro-Quebec Interconnection Capability Credit (HQICC) values for the 2005/2006 Power Year which are to replace the HQICC values initially filed on October 18, 2004. NEPOOL and the ISO state that this filing was made in response to the letter order issued on December 13, 2004 in Docket No. ER05–52–000.

NEPOOL 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 March 30, 2005.

**3. Old Dominion Electric Cooperative**

[Docket No. ER05–682–000]

Take notice that on March 7, 2005, Old Dominion Electric Cooperative (Old Dominion) tendered for filing a new proposed rate schedule for providing cost-based Reactive Power and Voltage Control from Generation Sources Service from Old Dominion's natural gas-fired generating facility located in Rock Springs, Maryland.

Old Dominion states that a copy of the filing has been mailed to representatives of PJM Interconnection, L.L.C.

*Comment Date:* 5 p.m. Eastern Time on March 28, 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. E5–1288 Filed 3–23–05; 8:45 am]

BILLING CODE 6717–01–P

---

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER00–1053–013, et al.]**

## Maine Public Service Company, et al. Electric Rate and Corporate Filings

March 15, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

**1. Maine Public Service Company**

[Docket Nos. ER00–1053–013 and ER00–1052–001]

Take notice that on March 10, 2005, Maine Public Service Company submitted revision to its Open Access Transmission Tariff to implement an Agreement regarding Main Public Service Company's 2004 Informational Filing (Settlement Agreement).

Maine Public Service Company states that copies of the filing were served upon its jurisdictional customers, parties to the proceeding, parties to the Settlement Agreement in Docket No. ER00–1053 *et al.,* Maine Public Utilities Commission and the Maine Public Advocate.

*Comment Date:* 5 p.m. Eastern Time on March 31, 2005.

**2. Carolina Power & Light Company**

[Docket Nos. ER01–1807–017 and ER01–2020–014]

Take notice that on March 11, 2005, Carolina Power & Light Company submitted a refund report pursuant to the Commission Order issued May 21, 2003 in Docket No. ER01–1807–005, *et al.,* 103 FERC ¶ 61,209 (2003).

Carolina Power & Light Company states that copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

*Comment Date:* 5 p.m. Eastern Time on April 1, 2005.

**3. PJM Interconnection, L.L.C.**

[Docket No. ER04–893–003]

Take notice that on March 11, 2005, PJM Interconnection, L.L.C. (PJM) submitted a compliance filing pursuant to the Commission's letter order issued February 9, 2005 in Docket No. ER04–893–002.

PJM states that copies of the filing were served upon all parties on the official service list for Docket No. ER04–893 and on counsel for Commonwealth Edison Company and Batavia.

*Comment Date:* 5 p.m. Eastern Time on April 1, 2005.

**4. American Electric Power Service Corporation**

[Docket No. ER05–694–000]

Take notice that on March 11, 2005, American Electric Power Service Corporation (AEPSC) submitted for filing on behalf of its AEP Texas North Company affiliate, who was formerly known as West Texas Utilities Company, an amendment to the Interconnection Agreement between West Texas Utilities Company and Brazos Electric Power Company (Brazos) providing for the parties' installation of motor-operated switches in and near Brazos' McAdams Substation in Foard County, Texas. AEPSC requests an effective date of February 28, 2005.

AEPSC states that it has served copies of the filing on Brazos and the Public Utility Commission of Texas.

*Comment Date:* 5 p.m. Eastern Time on April 1, 2005.

**5. Virginia Electric and Power Company**

[Docket No. ER05–695–000]

Take notice that on March 11, 2005, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing an unexecuted Standard Large Generator Interconnection Agreement (LGIA) with Tenaska Virginia II Partners, L.P. (Tenaska) setting forth the terms and conditions governing the interconnection between Tenaska's generating facility and Dominion Virginia Power's transmission system. Dominion Virginia Power requested an effective date of May 11, 2005.

Dominion Virginia Power states that copies of the filing were served upon Tenaska and the Virginia State Corporation Commission.

*Comment Date:* 5 p.m. Eastern Time on April 1, 2005.

**6. Entergy Services, Inc.,**

[Docket No. ER05–696–000]

Take notice that on March 11, 2005, Entergy Services, Inc., on behalf of the Entergy Operating Companies, Entergy

Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively Entergy), filed limited revisions to certain provisions of the System Agreement. Entergy requests an effective date of May 10, 2005.

*Comment Date:* 5 pm Eastern Time on April 1, 2005.

**7. PJM Interconnection, L.L.C.**

[Docket No. ER05–697–000]

Take notice that on March 11, 2005, PJM Interconnection, L.L.C. (PJM) submitted amendments to Schedule 2 of the PJM Open Access Transmission Tariff to incorporate the revenue requirements for Reactive Supply and Voltage Control From Generation Sources Service of CED Rock Springs, LLC (Rock Springs).

PJM requests a waiver of the Commission's notice requirements to permit an effective date of February 1, 2005 for First Revised Eighteenth Revised Sheet No. 230 and First Revised Tenth Revised Sheet No. 230A; and an effective date of February 16, 2005 for First Revised Eleventh Revised Sheet No. 230A.

PJM states that copies of this filing have been served on all PJM members, including Rock Springs, and each state electric utility regulatory commission in the PJM region.

*Comment Date:* 5 pm Eastern Time on April 1, 2005.

**8. San Joaquin Cogen, L.L.C.**

[Docket No. ER05–698–000]

Take notice that on March 11, 2005 San Joaquin Cogen, L.L.C. (San Joaquin) filed with the Federal Energy Regulatory Commission a request for authorization to sell electricity at market-based rates under its proposed market-based tariff. San Joaquin requests that the rate schedule become effective no later than April 15, 2005.

*Comment Date:* 5 pm Eastern Time on April 1, 2005.

**9. Xcel Energy Services Inc.**

[Docket No. ER05–699–000]

Take notice that on March 11, 2005, Xcel Energy Services Inc. (XES), as agent for Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly, the NSP Companies), submitted: (1) Proposed amendments to certain grandfathered agreements (GFAs) subject to Rate Schedule Transmission Service Tm-1 contained in the NSP Electric Rate Book—Sales for Resale and Transmission Service; and (2) a new Schedule 12 to the Xcel Operating Companies' Joint Open Access Transmission Tariff, applicable to certain grandfathered network integration transmission service customers in the NSP Companies' pricing zone.

XES states that a copy of the filing has been served on each affected GFA customer.

*Comment Date:* 5 pm Eastern Time on April 1, 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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Linda Mitry,**

*Deputy Secretary.*

[FR Doc. E5–1289 Filed 3–23–05; 8:45 am]

BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[OW–2004–0020; FRL–7889–1]**

## Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Willingness to Pay Survey: Phase III Cooling Water Intake Structures, EPA ICR Number 2155.01

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a new collection. This ICR describes the nature of the information collection and its estimated burden and cost.

**DATES:** Additional comments may be submitted on or before April 25, 2005.

**ADDRESSES:** Submit your comments, referencing docket ID number OW–2004–0020, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *OW-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, Mail Code 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Erik Helm, USEPA/OST/EAD, Mail Code 4303T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566–1066; fax number: (202) 566–1054; e-mail address: *helm.erik@epamail.epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On November 23, 2004, (69 FR 68140), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA has addressed the comments received.

EPA has established a public docket for this ICR under Docket ID No. OW–2004–0020, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday

through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426 An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

*Title:* Willingness to Pay Survey: Phase III Cooling Water Intake Structures

*Abstract:* The U.S. Environmental Protection Agency (EPA) is in the process of developing new regulations to provide national performance standards for controlling impacts from cooling water intake structures (CWIS) for Phase III facilities under section 316(b) of the Clean Water Act (CWA). In order to develop comprehensive quantified benefit estimates, for these performance standards EPA proposes to conduct a stated preference study to estimate the non-use benefits of reduced fish losses at CWIS. The study would focus on a broad range of fish species, including forage fish and a variety of fish species harvested by commercial and recreational fishermen.

The purpose of this information collection request is to solicit public comment on and obtain approval for conducting twelve focus groups that will assist in the design of the stated preference survey. EPA will use these focus groups to better understand the public's perceptions of fishery resources and to assist in the design of the stated preference.

EPA received several comments on the proposed ICR. Most of the received comments did not address focus groups explicitly, but rather the more general topic of resource valuation and stated preference surveys. Many of the submitted comments were empirical in nature and are therefore appropriately addressed within the survey design process. Some commenters argued that non-use benefits in the Phase III policy context are likely to be trivial and unreliable. EPA considers stated preference methods capable of measuring the total values (including use and non-use) of fish affected by impingement and entrainment, if a survey is appropriately designed. Moreover, focus groups represent one of the primary means of assessing whether many of the commenters' remarks are indeed accurate regarding the inability of survey instruments to measure non-use values for fish affected by entrainment and impingement. EPA also points out that there is significant evidence in the empirical literature as to the substantive nature of non-use benefits.

For a detailed discussion of these issues, see EPA's response to public comments for the ICR notice published on November 23, 2004 (69 FR 68140).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

*Burden Statement:* The annual public reporting and record keeping burden for this collection of information is estimated to average 160 minutes per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Focus group participants.

*Estimated Number of Respondents:* 96.

*Frequency of Response:* Once.

*Estimated Total Annual Hour Burden:* 256 hours.

*Estimated Total Annual Cost:* $5,000, which includes $0 capital/startup costs and O&M costs, and $5,000 labor costs.

Dated: March 16, 2005.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 05–5817 Filed 3–23–05; 8:45 am]

**BILLING CODE 6560–50–P**

---

## ENVIRONMENTAL PROTECTION AGENCY

**[OECA–2004–0032; FRL–7889–2]**

## Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NESHAP for Leather Finishing Operations (Renewal), ICR Number 1985.03, OMB Control Number 2060–0478

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on June 30, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

**DATES:** Additional comments may be submitted on or before April 25, 2005.

**ADDRESSES:** Submit your comments, referencing docket ID number OECA–2004–0032, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory

Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 14, 2004 (69 FR 55430), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2004–0032, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center Docket is: (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

*Title:* NESHAP for Leather Finishing Operations (Renewal).

*Abstract:* The National Emission Standards for Hazardous Air Pollutants (NESHAP), for Leather Finishing Operations were proposed on October 2, 2000 (65 *FR* 58702). These standards apply to any existing, reconstructed, or new leather finishing operations. A leather finishing operation is a single process or group of processes used to adjust and improve the physical and aesthetic characteristics of the leather surface through multistage application of a coating comprised of dyes, pigments, film-forming materials and performance modifiers dissolved or suspended in liquid carriers. A leather finishing operation is only subject to the regulation if it is a major source of hazardous air pollutant (HAP) emitting or has the potential to emit any single HAP at the rate of 10 tons (9.07 megagrams) or more per year or any combination of HAP at a rate of 25 tons (22.68 megagrams) or more per year or is collocated a major source of HAPs.

Owners and operators must submit notification reports upon the construction or reconstruction of any leather finishing operation. Any leather finishing operation that starts up after proposal but before promulgation must submit an initial notification, similar to the one submitted by existing sources. Each new or reconstructed source that starts up after promulgation must submit a series of notifications in addition to the initial notification which include: notification of intent to construct or reconstruct and notification of startup. Upon the collection of twelve months of data after the date of initial notification owners or operators of leather finishing operations must submit an annual compliance status certification report and each year thereafter. Records and reports will be required to be retained for a total of five years, two years at the site, and the remaining three years at an off-site location.

Notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated, and the standard is being met. Performance test reports are needed as these are the Agency's records of a source's initial capability to comply with the emission standards, and serve as a record of the operating conditions under which compliance was achieved. The information generated by monitoring, recordkeeping and reporting requirements described in this ICR is used by the Agency to ensure that facilities that are affected by the standard continue to operate the control equipment and achieve continuous compliance with the regulation.

All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 33 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Owners or operators of leather finishing operations.

*Estimated Number of Respondents:* 10.

*Frequency of Response:* Initially, annually and on occasion.

*Estimated Total Annual Hour Burden:* 334 hours.

*Estimated Total Annual Costs:* $21,279, which includes zero O&M costs, zero Capital Expense, and $21,279 in Respondent Labor costs.

*Changes in the Estimates:* There is a decrease of 151 hours in the total

estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease in the burden from the most recently approved ICR is due to a decrease in the number of sources. Our data indicates that there are approximately ten sources subject to the rule, as compared to the active ICR that shows twelve sources. There are no new facilities expected to be constructed in the next three years. The decline in the number of sources was due to the high energy cost to operate the machinery and foreign competition. Our research also shows that since the removal/delisting of the compound ethylene glycol butyl ether (EGBE) from the list of HAPs that the Agency regulates under the Clean Air Act, a number of leather finishing facilities that use EGBE will no longer be subject to the CAAA's Maximum Achievable Control Technology (MACT) requirements, thus the number of sources would be decreased even more over the next three years.

There are no capital/startup or operation and maintenance costs, because NESHAP for Leather Finishing Operations does not require any special monitoring or recordkeeping equipment, therefore, no capital and operations and maintenance costs are associated with recordkeeping or reporting to the rule.

Dated: March 16, 2005.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 05–5818 Filed 3–23–05; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7889–3]**

## Agency Information Collection Activities OMB Responses

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

**FOR FURTHER INFORMATION CONTACT:** Susan Auby (202) 566–1672, or e-mail at *auby.susan@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

**SUPPLEMENTARY INFORMATION:**

### OMB Responses to Agency Clearance Requests

*OMB Approvals*

EPA ICR No.1715.06; TSCA Section 402 and Section 404 Training and Certification, Accreditation and Standards for Lead-Based Paint Activities; in 40 CFR part 745; was approved 02/07/2005; OMB Number 2070–0155; expires 02/29/2008.

EPA ICR No. 1597.06; Requirements and Exemptions for Specific RCRA Wastes (Renewal); in 40 CFR part 273, 40 CFR 266.230, 40 CFR 266.240, 40 CFR 266.245, 40 CFR 266.250, 40 CFR 266.345, 40 CFR 266.355, 40 CFR 266.360; was approved 02/07/2005; OMB Number 2050–0145; expires 02/29/2008.

EPA ICR No. 1445.06; Continuous Release Reporting Regulations (CRRR) under CERCLA 1980 (Renewal); in 40 CFR 302.8; was approved 02/09/2005; OMB Number 2050–0086; expires 02/29/2008.

EPA ICR No. 1488.06; Superfund Site Evaluation and Hazard Ranking System (Renewal); in 40 CFR part 300; was approved 02/10/2005; OMB Number 2050–0095; expires 02/29/2008.

EPA ICR No. 1446.08; PCBs: Consolidated Reporting and Recordkeeping Requirements; in 40 CFR 302.8; was approved 02/09/2005; OMB Number 2070–0112; expires 02/29/2008.

EPA ICR No. 1487.08; Cooperative Agreements and Superfund State Contracts for Superfund Response Actions (Renewal); in 40 CFR part 35, subpart O; was approved 02/09/2005; OMB Number 2050–0179; expires 02/29/2008.

EPA ICR No. 0938.10; General Administrative Requirements for Assistance Programs: EPA Administrative Capability Questionnaire; in 40 CFR parts 30 and 31; was approved 02/08/2005; OMB Number 2030–0020; expires 12/31/2005.

EPA ICR No. 0596.05; Application for Emergency Exemption for Pesticides; in 40 CFR part 166; was approved 02/10/2005; OMB Number 2070–0032; expires 02/29/2008.

EPA ICR No. 1425.06; Application for Reimbursement to Local Governments for Emergency Response to Hazardous Substance Releases Under CERCLA section 123 (Renewal); was approved 02/10/2005; OMB Number 2050–0077; expires 02/29/2008.

EPA ICR No. 1681.05; NESHAP for Epoxy Resin and Non-Nylon Polyamide Production (Renewal); in 40 CFR part 63, subpart W; was approved 02/15/2005; OMB Number 2060–0290; expires 02/29/2008.

EPA ICR No. 1669.04; Lead-Based Paint Pre-Renovation Information Dissemination—TSCA Sec. 406(b); in 40 CFR part 745, subpart E; was approved 02/14/2005; OMB Number 2070–0158; expires 02/29/2008.

EPA ICR No. 1741.04; Correction of Misreported Chemical Substances on the Toxic Substances Control Act (TSCA) Chemical Substances Inventory; in 40 CFR part 710; OMB Number 2070–0145; expires 02/29/2008.

EPA ICR No. 1767.04; NESHAP for Primary Aluminum Reduction Plants (Renewal); in 40 CFR part 63, subpart LL; was approved 02/15/2005; OMB Number 2060–0360; expires 02/29/2008.

EPA ICR No. 2179.01; Recordkeeping and Periodic Reporting of the Production, Import, Recycling, Destruction, Transshipment and Feedstock Use of Ozone Depleting Substances (Emergency ICR for Critical Use Exempt Requirements); in 40 CFR part 82, subparts A and E and 40 CFR Section 83.13; was approved 02/17/2005; OMB Number 2060–0564; expires 08/31/2005.

EPA ICR No. 2182.01; Pilot Project Regarding the Transboundary Movements of Municipal of Solid Waste (MSW) Between the U.S. and Canada (Request for Information on Exports of Municipal Solid Waste from Ontario, Canada to Michigan); was approved 03/01/2005; OMB Number 2020–0030; expires 09/30/2005.

EPA ICR No. 1736.04; EPA's Natural Gas STAR Program (Renewal); was approved 03/02/2005; OMB Number 2060–0328; expires 03/31/2008.

*Short Term Extensions*

EPA ICR No. 0229.15; NPDES and Sewage Sludge Monitoring Reports; OMB Number 2040–0004; on 02/25/2005 OMB extended the expiration date to 05/31/2005.

EPA ICR No. 1639.04; National Pollutant Discharge Elimination System Great Lakes Water Quality Guidance; OMB Number 2040–0180; on 02/25/2005 OMB extended the expiration date to 05/31/2005.

EPA ICR No. 1944.02; Baseline Standards and Best Management Practices for the Coal Mining Point Source Category; in 40 CFR part 434; OMB Number 2040–0239; on 02/25/2005 OMB extended the expiration date to 05/31/2005.

EPA ICR No. 1878.01; Minimum Monitoring Requirements for Direct and Indirect Discharging Mills in the Bleached Papergrade Kraft and Soda Subcategory and the Papergrade Sulfite

Subcategory of the Pulp, Paper, and Paperboard Point Source Category; OMB Number 2040–0243; on 02/25/2005 OMB extended the expiration date to 05/31/2005.

EPA ICR No. 2015.01; Certification in Lieu of Chloroform Minimum Monitoring Requirements for Direct and Indirect Discharging Mills in the Bleached Papergrade Kraft and Soda Subcategory of the Pulp, Paper, and Paperboard Point Source Category; OMB Number 2040–0242; on 02/25/2005 OMB extended the expiration date to 05/31/2005.

Dated: March 17, 2005.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 05–5819 Filed 3–23–05; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7888–6]**

## Science Advisory Board Staff Office; SAB Review of RadNet's Air Radiation Network, a Nationwide System to Track Environmental Radiation; Request for Nominations of Experts

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The EPA Science Advisory Board (SAB) Staff Office is requesting nominations to augment expertise to the SAB's Radiation Advisory Committee (RAC) to review EPA's implementation of RadNet, a nationwide system to track environmental radiation. RadNet incorporates an upgrade to the Environmental Radiation Ambient Monitoring System (ERAMS) air network, which was developed to provide for real-time monitoring of environmental levels of radiation in the United States (U.S.).

**DATES:** Nominations should be submitted by April 14, 2005 per the instructions below.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing further information regarding this Request for Nominations may contact Dr. K. Jack Kooyoomjian, Designated Federal Officer (DFO), via telephone/voice mail at (202) 343–9984; via e-mail at *kooyoomjian.jack@epa.gov* or at the U.S. EPA Science Advisory Board (1400F), 1200 Pennsylvania Ave., NW., Washington, DC 20460. General information about the SAB can be found in the SAB Web site at *http://www.epa.gov/sab.* The EPA technical contact for this review is Dr. Mary E. Clark, by telephone at (202) 343–9348 or by e-mail at *clark.marye@epa.gov.*

**SUPPLEMENTARY INFORMATION:** *Background:* The Environmental Radiation Ambient Monitoring System (ERAMS), was established in 1973 and constitutes the U.S.'s single major source of environmental radiation data. The ERAMS has continuously monitored radiation in air, precipitation, drinking water, and milk via a national network of fixed sampling stations. EPA's Office of Radiation and Indoor Air (ORIA) and it's National Air and Radiation Environmental Laboratory (NAREL) in Montgomery, AL maintains, receives, analyzes samples, and data from this system.

EPA's ORIA over the past decade, has requested that the SAB provide advice regarding ERAMS. The SAB was established by Congress in 1978 by the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA, 42 U.S.C. 4365) to provide independent scientific, engineering and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for EPA positions, programs, systems and regulations. The SAB's Radiation Advisory Committee (RAC) had conducted reviews of the reconfigured ERAMS on two previous occasions. The first advisory by the SAB's RAC took place in 1995 and resulted in an advisory delivered to the EPA Administrator on April 5, 1996 (EPA–SAB–RAC–ADV–96–03). This activity provided advice on technical issues pertinent to developing a new vision and re-orienting the ERAMS at that time. The second advisory on ERAMS by the SAB's RAC took place in 1997 and 1998 and resulted in an advisory to the Administrator on August 28, 1998 (EPA–SAB–RAC–ADV–98–001) on the Agency's proposed reconfiguration to ERAMS. The previous SAB advisories on ERAMS can be obtained on the SAB's Web site (*http://www.epa.gov/sab* in the reports listings).

The U.S. EPA's ORIA is currently updating and expanding the air portion of its nationwide system to track environmental radiation, now known as RadNet. It is anticipated that when the new network is fully operational, data on ionizing radiation in air will be available in almost real-time from fixed monitors in 180 highly populated metropolitan areas, resulting in coverage of approximately 70 percent of the U.S. population. In addition to the fixed monitors, 40 deplorable monitors will be available to support the system during emergency conditions. The updated system will identify radioactive environmental contaminants and their concentrations so that early protective action decisions can be implemented to protect the public health. Data from all collection sites will be sent electronically to a central EPA database and made available to federal, state, and local decision makers and the public.

The upgraded system is designed to provide improved national coverage as well as additional air monitoring capabilities that are important during radiological emergencies. Routine operation of the air monitoring network will continue to generate valuable data for identifying long-term trends, and to define normal background levels for use in comparing with emergency data and scientific studies. Additionally, RadNet (the upgraded ERAMS air network) will have the capability of monitoring a radioactive plume from an accident or incident, transmitting data to NAREL for analysis and verification on a near real-time basis. In particular, the specific objectives for the upgraded air monitoring network are to: Provide data quickly in the event of a radiological incident for decision makers, for use in assessing potential protective actions for the public, as well as for dispersion modelers, for validating/refining source term and meteorological assumptions and estimates; provide data needed to determine large-scale national impacts of a radiological incident for follow-up monitoring and assessment and population dose reconstruction; and develop baseline data for trend analysis and abnormality identification during normal operations. Background information on RadNet, the upgrade to the ERAMS air network, can be found at *http://www.epa.gov/radiation/news/nms.htm.* EPA's ORIA is now seeking advice from the SAB about the RadNet and EPA's implementation strategy.

*Tentative Charge to the SAB:* The EPA is seeking comment on the proposed upgrades and expansion of the ERAMS air monitoring network into the RadNet, and the methodology for determining the locations for the monitoring stations, given the upgraded and expanded network's objectives. Specifically, EPA is requesting this review to obtain guidance regarding the concepts and implementation of the upgraded air monitoring system including overall plans for the air monitoring network. In particular, EPA is asking the SAB to address the following questions: (1) Are the proposed upgrades and expansion of the RadNet air monitoring network reasonable in meeting the air network's objectives?; and (2) Is the methodology for determining the locations for monitoring stations appropriate, given

the upgraded and expanded network's objectives?

*Request for Nominations:* The SAB Staff Office is requesting nominations to augment expertise to the Radiation Advisory Committee (RAC) to form an SAB panel to review the RadNet air monitoring network. The augmented RAC will provide advice through the chartered SAB, and will comply with the provisions of the Federal Advisory Committee Act (FACA) and all appropriate SAB procedural policies, including the SAB process for panel formation described in the Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board, which can be found on the SAB's Web site at: *http://www.epa.gov/sab/pdf/ec0210.pdf.* To supplement expertise on the RAC, the SAB Staff Office is seeking individuals who have radiation expertise and knowledge of ERAMS in the following areas:

(1) Instrumentation (especially air monitors and detection equipment involving fixed and deplorable monitors, sodium iodide crystals, and gamma exposure instruments);

(2) Statistics (especially involving data interpretation, identification of abnormalities during normal operations, monitor siting plans, baseline data and data trends analysis, data coverage issues, and data interpretation);

(3) Modeling (especially involving validating and refining source terms, dispersion modeling, meteorological assumptions and estimates);

(4) Risk assessment (with particular experience and expertise in population dose reconstruction, health data interpretation, and health effects); and

(5) Risk communication.

*Process and Deadline for Submitting Nominations:* Any interested person or organization may nominate individuals qualified in the areas of expertise described above to serve on the Panel. Nominations should be submitted in electronic format through the Form for Nominating Individuals to Panels of the EPA Science Advisory Board provided on the SAB Web site, *http://www.epa.gov/sab.* The form can be accessed through a link on the blue navigational bar on the SAB Web site, *http://www.epa.gov/sab.* To be considered, all nominations must include the information required on that form.

Anyone who is unable to submit nominations using this form, or who has questions concerning any aspects of the nomination process may contact the DFO, as indicated above in this notice. Nominations should be submitted in time to arrive no later than April 14, 2005. Any questions concerning either this process or any other aspects of this notice should be directed to the DFO.

The SAB will acknowledge receipt of the nomination and inform nominators of the panel selected. From the nominees identified by respondents to this **Federal Register** notice (termed the ''Widecast''), SAB Staff will develop a smaller subset (known as the ''Short List'') for more detailed consideration. Criteria used by the SAB Staff in developing this Short List are given at the end of the following paragraph. The Short List will be posted on the SAB Web site at: *http://www.epa.gov/sab,* and will include, for each candidate, the nominee's name and biosketch. Public comments on the Short List will be accepted for 21 calendar days. During this comment period, the public will be requested to provide information, analysis or other documentation on nominees that the SAB Staff should consider in evaluating candidates for the Panel.

For the SAB, a balanced review panel (*i.e.*, committee, subcommittee, or panel) is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. Public responses to the Short List candidates will be considered in the selection of the panel, along with information provided by candidates and information gathered by SAB Staff independently of the background of each candidate (*e.g.*, financial disclosure information and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluation of an individual subcommittee member include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) absence of financial conflicts of interest; (c) scientific credibility and impartiality; (d) availability and willingness to serve; and (e) ability to work constructively and effectively in committees.

Prospective candidates will also be required to fill-out the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency'' (EPA Form 3110–48). This confidential form allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address: *http://www.epa.gov/sab/pdf/epaform3110-48.pdf.*

In addition to reviewing background material, panel members will be asked to attend at least one public face-to-face meeting, as well as follow-up public conference calls over the anticipated course of the advisory activity.

Dated: March 17, 2005.

**Vanessa T. Vu,**

*Director, EPA Science Advisory Board Staff Office.*

[FR Doc. 05–5822 Filed 3–23–05; 8:45 am]

BILLING CODE 6560–50–P

---

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7888–7]**

## Science Advisory Board Staff Office; Notification of an Upcoming Meeting of the Science Advisory Board Regional Vulnerability Assessment (ReVA) Advisory Panel

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The EPA Science Advisory Board (SAB) Staff Office announces a public teleconference of the SAB Regional Vulnerability Assessment (ReVA) Advisory Panel.

**DATES:** April 14, 2005. The public teleconference will be held on April 14, 2005, from 2 p.m. to 4 p.m. (eastern time).

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing to obtain the teleconference call-in number and access code to participate in the teleconference may contact Dr. Thomas Armitage, Designated Federal Officer (DFO), U.S. EPA Science Advisory Board by telephone/voice mail at (202)–343–9995, or via e-mail at *armitage.thomas@epa.gov.* The SAB Mailing address is: U.S. EPA, Science Advisory Board (1400F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. General information about the SAB may be found in the SAB Web site at *http://www.epa.gov/sab.*

**SUPPLEMENTARY INFORMATION:**

*Background:* Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that the SAB Regional Vulnerability Assessment Advisory Panel will hold a public teleconference to discuss its draft

advisory report on EPA's Regional Vulnerability Assessment methods and web-based Environmental Decision Toolkit. The Panel reviewed the ReVA methods and Environmental Decision Toolkit at a public meeting held on October 26–27, 2004 and has prepared a draft advisory report to EPA. Background information on the Panel and the ReVA advisory was provided in **Federal Register** notices published on July 30, 2004 (69 FR 45706–45707), and October, 13, 2004 (69 FR 60864–60865). The Panel is holding the teleconference to finalize its draft report before submitting the report to the chartered SAB for review and approval. The Panel's draft advisory report may be found on the SAB Web site at *http://www.epa.gov/sab/pdf/reva_advisory_report_3_1_05.pdf.* The teleconference agenda will be posted on the SAB Web site prior to the teleconference.

*Procedures for Providing Public Comment:* It is the policy of the EPA Science Advisory Board (SAB) Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA SAB Staff Office expects that public statements presented at the Regional Vulnerability Assessment Advisory Panel teleconference will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a conference call meeting will be limited to no more than three minutes per speaker and no more than fifteen minutes total. Interested parties should contact the DFO in writing via e-mail at least one week prior to the teleconference in order to be placed on the public speaker list. *Written Comments:* Although written comments are accepted until the date of the teleconference (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the teleconference date so that the comments may be made available to the committee or panel for their consideration. Comments should be supplied to the DFO at the address/contact information above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 98/2000/XP format).

*Meeting Accommodations:* Individuals requiring special accommodation to access the teleconference, should contact the relevant DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: March 17, 2005.

**Vanessa T. Vu,**

*Director, EPA Science Advisory Board Staff Office.*

[FR Doc. 05–5820 Filed 3–23–05; 8:45 am]

BILLING CODE 6560–50–P

---

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7888–8]**

## Science Advisory Board Staff Office; Notification of Upcoming Meeting of the Science Advisory Board Committee on Valuing the Protection of Ecological Systems and Services (C–VPESS)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The EPA Science Advisory Board (SAB) Staff Office announces a public meeting of the SAB's Committee on Valuing the Protection of Ecological Systems and Services (C–VPESS).

**DATES:** April 12–13, 2005. A public meeting of the C–VPESS will be held from 9 a.m. to 5:30 p.m (eastern time) on April 12, 2005 and from 9 a.m. to 3:30 p.m. (eastern time) on April 13, 2005.

**ADDRESSES:** The meeting will take place at the SAB Conference Center, 1025 F Street, NW., Suite 3700, Washington, DC 20004.

**FOR FURTHER INFORMATION CONTACT:** Members of the public wishing further information regarding the SAB C-VPESS meeting may contact Dr. Angela Nugent, Designated Federal Officer (DFO), via telephone at: (202) 343–9981 or e-mail at: *nugent.angela@epa.gov.* The SAB mailing address is: U.S. EPA, Science Advisory Board (1400F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. General information about the SAB, as well as any updates concerning the meetings announced in this notice, may be found in the SAB Web site at: *http://www.epa.gov/sab.*

**SUPPLEMENTARY INFORMATION:**

*Background:* Background on the SAB C–VPESS and its charge was provided in 68 Fed. Reg. 11082 (March 7, 2003). The purpose of the meeting is for the SAB C–VPESS to discuss issues concerning methods for valuing the protection of ecological systems and services, to continue work on the Committee's advisory on the Agency's draft Ecological Benefit Assessments Strategic Plan, and to plan committee activities. All of these activities are related to the Committee's overall charge, to assess Agency needs and the state of the art and science of valuing protection of ecological systems and services, and then to identify key areas for improving knowledge, methodologies, practice, and research.

*Availability of Review Material for the Meetings:* The Agenda and background documents for this meeting will be posted prior to the meeting on the SAB Staff Office Web site at: *http://www.epa.gov/sab/agendas.htm.* EPA's draft Ecological Benefits Assessment Strategic Plan is available on the EPA's National Center for Environmental Economics Web site at: *http://yosemite.epa.gov/ee/epa/eed.nsf/pages/homepage.*

*Procedures for Providing Public Comment:* It is the policy of the EPA SAB Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible. The SAB Staff Office expects that public statements presented at SAB meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). Interested parties should contact the Designated Federal Official (DFO) in writing via e-mail at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the participants and public at the meeting. *Written Comments:* Although written comments are accepted until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 98/2000/XP format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

*Meeting Accommodations:* Individuals requiring special accommodation to access these meetings, should contact the relevant

DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: March 18, 2005.

**Richard Albores,**

*Acting Director, EPA Science Advisory Board Staff Office.*

[FR Doc. 05–5821 Filed 3–23–05; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[Docket Number ORD–2005–0009; FRL–7888–9]**

## Board of Scientific Counselors, Drinking Water Subcommittee Meetings—March 2005

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Cancellation of meetings.

**SUMMARY:** The Environmental Protection Agency, Office of Research and Development (ORD), announces the cancellation of two meetings of the Board of Scientific Counselors (BOSC) Drinking Water Subcommittee. These meetings (teleconference March 23, 2005, and face-to-face meeting March 29–31, 2005) were announced in a **Federal Register** notice published on Tuesday, March 8, 2005, 70 FR 11241. The purpose of these public meetings was to evaluate EPA's Drinking Water Research Program, and they will be rescheduled at a later date.

**FOR FURTHER INFORMATION CONTACT:** Edie Coates, Designated Federal Officer, Environmental Protection Agency, Office of Research and Development, Mail Code B105–03, Research Triangle Park, NC, 27711; telephone (919) 541–3508; fax (919) 541–3335; e-mail *coates.edie@epa.gov.*

Dated: March 18, 2005.

**Kevin Y. Teichman,**

*Director, Office of Science Policy.*

[FR Doc. 05–5824 Filed 3–23–05; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[Docket No. OEI–2005–0001; FRL–7889–4]**

## Establishment of a New System of Records Notice for the Federal Docket Management System

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a) the EPA, as managing partner of the Federal-wide eRulemaking, eGovernment Initiative, is giving notice that it proposes to establish a government-wide system of records, the Federal Docket Management System (FDMS). The FDMS allows the public to search, view, download, and comment on all Federal agency rulemaking documents in one central online system.

**DATES:** The proposed notice will be effective without further notice on May 3, 2005.

**ADDRESSES:** Questions regarding this notice should be referred to Valerie Brecher-Kovacevic at U.S. EPA, Office of Environmental Information, M/C 2282V, 1200 Pennsylvania Ave., NW., Washington, DC 20460, 202–632–0339, or via e-mail *brecher-kovacevic.valerie@epa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Patrick Micielli, *Micielli.Patrick@epa.gov,* 202–632–0350, U.S. EPA, Office of Environmental Information, M/C 2282V, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

The FDMS serves as a central, electronic repository for all Federal rulemaking dockets, which include **Federal Register** notices, supporting materials such as scientific or economic analyses, and public comments, as well as non-rulemaking dockets. The FDMS is a system used by all Federal agencies that conduct rulemakings. Each agency is responsible for managing its own docket and rulemaking documents. An agency may share documents with other agencies or persons in addition to making them available to the public on the FDMS Web site. Each agency has sole responsibility for the documents submitted in support of their rulemakings and these documents will be processed by the individual agencies.

On behalf of the Federal partner agencies, EPA is publishing this new system of record notice as the Program Manager (PMO) for the E-Government, eRulemaking Initiative's FDMS, in order to satisfy the applicable requirements of the Privacy Act. There will be instances when a person using FDMS to submit a comment or supporting materials on a Federal rulemaking must provide name and contact information (e-mail or mailing address) as required by an agency, or, a person may have the option to do so, if they would like an agency to contact them regarding a comment (*e.g.* if the agency experiences a problem receiving the comment or needs additional information). A comment that meets all requirements, as determined by the Federal agency publishing the rulemaking, will be posted on the Internet (FDMS Web site) for public viewing and all the contents of the posted comment will be searchable. The FDMS is a system with full text search capability, which would include any name and contact information submitted in or as part of a comment. Each agency has the opportunity to review the data it receives as part of its rulemakings. An agency may choose to keep certain types of information contained in a comment submission from being posted publicly, while preserving the entire document to be reviewed and considered as part of the rulemaking docket. For example, comments containing material whose disclosure is restricted by Federal statute, such as the Children's Online Privacy Protection Act of 1998 (COPPA), may not be publicly posted, but will be retained and evaluated/considered by the receiving agency. Each agency manages, accesses, and controls the information in the FDMS that is submitted to that particular agency and also maintains the sole ability to disclose the data submitted to that particular agency.

The FDMS contains information that is submitted in support of Federal rulemakings, only a limited portion of which is covered under the Privacy Act. The portion of this system that comes under the Act includes the information received by agencies that require or accept personal identifying information (name and contact address/e-mail address). It will be apparent whether or not an agency requires this information. There will be set fields to be filled out on the comment page and clear notification as to whether the information is required or optional. There will be agencies that do not place these fields on the comment page as they do not require or offer to collect this information. Submit your comments, identified by Docket ID No. OEI–2005–0001, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket.* EDOCKET is EPA's electronic public docket and comment system. Follow the on-line instructions for submitting comments.
- Mail: OEI Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- Hand Delivery: OEI Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington,

DC. Such deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays), and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. OEI–2005–0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal regulations.gov 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.

*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 Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

*Assistance to Individuals With Disabilities in Reviewing the Comments*

On request, the docket center will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, you may call 202–566–1744. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

Dated: March 18, 2005.

**Kimberly T. Nelson,**

*Assistant Administrator and Chief Information Officer.*

## EPA–GOVT–2

**SYSTEM NAME:**

Federal Docket Management System (FDMS).

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

U.S. EPA, Research Triangle Park, NC.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Any person—including public citizens and representatives of Federal, state or local governments, businesses, and industries, that provide personal information while submitting a comment or supporting materials on a Federal agency rulemaking.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Agency rulemaking material. This includes but is not limited to: pending **Federal Register** publications; supporting rulemaking documentation; scientific and financial studies; and public comments received.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Section 206(d) of the E-Government Act of 2002 (Pub. L. 107–347, 44 U.S.C. Ch 36).

**PURPOSE(S):**

To assist the Federal government in allowing the public to search, view, download, and comment on Federal agency's rulemaking documents in one central location on-line.

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

This notice covers the following general uses contained within FDMS: Disclosure for Law Enforcement Purposes; Disclosure Incident to Requesting Information; Disclosure to Requesting Agency; Disclosure to Office of Management and Budget; Disclosure to Congressional Offices; Disclosure to Department of Justice; Disclosure to the National Archives; Disclosure to Contractors, Grantees, and Others; Disclosures for Administrative Claims; Complaints and Appeals, and Disclosure in Connection with Litigation. Agencies must file a separate notice if they release Privacy Act information in a manner that does not fall under one of the above routine uses.

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

**STORAGE:**

Records will be maintained in computer databases compliant with DOD 5015.2 electronic records standards.

**RETRIEVABILITY:**

The FDMS will have the ability to retrieve records by various data elements and key word searches, among which are by: Name, Agency, Docket Type, Docket Sub-Type, Agency Docket ID, Docket Title, Docket Category, Document Type, CFR Part, Date Comment Received, and **Federal Register** Published Date.

**SAFEGUARDS:**

FDMS security protocols will meet multiple NIST Security Standards from Authentication to Certification and Accreditation. Records in the FDMS will be maintained in a secure, password protected electronic system that will utilize security hardware and software to include: Multiple firewalls, active intruder detection, and role-based access controls. Additional safeguards will vary by agency.

**RETENTION AND DISPOSAL:**

Each Federal agency will handle its records in accordance with its records schedule as approved by the National Archives and Records Administration (NARA). Electronic data will be retained and disposed of in accordance with the agency's records schedule pending approval by the NARA. The majority of documents residing on this system will be public comments and other documentation in support of federal rulemakings. All **Federal Register** publications are part of the FDMS and are identified as permanent records and retained by NARA.

**SYSTEM MANAGER(S) ADDRESS AND CONTACT INFORMATION:**

Oscar Morales, Collection Strategies Division, Office of Information

Collection, Office of Environmental Information, U.S. EPA, M/C 2282V, 1200 Pennsylvania Ave, NW., Washington, DC 20460

**NOTIFICATION PROCEDURE:**

Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should contact the appropriate agency contact as indicated on the **Federal Register** notice or other document to which the information in question is linked.

**RECORD ACCESS PROCEDURES:**

Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document. Additional identification procedures may be required in some instances in accordance with each agency's Privacy Act regulations; and may be specified in an agency's **Federal Register** notices.

**CONTESTING RECORDS PROCEDURES:**

Requests for correction or amendment must identify the record to be changed and the corrective action sought. Requests must be submitted to the agency contact indicated on the initial document for which the related contested record was submitted.

**RECORD SOURCE CATEGORIES:**

Any person, including public citizens and representatives of Federal, state or local governments; businesses; and industries.

**SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 05–5823 Filed 3–23–05; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

March 18, 2005.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before April 25, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Cathy.Williams@fcc.gov* or Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information or copy of the information collection(s) contact Cathy Williams at (202) 418–2918 or via the Internet at *Cathy.Williams@fcc.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0996.

*Title:* AM Auction, Section 307(b) Submissions.

*Form Number:* Not Applicable.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents:* 450.

*Estimated Time per Response:* 0.5–3 hours.

*Frequency of Response:* On occasion reporting requirement.

*Total Annual Burden:* 1,100 hours.

*Total Annual Cost:* $132,500.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* Section 307(b) of the Communications Act, as amended, requires that the Commission effect a fair, efficient and equitable distribution of radio stations throughout the United States. In the context of competitive bidding application processing, section 307(b) is relevant when a mutually exclusive AM application group consists of applications to serve different communities, or when a non-mutually exclusive AM application proposes a community of license change. Such applicants must submit supplemental information addressing section 307(b) criteria. The data submitted will be used to determine the community having the greater need for an AM radio service.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 05–5842 Filed 3–23–05; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Company; Correction

This notice corrects a notice (FR Doc. 05-4788) published on page 12218 of the issue for Friday, March 11, 2005.

Under the Federal Reserve Bank of Kansas City heading, the entry for David Buford, Stephen Buford, Sam Buford, Ernest Dillard, Sheila Dillard, Aaron Dillard, and Hannah Dillard, all of Tulsa, Oklahoma, is revised to read as follows:

**B. Federal Reserve Bank of Kansas City** (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

*1. Daniel Buford, Stephen Buford, Sam Buford, Ernest Dillard, Sheila Dillard, Aaron Dillard, and Hannah Dillard*, all of Tulsa, Oklahoma; Sharon Linsenmeyer, Beatrice, Nebraska; and Sarah Dillard, Tampa, Florida; to acquire voting shares of Healthcare Bancorp, Inc., and thereby indirectly acquire voting shares of First BankCentre, both of Broken Arrow, Oklahoma.

Comments on this application must be received by March 25, 2005.

Board of Governors of the Federal Reserve System, March 18, 2005.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 05–5783 Filed 3–23–05; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL RESERVE SYSTEM

### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. 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 the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 7, 2005.

**A. Federal Reserve Bank of Richmond** (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

*1. GrandSouth Bancorporation*, Greenville, South Carolina; to acquire Car Bucks, Inc., Anderson, South Carolina, and thereby engage in lending activities, pursuant to section 225.28(b)(1) of Regulation Y.

**B. Federal Reserve Bank of Chicago** (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

*1. First National Bancshares, Inc.*, East Lansing, Michigan; to retain 100 percent of the voting shares of Equifunding, Inc., East Lansing, Michigan, and thereby engage in acquiring debt in default (including tax liens), pursuant to section 225.28(b)(2)(vii) of Regulation Y.

Board of Governors of the Federal Reserve System, March 18, 2005.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 05–5784 Filed 3–23–05; 8:45 am]

BILLING CODE 6210–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

**[Document Identifier: OS–4040–New]**

### Notice of Proposed Requirement To Establish Government-wide Standard Data Elements for Use by All Federal Grant Making Agencies—SF–424 Short Organizational and Supplemental Data Sets and Forms

**AGENCY:** Grants.gov Program Management Office.

In compliance with the requirement of the Paperwork Reduction Act of 1995, the Grants.gov Program Management Office, one of the 26 E-Government initiatives, managed by the Department of Health and Human Services is publishing the following summary of proposed collection for public comment. Interested individuals are invited to send comments regarding any aspect of this collection of information.

*Type of Information Collection Request:* Emergency.

*Title of Information Collection Request:* SF–424 Short Organizational (Short) and SF–424.

*Supplemental forms:* Key Contacts and Project Abstract.

*Form/OMB No.:* OS–4040–New.

*Background:* The discretionary SF–424, Application for Federal Assistance was established as the government-wide standard core data set and form for discretionary grant applications in July 31, 2003 [**Federal Register** Notice 68 FR 44974]. The SF–424 consolidates grant application related data and forms used by Federal grant-making agencies and organizations for their discretionary grant programs and replaces numerous agency-specific forms. The effect has been to reduce the administrative burden to the Federal grants community.

During the identification of the core SF–424 data set, it was determined, that in some instances, there were sufficient commonalities of data requirements across agencies to warrant a separate government-wide SF–424 data set and form. Four ''market segment'' SF–424 data sets and forms, in addition to the standard core data set, were subsequently identified; each tailored for a specific segment of the applicant community; and each developed for the purpose of reducing the administrative burden on the applicant community. The market segment SF–424 data sets and forms provide agencies with an alternative to the SF–424 core data set and form.

The research and related market segment SF–424 (SF–424 R&R) data set and form was deployed in November 2004 for use the by grant-making agencies with a research mission or that conduct research-related activities. The SF–424 Mandatory data set and form (SF–424 M) was deployed in February 2005 for use by the agencies with mandatory grant programs, including Formula and Block grants. Two additional market segments SF–424 data set and forms, the SF–424 Individual (SF–424 I) and the SF–424 Organizational Short (SF–424 short), will be deployed later this year. Both the SF–424 (I) and the SF–424 (short) will provide a further streamlined version of the SF–424 core data set and form for specific applicant communities. The SF–424 (I) will provide a streamlined data set and form for applicants that are individuals, rather than organizations. The SF–424 (short) will provide a streamlined form for those grant programs not required to collect certain information on the SF–424 core data set and form.

*Use:* Use of the standard data elements was implemented through the electronic grants application process of Grants.gov, which was deployed in October 2003 and is part of the implementation of the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107). Federal agencies and applicants under discretionary grant programs now use the discretionary SF–424 core data set and definitions for paper and electronic applications.

Comments received on the discretionary SF–424 core data set and form during the public comment period included the need for a further streamlined version of the SF–424 for use by the grant programs not required to collect certain applicant information as required on the SF–424 core data set and form. In response to this need, the SF–424 Short Organizational (SF–424 (short)) form is proposed to support the streamlined application requirements of some grant programs and to reduce the administrative burden placed on this applicant community. The SF–424 (short) provides agencies with an alternative to the SF–424 core data set and form. The SF–424 (short) can be used by grants programs not required to collect certain information on the SF–424 core data set and form.

Also in response to comments received from the public, two new SF–424 supplemental data sets and forms are proposed. The first, the Key Contacts data set and form, is proposed in response to the request that the SF–424 form support collection of additional key contact or point of contact information. The Key Contacts form is an optional form that the agencies may include in the application package for this purpose.

The second supplemental form, the Project Abstract form, is proposed in response to the public's request that the SF–424 support submission of project abstract information. This optional form provides the mechanism for the applicant to attach a file that contains an abstract of the project, in a format specified by the agency.

Federal agencies will not be required to use the SF–424 (short) or the supplemental forms, nor be required to collect all of the information included in the proposed data sets. The agency will identify the data that must be provided by applicants through instructions that will accompany the application package.

An estimate of the total burden was submitted during the first information collection package for the discretionary SF–424 on April 8, 2003, **Federal Register** notice [68 FR 17090]. At that time, an estimated 100,000 total number of responses with an estimated average time per response of 20 minutes per form were calculated. The collection information for the SF–424 (short) and supplemental forms is estimated similarly, subject to change based on comments received during this public comment period.

*Frequency:* Recordkeeping, Reporting, on occasion.

*Affected:* Federal, State, Local and Tribal governments; farms; non-profit institutions, and other for-profit.

*Total Annual Respondents:* 100,000.

*Total Annual Responses:* 100,000.

*Average Burden Per Response:* 20 minutes.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be mailed within 30-days directly to the Desk Officer at the address below:

OMB Desk Officer: Katherine Astrich, OMB Human Resources and Housing Branch, Attention: (OMB#OS–4040–New), New Executive Office Building, Room 10235, Washington DC 20201.

Dated: March 15, 2005.

**Robert E. Polson,**

*Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.*

[FR Doc. 05–5788 Filed 3–23–05; 8:45 am]

**BILLING CODE 4168–17–P**

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

**[Document Identifier: OS–4040–New]**

### Notice of Proposed Requirement To Establish Government-wide Standard Data Elements for Use by All Federal Grant Making Agencies—SF–424 Individual

**AGENCY:** Grants.gov Program Management Office, DHHS.

In compliance with the requirement of the Paperwork Reduction Act of 1995, the Grants.gov Program Management Office, one of the 26 E-Government initiatives, managed by the Department of Health and Human Services is publishing the following summary of proposed collection for public comment. Interested individuals are invited to send comments regarding any aspect of this collection of information.

*Type of Information Collection Request:* Emergency.

*Title of Information Collection Request:* SF–424 Individual.

*Form/OMB No.:* OS–4040–New.

*Use:* The discretionary SF–424 was established as the government-wide standard data set and form for Discretionary grant applications in July 31, 2003 [**Federal Register** Notice 68 FR 44974]. The SF–424 consolidates grant application related data and forms currently used by Federal grant-making agencies and organizations for their discretionary grant programs and replaces numerous agency-specific forms. The effect has been to reduce the administrative burden to the Federal grants community, which includes applicants/grantees and Federal staff involved in grants-related activities.

Use of the standard data elements was implemented through the electronic grants application process of Grants.gov, which was deployed in October 2003 and is part of the implementation of the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107). Federal agencies and applicants under discretionary grant programs now use the standard SF–424 discretionary data set and definitions for paper and electronic applications.

Comments received on the SF–424 discretionary data set and form by the public included the need for a further streamlined version of the SF–424 for use by individuals. In response to this need, the SF–424 Individual (SF–424 (I)) data set and form is proposed to support the streamlined application requirements of individuals and to reduce the administrative burden placed on this community. Although initially envisioned for use by the cultural agencies, such as NEA, NEH and IMLS for their applicant communities, the SF–424 (I) will support all grant-making agencies where individuals, rather than organizations, can apply for Federal grants.

Federal agencies will not be required to use the SF–424 (I) nor be required to collect all of the information included in the proposed data set. The agency will identify the data that must be provided by applicants through instructions that will accompany the application package.

An estimate of the total burden was submitted during the first information collection package for the discretionary SF–424 on April 8, 2003, **Federal Register** notice [68 FR 17090]. At that time, an estimated 100,000 total number of responses with an estimated average time per response of 20 minutes per form were calculated. The collection information for the SF–424 (I) is estimated similarly, subject to change based on comments received during this public comment period.

*Frequency:* Recordkeeping, Reporting, on occasion.

*Affected:* Individuals.

*Total Annual Respondents:* 100,000.

*Total Annual Responses:* 100,000.

*Average Burden Per Response:* 20 minutes.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be mailed within 30-days directly to the Desk Officer at the address below: *OMB Desk Officer:* Katherine Astrich, OMB Human Resources and Housing Branch, Attention: (OMB#OS–4040–New), New

Executive Office Building, Room 10235, Washington, DC 20201.

Dated: March 15, 2005.

**Robert E. Polson,**

*Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.*

[FR Doc. 05–5789 Filed 3–23–05; 8:45 am]

BILLING CODE 4168–17–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

**[Document Identifier: OS–0990–New]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*#1 Type of Information Collection Request:* New Collection, Regular.

*Title of Information Collection:* National Heart, Lung, and Blood Institute (NHLBI) ''The HeartTruth'' Professional Education Campaign Provider Survey.

*Form/OMB No.:* OS–0990–New.

*Use:* This survey will evaluate the success of educating health care providers on ''The HeartTruth'' Professional Education Campaign materials.

*Frequency:* Reporting, On occasion.

*Affected Public:* Individuals or households.

*Annual Number of Respondents:* 3,950.

*Total Annual Responses:* 106,650.

*Average Burden Per Response:* 1 hour.

*Total Annual Hours:* 1,343.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the OS Paperwork Clearance Officer designated at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: Naomi Cook (0990–New), Room 531–H, 200 Independence Avenue, SW., Washington, DC 20201.

Dated: March 15, 2005.

**Robert E. Polson,**

*Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.*

[FR Doc. 05–5790 Filed 3–23–05; 8:45 am]

BILLING CODE 4168–17–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

*Name:* National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Standards and Security (SSS).

*Time and Date:* April 6, 2005, 9 a.m.–5 p.m.; April 7, 2005 8:30 a.m.–3 p.m.

*Place:* Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 705A, Washington, DC 20201.

*Status:* Open.

*Purpose:* The meeting will focus on HIPAA implementation, with testimony from providers, payers, and others concerning the ''return on investment'' from HIPAA implementation to date. The Subcommittee also will review next steps needed to develop input to various NCVHS reports, such as the Committee's annual report to Congress.

**FOR FURTHER INFORMATION CONTACT:** Substantive program information as well as summaries of meetings and a roster of Committee members may be obtained from Maria Friedman, Health Insurance Specialist, Security and Standards Group, Centers for Medicare and Medicaid Services, MS: C5–24–04, 7500 Security Boulevard, Baltimore, MD 21244–1850, telephone: (410) 786–6333 or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, 3311 Toledo Road, Hyattsville, MD 20782, telephone: (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/* where an agenda for the meeting will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: March 16, 2005.

**James Scanlon,**

*Acting Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.*

[FR Doc. 05–5791 Filed 3–23–05; 8:45 am]

BILLING CODE 4151–05–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

*Name:* National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Privacy and Confidentiality.

*Time and Date:* March 30, 2005, 9 a.m.–5 p.m.; March 31, 2005, 8:30 a.m.–12:30 p.m.

*Place:* Millennium Knickerbocker Hotel, 163 East Walton Place, Chicago, IL 60611, 1–866–866–8086.

*Status:* Open.

*Purpose:* The meeting will focus on privacy and confidentiality issues related to electronic health records and the development of a National Health Information Network. On the first day of this meeting the Subcommittee will hear presentations from professional clinicians and institutional providers of care. On the second day the Subcommittee will hear presentations from a variety of other providers.

**FOR FURTHER INFORMATION CONTACT:** Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Maya A. Bernstein, Lead Staff for Subcommittee on Privacy and Confidentiality, Office of the Assistant Secretary for Planning and Evaluation, 434E Hubert H. Humphrey Building, 200 Independence Avenue, SW.,

Washington, DC 20201; telephone (202) 690–7100; or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/,* where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: March 14, 2005

**James Scanlon,**

*Acting Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.*

[FR Doc. 05–5792 Filed 3–23–05; 8:45 am]

**BILLING CODE 4151–05–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Findings of Scientific Misconduct

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Office of Research Integrity (ORI) and the Acting Assistant Secretary for Health have taken final action in the following case:

*Eric T. Poehlman, Ph.D., University of Vermont:* Based on the report of an investigation conducted by the University of Vermont (Report), admissions made by the respondent, and additional analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) found that Eric T. Poehlman, Ph.D., former Professor, Department of Medicine at the University of Vermont College of Medicine, engaged in scientific misconduct in research. The research was supported by National Institutes of Health (NIH) grants from the National Institute of Aging (NIA), the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), and the National Center for Research Resources (NCRR).

Specifically, PHS found that the respondent is responsible for scientific misconduct by engaging in the misleading and deceptive practices set forth herein below:

**Group 1: Longitudinal Study of Aging; Protocol 678 and Associated Excel Spreadsheets**

*Proposing Research (Report, pp. 22–25)*

1. That Respondent falsified preliminary data purportedly obtained in a longitudinal study of aging in NIH grant application 1 R01 AG17906–01, submitted May 27, 1999; specifically, the claim of 130 subjects at visit one (T1) and 70 subjects at visit two (T2), mean values for total energy expenditure (TEE) obtained with a doubly-labeled water technique were falsified; additional parameters such as physical activity energy expenditure (PAEE), resting metabolic rate (RMR), fat-free mass, appendicular skeletal muscle mass, and percent body fat were falsified to show significant trends during the aging process that were not reflective of the actual data (Abstract and pp. 19, 21, 22, 23, 27, 29, 34, 41, 42).

2. That Respondent falsified preliminary data purportedly obtained in a longitudinal study of aging in NIH grant application 1 R01 AG17906–01A1, submitted February 2000, specifically, the claim of 130 subjects at visit one (T1) and 70 subjects at visit two (T2), mean values for total energy expenditure (TEE) obtained with a doubly-labeled water technique were falsified; additional parameters such as physical activity energy expenditure (PAEE), resting metabolic rate (RMR), fat-free mass, appendicular skeletal muscle mass, and percent body fat were falsified to show significant trends during the aging process that were not reflective of the actual data (Abstract and pp. 32, 34, 38, 39, 45, 46).

*Conducting Research*

3. That Respondent systematically falsified a number of metabolic and physical measures of subjects in the longitudinal study of aging; these falsifications of specific types of data in the Protocol 678 spreadsheet commenced immediately after he assigned responsibility for maintenance of the data to a young technician and simultaneously arranged to have personal access to the data; his widespread alteration of data in specific fields has been detected in a number of different versions, often with cumulative effect, and several were transmitted to different co-workers for specific reasons, as detailed in the following sub issues:

a. That in the spreadsheet labeled ''678data3.xls,'' produced during the late spring/early summer of 2000, Respondent falsified and fabricated numerous values in the fields called underwater fat mass (UWFM), underwater fat-free mass (UWFFM), leisure time activity (LTA), and maximum oxygen consumption ($VO_2$ Max);

b. That on July 16, 2000, Respondent transmitted a subset of the Protocol 678 spreadsheet to Witness 1 entitled ''RevisedTEE_s.xls;'' that had 135 values each for T1 and T2 for TEE; many values were fabricated and most of the remaining values had been falsified by reversing the original T1 and T2 values (Report, pp. 6–8);

c. That Respondent falsified *additional* data fields in the version of the 678 data set called ''ExcelLongitudinal2.xls,'' on or about August 17, 2000; specifically values for total cholesterol, insulin, resting metabolic rate (RMR), and glucose values of the subjects with names in the second half of the alphabet were falsified (often by reversing T1 and T2) or fabricated (Report, p. 10);

d. That Respondent gave falsified data to Witness 2 in August 2000 to provide him with data for a presentation to be given in September 2000 to UVM staff (initially postponed until February 2001); the spreadsheet given to Witness 2 contained the falsified and fabricated TEE and underwater body composition values of RevisedTEE_s.xls; the spreadsheet, when subsequently obtained by ORI, was labeled ''LongitudinalBodyCompWitness2.xls'';

e. That Respondent falsified additional data in another version of ''ExcelLongitudinal2.xls'' that he sent to Witness 3 on or about August 22, 2000; specifically, this version contained the falsifications already described above (Issues 3a through 3c) and, in addition, the remainder of the glucose values, and individual lipid components (triglycerides, HDL, and LDL) were extensively falsified and fabricated; this spreadsheet was transmitted to Witness 3 with the expectation that he would write a paper describing the effect of aging on lipid metabolism (Report, pp. 8–10);

f. That Respondent provided a falsified version of the Protocol 678 spreadsheet to Witness 4 in the fall of 2000 so that Witness 4 could write a review article;

g. That Respondent, in late September/early October 2000, extensively falsified body composition data (a number of parameters including but not limited to fat mass and fat-free mass) obtained with the DEXA method in a spreadsheet transmitted to Witness 5 so that Witness 5 could write a paper using the DEXA method to demonstrate body composition changes with age (Report, pp. 5 and 39);

*Reporting Research*

h. That Respondent reported falsified data from the longitudinal study of aging at the annual North American Association for the Study of Obesity (NAASO) meeting in October 2000, and to the Vermont community; the falsifications on his slides included falsified values for both the number of subjects tested at T1 and T2 for TEE and the claim of a significant difference between the means for TEE at T1 versus T2; values for RMR, PAEE, and body composition (fat mass and fat-free mass) were also falsely reported (Report, p. 34);

i. From the falsified data set that Respondent provided him, Witness 4 developed a review article: Rawson, E. and Poehlman, E.T. ''Resting metabolic rate and aging.'' Recent Research Developments in Nutrition 4, 2001, coauthored by Respondent, that included falsified yet unpublished results about the decline in RMR upon aging (p. R1792). These results, ORI determined, are very similar to the falsified results that Respondent presented at NAASO, based on the falsified Protocol 678 data set;

*Conducting Research*

j. That on October 16, 2000, Respondent provided Witness 6 a version of the Protocol 678 data set entitled ''ExcelLongitudinal4.xls'' that included falsified cholesterol and individual lipid component data (as well as falsified parameters such as insulin, glucose (all subjects), TEE, RMR, PAEE, and underwater body composition data) so that Witness 6 could write a paper on the effect of aging on lipid composition (Report, pp. 8–10);

*Other*

k. That Respondent falsely testified to the University of Vermont Investigation Committee that he had never used data from the longitudinal study of aging in grant applications or in public presentations (Report, pp. 34 and 36).

**Group 2: Muscle Biopsy Results**

*Proposing Research*

4. That Respondent reported fabricated muscle biopsy data in NIH grant application 1 R01 AG17906–01A1 (p. 27), submitted in February 2000; specifically, he falsely claimed to have successfully tested five individuals on two occasions (1994 and 1999) when he had not (Report, pp. 25–26).

**Group 3: Protocol 467, Including the ''Longitudinal Menopause Study'' and Other Falsifications/Fabrications**

*Reporting Research*

5. That Respondent published falsified thyroid hormone results for women entered in a cross-sectional study (Protocol 467) (Figures 3A and 3B and related text and the portion of Table 2 related to T3 and free T3) in the following paper: Poehlman, E.T. Goran, M.I. Gardner, A.W., Ades, P.A., Arciero, P.J., Katzman-Rooks, S.M., Montgomery, S.M., Toth, M.J., and Sutherland, P.T. ''Determinants of decline in resting metabolic rate in aging females.'' American Journal of Physiology 264 (Endrocrinol Metab. 27):E450–E455, March 1993 (Correction required);

6. That Respondent published in November 1995 falsified and fabricated data from a longitudinal study of menopause in women in the following paper: Poehlman, E.T., Toth, M.J., and Gardner, A.W. ''Changes in energy balance and body composition at menopause: A controlled longitudinal study.'' Annals of Internal Medicine 123(9):673–675, November 1, 1995; Respondent has admitted that this longitudinal study was never conducted (the number of women seen at T1 was falsified, and there were at most 3, rather than 35, women seen at T2) (Report, pp. 27–32) (Retracted by editor; letter from Respondent required);

*Proposing Research*

7. That Respondent repeatedly reported this non-existent longitudinal menopause study and cited the 1995 Annals of Internal Medicine paper in NIH grant applications as proof that Respondent could conduct such longitudinal studies, and the falsified and fabricated data supported his proposed hypotheses:

a. Respondent provided for the annual report for the University of Vermont General Clinical Research Center (GCRC) grant (M01 RR00109) for the period 12/1/94–11/30/95, information about the falsified longitudinal menopause study, and the Annals of Internal Medicine paper was cited as having utilized the University of Vermont GCRC facilities;

b. In application 5 K04 AG00564–05, submitted July 18, 1995, Respondent reported the results of a seven (7) year [1] followup study of pre- and post-menopausal women, noting an article was in press in the Annals of Internal Medicine 1995 (unnumbered page 3);

c. In application R01 AG13978–01, submitted in September 1995, Respondent reported falsified and fabricated data on menopause related changes in metabolism, body composition, and other variables in Preliminary Data (pp. 35, 41, and 42), and cited the published Annals of Internal Medicine 1995 paper;

d. In application R01 AG13978–01A1, submitted in July 1996, Respondent reported falsified and fabricated data on menopause related changes in metabolism, body composition, and other variables in Preliminary Data (p. 33) and cited the published 1995 paper in the Annals of Internal Medicine and a submitted manuscript on the same topic (pp. 25, 29, 33, 40, 44, 49);

e. In Project 1 of application P01 AG16782–01, submitted in June 1998, Respondent reported (p. 233) fabricated data showing that menopause led to significant changes in body composition (pp. 229, 230, 231, 232, 233, 246, 256) (Report, p. 32);

f. In application 1 R01 AG 18238–01, submitted in April 1999, Respondent reported falsified and fabricated data from his longitudinal menopause study (RMR, leisure time physical activity, fat-free mass, fat mass, waist to hip ratio, and insulin (pp. 9, 18, 19, 20, 22, 23, 33, 37, 44);

g. In application 1 R01 AG17906–01, submitted in May 1999, Respondent reported falsified and fabricated data in the description of his longitudinal menopause study (RMR, leisure time physical activity, and fat-free mass, p. 25);

h. in Project 1 of application P01 AG16782–01A1, submitted in January 2000, Respondent reported the falsified and fabricated longitudinal menopause study (pp. 214, 220, 221, 228, 250) (Report, p. 32);

i. In application 1 R01 AG17906–01A1, submitted in February 2000, Respondent reported the falsified and fabricated longitudinal menopause study (pp. 31 and 59);

j. In application 1R01 AG19800–01, submitted in September 2000, Respondent reported the falsified and fabricated longitudinal menopause study (pp. 18 and 43).

*Reporting Research*

8. That Respondent continued to publish papers on the fictitious longitudinal menopause study, referring to the same cohort of 35 women, 18 of whom purportedly went through the menopause transition during the six year followup period; all or parts of the

[1] All other reports of the ''longitudinal menopause study'' claimed an average of six (6) years of follow-up.

following additional papers [2] reported this non-existent study and require correction or retraction:

a. Poehlman, E.T., Toth, M.J., Ades, P.A., and Rosen, C.J. ''Menopause-associated changes in plasma lipids, insulin-like growth factor I and blood pressure: A longitudinal study.'' European Journal of Clinical Investigation 27(4):322–326, April 1997 (Report, p. 30) (Retraction required);

b. Tchernof, A., and Poehlman, E.T. ''Effects of the menopause transition on body fatness and body fat distribution.'' Obesity Research 6(3):246–254, May 1998 (pp. 249–251) (Correction required);

c. Tchernof, A., Poehlman, E.T., and Despres, J.P. ''Body fat distribution, the menopause transition, and hormone replacement therapy.'' Diabetes and Metabolism 26(1):12–20, February 2000 (Report, p. 31) (p. 17 Correction required);

d. Rawson, E. and Poehlman, E.T. ''Resting metabolic rate and aging.'' Recent Research Developments in Nutrition 4, 2001 (Correction required);

e. Poehlman, E.T. ''Menopause, energy expenditure, and body composition.'' Acta Obstet. Gynecol. Scand. 81(7):603–611, July 2002 (Retraction required).

f. Poehlman, E.T. and Tchernof, A. ''Traversing the menopause: Changes in energy expenditure and body composition.'' Coronary Artery Disease 9(12):799–803, 1998 (Correction/retraction required).

9. That Respondent reported falsified and fabricated longitudinal menopause data in a talk presented in October 2000 at the annual NAASO meeting and to the Vermont community; specifically he reported to the NAASO falsified RMR and fat mass data on 40 women followed over six years (17 pre-menopausal, 18 post-menopausal, and 5-peri-menopausal) and RMR, FM, F–FM, PAEE, WHR, and insulin (Vermont Community) (Report, pp. 33–34).

*Other*

10. That Respondent falsely wrote to the University of Vermont Investigation Committee that the subjects in the longitudinal menopause study had not stayed overnight in the GCRC for the second visit. In fact, no women were seen a second time at the GCRC on an in-patient or outpatient basis (Report, p. 29).

[2] The first paper describing the longitudinal menopause study, the 1995 Annals of Internal Medicine paper, was the subject of PHS Issue 6.

**Group 4: Protocol 646—Hormone Replacement Therapy and Visceral Fat and Weight Loss; the Genetics of an Obesity Gene**

*Proposing Research*

11. That Respondent included Protocol 646 in grant application 2 M01 RR00109–33 (funding for the University of Vermont, GCRC), submitted in February–March 1996, in which he provided falsified and fabricated data on 40 women with and without the variant gene Trp64Arg; falsified parameters included body weight, body mass index, and percent body fat that were falsely claimed to be significantly different between the two groups.

12. That Respondent reported falsified and fabricated preliminary data and results in application 1 R01 AG18238 on HRT and its preferential effect on abdominal fat content:

a. That Respondent, in grant application 1 R01 AG18238–01 (p. 24), submitted in April 1999, presented falsified data in Table 1, on a study of women who had reported to be on, or not on, hormone replacement therapy (HRT); specifically, he claimed that women on HRT had significantly lower intra-abdominal fat than non-users and that there was a significant difference in PAEE between the two groups;

b. Respondent also falsely claimed to have evaluated the effect of HRT on intra-abdominal fat loss in a double blind placebo controlled study of 27 weeks duration (Figure 4); the actual study was not unblinded until 2002;

c. Respondent also falsely claimed (pp. 36–37) to have completed a six month pilot study on the effect of exercise weight loss on postmenopausal women administered HRT, compared to women not on HRT.

13. That Respondent, in grant application 1 P01 AG16782–01A1, submitted in January 2000, presented (p. 230) falsified data:

a. On a study of women reported to be on, or not on, HRT; specifically the number of subjects in Table 4 was 25 for HRT users and 23 for non-users, while seven of eight values for PAEE and intra-abdominal fat (3 means and 4 standard deviations) were unchanged from Table 1 of Application 1 R01 AG18328–01, where the number of subjects was 13 for each group;

b. Respondent repeated the false claim in the April 1999 application to have evaluated the effect of HRT on intra-abdominal fat in a double blind placebo controlled study of 27 weeks duration; the actual study was not unblinded until 2002; Respondent admitted to falsifying the figure in this application relative to the version in the 1 R01 AG18328–01 application;

c. Respondent falsely claimed (p. 231) to have studied 8 post-menopausal women on HRT and 7 women not on HRT in a six month weight loss program, when the average ages, standard deviations and certain mean values were unchanged from the smaller and purportedly different, groups described in the April 1999 application (*see* PHS Issue 12c above).

14. That Respondent, in grant application 2 R01 DK052752–05, submitted in June 2000:

a. Falsified the number of subjects carrying or not carrying the Trp64Arg genotype in Tables 4, 5, and 6 (pp. 30–31); specifically in the application, he falsely claimed to have tested 40 in each group; Respondent admitted that the actual number tested varied from 8–13, depending on the group and parameter being measured;

b. Respondent also falsely claimed that the number of women recruited to his funded grant on the menopause transition was 85 (p. 49).

15. That Respondent, in grant application 1 R01 AG19800–01, submitted in September 2000:

a.–c. Made the same three false claims with respect to HRT as in application 1 P01 AG16782–01A1 (Findings 13 a–c); in addition, Respondent falsely claimed in Table 5 that the number of subjects with and without HRT participating in the six-month weight loss program (*see* PHS Issue 13 c. above) was now 10 in each group rather than the group sizes of 8 and 7 claimed in Table 5 of the 1 P01 AG16782–01A1 application; many of the means and standard deviations in these two tables match the values obtained in a 6 month weight loss pilot study described on pp. 36–37 of application 1 R01 AG18238–01, where the two groups were comprised of 3 and 4 individuals; (pp. 13, 15, 17, 20, 21 and Tables 4 and 5 and Figure 6);

d. Falsely claimed (Table 3, p. 19) to have weight-reduced 70 obese women in the genetic study.

*Reporting Research*

16. That in public presentations or material prepared for these fora, Respondent falsified or fabricated data and results of the effects of HRT and of the effects of the Trp64Arg genotype:

a. That Respondent, at talks given at the annual NAASO meeting in October 2000, and to the Vermont Community (October 17, 2000), presented false information on the effects of HRT on visceral fat loss and glucose disposal when the HRT users and non-users were on a six-month weight loss program;

b. That Respondent, in both the NAASO and Vermont Community talks, falsely claimed that Trp64Arg carriers have significantly lower rates of glucose disposal than non-carriers.

*Other*

17. That Respondent falsely testified to the University of Vermont Investigation Committee that the slide shown at NAASO regarding the loss of visceral fat in women on or not on HRT during a six-month weight loss program (Issue 16a) had been labeled ''hypothesized.'' Respondent falsely labeled the NAASO slide ''hypothesized'' and submitted it to the University of Vermont Investigation Committee with the intention of misleading the committee (Report, pp. 34, 37).

**Group 5: Alzheimer's Disease**

18. That Respondent, in applications 2 R01 AG07857–06 and 7 R01 AG07857–07, submitted June 26, 1992, and March 28, 1994, respectively, falsified certain preliminary data (average ages, height, and fat-free weight values) to show that the Alzheimer's and control patients were more closely matched for age than shown in the original data;

19. That Respondent, in application 5 R01 AG07857–09, submitted May 18, 1995, falsified preliminary data; specifically, compared to data in the preceding 5 R01 AG07857–08 application, where the number of Alzheimer's and control subjects was 7 and 13 respectively, the number of Alzheimer's and control subjects was doubled to 14 and 26 respectively, while many of the data values and standard deviations remained unchanged; in the latter application however, Respondent claimed that Alzheimer's patients had significantly lower fat-free mass and significantly higher fat mass than control patients, while no claim of significant differences had been made in the earlier application.

**Group 6: Effect of Endurance Training on Metabolism**

20. Respondent admitted to falsifying norepinephrine data (a measure of sympathetic nervous system activity) in two papers published in 1992 and 1994 and agreed to retraction of the papers.[3] Specifically:

a. Respondent falsified norepinephrine data in Table 2 and Figure 4 of Poehlman, E.T., Gardner, A.W., and Goran, M.I. ''Influence of endurance training on energy intake, norepinephrine kinetics, and metabolic rate in older individuals.'' Metabolism 41(9):941–948, September 1992, in order to strengthen the relationship between endurance training and increased norepinephrine levels and rate of appearance (paper to be retracted);

b. Respondent falsified norepinephrine data in Table 2 and associated text of Poehlman E.T., Gardner, A.W., Arciero, P.J., Goran, M.I., and Calles-Escandon, J. ''Effects of endurance training on total fat oxidation in elderly persons.'' J. Appl. Physiol. 76(6):2281–2287, June 1994, in order to make the claims that norepinephrine concentration and norepinephrine appearance were significantly enhanced following endurance training (paper to be retracted).

Dr. Poehlman has entered into a Voluntary Exclusion Agreement (Agreement ) in which he has voluntarily agreed, beginning on March 9, 2005:

(1) To exclude himself permanently from serving in any advisory capacity to PHS including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant;

(2) To exclude himself permanently from any contracting or subcontracting with any agency of the United States Government and from eligibility or involvement in nonprocurement programs of the United States Government referred to as ''covered transactions'' as defined in the debarment regulations at 45 CFR part 76; the respondent agrees that he will not petition HHS to reverse or reduce the scope of the permanent voluntary exclusion or administrative actions that are the subject of this Agreement; and

(3) To execute and deliver letters requesting retraction or correction to the editors of the journals that published the ten papers named in the Agreement and cited above, and to sign the letters requesting the retraction or correction prepared for his signature by ORI without alteration or modification in any way.

**FOR FURTHER INFORMATION CONTACT:** Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (301) 443–5330.

**Chris B. Pascal,**

*Director, Office of Research Integrity.*

[FR Doc. 05–5876 Filed 3–23–05; 8:45 am]

BILLING CODE 4150–31–P

[3] Both the 1992 and 1994 papers were designed to reproduce, under more controlled conditions, an earlier result, published in Poehlman, E. and Danforth, E. ''Endurance training increases metabolic rate and norepinephrine appearance rate in older individuals.'' Am. J. Physiol. 261:E233–E239, 1991. These papers claimed that plasma levels of norepinephrine increased significantly in older individuals following endurance training. Because the norepinephrine results in the two carefully controlled studies conducted to verify this finding were falsified, it is apparent that this original report cannot be relied upon.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration on Aging

### Notice; Availability of Funding Opportunity Announcement

*Funding Opportunity Title/Program Name:* Senior Medicare Patrol Projects.

*Announcement Type:* Initial.

*Funding Opportunity Number:* HHS–2005–AoA–Initial–SM.

*Statutory Authority:* The Older Americans Act, Public Law 106–501.

*Catalog of Federal Domestic Assistance (CFDA) Number:* 93.048, Title IV and Title II, Discretionary Projects, and the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191).

*Dates:* The deadline date for the submission of applications is May 13, 2005.

**I. Funding Opportunity Description**

This announcement seeks proposals for the Senior Medicare Patrol (SMP) Projects which will serve as model projects that demonstrate effective ways of utilizing retired persons as volunteer expert resources and educators in community efforts to prevent and identify health care, error, fraud and abuse in the Medicare/Medicaid programs.

A detailed description of the funding opportunity and application materials may be obtained at *http://www.aoa.gov/doingbus/fundopp/fundopp.asp* or *http://www.grants.gov.*

**Award Information**

*1. Funding Instrument Type*

Cooperative Agreement. The award is a cooperative agreement because of the substantial involvement of the Administration on Aging in the development and execution of the activities of the projects. The cooperative agreements will describe training, technical assistance and support to be provided the projects funded under this announcement.

The SMP project will form a consortium of community-based agencies to assist in planning and implementing the project, while working in close partnership with an interdisciplinary team of Federal, State, and local resources, including

representatives from the Administration on Aging, the Office of Inspector General (OIG), the Centers for Medicare & Medicaid Services' Program Safeguard Contractors or Medication Fraud Information Specialists (MFIS), and State Quality Improvement Organizations.

The SMP project will recruit, train, and place retired individuals in a variety of communities and settings to provide public education and outreach to older persons and their families, including an emphasis on reaching vulnerable, isolated, and limited English-speaking beneficiaries.

The Administration on Aging will define project performance criteria and expectations, and will monitor, evaluate and support the projects' efforts in achieving performance goals. The project will participate in a national assessment of the program utilizing the performance measurement instrument developed by the HHS Office of Inspector General (OIG), including reporting outputs and out comes to the OIG semiannually.

The SMP project and Administration on Aging will work cooperatively to clarify the issues to be addressed by the project and develop the work plan for each year of the project. Within 45 days of the award and 45 days of each continuation award, the project will agree upon and adhere to a work plan that details expectations for major activities, products, and reports during the current budget period. The work plan will include timelines, staff assignments, work locations, and areas that require Administration on Aging consultation, review, and/or prior approval. Either the Administration on Aging or the project can propose a revision of the final work plan at any time. Any changes in the final work plan will require agreement of both parties.

The Administration on Aging will assist the SMP project leadership in understanding the policy concerns and/or priorities of the Assistant Secretary for Aging and the Department of Health and Human Services by conducting periodic briefings and by carrying out ongoing consultations.

The Administration on Aging has established the National Consumer Protection Technical Resource Center to enhance the effectiveness of the Senior Medicare Patrol projects' efforts to meet AoA and SMP program strategic objectives, by providing informational resources, technical assistance and support to the projects.

The Administration on Aging will also share information with the project about other Federally sponsored projects and activities carried out under this Agreement.

The Administration on Aging will be provided a period of three weeks, prior to their release and/or publication, to review and comment upon all materials, reports, documents, etc. produced by the project with funds provided through this award. After the three weeks review and comment period, the project is free to make such materials public, displaying the Administration on Aging disclaimer.

*2. Anticipated Total Priority Area Funding per Budget Period*

Option 1—AoA intends to make available, under this program announcement, grant awards for up to thirty-two (32) cooperative agreements at a federal share of between $125,000 and $180,000 per year for a project period of three (3) years.

Option 2—AoA intends to fund up to two 1-year capacity-building grants at a federal share of between $40,000 and $75,000 for a period of one year.

## II. Eligibility Criteria and Other Requirements

*1. Eligible Applicants*

Option 1—Eligibility for grant awards is limited to public state and local agencies, federally recognized tribes, or nonprofit agencies, organizations, and institutions, including faith-based organizations, in the following 28 States and jurisdictions: Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Idaho, Kentucky, Maine, Massachusetts, Michigan, Montana, Nevada, New Jersey, New Mexico, Ohio, Oklahoma, Oregon, Puerto Rico, Tennessee, Texas, Virginia, Washington, and West Virginia.

Option 2—Eligible entities from U.S. territories are extended the opportunity to apply for one-year capacity-building grants. Eligibility is limited to public State and local agencies, federally recognized tribes, or nonprofit agencies, organizations, and institutions, including faith-based organizations from within these territories.

The competition is limited to the 28 states and jurisdictions specified under Option 1, as well as the U.S. territories (per Option 2). Competition under Option 1 is limited to those specified states and jurisdictions because the current three-year grant period for Senior Medicare Patrol projects within these areas will end on June 30, 2005. The competition is limited to U.S. territories under Option 2 in order to offer an opportunity to expand the program to the territories on a first-time basis. The AoA is currently funding SMP projects in the remaining 24 states not specified under Options 1 and 2. In order to ensure the program reaches Medicare beneficiaries in the maximum number of states, given available funding, applicants from those states currently served by SMP projects are ineligible to apply.

Grantees under both Option 1 and Option 2 will carry out cooperative agreement awards to train retired persons to serve in their communities as volunteer expert resources and educators in preventing and identifying health care error, fraud, and abuse.

*2. Cost Sharing or Matching*

Grantees are required to provide at least 25 percent of the total program costs from non-federal cash or in-kind resources in order to be considered for the award. Applicants from the U.S. territories are exempt from the matching requirement.

*3. DUNS Number*

All grant applicants must obtain a D–U–N–S number from Dun and Bradstreet. It is a nine-digit identification number, which provides unique identifiers of single business entities. The D–U–N–S number is free and easy to obtain from *http://www.dnb.com/US/duns_update/.*

*4. Intergovernmental Review*

Executive Order 12372, Intergovernmental Review of Federal Programs, is not applicable to these grant applications.

## III. Application and Submission Information

*1. Address To Request Application Package*

Application kits are available by writing to the U.S. Department of Health and Human Services, Administration on Aging, Attn.: Doris Summey, Office of Consumer Choice and Protection, Washington, DC 20201, by calling 202/357–3533, or on-line at *http://www.grants.gov.*

*Address for Application Submission*

Applications may be mailed to the U.S. Department of Health and Human Services, Administration on Aging, Office of Grants Management, Washington, DC 20201, attn: Margaret Tolson (HHS–2005–AoA–Initial–SM).

Applications may be delivered (in person, via messenger) to the U.S. Department of Health and Human Services, Administration on Aging, Office of Grants Management, One Massachusetts Avenue, NW., Room

4604, Washington, DC 20001, attn: Margaret Tolson (HHS–2005–AoA–Initial–SM).

If you elect to mail or hand deliver your application you must submit one original and two copies of the application; an acknowledgement card will be mailed to applicants. Instructions for electronic mailing of grant applications are available at *http://www.grants.gov/.*

*2. Submission Dates and Times*

To receive consideration, applications must be received by the deadline listed in the **DATES** section of this Notice.

**IV. Responsiveness Criteria**

Each application submitted will be screened to determine whether it was received by the closing date and time.

Applications received by the closing date and time will be screened for completeness and conformity with the requirements outlined in Sections II and III of this Notice and the Program Announcement. Only complete applications that meet these requirements will be reviewed and evaluated competitively.

**V. Application Review Information**

Eligible applications in response to this announcement will be reviewed according to the following evaluation criteria: Purpose and Need for Assistance (20 points); Approach, Work Plan and Activities (30 points); Project Outcomes, Evaluation and Dissemination (30 points); and Level of Effort (20 points).

**VI. Agency Contacts**

Direct inquiries regarding programmatic issues to U.S. Department of Health and Human Services, Administration on Aging, Attn.: Doris Summey, Office of Consumer Choice and Protection, Washington, DC 20201, telephone: (202) 357–3533.

Dated: March 21, 2005.

**Josefina G. Carbonell,**

*Assistant Secretary for Aging.*

[FR Doc. 05–5808 Filed 3–23–05; 8:45 am]

BILLING CODE 4154–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–05–0445)**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–371–5983 or send comments to Seleda M. Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

**Proposed Project**

School Health Policies and Programs Study 2006—OMB No. 0920–0445—Reinstatement With Changes—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention, (CDC).

*Background and Brief Description*

CDC intends to continue to conduct the School Health Policies and Programs Study (SHPPS) in 2006. SHPPS is a national study of school health policies and programs at the state, district, school, and course levels. Much of the information collected will expand upon data gathered from the SHPPS 1994 (OMB No. 0920–0340, expiration date 1/31/95) and 2000 (OMB No. 0920–0445, expiration date 10/31/2002). SHPPS 2006 will assess the characteristics of eight components of school health programs at the elementary, middle/junior, and senior high school levels: Health education, physical education, health services, mental health and social services, food service, school policy and environment, faculty and staff health promotion, and family and community involvement. SHPPS 2006 data will be used to provide measures for 16 Healthy People 2010 national health objectives. No other national source of data exists for these objectives. The data will also have significant implications for policy and program development for school health programs nationwide.

There are no direct costs to the respondents except for their time to participate in the survey.

ESTIMATE OF ANNUALIZED BURDEN TABLE

| Respondents | Number of respondents | Number responses per respondent | Average burden per response (in hrs.) | Total burden hours |
|---|---|---|---|---|
| State Officials (Health Education) | 51 | 1 | 50/60 | 43 |
| State Officials (Physical Education) | 51 | 1 | 1 | 51 |
| State Officials (Health Services) | 51 | 1 | 1 | 51 |
| State Officials (Food Service) | 51 | 1 | 30/60 | 26 |
| State Officials (School Policy and Environment) | 51 | 1 | 45/60 | 38 |
| State Officials (Mental Health and Social Services) | 51 | 1 | 25/60 | 21 |
| State Officials (Faculty and Staff Health Promotion) | 51 | 1 | 20/60 | 17 |
| State Officials (Assist with identifying state-level respondents and with recruiting districts and schools) | 51 | 1 | 1 | 51 |
| District Officials (Health Education) | 652 | 1 | 50/60 | 543 |
| District Officials (Physical Education) | 652 | 1 | 1 | 652 |
| District Officials (Health Services) | 652 | 1 | 1.2 | 782 |
| District Officials (Food Service) | 652 | 1 | 1 | 652 |
| District Officials (School Policy and Environment) | 652 | 1 | 1.5 | 978 |

ESTIMATE OF ANNUALIZED BURDEN TABLE—Continued

| Respondents | Number of respondents | Number responses per respondent | Average burden per response (in hrs.) | Total burden hours |
|---|---|---|---|---|
| District Officials (Mental Health and Social Services) | 652 | 1 | 35/60 | 380 |
| District Officials (Faculty and Staff Health Promotion) | 652 | 1 | 25/60 | 272 |
| District Officials (Assist with identifying district-level respondents and with recruiting schools) | 652 | | 1 | 652 |
| Principals, secretaries, or designees (Assist with identifying and scheduling school-level respondents) | 1,120 | 1 | 1 | 1120 |
| Health education lead teachers, principals, or designees (Health Education) | 1,120 | 1 | 50/60 | 933 |
| Physical education lead teachers, principals, or designees (Physical Education) | 1,120 | 1 | 1.9 | 2128 |
| School nurses, principals, or designees (Health Services) | 1,120 | 1 | 1.4 | 1,568 |
| Food service managers, principals, or designees (Food Service) | 1,120 | 1 | 1.2 | 1,344 |
| Principals or designee (School Policy and Environment) | 1,120 | 1 | 2.5 | 2,800 |
| Counselors, principals, or designees (Mental Health and Social Services) | 1,120 | 1 | 50/60 | 933 |
| Principals or designees (Faculty and Staff Health Promotion) | 1,120 | 1 | 30/60 | 560 |
| Health education teachers (Classroom Health Education) | 2,480 | 1 | 1.7 | 4,216 |
| Physical education teachers (Classroom Physical Education) | 2,022 | 1 | 1 | 2,022 |
| | 19,086 | | | 22,833 |

Dated: March 18, 2005.

**Betsey Dunaway,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. 05–5797 Filed 3–23–05; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Child Care Bureau Research Scholars

*Announcement Type:* Initial.

*Funding Opportunity Number:* HHS–2005–ACF–ACYF–YE–0010.

*CFDA Number:* 93.647.

*Dates: Due Date for Notice of Intent or Preapplications:* Notice of Intent is due April 25, 2005.

*Due Date for Applications:* Application is due May 23, 2005.

*Executive Summary:* The Administration for Children and Families' (ACF), Administration on Children, Youth and Families' (ACYF), Child Care Bureau (CCB) announces the availability of funds to support new CCB Research Scholar projects in Fiscal Year 2005. The Research Scholar Grants are designed to increase the number of graduate students conducting dissertation research on child care issues that are consistent with the Bureau's research agenda.

**I. Funding Opportunity Description**

The Administration for Children and Families' (ACF), Administration on Children Youth and Families' (ACYF), Child Care Bureau (CCB) announces the availability of funds to support new CCB Research Scholar projects in Fiscal Year 2005. The Research Scholar grants are designed to increase the number of graduate students conducting dissertation research on child care issues that are consistent with the Bureau's research agenda.

*Priority Area 1*

1. Description

*A. Child Care Bureau.* Since its establishment in 1995, the CCB has been dedicated to enhancing the quality, affordability, and supply of child care available for all families. CCB administers the Child Care and Development Fund (CCDF), a $4.8 billion child care program that includes funding for child care subsidies and activities to improve child care quality and availability. The CCDF was created after amendments to ACF child care programs by Title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 consolidated four Federal child care funding streams, including the Child Care and Development Block Grant, AFDC/JOBS Child Care, Transitional Child Care, and At-Risk Child Care. The entitlement portion consisted of mandatory and matching funds made available under section 418 of the Social Security Act, while the discretionary funding was authorized by the Child Care and Development Block Grant Act. The combined funding from these streams was designated the CCDF. With related State and Federal funding, CCDF provides more than $11 billion a year to States, Territories, and Tribes to help low-income, working families access child care.

The Bureau works closely with States, Territories, Tribes, and ACF regions to facilitate, oversee, and document the implementation of new policies and programs that support State, local, and private sector administration of child care services and systems. In addition, the Bureau collaborates extensively with other offices throughout the Federal government to promote integrated approaches, family-focused services, and coordinated child care delivery systems. In all of these activities, the Bureau strives to support children's healthy growth and development in safe child care environments, promote children's early learning and school readiness, enhance parental choice and involvement in their children's care, and facilitate the linkage of child care with other community services.

*B. Child Care Bureau's Research Agenda.* Since 2000, Congress has appropriated about $10 million per year of CCDF discretionary funds to be used for child care research and evaluation, and the CCB has used these funds to develop its research agenda. The Bureau's FY 2005 child care research agenda will continue ongoing projects and launch new research initiatives. CCB's research agenda supports activities that will generate knowledge about child care services and programs and inform policy decisions and solutions. We intend to improve our capacity to respond to questions of immediate concern to policy makers, strengthen the child care research infrastructure, and increase knowledge about the efficacy of child care policies and programs in providing positive learning and school readiness outcomes

for children and employment and self-sufficiency outcomes for parents.

The CCB's capacity to further child care related research and data is enhanced by the Child Care Policy Consortium, which is an alliance of research projects sponsored by CCB. The consortium is comprised of researchers who have partnered with policy organizations, States, and local communities to link research, policy, and practice. The research projects of consortium members cover a wide array of topics. For example, some projects describe State and local child care populations, services, and programs, while others focus on child care subsidy policies and market dynamics. In addition, some projects examine issues surrounding professional development and training approaches for child care providers.

In order to synthesize the broad array of child care information generated, CCB created the Child Care and Early Education Research Connections (Research Connections) to serve as a national research knowledge management system for the child care and early education fields. Research Connections consists of an interactive Web site, an archive of data sets and reports, and a technical assistance support system to assist researchers and facilitate collaboration.

*C. Purpose and Goals of the CCB Research Scholar Program.* The purpose of this grant program is to help develop a national infrastructure for high quality child care research by increasing the number of upcoming researchers investigating child care issues that are consistent with the Bureau's research agenda.

The goals of this program area are as follows:

1. *To foster formal mentoring relationships between faculty members and graduate students who are pursuing research in the child care field.* Each student will work in partnership with a faculty mentor in order to foster the skills necessary to build a graduate student's career trajectory. Within this nurturing and supportive mentoring relationship, scholars are empowered to become autonomous researchers with the skills necessary to address critical child care issues with a high level of technical quality. The faculty mentor will be listed as the Principal Investigator of the grant and will ensure that all requirements are met and that a high quality dissertation is completed.

2. *To support students' graduate training and professional development as researchers engaged in policy-relevant research.* Students are expected to become autonomous researchers who are connected to other professionals from diverse backgrounds across a variety of child care roles. Research projects may include independent studies conducted by the student or a well-defined portion of a larger study being conducted by the Principal Investigator holding a faculty position or senior research position and for which the graduate student will have primary responsibility. Research projects must use sound quantitative or qualitative research methodologies or some combination of the two. *The student must be the author of the grant proposal.*

3. *To encourage active communication, networking, and collaboration among graduate students, their mentors, other prominent child care researchers, and policy makers.* Students whose projects involve community-level or administrative-level research are encouraged to work with an additional mentor from the field in order to gain a more comprehensive understanding of child care policies and practices. Students whose work involves secondary analysis of large data sets are encouraged to work closely with one or more senior investigators on the original project. In order to facilitate students' networking with policy makers, students are required to participate in CCB's Annual Meeting of the Child Care Policy Research Consortium and the State Administrators' Meeting.

## II. Award Information

*Funding Instrument Type:* Grant.

*Anticipated Total Priority Area Funding Per Budget Period:* $120,000 per budget period.

*Anticipated Number of Awards:* 4.

*Average Projected Award Amount Per Budget Period:* $30,000 per budget period.

*Ceiling on Individual Awards Per Budget Period:* $30,000 per budget period.

*Floor on amount of individual awards:* None.

*Length of Project Periods:* 24-month project with two 12-month budget periods.

*Other*

*Explanation of other:* This announcement is inviting applications for project periods of up to 24 months with two 12-month budget periods. Pending the availability of funds and receipt of satisfactory applications, grants will be awarded for up to $30,000 for the first 12-month budget period and up to $20,000 for the second 12-month budget period, for a total not exceeding $50,000 for the entire 24-month project period. The need for a 24-month project period should be identified in the current application (on SF–424A) and in the project narrative and budget. If the student expects to receive a doctorate by the end of the first 12-month budget period, the application should request funding for only a 12-month project period. A subsequent year award for continuation of the project will not be approved if the student has completed his/her dissertation by the end of the first budget period.

An application that exceeds the upper value of the dollar range specified will be considered non-responsive and will not be eligible for funding under this announcement.

## III. Eligibility Information

*1. Eligible Applicants*

State controlled institutions of higher education; Native American tribal governments (federally recognized); Nonprofits having a 501(c)(3) status with the IRS, other than institutions of higher education; Private institutions of higher education.

You must have a Data Universal Numbering System (DUNS) to be considered eligible.

Private, non-profit organizations are encouraged to submit with their applications the optional survey located under ''Grant Manuals & Forms'' at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Additional Information on Eligibility: *Institutions of Higher Education.* Eligible institutions must be fully accredited by one of the regional accrediting commissions recognized by the Department of Education and the Council of Post-Secondary Accreditation. No individual educational institution will be funded for more than one candidate unless applications from different universities or colleges do not qualify for support.

Faith-based institutions are eligible applicants. In addition, Tribally Controlled Land Grant Colleges and Universities (TCUs) and Historically Black Colleges and Universities (HBCUs) are encouraged to apply. TCUs are those institutions cited in section 532 of the Equity in Educational Land Grant Status Act of 1994 (7 U.S.C. 301 note), any other institutions that qualify for funding under the Tribally Controlled Community College Assistance Act of 1978, (25 U.S.C. 1801 *et seq.*), and Navajo Community College, authorized in the Navajo Community College Assistance Act of 1978, Public Law 95–471, title II (25 U.S.C. 640a note). Those TCUs that are not

accredited are not eligible to apply under this announcement.

HBCUs are defined in the amended version of the Higher Education Act of 1965, codified at 20 U.S.C. 1061(2), and are institutions established prior to 1964 whose principal mission was, and is, the education of Black Americans, and must satisfy Section 322 of the Higher Education Act of 1965, as amended. Institutions which meet the definition of ''Part B institution'' in Section 322 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1061(2), shall be eligible for assistance under this announcement.

Eligible applicants are institutions of higher education acting on behalf of graduate students who are pursuing a doctorate and who are completing a dissertation on child care issues. As the author of the grant proposal, the student is expected to have an approved dissertation proposal before the beginning of the grant period, September 30, 2005. All monies must be used for the student's dissertation research, including required personnel costs, travel, and other expenses directly related to the research.

Please see Section IV.2 for required documentation supporting eligibility or funding restrictions if any are applicable.

*2. Cost Sharing/Matching*

None.

*3. Other Eligibility Information*

1. Contact information for both the graduate student and the student's faculty mentor is required and should be included in the Appendix. The student must be the author of the grant proposal.

2. The application must include a letter from the faculty mentor stating that he/she approves the application and describing how he/she will regularly monitor the student's work. In addition, the letter must verify (a) the student's status in the doctoral program, (b) that the grant will be used to fund the student's dissertation research, and (c) that the student is within two years or less of completing his/her dissertation. This letter should be included in the Appendix.

3. In the Appendix the student must include an official transcript reflecting his/her completed graduate course work.

4. Because of the small size of these grants and their value to institutions of higher education as well as to the student scholars, applicants are strongly encouraged to waive any allowable indirect costs.

All applicants must have a Dun & Bradstreet number. On June 27, 2003 the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires all Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*http://www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

Non-profit organizations applying for funding are required to submit proof of their non-profit status. Proof of non-profit status is any one of the following:

- A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code.
- A copy of a currently valid IRS tax exemption certificate.
- A statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals.
- A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.
- Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

When applying electronically we strongly suggest you attach your proof of non-profit status with your electronic application.

Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Non-Profit Grant Applicants'' at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Disqualification Factors

Applications that exceed the ceiling amount will be considered non-responsive and will not be eligible for funding under this announcement.

Any application received after 4:30 p.m., eastern time, on the deadline will not be considered for competition.

## IV. Application and Submission Information

*1. Address To Request Application Package*

ACYF Operations Center, c/o The Dixon Group, Attn: Child Care Bureau Research Scholars Funding, 118 Q Street, NE., Washington, DC 20002–2132. Phone: 866–796–1591; e-mail: ccb@dixongroup.com; URL: *http://www.acf.hhs.gov/grants/open/HHS–2005–ACF–ACYF–YE–0010.html.*

*2. Content and Form of Application Submission*

*Notice of Intent to Submit Application:* If you intend to submit an application, please e-mail the ACYF Operations Center (*ccb@dixongroup.com*) and include the following information: The number and title of this announcement, your organization's name and address, and your contact person's name, title, phone number, fax number, and e-mail address. This notice is not required, but is strongly encouraged. The information will be used to determine the number of expert reviewers needed to evaluate applications and to update the mailing list for future program announcements.

*Format and Organization.* An original and two copies of your application must be submitted. Applicants must limit their application to 100 pages, double-spaced, with standard one-inch margins and 12-point fonts. This page limit applies to both narrative text and supporting materials. In addition, applicants must number the pages of their application and include a table of contents.

Applicants should include all required forms and materials and organize these materials according to the format presented below:

a. Letter of Intent to Submit Application (30 days prior to application due date).
b. Cover Letter.
c. Required Standard Forms and Certifications.
d. Table of Contents.
e. Project Abstract.
f. Project Description.
g. Budget Narrative/Justification.

h. Appendix.

Complete Contact Information for Student and Faculty Advisor;

Curriculum Vitae for Student and Faculty Advisor;

Letter of Support from Advisor;

Official Transcript of Student Reflecting Graduate Courses.

You may submit your application in either electronic or paper format. To submit an application electronically, please use the *http://www.Grants.gov* apply site. If you use Grants.gov, you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to us.

Please note the following if you plan to submit your application electronically via Grants.gov:

• Electronic submission is voluntary, but strongly recommended.

• When you enter the Grants.Gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.Gov.

• We recommend you visit Grants.gov at least 30 days prior to filing your application to fully understand the process and requirements. We encourage applicants who submit electronically to submit well before the closing date and time so that if difficulties are encountered an applicant can still send in a hard copy overnight. If you encounter difficulties, please contact the Grants.gov Help Desk at 1–800–518–4276 to report the problem and obtain assistance with the system.

• To use Grants.gov, the applicant must have a DUNS number and register in the Central Contractor Registry (CCR). Applicants should allow a minimum of five days to complete the CCR registration.

• Applicants will not receive additional point value for submitting a grant application in electronic format, nor be penalized for submitting an application in paper format.

• Applicants may submit all documents electronically, including all information typically included on the SF–424 and all necessary assurances and certifications.

• Applications must comply with any page limitation requirements described in this program announcement.

• After submitting the electronic application, applicants will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. ACF will retrieve the application from Grants.gov.

• ACF may request that you provide original signatures on forms at a later date.

• The electronic application for this program can be accessed on *http://www.Grants.gov.*

• Search for the downloadable application package by the CFDA number.

An original and two copies of the complete application are required. The original and each of the two copies must include all required forms, certifications, assurances, and appendices, be signed by an authorized representative, have original signatures, and be submitted unbound.

Private non-profit organizations may voluntarily submit with their applications the survey located under ''Grant Related Documents and Forms,'' ''Survey for Private, Non-Profit Grant Applicants,'' titled, ''Survey on Ensuring Equal Opportunity for Applicants,'' at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Standard Forms and Certifications

The project description should include all the information requirements described in the specific evaluation criteria outlined in the program announcement under Section V Application Review Information. In addition to the project description, the applicant needs to complete all the standard forms required for making applications for awards under this announcement.

Applicants seeking financial assistance under this announcement must file the Standard Form (SF) 424, Application for Federal Assistance; SF–424A, Budget Information—Non-Construction Programs; SF–424B, Assurances—Non-Construction Programs. The forms may be reproduced for use in submitting applications. Applicants must sign and return the standard forms with their application.

Applicants must furnish prior to award an executed copy of the Standard Form LLL, Certification Regarding Lobbying, when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form, if applicable, with their applications (approved by the Office of Management and Budget under control number 0348–0046). Applicants must sign and return the certification with their application.

Applicants must also understand they will be held accountable for the smoking prohibition included within Public Law 103–227, Title XII Environmental Tobacco Smoke (also known as the PRO–KIDS Act of 1994). A copy of the **Federal Register** notice which implements the smoking prohibition is included with forms. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification of their compliance with all Federal statutes relating to nondiscrimination. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification form. Complete the standard forms and the associated certifications and assurances based on the instructions on the forms. The forms and certifications may be found at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Please see Section V.1. Criteria, for instructions on preparing the project summary/abstract and the full project description.

*3. Submission Dates and Times*

*Dates:* Notices of Intent are due April 25, 2005.

*Due Date:* Application is due May 23, 2005.

*Explanation of Due Dates:* The closing time and date for receipt of applications is referenced above. Mailed or hand carried applications received after 4:30 p.m. eastern time on the closing date will be classified as late.

*Deadline:* Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date referenced in Section IV.6. Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., eastern time, at the address referenced in Section IV.6., between Monday and Friday (excluding Federal holidays).

ACF cannot accommodate transmission of applications by fax. Therefore, applications transmitted to ACF by fax will not be accepted regardless of date or time of submission and time of receipt.

*Late applications:* Applications which do not meet the criteria above are

considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Any application received after 4:30 pm eastern time on the deadline date will not be considered for competition.

Receipt acknowledgement for application packages will not be provided to applicants who submit their package via mail, courier services, or by hand delivery. However, applicants will receive an electronic acknowledgement for applications that are submitted via *Grants.gov.*

Applicants using express/overnight mail services should allow two (2) working days prior to the deadline date for receipt of applications. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed).

*Extension of deadlines:* ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service, or in other rare cases. A determination to extend or waive deadline requirements rests with the Chief Grants Management Officer.

CHECKLIST

| What to submit | Required content | Required form or format | When to submit |
|---|---|---|---|
| Notice of Intent to Submit Application. | See Section IV.2 | Found in Section IV.2 | 30 days prior to application due date. |
| Project Abstract | See Sections IV.2 and V. | Found in Sections IV.2 and V | By application due date. |
| Project Description | See Sections IV.2 and V. | Found in Sections IV.2 and V | By application due date. |
| Budget Narrative/Justification | See Sections IV.2 and V. | Found in Sections IV.2 and V | By application due date. |
| Table of Contents | See Section IV.2 | Found in Sections IV.2 | By application due date. |
| Complete Contact Information for Student and Faculty Advisor. | See Section IV.2 | Found in Section III.3 and IV.2 | By application due date. |
| Curriculum Vitae for Student and Faculty Advisor. | See Section IV.2 | Found in Section IV.2 | By application due date. |
| Letter of Support from Advisor | See Section IV.2 | Found in Section III.3 and IV.2 | By application due date. |
| Official Student Transcript Reflecting Graduate Courses. | See Section IV.2 | Found in Section III.3 and IV.2 | By application due date. |
| SF424 | See Section IV.2 | See *http://www.acf.hhs.gov/programs/ofs/forms.htm.* | By application due date. |
| SF–LLL Certification Regarding Lobbying. | See Section IV.2 | See *http://www.acf.hhs.gov/programs/ofs/forms.htm.* | By date of award. |
| Certification Regarding Environmental Tobacco Smoke. | See Section IV.2 | See *http://www.acf.hhs.gov/programs/ofs/forms.htm.* | By date of award. |
| Assurances | See Section IV.2 | | By date of award. |

*Additional Forms*

Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Non-Profit Grant Applicants'' at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

| What to submit | Required content | Required form or format | When to submit |
|---|---|---|---|
| Survey for Private, Non-Profit Grant Applicants. | Per required form | May be found on *http://www.acf.hhs.gov/programs/ofs/form.htm.* | By application due date. |

*4. Intergovernmental Review*

State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

The following jurisdictions have elected not to participate in the Executive Order (E.O.) process. Applicants from these jurisdictions or for projects administered by federally-recognized Indian Tribes need to take no action in regard to E.O. 12372:

All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Indiana, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, Wyoming, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-four jurisdictions need take no action in regard to E.O. 12372. Applicants for projects to be administered by federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Although the jurisdictions listed above no longer participate in the process, entities which have met the

eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447.

A list of SPOCs for each State and Territory is included with the application materials for this announcement.

*5. Funding Restrictions*

*Pre-award Costs:* Grant awards will not allow reimbursement of pre-award costs.

*Transferability:* Grants awarded as a result of this competition are not transferable to another student or to another institution. Awards cannot be divided among two or more students.

*Concurrent Awards:* A CCB research scholar grant may not be held concurrently with another Federally-funded dissertation grant or fellowship.

*6. Other Submission Requirements*

*Submission by Mail:* An applicant must provide an original application with all attachments, signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. eastern time on or before the closing date. Applications should be mailed to: ACYF Operations Center, c/o The Dixon Group, Attn: Child Care Research Scholars Funding, 118 Q Street, NE., Washington, DC 20002–2132.

*Hand Delivery:* An applicant must provide an original application with all attachments signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m., eastern time, on or before the closing date. Applications that are hand delivered will be accepted between the hours of 8 a.m. to 4:30 p.m., eastern time, Monday through Friday. Applications may be delivered to: ACYF Operations Center, c/o The Dixon Group, Attn: Child Care Research Scholars Funding, 118 Q Street, NE., Washington, DC 20002–2132.

*Electronic Submission: http://www.grants.gov* Please see Section IV. 2 for guidelines and requirements when submitting applications electronically.

## V. Application Review Information

### The Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average 15 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information. This program announcement fully complies with the Paperwork Reduction Act through the use of the Uniform Project Description.

The project description is approved under OMB control number 0970–0139 which expires April 30, 2007. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

*1. Criteria*

The following are instructions and guidelines on how to prepare the ''project summary/abstract'' and ''Full Project Description'' sections of the application. Under the evaluation criteria section, note that each criterion is preceded by the generic evaluation requirement under the ACF Uniform Project Description (UPD).

Part 1—The Project Description Overview

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, information responsive to each of the requested evaluation criteria must be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application in a manner that is clear and complete.

General Instructions

ACF is particularly interested in specific project descriptions that focus on outcomes and convey strategies for achieving intended performance. Project descriptions are evaluated on the basis of substance and measurable outcomes, not length. Extensive exhibits are not required. Cross-referencing should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix. Pages should be numbered and a table of contents should be included for easy reference.

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions while being aware of the specified evaluation criteria. The text options give a broad overview of what your project description should include while the evaluation criteria identifies the measures that will be used to evaluate applications.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate

demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Approach

Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any ''collection of information that is conducted or sponsored by ACF.''

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Additional Information

Following are requests for additional information that need to be included in the application:

Staff and Position Data

Provide a biographical sketch and job description for each key person appointed. Job descriptions for each vacant key position should be included as well. As new key staff is appointed, biographical sketches will also be required.

Budget and Budget Justification

Provide a budget with line-item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. Also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

Personnel

*Description:* Costs of employee salaries and wages.

*Justification:* Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

*Description:* Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

*Justification:* Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

*Description:* Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

*Justification:* For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment

*Description:* ''Equipment'' means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (Note: Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

*Justification:* For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

*Description:* Costs of all tangible personal property other than that included under the Equipment category.

*Justification:* Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

*Justification:* Provide computations, a narrative description and a justification for each cost under this category.

Indirect Charges

*Description:* Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

*Justification:* An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, upon notification that an award will be made, it should immediately develop a tentative indirect cost rate proposal based on its most recently completed fiscal year, in accordance with the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. When an indirect cost rate is requested, those costs included in the indirect cost pool

should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

*Evaluation Criteria:* The following evaluation criteria appear in weighted descending order. The corresponding score values indicate the relative importance that ACF places on each evaluation criterion; however, applicants need not develop their applications precisely according to the order presented. Application components may be organized such that a reviewer will be able to follow a seamless and logical flow of information (*i.e.,* from a broad overview of the project to more detailed information about how it will be conducted).

In considering how applicants will carry out the responsibilities addressed under this announcement, competing applications for financial assistance will be reviewed and evaluated against the following criteria:

Objectives and Need for Assistance (35 Points)

The extent to which the proposal reflects a solid understanding of (a) critical issues, information needs, and research issues of the child care field, (b) the child care subsidy system and TANF, and (c) low-income working families from various cultural, language, and ethnic groups.

The extent to which the conceptual model, objectives and hypotheses are (a) well formulated and appropriately linked, (b) reflect the Bureau's research agenda and goals, and (c) will contribute new knowledge to the field.

The effectiveness with which the proposal articulates the current state of knowledge on (a) the interplay among child care and other early care and education programs, (b) child care and children's development and well-being, or (c) child care and family self-sufficiency.

Approach (35 Points)

The extent to which the proposed research design (a) appropriately links research issues, questions, variables, data sources, samples, and analyses (b) employs technically sound and appropriate approaches, design elements and procedures, and sampling techniques.

The extent to which the proposed design (a) reflects sensitivity to technical, logistical, and ethical issues that may arise (b) includes realistic strategies for the resolution of difficulties, (c) demonstrates how the researcher will gain access to the necessary organizations, participants, and data sources needed for the project.

The extent to which the researchers assure (a) adequate protection of human subjects, confidentiality of data, and consent procedures, as appropriate; and (b) include a sound description of the anticipated results and benefits of the project.

The extent to which the research design (a) specifies the measures to be used and their psychometric properties, (b) describes how these measures have been used to address the proposed research questions, and (c) describes how these measures have been used with the low-income, diverse population to be studied.

Staff and Position (Data 20 Points)

The extent to which the student and his/her mentor (a) demonstrate competence in the areas addressed by the proposed research, including relevant background, experience, and training on related research or similar projects, (b) demonstrate expertise in research design, sampling, field work, data processing, statistical analysis, (c) reflect an understanding of the child care subsidy system and the child care needs of low-income families and the complexities of conducting research within that system and the diverse cultural, language, and ethnic population it serves, and (d) include an effective plan for the dissemination and utilization of information by researchers, policy-makers, and practitioners in the field.

The extent to which the application includes a management plan that presents a sound framework for how the mentor and student will maintain quality control over the implementation and ongoing operations for the study.

Budget and Budget Justification (10 Points)

The extent to which the proposed project costs (a) are reasonable, appropriately allocated, and sufficient to accomplish the objectives, research design, and dissemination plan, (b) include funds for the student, and his/her mentor if applicable, to participate in the CCB's Annual Meeting of the Child Care Policy Research Consortium and the State Administrators' Meeting in Washington, DC (c) are justified according to the needs and time frame for carrying out the proposed project, and (d) includes funds for activities, such as conference attendance, publications, invited lectures, etc.

*2. Review and Selection Process*

No grant award will be made under this announcement on the basis of an incomplete application.

*Application Process:* This announcement includes all of the information needed to apply for funding. Detailed instructions for preparing and submitting applications are described. Applicants must follow the prescribed content and format in preparing their applications (see Section IV.2). Applications will be evaluated according to the Evaluation Criteria and the Uniform Project Description (see Section V.1).

*Application, Review, Selection, and Award:* Each application will be screened to determine whether the applicant institution is eligible.

The review will be conducted in Washington, DC. Expert reviewers may include researchers, Federal or State staff, child care administrators, or other individuals experienced in child care research and evaluation. A panel of at least three reviewers will evaluate each application to determine the strengths and weaknesses of the proposal in terms of the Bureau's research goals and expectations, its fit with the bureau's research agenda, and the evaluation criteria.

Panelists will provide written comments and assign numerical scores for each application. The assigned scores for each criterion will be summed to yield a total evaluation score for the proposal. In addition to the panel review, CCB may solicit comments from other Federal offices and agencies, States, non-governmental organizations, and individuals whose particular expertise is identified as necessary for the consideration of technical issues arising during the review. The Bureau will consider their comments, along with those of the panelists, when making funding decisions. The Bureau will also take into account the best combination of proposed projects to meet its overall research goals.

The ACYF Commissioner will make the final selection of the applicants to be funded. Applications may be funded in whole or in part depending on: (1) Rank order of applicants resulting from the competitive review, (2) staff review and consultations, (3) the combination of projects that best meet the Bureau's research objectives, (4) the funds available; and (5) other relevant considerations.

Since ACF will be using non-Federal reviewers in the process, applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for

individuals specified in the application budget and Social Security Numbers, if otherwise required for individuals. The copies may include summary salary information.

Approved But Unfunded Applications

In cases where more applications are approved for funding than ACF can fund with the money available, the Grants Officer shall fund applications in their order of approval until funds run out. In this case, ACF has the option of carrying over the approved applications up to a year for funding consideration in a later competition of the same program. These applications need not be reviewed and scored again if the program's evaluation criteria have not changed. However, they must then be placed in rank order along with other applications in later competition.

**VI. Award Administration Information**

*1. Award Notices*

The successful applicants will be notified through the issuance of a Financial Assistance Award document which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided, and the total project period for which support is contemplated. The Financial Assistance Award will be signed by the Grants Officer and transmitted via postal mail.

Organizations whose applications will not be funded will be notified in writing.

*2. Administrative and National Policy Requirements*

Grantees are subject to the requirements in 45 CFR part 74 (non-governmental) or 45 CFR part 92 (governmental).

Direct Federal grants, subaward funds, or contracts under this Child Care Research Scholars Program shall not be used to support inherently religious activities such as religious instruction, worship, or proselytization. Therefore, organizations must take steps to separate, in time or location, their inherently religious activities from the services funded under this Program. Regulations pertaining to the prohibition of Federal funds for inherently religious activities can be found on the HHS Web site at *http://www.os.dhhs.gov/fbci/waisgate21.pdf.*

*Special Terms and Conditions of Awards:* The following special term(s) and condition(s) are in addition to the ACF standard terms and conditions which accompany the Financial Assistance Award (FAA) document.

*Conference Attendance.* The student must attend and present a poster at the Annual Meeting of the Child Care Policy Research Consortium and pre-conference each year of the grant. This conference is typically scheduled during the spring of each year. In addition, the student must attend and present at the State Administrators' Meeting typically held in the summer of each year. The budget should reflect travel funds for both conferences. Faculty advisors are strongly encouraged to attend these conferences as well.

*Archiving and Publishing.* The student must agree to archive his/her approved dissertation document with Research Connections. The student must also work with CCB staff and Research Connections staff to publish a research/policy brief that can be published on the Research Connections Web site.

*3. Reporting Requirements*

*Program Progress Reports:* Semi-annual.

*Financial Reports:* Semi-annual.

Grantees will be required to submit program progress and financial reports (SF 269) throughout the project period. Program progress and financial reports are due 30 days after the reporting period. In addition, final programmatic and financial reports are due 90 days after the close of the project period. The SF–269 may be found at the following URL: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

**VII. Agency Contacts**

*Program Office Contact:* Dr. Dawn Ramsburg, Administration for Children and Families, Child Care Bureau, 330 C Street, SW., Switzer Building, Room 2046, Washington, DC 20447. Phone: 202–690–6705; Fax: 202–690–5600; e-mail: *dramsburg@acf.hhs.gov.*

*Grants Management Office Contact:* Peter Thompson, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, Mary E. Switzer Building, Room 2070, 330 C Street, SW., Washington, DC 20447. Phone: 202–401–4608; Fax: 202–401–5644; e-mail: *PAThompson@acf.hhs.gov.*

**VIII. Other Information**

Applicants will not be sent acknowledgements of received applications.

**Notice:** Beginning with FY 2006, the Administration for Children and Families will no longer publish grant announcements in the **Federal Register**. Beginning October 1, 2005, applicants will be able to find a synopsis of all ACF grant opportunities and apply electronically for opportunities via: *http://www.Grants.gov.* Applicants will also be able to find the complete text of all ACF grant announcements on the ACF Web site located at: *http://www.acf.hhs.gov/grants/index.html.*

Dated: March 14, 2005.

**Joan E. Ohl,**

*Commissioner, Administration on Children, Youth and Families.*

[FR Doc. 05–5554 Filed 3–23–05; 8:45 am]

BILLING CODE 4184–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2001N–0541]**

### Eduardo Caro Acevedo; Debarment Order

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) debarring Dr. Eduardo Caro Acevedo for 5 years from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Dr. Caro was convicted of a felony under Federal law for engaging in a conspiracy to defraud the United States and has demonstrated a pattern of conduct sufficient to find that there is reason to believe that he may violate requirements under the act relating to drug products. Dr. Caro failed to request a hearing and, therefore, has waived his opportunity for a hearing concerning this action.

**DATES:** This order is effective March 24, 2005.

**ADDRESSES:** Submit applications for termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Sadove, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On February 16, 2001, the U.S. District Court for the District of Puerto Rico accepted Dr. Eduardo Caro Acevedo's plea of guilty to one count of conspiracy to offer and pay kickbacks in

relation to the referral of Medicare beneficiaries to a durable medical equipment company, in violation of the Medicare antikickback law (42 U.S.C. 1320a–7b), and in violation of 18 U.S.C. 371. The court sentenced Dr. Caro to 2 years probation for the offense (*United States* v. *Eduardo Caro*, Docket No. 00CR020–05 (SEC) (D.P.R. July 13, 2001)).

At the time of Dr. Caro's criminal actions, he was a physician authorized to practice medicine in Puerto Rico as a Medicare provider and was authorized to prescribe, among other things, durable medical equipment to Medicare beneficiaries. The owner of a durable medical equipment company, authorized to sell to Medicare beneficiaries, offered and paid money to Dr. Caro to unlawfully induce him to refer patients to the medical equipment company. Dr. Caro received money in return for referring patients to the company for the furnishing of durable medical equipment and services payable under the Medicare program, the specific amount depending on the value of the service or equipment referred to the company. The unlawful kickback payments made to Dr. Caro allowed the company to improperly invoice Medicare for approximately $11,940.

In addition, Dr. Caro demonstrated a pattern of conduct sufficient to find reason to believe that he may violate requirements under the act relating to drug products. In July 2002, FDA issued Dr. Caro a Notice of Disqualification to Receive Investigational New Drugs. This action was based upon repeated and deliberate submissions of false information to drug sponsors in required reports for studies of investigational new drugs that are subject to section 505 of the act. In addition, Dr. Caro repeatedly and deliberately failed to comply with regulations governing the conduct of clinical investigators and the use of investigational new drugs in conducting two protocols sponsored by Daiichi Pharmaceutical Corp. Among other things, he submitted false information in required reports, deviated from protocols, maintained inaccurate and inadequate study records, failed to report adverse events, failed to properly account for the disposition of study medications, failed to obtain adequate institutional review board approval, and failed to obtain proper consent from study subjects or their legally authorized representatives. As a result, he is no longer entitled to receive investigational new drugs (Notice of Disqualification to Receive Investigational New Drugs, July 30, 2002).

As a result of Dr. Caro's conviction and pattern of conduct, FDA served him by certified mail on February 18, 2004, a notice proposing to debar him for 5 years from providing services in any capacity to a person that has an approved or pending drug product application. The proposal also offered Dr. Caro an opportunity for a hearing on the proposal. The proposal was based on a finding, under section 306(b)(2)(B)(ii) of the act (21 U.S.C. 335a(b)(2)(B)(ii)), that Dr. Caro was convicted of a felony under Federal law for engaging in a conspiracy to defraud the United States and has demonstrated a pattern of conduct sufficient to find that there is reason to believe that he may violate requirements under the act relating to drug products. Dr. Caro was provided 30 days to file objections and request a hearing. Dr. Caro did not request a hearing. His failure to request a hearing constitutes a waiver of his opportunity for a hearing and a waiver of any contentions concerning his debarment.

## II. Findings and Order

Therefore, the Director, Center for Drug Evaluation and Research, under section 306(b)(2)(B)(ii) of the act and under authority delegated to him (Staff Manual Guide 1410.035), finds that Dr. Eduardo Caro Acevedo has been convicted of a felony under Federal law for engaging in a conspiracy to defraud the United States and has demonstrated a pattern of conduct sufficient to find that there is reason to believe that he may violate requirements under the act relating to drug products.

As a result of the foregoing findings, Dr. Caro is debarred for 5 years from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 512, or 802 of the act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective March 24, 2005 (see sections 306(c)(1)(B) and (c)(2)(A)(iii) and 201(dd) of the act (21 U.S.C. 321(dd))). Any person with an approved or pending drug product application who knowingly uses the services of Dr. Caro, in any capacity, during his period of debarment, will be subject to civil money penalties (section 307(a)(6) of the act (21 U.S.C. 355b(a)(6))). If Dr. Caro, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties (section 307(a)(7) of the act). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Dr. Caro during his period of debarment.

Any application by Dr. Caro for termination of debarment under section 306(d)(4) of the act should be identified with Docket No. 2001N–0541 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 5, 2005.

**Steven K. Galson,**

*Acting Director, Center for Drug Evaluation and Research.*

[FR Doc. 05–5781 Filed 3–23–05; 8:45 am]

BILLING CODE 160–01–S

---

## 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.

**Minimally Immunogenic Germline Sequence Variants of COL–1 Antibody and Their Use**

Syed Kashmiri (NCI), Eduardo Padlan (NIDDK), and Jeffrey Schlom (NCI)

U.S. Provisional Application No. 60/562,781 filed 15 Apr 2004 (DHHS Reference No. E–105–2004/0–US–01) and U.S. Provisional Application No.

60/580,839 filed 16 Jun 2004 (DHHS Reference No. E–105–2004/1–US–01)

*Licensing Contact:* Jeffrey Walenta; 301/435–4633; *walentaj@mail.nih.gov.*

This invention relates to humanized monoclonal antibodies that bind to the tumor antigen carcinoembryonic antigen (CEA). More specifically, the present technology relates to humanized COL–1 antibodies that have minimal immunogenicity and retain antigen-binding affinity for CEA. CEA is over expressed in 95% of gastrointestinal and pancreatic tumors. Because CEA is over expressed consistently, it is anticipated that CEA would be an excellent target for an antibody-based therapeutics.

The invention also discloses a novel method for humanizing monoclonal antibodies. This humanization method encompasses grafting xenogenic Specificity Determining Regions (SDRs) onto Complementarity Determining Regions (CDR) templates derived from several different human germline sequences. The use of several different human germline sequences greatly reduces the potential for immunogenicity and greatly minimizes the number of SDRs required for equivalent or better antigen binding of the antibody.

This humanization method is applicable to development of antibodies to any immunogenic epitopes.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

**Modulating p38 Kinase Activity**

Jonathan D. Ashwell et al. (NCI)

PCT Application filed 04 Feb 2005 (DHHS Reference No. E–010–2004/2–PCT–01)

*Licensing Contact:* Marlene Shinn-Astor; 301/435–4426; *shinnm@mail.nih.gov.*

Protein kinases are involved in various cellular responses to extracellular signals. The protein kinase termed p38 is also known as cytokine suppressive anti-inflammatory drug binding protein (CSBP) and RK. It is believed that p38 has a role in mediating cellular response to inflammatory stimuli, such as leukocyte accumulation, macrophage/monocyte activation, tissue resorption, fever, acute phase responses and neutrophilia. In addition, p38 has been implicated in cancer, thrombin-induced platelet aggregation, immunodeficiency disorders, autoimmune diseases, cell death, allergies, osteoporosis and neurodegenerative disorders.

This invention includes compositions and methods for controlling the activity of p38 specifically in T cells through an alternate activation pathway. By controlling p38 activity through interference with this alternate pathway, the T cells themselves can be controlled which in turn can be a treatment for conditions or diseases characterized by T cell activation such as autoimmune diseases, transplant rejection, graft-versus-host disease, systemic lupus erythematosus, and viral infections such as HIV infections. One major benefit for this invention is the development of small molecular inhibitors of the alternative p38 activation pathway (*i.e.* Gadd45a-mimetics). The inventors have found that Gadd45a specifically inhibits the activity of p38 phosphorylated on Tyr-323. p38 activated by MKK6 (which phosphorylates Thr-180/Tyr-182) is found not to be inhibited by Gadd45a. This emphasizes the specific nature of the activating modification and its regulation by Gadd45a, including its suitability as a tissue-specific molecular target.

References: JM Salvador *et al.*, ''The autoimmune suppressor Gadd45alpha inhibits the T cell alternative p38 activation pathway,'' Nat. Immunol. advance online publication, 27 Feb 2005 (doi:10.1038/ni1176); JM Salvador *et al.*, ''Alternative p38 activation pathway medicated by T cell receptor-proximal tyrosine kinases,'' Nat. Immunol. advance online publication, 27 Feb 2005 (doi:10.1038/ni1177).

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

**Mu Opiate Receptor Knockout Mouse**

George R. Uhl (NIDA)

DHHS Reference No. E–034–2003/0—Research Material

*Licensing Contact:* Norbert Pontzer; 301/435–5502; *pontzern@mail.nih.gov.*

The researchers produced heterozygous and homozygous mu opiate receptor knockout mice that displayed 54% and 0% of wild-type levels of mu opiate receptor expression, respectively. These knockout mice were generated by injecting 15–20 homologous, recombinant ES cells into blastocysts harvested from C57BL/6J mice and by implanting the blastocysts into the uteri of pseudopregnant CD–1 mice.

Morphine acts on opiate receptors found on spinal and supraspinal neurons in the central nervous system. There are three main subtypes of these receptors, mu, kappa, delta. Morphine produces an analgesic effect by acting through these receptors, especially the mu receptor. However, the roles played by each of these receptors in pain processing in either drug-free or morphine-treated states are not clear. A mu opiate receptor knockout mouse model can be used to elucidate mechanistic and behavioral roles of this receptor subtype.

Reference: I. Sora et al., ''Opiate receptor knockout mice define mu receptor roles in endogenous mociceptive responses and morphine-induced analgesia,'' Proc. Natl. Acad. Sci. USA 18 Feb 1997 94(4):1544–1549.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

**Tryptophan as a Functional Replacement for ADP-ribose-arginine in Recombinant Proteins**

Joel Moss et al. (NHLBI)

U.S. Patent Application No. 10/517,565 filed 07 Dec 2004 (DHHS Ref. No. E–160–2002/0–US–03), claiming priority to 28 Jun 2002; Foreign rights available

*Licensing Contact:* Marlene Shinn-Astor; 301/435–4426; *shinnm@mail.nih.gov.*

Bacterial toxins such as cholera toxin and diphtheria toxin catalyze the ADP-ribosylation of important cellular target proteins in their human hosts, thereby, as in the case of cholera toxin, irreversibly activating adenylyl cyclase. In this reaction, the toxin transfers the ADP-ribose moiety of Nicotinamide Adenine Dinucleotide (NAD) to an acceptor amino acid in a protein or peptide. ADP-ribosylation leads to a peptide/protein with altered biochemical or pharmacological properties. Mammalians proteins catalyze reactions similar to the bacterial toxins. The ADP-ribosylated proteins represent useful pharmacological agents, however, their use is limited by the inherent instability of the ADP-ribose-protein linkage.

The NIH announces a new technology wherein recombinant proteins are created that substitute tryptophan for an arginine, thereby making the protein more stable, and better suited as agents for therapeutic purposes. The modification creates an effect similar to ADP-ribosylation of the arginine. An example of a protein that can be modified is the defensin molecule, which is a broad-spectrum antimicrobial that acts against infectious agents and plays an important role in the innate immune defense in vertebrates.

In addition to licensing, the technology is available for further development through collaborative

research opportunities with the inventors.

**Cannula for Pressure Mediated Drug Delivery**

Stephen Wiener, Robert Hoyt, John Deleonardis, Randal Clevenger, Robert Lutz, Brian Safer (NHLBI)

PCT Application No. PCT/US99/11277 filed 21 May 1999, which published as WO 99/59666 on 25 Nov 1999 (DHHS Reference No. E–196–1998/2–PCT–01); U.S., Australian, Japanese, and European rights pending

*Licensing Contact:* Michael Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov*.

Available for licensing are methods and devices for selective delivery of therapeutic substances to specific histologic or microanatomic areas of organs (introduction of the therapeutic substance into a hollow organ space (such as an hepatobiliary duct or the gallbladder lumen) at a controlled pressure, volume or rate allows the substance to reach a predetermined cellular layer (such as the epithelium or sub-epithelial space). The volume or flow rate of the substance can be controlled so that the intralumenal pressure reaches a predetermined threshold level beyond which subsequent subepithehal delivery of the substance occurs. Alternatively, a lower pressure is selected that does not exceed the threshold level, so that delivery occurs substantially only to the epithelial layer. Such site-specific delivery of therapeutic agents permits localized delivery of substances (for example to the interstitial tissue of an organ) in concentrations that may otherwise produce systemic toxicity. Occlusion of venous or lymphatic drainage from the organ can also help prevent systemic administration of therapeutic substances, and increases selective delivery to superficial epithelial cellular layers. Delivery of genetic vectors can also be better targeted to cells where gene expression is desired. The access device comprises a cannula with a wall piercing tracar within the lumen. Two axially spaced inflatable balloons engage the wall securing the cannula and sealing the puncture site. A catheter equipped with an occlusion balloon is guided through the cannula to the location where the therapeutic substance is to be delivered.

Dated: March 17, 2005.

**Steven M. Ferguson,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 05–5875 Filed 3–23–05; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Clinical Center; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the NIH Advisory Board for Clinical Research, March 28, 2005, 10 a.m. to March 28, 2005, 2 p.m., National Institutes of Health, Building 10, 10 Center Drive, Medical Board Room 4–2551, Bethesda, MD, 20892 which was published in the **Federal Register** on March 11, 2005, FR 70 12223.

The open session will occur from 10 a.m.–1 p.m. The closed session will begin approximately at 1 p.m. and run until 2 p.m. The meeting will be held in the Clinical Center, Bldg. 10, Rm. 4–2551, CRC Medical Board Room. The meeting is partially closed to the public.

Dated: March 17, 2005.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–5872 Filed 3–23–05; 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 Research Projects (Cooperative Agreements) (U01s).

*Date:* April 18, 2005.

*Time:* 2 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate cooperative agreement applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Keith A. Mintzer, PhD, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7186, MSC 7924, Bethesda, MD 20892, 301–435–0280.

(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: March 17, 2005.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–5870 Filed 3–23–05; 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 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/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 Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Antidepressant Therapy for Functional Dyspepsia.

*Date:* April 4, 2005.

*Time:* 3 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call).

*Contact Person:* Lakshmanan Sankaran, PhD, Scientific Review Adminstrator, Review Branch, DEA, NIDDk, National Institutes of Health, Room 777, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *Is38oz@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 of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Nuclear Receptors Structure and Function.

*Date:* April 11, 2005.

*Time:* 2 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call).

*Contact Person:* Paul A. Rushing, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.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 of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Loan Repayment.

*Date:* April 13, 2005.

*Time:* 1 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate loan repayment.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call).

*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*.

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 of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Beta Cell Biology Consortium.

*Date:* April 14, 2005.

*Time:* 8:30 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Suites, 6711 Democracry Boulevard, Bethesda, MD 20817.

*Contact Person:* Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 778, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8890, *federn@extra.niddk.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. 93.847, 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: March 17, 2005.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–5862 Filed 3–23–05; 8:45 am]

**BILLING CODE 4140–01–M**

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Notice of 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 of Neurological Disorders and Stroke Special Emphasis Panel Fellowship Review.

*Date:* April 6, 2005.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Radisson Barcello, 2121 P Street, NW., Washington, DC 20037.

*Contact Person:* Joann McConnell, PhD, Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529. (301) 496–5324, *mcconnej@ninds.nih.gov.*

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Stroke Rehabilitation Review.

*Date:* April 14, 2005.

*Time:* 10:30 a.m. to 12:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call.)

*Contact Person:* Richard Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research NINDS/NIH/DHHS/ Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–594–0635, *rc218u@nih.gov.*

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Howard University SNRP Review.

*Date:* April 19, 2005.

*Time:* 8 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

*Contact Person:* Richard Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research NINDS/NIH/DHHS/ Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529. 301–594–0635. *rc218u@nih.gov.*

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Olfactory Receptors.

*Date:* April 20, 2005.

*Time:* 12:30 p.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

*Contact Person:* Richard D. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 594–0635, *rc218u@.nih.gov.*

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Ischemic Stroke Review.

*Date:* April 28, 2005.

*Time:* 10:30 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

*Contact Person:* Richard D. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 594–0635. *rc218u@.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: March 17, 2005.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–5863 Filed 3–23–05; 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 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 of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, High Fat Diet Induced Obesity.

*Date:* April 11, 2005.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call).

*Contact Person:* Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 777, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *ls38oz@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 of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Diabetes and Autoimmunity.

*Date:* April 11, 2005.

*Time:* 2 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call).

*Contact Person:* Carol J. Goter-Robinson, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinson@extra.niddk.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 of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Gastrointestinal Inflammation and Genetics.

*Date:* April 13, 2005.

*Time:* 8 a.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:* Maxine A. Lesniak, MPH, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7792, *lesniakm@extra.niddk.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 of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Beta Cell Biology Consortium.

*Date:* April 13, 2005.

*Time:* 8:30 a.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

*Contact Person:* Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 778, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8890, *federn@extra.niddk.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. 93.847, 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: March 17, 2005.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–5865 Filed 3–23–05; 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, Human Embryonic Stem Cell Infrastructure.

*Date:* April 12, 2005.

*Time:* 3 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call).

*Contact Person:* John F. Connaughton, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 757, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7797, *connaughton;@extra.niddk.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. 93.847, 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: March 17, 2005.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–5866 Filed 3–23–05; 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 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 of Allergy and Infectious Diseases Special Emphasis Panel, Disabling Innate Immune Evasion: New Attenuated Vaccines.

*Date:* April 11–12, 2005.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Thomas J. Hiltke, 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) 496–2550, *thiltke@niaid.nih.gov.*

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Regional Bio-Containment Laboratory Review.

*Date:* April 11–12, 2005.

*Time:* 8:30 a.m. to 12:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

*Contact Person:* John A. Bogdan, 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, 301–496–2550, *jbogdan@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: March 17, 2005.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–5873 Filed 3–23–05; 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, ZAA1 DD (34)–R21 Grant Application Review.

*Date:* March 28, 2005.

*Time:* 10 a.m. to 11 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, FISHERS–MSC 9304, 5635 Fishers Lane, 3045, Bethesda, MD 20892. (Telephone Conference Call).

*Contact Person:* Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, Bethesda, MD 20892–9304, (301) 443–2926, *skandasa@mail.nih.gov.*

This notice is being published less that 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 DD (35)–R21 Grant Application Review.

*Date:* April 1, 2005.

*Time:* 3:30 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, FISHERS–MSC 9304, 5635 Fishers Lane, 3045, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, Bethesda, MD 20892–9304, (301) 443–2926, *skandasa@mail.nih.gov.*

This notice is being published less that 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 DD (33)–R21 Grant Application Review.

*Date:* April 4, 2005.

*Time:* 2 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, FISHERS–MSC 9304, 5635 Fishers Lane, 3045, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, Bethesda, MD 20892–9304, (301) 443–2926, *skandasa@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 DD (32)–R21 Grant Application Review.

*Date:* April 11, 2005.

*Time:* 1 p.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, FISHERS, MSC 9304, 5635 Fishers Lane, 3045, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute of Alcohol, Abuse and Alcoholism, Bethesda, MD 20892–9304, (301) 443–2926, *skandasa@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: March 17, 2005.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–5874 Filed 3–23–05; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Notice of 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 meetings of the Board of Regents of the National Library of Medicine.

The meetings 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 interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

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:* Board of Regents of the National Library of Medicine, Extramural Programs Subcommittee.

*Date:* May 9, 2005.

*Closed:* 4 p.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20894.

*Name of Committee:* Board of Regents of the National Library of Medicine, Subcommittee on Outreach and Public Information.

*Date:* May 10, 2005.

*Open:* 7:30 a.m. to 8:45 a.m.

*Agenda:* Outreach Activities.

*Place:* National Library of Medicine, Building 38, 2nd Floor Conference Room B, 8600 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20894.

*Name of Committee:* Board of Regents of the National Library of Medicine.

*Date:* May 10–11, 2005.

*Open:* May 10, 2005, 9 a.m. to 4:30 p.m.

*Agenda:* Administrative Reports and Program Discussion.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Closed:* May 10, 2005, 4:30 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Open:* May 11, 2005, 9 a.m. to 12 p.m.

*Agenda:* Administrative Reports and Program Discussion.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20894.

*Name of Committee:* Board of Regents of the National Library of Medicine, Planning Subcommittee.

*Date:* May 11, 2005.

*Open:* 7:30 a.m. to 8:45 a.m.

*Agenda:* Long-Range Planning.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20892.

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 home page: *www.nlm.nih.gov/od/bor/bor.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: March 17, 2005.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–5869 Filed 3–23–05; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, March 31, 2005, 11 a.m. to March 31, 2005, 12 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on March 10, 2005, 70 FR 12000–12001.

The meeting will be held on March 30, 2005, from 2 p.m. to 3 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: March 17, 2005.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–5864 Filed 3–23–05; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, March 31, 2005, 3 p.m. to March 31, 2005, 4 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on March 10, 2005, 70 FR 12000–12001.

The meeting will be held on March 23, 2005, from 11:30 a.m. to 12:30 p.m. The meeting location remains the same.

The meeting is closed to the public.

Dated: March 17, 2005.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–5867 Filed 3–23–05; 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 the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Neuromodulation of Vision.

*Date:* March 28, 2005.

*Time:* 1 p.m. to 2 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:* Michael H. Chaitin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435–0910, *chaitinm@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, Novel Proton MRI Review.

*Date:* March 30, 2005.

*Time:* 1 p.m. to 2 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:* Mary Bell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6188, MSC 7804, Bethesda, MD 20892, 301–451–8754, *bellmar@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, Psychoneuroimmunology.

*Date:* March 30, 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:* Lynn T. Nielsen-Bohlman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089F, MSC 7848, Bethesda, MD 20892, (301) 594–5287, *nielsenl@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, Retina Degeneration and Gene Therapy.

*Date:* April 4, 2005.

*Time:* 1 p.m. to 2:30 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:* Raya Mandler, PhD, Scientific Review Administrator (intern), Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892, (301) 402–8228, *rayam@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, Immunology—Lymphocytoe Signaling, Modeling, Component.

*Date:* April 6, 2005.

*Time:* 10 a.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The River Inn, 924 25th Street, NW., Washington, DC 20037.

*Contact Person:* Samuel C. Edwards, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892, (301) 435–1152, *edwardss@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, NOGO in Angiogenesis and Atheroscilerosis.

*Date:* April 11, 2005.

*Time:* 11 a.m. to 12 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:* Larry Pinkus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214, *pinkusl@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Cancer Biomarkers and Targeted Anticancer Therapy.

*Date:* April 28, 2005.

*Time:* 11 a.m.. to 1 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:* Sharon K. Gubanich, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, (301) 435–1767, *gubanics@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: March 18, 2005.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–5868 Filed 3–23–05; 8:45 am]

**BILLING CODE 4140–01–M**

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, April 1, 2005, 11 a.m. to April 1, 2005, 1 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on March 15, 2005, 70 FR 12705–12707.

The meeting will be held on March 30, 2005, from 11 a.m. to 2 p.m. The meeting location remains the same.

The meeting is closed to the public.

Dated: March 18, 2005.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–5871 Filed 3–23–05; 8:45 am]

**BILLING CODE 4140–01–M**

---

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4972–N–06]**

### Notice of Proposed Information for Public Comments, Housing Opportunities for Persons with AIDS (HOPWA) Program Annual Reporting Requirements

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* May 23, 2005.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Shelia Jones, Reports Liaison Officer, Department of Housing Urban and Development, 451 7th Street, SW., Room 7232, Washington, DC 20410.

**FOR FURTHER INFORMATION CONTACT:** William Rudy, 202–708–1827, Telephone number (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information to those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Annual performance reporting requirements for formula and competitive Housing Opportunities for Persons with AIDS (HOPWA) grant recipients.

*OMB Control Number, if applicable:* 2506–0133.

*Description of the need for the information and proposed use:* The Department is implementing a new long-term performance measure for client outcomes that will assess program success in assisting HOPWA clients achieve and maintain housing stability, avoid homelessness, and improve access to HIV treatment and other care. These changes are intended to assist HOPWA grantees and project sponsors aggregate results from the use of their HOPWA resources by providing housing assistance as the annual output measure and to collect individual client information demonstrating the outcome for improved housing stability for this special needs population.

*Agency form numbers, if applicable:* HUD–40110–C and HUD–40110–D.

*Estimation of the total numbers of hours needed to prepare the Information collection including number of respondents, frequency of response, and hours of response.*

| Description of information collection (annual reports) | Number of respondents | Responses per year | Total annual responses | Hrs. per responses | Total hours |
|---|---|---|---|---|---|
| 40110–C Annual Progress Report (APR) | 85 | 1 | 85 | 66 | 5,610 |
| 40110–D Consolidated Annual Performance and Evaluation Report (CAPER) | 122 | 1 | 122 | 36 | 4,392 |
| Recordkeeping | 207 | 1 | 207 | 72 | 14,904 |
| Grant amendments and extensions | 20 | 1 | 20 | 20 | 400 |
| Uniform relocation act appeals process | 5 | 1 | 5 | 2 | 10 |
| Environmental review recordkeeping | 20 | 1 | 20 | 20 | 400 |
| Miscellaneous other reporting | 40 | 1 | 40 | 6 | 240 |
| Total of grantee annual reporting burden: | 207 | 1 | 207 | ..... | 25,956 |

*Status of the proposed information collection:* This is a revision to existing annual data collection requirements in order to measure annual performance outcomes. Implementation of these new reporting requirements will commence during FY 2005.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 17, 2005.

**Nelson R. Bregon,**

*General Deputy Assistant Secretary for Community Planning and Development.*

[FR Doc. 05–5785 Filed 3–23–05; 8:45 am]

**BILLING CODE 4210–29–M**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4975–N–04]**

## Notice of Proposed Information Collection: Comment Request; Assisted Living Conversion Program (ALCP) and Emergency Capital Repair Program (ECRP)

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* May 23, 2005.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov*.

**FOR FURTHER INFORMATION CONTACT:** Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3000, (this is not a toll free number) for copies of the proposed forms and other available information.

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Assisted Living Conversion Program (ALCP) and Emergency Capital Repair Program (ECRP).

*OMB Control Number, if applicable:* 2502–0541.

*Description of the need for the information and proposed use:* The information collection is a grant application and reporting forms for HUD's Assisted Living Conversion Program (ALCP) and Emergency Capital Repair Program (ECRP). HUD uses the applications to determine an applicant's need for and capacity to administer grant funds. The applicants are usually not-for-profit institutions. HUD will evaluate applications through the use of statutory and administratively designated selection criteria.

*Agency form numbers, if applicable:* HUD–50080–ALCP, HUD–50080–ECRP, HUD–92045, HUD–424B, HUD–424C, HUD–2530, HUD–2880, HUD–2990, HUD–2991, HUD–96010, HUD–27300.

*Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The estimated total number of burden hours needed to prepare the information collection is 4,005; the number of respondents is 90 generating approximately 735 annual responses; the frequency of response is quarterly, semi-annually, and annually; and the estimated time needed to

prepare the response varies from 15 minutes to 80 hours.

*Status of the proposed information collection:* Extension of a currently approved collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: March 16, 2005.

**Frank L. Davis,**

*General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.*

[FR Doc. 05–5825 Filed 3–23–05; 8:45 am]

**BILLING CODE 4210–27–M**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4975–N–05]**

### Notice of Proposed Information Collection: Comment Request

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* May 23, 2005.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development,451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

**FOR FURTHER INFORMATION CONTACT:** Cheryl D. Gordon, Operating Accountant, Office of Financial Services, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 401–2168, extension 4962 (this is not a toll free number(for copies of the proposed forms and other available information.

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Multifamily Insurance Benefits Claims Package.

*OMB Control Number, if applicable:* 2502–415.

*Description of the need for the information and proposed use:* When a lender with an insured multifamily mortgage assigns a mortgage or conveys a property to HUD, the lender is required to submit all records and accounts relative to the mortgage to HUD. These provisions are spelled out in Statute 12 USC 1713(g); Title II, section 207(g) of the National Housing Act; and 24 CFR 207.258(b)(4). To receive insurance benefits, the mortgagee must prepare and submit to HUD the multifamily Insurance Benefits Claims Package.

*Agency form numbers, if applicable:* HUD–2742, HUD–2744–A, HUD–2744–B, HUD–2744–C, HUD–2744–D, HUD–2744E, and HUD–434

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The estimated number of respondents is 118 (113 regular claims and 5 co-insured claims), the frequency of response is one per claim, the burden per response is estimated to be four hours for a regularly submitted claim or three hours for a co-insured claim, and the total estimated annual burden hours requested is 478.

*Status of the proposed information collection:* Revision of a currently approved collection to incorporate OMB information collections 2502–0418 and 2502–0555.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: March 17, 2005.

**Frank L. Davis,**

*General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.*

[FR Doc. 05–5826 Filed 3–23–05; 8:45 am]

**BILLING CODE 4210–27–M**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4975–N–06]**

### Notice of Proposed Information Collection: Comment Request

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* May 23, 2005.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410 or *Wayne_Eddins@hud.gov*.

**FOR FURTHER INFORMATION CONTACT:** Vance T. Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of

information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Requirements for Single Family Mortgage Instruments.

*OMB Control Number, if applicable:* 2502–0404.

*Description of the need for the information and proposed use:* These documents must be recordable and enforceable instruments that comply with applicable state and local requirements for recordation in the public land records for the protection of the mortgagee's and HUD's interest in the property. The single-family mortgage instruments include the mortgage or deed of trust, and the mortgage note or deed of trust note.

*Agency form numbers, if applicable:* None.

*Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The total number of annual hours needed to prepare the information collection is 250,000. The number of respondents is estimated to be 9,000; the frequency of the response is on occasion but generates an estimated 1,000,000 responses per year; and the estimated time per response is 0.25 hours.

*Status of the proposed information collection:* Extension of a currently approved collection.

**Authority** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: March 17, 2005.

**Frank L. Davis,**

*General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.*

[FR Doc. 05–5827 Filed 3–23–05; 8:45 am]

BILLING CODE 4210–27–M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Issuance of Permits

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of issuance of permits for endangered species and marine mammals.

**SUMMARY:** The following permits were issued.

**ADDRESSES:** Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

**FOR FURTHER INFORMATION CONTACT:** Division of Management Authority, telephone 703/358–2104.

**SUPPLEMENTARY INFORMATION:**

Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*), and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361, *et seq.*), the Fish and Wildlife Service issued the requested permit(s) subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

**Endangered Species**

| Permit No. | Applicant | Receipt of application **Federal Register** notice | Permit issuance date |
|---|---|---|---|
| 097137 | James E. Davidson, Jr | 70 FR 5203, February 1, 2005 | March 8, 2005. |

**Endangered Marine Mammals**

| Permit No. | Applicant | Receipt of application **Federal Register** notice | Permit issuance date |
|---|---|---|---|
| 770191 | Jacksonville Field Office | 68 FR 41167; July 10, 2003 | March 4, 2005. |

Dated: March 11, 2005.

**Monica Farris,**

*Senior Permit Biologist, Branch of Permits, Division of Management Authority.*

[FR Doc. 05–5778 Filed 3–23–05; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Receipt of Applications for Permit

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of applications for permit.

**SUMMARY:** The public is invited to comment on the following applications to conduct certain activities with endangered species.

**DATES:** Written data, comments or requests must be received by April 25, 2005.

**ADDRESSES:** Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

**FOR FURTHER INFORMATION CONTACT:** Division of Management Authority, telephone 703/358–2104.

**SUPPLEMENTARY INFORMATION:**

**Endangered Species**

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

*Applicant:* David Elua, Great Neck, NY, PRT–098484.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species

*Applicant:* Anthony Battaglia, Moscow, ID, PRT–099297.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

*Applicant:* Zoo Atlanta, Atlanta, GA, PRT–008519.

The applicant requests reissuance of their permit for scientific research with two captive-born giant pandas (*Ailuropoda melanoleuca*) currently held under loan agreement with the Government of China and under provisions of the USFWS Giant Panda Policy. The proposed research will cover all aspects of behavior, reproductive physiology, genetics, nutrition, and animal health and is a continuation of activities currently in progress. This notification covers activities conducted by the applicant over a period of five years.

*Applicant:* David W. Hanna, Irvine, CA, PRT–100443.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

*Applicant:* Thomas Productions, Las Vegas, NV, PRT–066158, 066159, 097784, 097785, 097786, 097787.

The applicant requests permits to captive-born tigers (*Panthera tigris*) to worldwide locations for the purpose of enhancement of the species through conservation education. The animals and permit numbers are: Sampson, PRT # 066158; Starr, 066159; Maximillian, 097784; Morpheus, 097785; Rocky, 097786; and Mercury, 097787. This notification covers activities to be conducted by the applicant over a three-year period and the import of any potential progeny born to these animals while overseas.

Dated: March 11, 2005.

**Monica Farris,**

*Senior Permit Biologist, Branch of Permits, Division of Management Authority.*

[FR Doc. 05–5777 Filed 3–23–05; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Endangered and Threatened Species Permit Applications

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of applications.

**SUMMARY:** The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

**DATES:** Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received on or before April 25, 2005.

**FOR FURTHER INFORMATION CONTACT:** Mr. Peter Fasbender, (612) 713–5343.

**SUPPLEMENTARY INFORMATION:**

*Permit Number:* TE100141.

*Applicant:* Melissa Yanek, Madison, Wisconsin.

The applicant requests a permit to take the Karner blue butterfly (*Lycaeides melissa samuelis*) in Wisconsin. The scientific research is aimed at enhancement of survival of the species in the wild.

*Permit Number:* TE100143.

*Applicant:* Devetta Hill, Zanesfield, Ohio.

The applicant requests a permit to take the Indiana bat (*Myotis sodalis*), gray bat (*M. grisescens*), and Virginia big-eared bat (*Corynorhinus townsendii virginianus*) throughout Ohio. The scientific research is aimed at enhancement of survival of the species in the wild.

*Permit Number:* TE100148.

*Applicant:* Bradley Steffen, Carbondale, Illinois.

The applicant requests a permit to take the Indiana bat (*Myotis sodalis*) throughout Illinois. The scientific research is aimed at enhancement of survival of the species in the wild.

*Permit Number:* TE100150.

*Applicant:* Neil Bossart, Pittsburgh, Pennsylvania.

The applicant requests a permit to take the Indiana bat (*Myotis sodalis*) throughout seven states within U.S. Fish and Wildlife Service Region 3. The scientific research is aimed at enhancement of survival of the species in the wild.

*Permit Number:* TE100155.

*Applicant:* Sanders Environmental Inc., Centre Hall Pennsylvania.

The applicant requests a permit to take the Indiana bat (*Myotis sodalis*), gray bat (*M. grisescens*), and Virginia big-eared bat (*Corynorhinus townsendii virginianus*) throughout seven states within U.S. Fish and Wildlife Service Region 3. The scientific research is aimed at enhancement of survival of the species in the wild.

*Permit Number:* TE100159.

*Applicant:* Missouri Botanical Garden, St. Louis, Missouri.

The applicant requests a permit to take the following species: Cumberland false rosemary (*Conradina verticillata*), Cumberland stichwort (*Arenaria cumberlandensis*), Virginia spirea (*Spiraea virginiana*), Eggert's sunflower (*Helianthus eggertii*), Missouri bladderpod (*Lesquerella filiformis*), Price's potato bean (*Apios priceana*), Nevada rockcress (*Arabis perstellata*), Leafy prairie-flower (*Dalea foliosa*), Tennessee yellow-eyed grass (*Xyris tennesseensis*), Guthries ground plum (*Astragalus bibullatus*), and Tennessee purple coneflower (*Echinacea tennesseensis*). The applicant intends to collect seeds from the listed plant species within National Park Service properties within Alabama, Kentucky, Mississippi, Missouri, and Tennessee. The scientific research is aimed at enhancement of survival of the species in the wild.

*Permit Number:* TE101191.

*Applicant:* Russell A. Benedict, Pella, Iowa.

The applicant requests a permit to take the Indiana bat (*Myotis sodalis*) throughout Iowa. The scientific research is aimed at enhancement of survival of the species in the wild.

*Permit Number:* TE101192.

*Applicant:* Arthur Howard, Indiana Army National Guard, Edinburgh, Indiana.

The applicant requests a permit to take the Indiana bat (*Myotis sodalis*) at Camp Atterbury, Indiana. The scientific research is aimed at enhancement of survival of the species in the wild.

*Permit Number:* TE101193.

*Applicant:* Robert R. Kiser, Whitesburg, Kentucky.

The applicant requests a permit to take the Indiana bat (*Myotis sodalis*), gray bat (*M. grisescens*), Virginia big-eared bat (*Corynorhinus townsendii virginianus*), and the Blackside dace (*Phoxinus cumberlandensis*) throughout the species range. The scientific research is aimed at enhancement of survival of the species in the wild.

*Permit Number:* TE101297.

*Applicant:* Catherine E. Brown McCall, Georgetown University, Washington, DC.

The applicant requests a permit to take the Karner blue butterfly (*Lycaeides melissa samuelis*) in Wisconsin. The scientific research is aimed at enhancement of survival of the species in the wild.

*Permit Number:* TE091328.

Applicant: John Chenger, Bat Conservation and Management, Inc., Carlisle, Pennsylvania.

The applicant requests a permit amendment to take the Indiana bat (*Myotis sodalis*) throughout Illinois, Kentucky, Missouri, North Carolina, South Carolina, and Tennessee. The scientific research is aimed at enhancement of survival of the species in the wild.

Dated: March 14, 2005.

**Jeffery C. Gosse,**

*Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.*

[FR Doc. 05–5800 Filed 3–23–05; 8:45 am]

**BILLING CODE 4310–55–P**

---

## DEPARTMENT OF THE INTERIOR

## Bureau of Indian Affairs

## Guidance for Distributing Fiscal Year 2005 Contract Support Funds and Indian Self-Determination Funds

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of methodology for distribution and use of FY 2005 Contract Support Funds and Indian Self-Determination Funds.

**SUMMARY:** The Bureau of Indian Affairs (Bureau) is publishing this notice to inform the public, the tribes, and Federal staff of the methodology that will be used for the distribution of CSF and ISDF for FY 2005. These funds are distributed as authorized by the Indian Self-Determination and Education Assistance Act of 1975, as amended, and financed with funds appropriated under the Snyder Act. This distribution methodology is published to ensure eligible recipients and responsible federal employees are aware of program operations for this fiscal year. This is a guidance document, it is not establishing regulations.

**DATES:** The ''FY 2005 CSF Needs Report'' is due June 30, 2005. Final distribution of CSF will be made on a pro-rata basis on or about July 19, 2005. FY 2005 ISDF will be distributed on a first come, first served basis, until funds are depleted.

**ADDRESSES:** Submit the ''FY 2005 CSF Needs Report'' to: Harry Rainbolt, Bureau of Indian Affairs, Office of Tribal Services, 1951 Constitution Avenue NW., Mail Stop 320–SIB, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Harry Rainbolt, (202) 513–7630.

**SUPPLEMENTARY INFORMATION:** Title I and title IV of Public Law 93–638, the Indian Self-Determination and Education Assistance Act of 1975, as amended, authorizes the Bureau to annually distribute CSF and ISDF. In making these distributions for FY 2005, the Bureau will follow the procedures in this notice.

The request for FY 2005 ISDF for new and expanded contracts and self-governance funding agreements may be submitted to the Bureau throughout the year as the need arises. Approved requests will be funded until the ISDF is depleted.

### Part 1—Contract Support Funds

*1.1 What Is the Purpose of Contract Support Funds (CSF)?*

The Bureau provides CSF to meet the indirect cost need identified for ongoing/existing self-determination contracts and self-governance compacts that are financed with funds appropriated pursuant to the Snyder Act (25 U.S.C. 13). [Note that 25 U.S.C. 450j–3, restricts the use of CSF for only self-determination contracts and self-governance compacts. Congress directed in the FY 2005 appropriations bill, however, that the Secretary continue to distribute indirect and administrative cost funds to Tribes and tribal organizations that received such funds in FY 2003 or FY 2004.

*1.2 How Does BIA Determine Eligibility for CSF?*

All self-determination contractors and self-governance tribes/consortia with either an approved indirect cost rate, a current indirect cost proposal on file with the National Business Center (NBC), or an approved current lump sum agreement are eligible to receive CSF.

*1.3 How Does the Bureau Determine Indirect Cost Need and CSF Amounts for Contracts and Annual Funding Agreements?*

The methodology used to determine indirect cost amount and CSF need is as follows:

(1) Total current year Program fund amount;

(2) Less exclusions; exclusions are determined as follows:

(a) For Construction under Public Law 93–638, as amended, title I, section 106(h), the amount of construction funding provided for the actual ''on-the-ground'' construction activities is an exclusion.

(b) For a Direct Cost Base consisting of Salaries and Wages, all costs except ''Salaries and Wages'' are exclusions.

(c) For a Direct Cost Base consisting of ''total direct costs less capital expenditures and pass-through, such as those items requiring minimal administrative effort,'' capital expenditures and pass-through items are considered exclusions.

*Capital Expenditure:* The acquisition of items of personal property with an individual value of $5,000 or more, and real property acquisition, renovation or repair with a value of $5,000 or more.

*Pass-Through:* Those programs expenditures for items requiring minimal level of effort to be performed by tribal administrative personnel, such as: grants to individuals (i.e., scholarship grants, general assistance grants, etc.); leases; subcontracts; management and/or professional agreements; etc.

(3) Direct Cost Base amount;

(4) Times indirect cost rate;

(5) Indirect cost amount;

(6) Times current CSF funding percentage; and

(7) CSF amount.

*1.4 What Is Designated as an Ongoing/Existing Contract or Funding Agreement?*

An ongoing/existing contract or annual funding agreement is a Bureau program operated under a self-determination contract or a self-governance compact on an ongoing basis, which was entered into before the current fiscal year. Examples:

(1) All contracted or compacted programs, functions, services, activities or those included in annual funding agreements in the previous fiscal year and continued in the current fiscal year that are financed with funds appropriated to the Bureau;

(2) Direct funding increases for programs financed with funds appropriated to the Bureau; and

(3) Programs, functions, services, or activities started or expanded in the current fiscal year that are a result of a change in priorities from other already contracted, annual funding agreement programs, functions, services, or activities financed with funds appropriated to the Bureau.

*1.5 Does an Increase or Decrease in the Level of Funding From Year to Year Affect the Designation of a Contract or Annual Funding Agreement?*

No.

*1.6 Can I Use Current Fiscal Year CSF To Pay a Prior Year Indirect Cost Shortfall?*

No. The use of current year CSF to pay prior year indirect cost shortfall is not authorized.

*1.7 Are There Any Restrictions on Distributing CSF for Indirect Cost?*

Yes. The following conditions must be met before the Bureau distributes CSF to pay indirect cost:

(1) Programs, functions, services, activities, or portions thereof, must be financed with funds appropriated under the Snyder Act (25 U.S.C. 13) or the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2501 *et seq.*); and

(2) Programs, functions, services, activities, or portions thereof, must be included in a Bureau self-determination contract or a self-governance funding agreement or in a grant under the Tribally Controlled Schools Act of 1988.

*1.8 Is There Any Other Exclusion?*

Yes. Self-determination contracts or self-governance agreements that receive appropriated funds from other Department of the Interior bureaus, offices, or other sources are not eligible to receive CSF.

*1.9 How Can Tribes or Tribal Organizations Find Funding To Pay for Their Indirect Cost Needs for Programs That Are Excluded From Receiving CSF?*

Those programs that are not eligible to receive CSF or ISDF to cover indirect cost needs must contact the specific program funding source to determine the methodology for covering the indirect cost need for those programs. This may entail using funds provided for the contracted services to cover the indirect cost need. For example, funding for Indian Reservation Roads construction is transferred to the Bureau from the Federal Highway Trust Fund by the Department of Transportation. Therefore, this program is excluded from receiving CSF to cover the indirect cost need and must use funds provided for the construction activity to cover their indirect cost needs.

*1.10 How Does the Bureau Determine the Amount of CSF a Tribe or Tribal Organization Is Eligible To Receive?*

See the computation methodology in section 1.3 of this notice.

*1.11 How Does the Bureau Decide What Direct Cost Base To Use To Determine CSF Need?*

BIA will use the following procedures to determine the direct cost base:

| If a tribe's direct cost base is . . . | Then BIA will make the following adjustments . . . |
|---|---|
| (1) Total direct cost, less capital expenditures and pass-through | Total direct cost, minus exclusions = direct cost base amount. (Exclusions will be on-the-ground construction costs, capital expenditures and pass-through.) |
| (2) Total salaries and wages | Look at program budget and identify amount for salaries and wages. (The exclusions will be funding amounts for everything except salaries and wages.) |
| (3) A negotiated Lump Sum Agreement direct cost base is the total current year program funds, less amount for on-the-ground construction costs, capital expenditures and pass-through. | The exclusions will be amounts for on-the-ground construction costs, capital expenditures and pass-through funds. |

*1.12 How Does the Bureau Determine What Indirect Cost Rate To Use When Calculating the Amount CSF Eligible Tribes or Tribal Organizations Will Receive?*

When calculating the amount CSF eligible tribes or tribal organizations will receive, BIA follows the following procedures:

| If . . . | Then . . . |
|---|---|
| (1) The tribe or tribal organization has an approved indirect cost rate negotiated with the National Business Center (NBC) or an indirect cost proposal currently under consideration by the NBC. | The Regional Director or Office of Self-Governance Director must use the tribe's or tribal organization's current rate, if approved, or, if not approved, the proposed indirect cost rate currently under consideration. |
| (2) The tribe or tribal organization proposes to use the prior-year approved rate.* | The most current rate must be used.* |
| (3) A tribe or tribal organization that can document that they are unable to negotiate an indirect cost rate because of circumstances beyond their control may request negotiation of a lump sum amount.** | The Awarding Official may negotiate a reasonable lump sum amount (not to exceed 15%) with the tribe or tribal organization for FY 2005.** |

*This rate is temporary and subject to finalization through negotiation with NBC, and may result in actual over or under recovery of indirect cost.

**Beginning in FY 2004, a reasonable lump sum amount must not exceed 15 percent of total current year program funds, less capital expenditure and pass-through.

*1.13 What Happens If the Amount Identified in the ''FY 2005 CSF Needs Report'' Exceeds the Available FY 2005 CSF Amount?*

The CSF distribution will be made on a pro rata basis so that all eligible tribes and tribal organizations receive the same percentage of their reported need. For example, if the pro rata amount is 92 percent, each tribe or tribal organization will receive 92 percent of their identified indirect cost need.

*1.14 Who Is Responsible for Submitting the ''CSF Needs Report'' to the Bureau?*

Each regional office and the Office of Self-Governance must submit a ''CSF Needs Report'' for ongoing/existing contracts and funding agreements.

*1.15 How Does the Bureau Distribute CSF to Tribes and Tribal Organizations?*

(1) In the initial distribution of CSF, the Bureau will distribute to each regional office and the Office of Self-governance 85 percent of the total amount of CSF provided in the previous fiscal year. From this 85 percent, the regional office will award 75 percent of the CSF need identified for each contract or annual funding agreement that meets the established criteria.

(2) In the second or final allotment of CSF, all tribal contractors and self-governance tribes/consortia will receive a pro-rated share of the CSF, based on the program funds in the contract or annual funding agreement at that time.

*1.16 What Can I Do To Cover My Total CSF Needs If the CSF Provided Is Insufficient?*

If your CSF funds are insufficient, you may reprogram funds provided for the operation of programs to make up deficiencies to recover your full indirect cost need. This reprogramming authority is limited to funds in the Tribal Priority Allocation (TPA) portion of the Bureau budget, or annual funding agreement.

*1.17 Can Funds From Other Bureau Programs That Are Not in the TPA Be Used To Meet CSF Shortfall?*

No. Congressional appropriation language does not provide authority for the Bureau to reprogram funds from other Bureau programs to meet any CSF shortfall.

*1.18 What Are the Definitions of the Terms ''New Contract or Annual Funding Agreement'' and ''Expanded Contract or Annual Funding Agreement''?*

(a) A new contract or annual funding agreement is defined as the initial transfer of a program, function, service, or activity previously operated by the Bureau to a tribe, tribal organization or consortium.

(b) An expanded contract or annual funding agreement is defined as a contract or annual funding agreement which has become enlarged, during the current fiscal year through the assumption of additional programs, functions, services, or activities (or portion thereof) previously operated by the Bureau.

**Part 2—Indian Self-Determination Funds**

*2.1 How Are Indian Self-Determination Funds (ISDF) Distributed?*

The Bureau provides ISDF on a ''first-come, first-served'' basis. The Bureau will fund requests at 100 percent of the ''identified and approved need'' until the ISDF is depleted.

*2.2 How Does the Bureau Distribute ISDF for a New and Expanded Contract or Annual Funding Agreement?*

Each regional office or the Office of Self-Governance must submit an ''ISDF Needs Request'' to the Office of Tribal Services when a new contract or annual funding agreement is awarded, or existing contracts or annual funding agreements are expanded.

*2.3 What Must a Complete ''ISDF Request Package'' for New and Expanded Contacts/Annual Funding Agreements Contain?*

A complete request package for new/expanded contracts or annual funding agreement must contain:

(1) Indirect cost needs; and

(2) Startup cost needs.

*2.4 What Happens If Requests Are Received After the ISDF Have Been Depleted?*

The ISDF request will not be funded for the fiscal year. However, requests received after the ISDF have been depleted will be considered first for ISDF funding in the following fiscal year.

*2.5 How Does the Bureau Compute the Indirect Cost Need?*

We compute the indirect cost need following the indirect cost computation methodology provided in this announcement at section 1.3.

*2.6 How Does BIA Determine What Indirect Cost Rate To Use When Calculating the Amount of ISDF Eligible Tribes or Tribal Organizations Will Receive?*

When calculating the amount ISDF eligible tribes or tribal organizations will receive, the Bureau follows the following procedures:

| If . . . | Then . . . |
|---|---|
| (1) The tribe or tribal organization has an approved indirect cost rate negotiated with the National Business Center (NBC) or an indirect cost proposal currently under consideration by the NBC. | The Regional Director or Office of Self-Governance Director must use the tribe's or tribal organization's current rate, if approved, or, if not approved, the proposed indirect cost rate currently under consideration. |
| (2) The tribe or tribal organization proposes to use the prior-year approved NBC rate.* | The most current NBC rate must be used.* |
| (3) A tribe or tribal organization that can document that they are unable to negotiate an indirect cost because of circumstances beyond their control may request negotiation of a lump sum amount.** | The Awarding Official may negotiate a reasonable lump sum amount (not to exceed 15 percent) with the tribe or tribal organization for FY 2004.** |

* This rate is temporary and subject to finalization through negotiation with NBC, and may result in actual over or under recovery of indirect cost.

** Beginning in FY 2004, a reasonable lump sum amount must not exceed 15 percent of total current year program funds, less capital expenditure and pass-through.

*2.7 What Is Considered ''Startup Cost'' Need?*

Startup costs are direct costs for items that are identified in the program operational budget for the new or expanded contract/annual funding agreements. These costs must be allowable costs, allocable to the new or expanded program, and reasonable within the context of the operational budget.

*2.8 What Information for a ''Startup Cost'' Request Must I Include in the ISDF Request Package?*

The request must contain:

(1) A copy of the program operational budget for the new or expanded contract/annual funding agreement activity, with the startup cost items identified;

(2) A copy of the program operational budget narrative; and

(3) Documentation of the provision of technical assistance and negotiation in regard to the startup cost items.

*2.9 Will the Bureau Consider Funding Requests That Do Not Meet the Requirement of 2.8?*

No. The Bureau will not consider funding ISDF requests that do not contain the items in section 2.8 of this notice.

*2.10 Are There Any Contracts or Agreements That Cannot Receive ISDF?*

Yes. Self-determination contracts or self-governance agreements that receive appropriated funds from other Department of the Interior bureaus, offices, or other sources are not eligible to receive ISDF.

*2.11 Are There Any Guidelines That Can Be Used To Help Provide Technical Assistance?*

Yes. Use the ''Guidance for Contract Support Costs'' handbook to assist in the negotiation and providing technical assistance for startup cost. You may obtain a copy of this handbook by calling the telephone number provided in the **FOR FURTHER INFORMATION CONTACT** section.

*2.12 What Happens to an Incomplete ISDF Request?*

The request will be returned to the office of origin for proper completion and resubmission.

Dated: March 15, 2005.

**Michael D. Olsen,**

*Acting Principal Deputy Assistant Secretary—Indian Affairs.*

[FR Doc. 05–5841 Filed 3–23–05; 8:45 am]

**BILLING CODE 4310–4J–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### California Bay-Delta Public Advisory Committee Public Meeting

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, the California Bay-Delta Public Advisory Committee will meet jointly with the California Bay-Delta Authority on April 13 and 14, 2005. The agenda for the joint meeting will include reports from the Director, the Lead Scientist, and the Bay-Delta Public Advisory Committee Subcommittees; updates on the Delta Improvements Package and the State Water Plan; and discussions leading to recommendations on several grant awards, the Finance Plan, and the Multi-Year Program Plans with State and Federal agency representatives.

**DATES:** The meeting will be held on Wednesday, April 13, 2005, from 9 to 4 p.m., and on Thursday, April 14, 2005, from 9 a.m. to 4 p.m. If reasonable accommodation is needed due to a disability, please contact Pauline Nevins at (916) 445–5511 or TDD (800) 735–2929 at least 1 week prior to the meeting.

**ADDRESSES:** The meeting will be held at the Sheraton Grand Hotel, 1230 J Street, Sacramento, California.

**FOR FURTHER INFORMATION CONTACT:** Jamie Cameron-Harley, California Bay-Delta Authority, at 916–445–5511, or Diane Buzzard, Bureau of Reclamation, at 916-978-5022.

**SUPPLEMENTARY INFORMATION:** The Committee was established to provide recommendations to the Secretary of the Interior, other participating Federal agencies, the Governor of the State of California, and the California Bay-Delta Authority on implementation of the CALFED Bay-Delta Program. The Committee makes recommendations on annual priorities, integration of the eleven Program elements, and overall balancing of the four Program objectives of ecosystem restoration, water quality, levee system integrity, and water supply reliability. The Program is a consortium of State and Federal agencies with the mission to develop and implement a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the San Francisco/Sacramento and San Joaquin Bay Delta.

Committee and meeting materials will be available on the California Bay-Delta Authority Web site at *http://calwater.ca.gov* and at the meeting. This meeting is open to the public. Oral comments will be accepted from members of the public at the meeting and will be limited to 3–5 minutes.

(Authority: The Committee was established pursuant to the Department of the Interior's authority to implement the Fish and Wildlife Coordination Act, 16 U.S.C. 661 *et. seq.,* the Endangered Species Act, 16 U.S.C. 1531 *et. seq.,* and the Reclamation Act of 1902, 43 USC 371 *et. seq.,* and the acts amendatory thereof or supplementary thereto, all collectively referred to as the Federal Reclamation laws, and in particular, the Central Valley Project Improvement Act, Public Law 102–575.)

Dated: March 3, 2005.

**Allan Oto,**

*Special Projects Officer, Mid-Pacific Region, U.S. Bureau of Reclamation.*

[FR Doc. 05–5799 Filed 3–23–05; 8:45 am]

**BILLING CODE 4310–MN–M**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Orlando Ortega-Ortiz, M.D. Revocation of Registration

On February 20, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Orlando Ortega-Ortiz, M.D. (Dr. Ortega-Ortiz) of Penuelas, Puerto Rico, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration B07925766, as a practitioner, under 21 U.S.C. 824(a)(5) and deny any pending applications for renewal or modification of that registration. As a basis for revocation, the Order to Show Cause alleged that Dr. Ortega-Ortiz has been mandatorily excluded from participating in federal health programs pursuant to 42 U.S.C. 1320–7(a). The order also notified Dr. Ortega-Ortiz that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Ortega-Ortiz at his address of record at 656h Infanteria 319, Penuelas, Puerto Rico 00624. The letter was delivered to the registered address prior to April 1, 2004, and receipted for by Dr. Ortega-Ortiz. DEA has not received a request for a hearing or any other reply from Dr. Ortega-Ortiz or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Ortega-Ortiz is deemed to have waived his hearing right. *See* Samuel S. Jackson, D.D.S., 67 FR 65145 (2002); David W. Linder, 67 FR 12579 (2002). After considering material from the investigative file, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Ortega-Ortiz currently possesses DEA Certificate of Registration B07925766. The Deputy Administrator further finds that as a result of Dr. Ortega-Ortiz's fraudulent activities, pursuant to his guilty pleas, on September 17, 2002, he was convicted in the United States District Court, District of Puerto Rico of 11 counts of conspiring to solicit and receive kickbacks in relation to Medicare referrals, in violation of 18 U.S.C. 371. He was sentenced to three years probation and a $7,500.00 fine.

As a result of Dr. Ortega-Ortiz's convictions, he was notified by the Department of Health and Human Services of his five-year mandatory exclusion from participation in the Medicare program pursuant to 42 U.S.C. 1320a–7(a). Exclusion from Medicare is an independent ground for revoking a DEA registration. 21 U.S.C. 824(a)(5);

*see* Johnnie Melvin Turner, M.D., 67 FR 71203 (2002). The underlying conviction forming the basis for a registrant's exclusion from participating in federal health care programs need not involve controlled substances for revocation under 21 U.S.C. 824(a)(5). *See* KK Pharmacy, 64 FR 49507 (1999); Stanley Dubin, D.D.S., 61 FR 60727 (1996).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration B07925766, issued to Orlando Ortega-Ortiz, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective April 25, 2005.

Dated: September 29, 2004.

**Michele M. Leonhart,**

*Deputy Administrator.*

**Editorial Note:** This document was received at the Office of the Federal Register on March 21, 2005.

[FR Doc. 05–5815 Filed 3–23–05; 8:45 am]

**BILLING CODE 4410–09–M**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review: Comment Request

March 10, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Occupational Safety and Health Administration.

*Type of Review:* Extension of currently approved collection.

*Title:* Commercial Diving Operations (29 CFR part 1910, subpart T).

*OMB Number:* 1218–0069.

*Frequency:* On occasion and Annually.

*Type of Response:* Recordkeeping; Reporting; and Third party disclosure.

*Affected Public:* Business or other for-profit; Federal Government; and State, local, or tribal government.

*Number of Respondents:* 3,000.

*Number of Annual Responses:* 4,002,966.

*Estimated Time Per Response:* Varies from 3 minutes to replace the safe practices manual to 1 hour to develop a new manual.

*Total Burden Hours:* 205,397.

*Total Annualized Capital/Startup Costs:* $0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* $0.

*Description:* 29 CFR part 1910, subpart T (''the Subpart'') contains a number of paperwork requirements. The following paragraphs describe these requirements; specify who uses them, and what purpose they serve.

Section 910.401(b). *Description of the requirement.* Allows employers to deviate from the requirements of the subpart to the extent necessary to prevent or minimize a situation that is likely to cause death, serious physical harm, or major environmental damage (but not situations in which purely economic or property damage is likely to occur). Employers must notify the OSHA Area Director within 48 hours of taking such action; this notification must describe the situation responsible for the deviation and the extent of the deviation from the requirements. On request of the Area Director, employers must submit this information in writing.

Sections 1910.410(a)(3) and (a)(4). *Description of the requirements.* Paragraph (a)(3) requires employers to train all dive-team members in cardiopulmonary resuscitation and first aid (i.e., the American Red Cross standard course or equivalent), while paragraph (a)(4) specifies that employers train dive-team members exposed to hyperbaric conditions, or who control exposure of other employees to such conditions, in diving-related physics and physiology.

Section 1910.420(a). *Description of the requirement.* Under paragraph (a), employers must develop and maintain a safe-practices manual and make it available to each dive-team member at the dive location. In addition, for each diving mode used at the dive location, the manual must contain: safety procedures and checklists for diving operations; assignments and responsibilities of the dive-team members; equipment procedures and checklists; and emergency procedures for fire, equipment failures, adverse environmental conditions, and medical illness and injury.

Section 1910.421(b). *Description of the requirement.* Under this provision, employers are to keep at the dive location a list of telephone or call numbers for the following emergency facilities and services: An operational decompression chamber (when such a chamber is not at the dive location); accessible hospitals; available physicians and means of emergency transportation; and the nearest U.S. Coast Guard Rescue Coordination Center.

Section 1910.421(f). *Description of the requirement.* Requires employers to brief dive-team members on the diving-related tasks they are to perform, safety procedures for the diving mode used at the dive location, any unusual hazards or environmental conditions likely to affect the safety of the diving operation, and any modifications to operating procedures necessitated by the specific diving operation. Before assigning diving-related tasks, employers must ask each dive-team member about their current state of physical fitness, and inform the member about the procedure for reporting physical problems or adverse physiological effects during and after the dive.

Section 1910.421(h). *Description of the requirement.* When the diving operation occurs in an area capable of supporting marine traffic and occurs from a surface other than a vessel, employers are to display a rigid replica of the international code flag ''A'' that

is at least one meter in height so that it is visible from any direction; the employer must illuminate the flag during night diving operations.

Section 1910.422(e). *Description of the requirement.* Employers must develop and maintain a depth-time profile for each diver that includes, as appropriate, any breathing gas changes or decompression.

Sections 1910.423(b)(1)(ii) through (b)(2). *Description of the requirements.* Requires the employer to: instruct each diver to report any physical symptoms or adverse physiological effects, including symptoms of DCS; advise each diver of the location of a decompression chamber that is ready for use; and alert each diver to the potential hazards of flying after diving. For any dive outside the no-decompression limits, deeper than 100 feet, or that uses mixed gas in the breathing mixture, the employer also must inform the diver to remain awake and in the vicinity of the decompression chamber that is at the dive location for at least one hour after a dive, or after any decompression or treatment associated with a dive.

Section 1910.423(d). *Description of the requirement.* Paragraph (d)(1) specifies that employers are to record and maintain the following information for each diving operation: The names of dive-team members; date, time, and location; diving modes used; general description of the tasks performed; an estimate of the underwater and surface conditions; and the maximum depth and bottom time for each diver. In addition, for each dive outside the no-decompression limits, deeper than 100 feet, or that uses mixed gas in the breathing mixture, paragraph (d)(2) requires the employer to record and maintain the following information for each diver: Depth-time and breathing-gas profiles; decompression table designation (including any modifications); and elapsed time since the last pressure exposure when it is less than 24 hours or the repetitive dive designation. Under paragraph (d)(3), if the dive results in DCS symptoms, or the employer suspects that a diver has DCS, the employer must record and maintain a description of the DCS symptoms (including the depth and time of symptom onset) and the results of treatment.

Section 1910.423(e). *Description of the requirement.* Requires employers to assess each DCS incident by: investigating and evaluating it based on the recorded information, consideration of the past performance of the decompression profile used, and the diver's individual susceptibility to DCS; taking appropriate corrective action to reduce the probability of a DCS recurrence; and, within 45 days of the DCS incident, preparing a written evaluation of this assessment, including any corrective action taken.

Sections 1910.430(a), (b)(4), (c)(1)(ii), (c)(3)(i), (f)(3)(ii), and (g)(2). *Description of the requirements.* Paragraph (a) contains a general requirement that employers must record by means of tagging or a logging system any work performed on equipment, including any modifications, repairs, tests, calibrations, or maintenance performed on the equipment. This record is to include a description of the work, the name or initials of the individual who performed the work, and the date they completed the work. Paragraphs (b)(4) and (c)(1)(iii) require employers to test two specific types of equipment, including, respectively: the output of air compressor systems used to supply breathing air to divers for air purity every six months by means of samples taken at the connection to the distribution system; and breathing-gas hoses at least annually at one and one-half times their working pressure. Under paragraph (c)(3)(i), employers must mark each umbilical (i.e., separate lines supplying air and communications to a diver, as well as a safety line, tied together in a bundle), beginning at the diver's end, in 10-foot increments for 100 feet, then in 50-foot increments. Paragraph (f)(3)(ii) mandates that employers regularly inspect and maintain mufflers located in intake and exhaust lines on decompression chambers. According to paragraph (g)(2), employers are to test depth gauges using dead-weight testing, or calibrate the gauges against a master reference gauge; such testing or calibration is to occur every six months and when the employer finds a discrepancy larger than two percent of the full scale between any two equivalent gauges. Employers must make a record of the tests, calibrations, inspections, and maintenance performed on the equipment specified by these paragraphs in accordance with § 1910.430(a).

Sections 1910.440(a)(2) and (b). *Description of the requirements.* Under paragraph (a)(2) of this provision, employers must record any diving-related injuries and illnesses that result in a dive-team member remaining in hospital for at least 24 hours. This record is to describe the circumstances of the incident and the extent of any injuries or illnesses.

Paragraph (b) of this provision regulates the availability of the records required by the Subpart, including who has access to these records, the retention periods for various records, and, in some cases, the final disposition of the records. Under paragraph (b)(1), employers must make any record required by the Subpart available, on request, for inspection and copying by an OSHA compliance officer or to a representative of the National Institute for Occupational Safety and Health (NIOSH). Paragraph (b)(2) specifies that employers are to provide employees, their designated representatives, and OSHA compliance officers with exposure and medical records generated under the Subpart in accordance with § 1910.1020 (''Access to employee exposure and medical records''); these records include safe-practices manuals, depth-time profiles, diving records, DCS incident assessments, and hospitalization records. This paragraph also mandates that employers make equipment inspection and testing records available to employees and their designated representative on request.

According to paragraph (b)(3), employers must retain these records for the following periods: Safe-practices manuals, current document only; depth-time profiles, until completing the diving record or the DCS incident assessment; diving records, one year, except five years when a DCS incident occurred during the dive; DCS incident assessments, five years; hospitalization records, five years; and equipment inspections and testing records (i.e., current tag or log entry), until the employer removes the equipment from service. Paragraphs (b)(4) and (b)(5) specify the requirements for disposing of these records. Under paragraph (b)(4), employers are to forward to NIOSH any record with an expired five-year retention period. Paragraph (b)(5) states that employers who cease to do business must transfer records without unexpired retention dates to the successor employer who will retain them for the required period; however, when employers cease to do business without a successor employer, they must transfer the records to NIOSH.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 05–5802 Filed 3–23–05; 8:45 am]

BILLING CODE 4510–26–P

---

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

March 17, 2005.

The Department of Labor (DOL) has submitted the following public

information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Ira Mills on 202–693–4122 (this is not a toll-free number) or E-Mail: *mills.ira@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*Agency:* Employment and Training Administration.

*Type of Review:* Extension of a currently approved collection.

*Title:* Placement Verification and follow-up of Job Corps Participants.

*OMB Number:* 1205–0426.

*Frequency:* On occasion; Other (1–3 times).

*Affected Public:* Individuals or households; Business or other for-profit.

*Number of Respondents:* 77,507.

*Number of Annual Responses:* 77,507.

*Total Burden Hours:* 16,483.

*Estimated Time Per Response:* 10 to 15 minutes.

*Estimated Time Per Response:*

| Respondent category | Number of respondents | Average time (hours) per respondent | Estimated hours |
|---|---|---|---|
| Placed Former Enrollees at 90 days | 1,815 | 0.25 | 454 |
| Placed Graduates at 90–120 days | 22,720 | 0.25 | 5,680 |
| Placed Graduates at Six Months | 23,360 | 0.20 | 4,672 |
| Placed Graduates at 12 Months | 21,440 | 0.20 | 4,288 |
| Employer/Institution Re-Verification | 8,172 | 0.17 | 1,389 |
| Total | 77,507 | ..... | 16,483 |

*Burden Hours:* 16,483.

*Total annualized capital/startup costs:* $0.

*Total annual costs (operating/maintaining systems or purchasing services):* $0.

*Description:* This submission requests approval of three primary and two secondary data collection instruments that will be used to collect follow-up data on individuals who are no longer actively participating in Job Corps. The instruments are comprised of modules that include questions designed to obtain the following information: re-verification of initial job and/or school placements; employment and educational experiences; job search activities of those who are neither working nor in school; information about former participants' satisfaction with the services provided by Job Corps, and confirmation of contact information for purposes of further follow-up. The secondary instruments are used to secure placement verification from employers and educational institutions when the individuals cannot be contacted directly.

**Ira L. Mills,**

*Departmental Clearance Officer/Team Leader.*

[FR Doc. 05–5803 Filed 3–23–05; 8:45 am]

BILLING CODE 4510–26–P

## DEPARTMENT OF LABOR

### Bureau of International Labor Affairs; National Advisory Committee for Labor Provisions of U.S. Free Trade Agreements; Notice of Reestablishment

In accordance with the provisions of the Federal Advisory Committee Act, Article 17 of the North American Agreement on Labor Cooperation (NAALC), Article 17.4 of the United States—Singapore Free Trade Agreement, and Article 18.4 of the United States—Chile Free Trade Agreement, and Article 18.4 of the United States—Australia Free Trade Agreement, the Secretary of Labor has determined that the issuance of the charter of the National Advisory Committee for Labor Provisions of U.S. Free Trade Agreements, formerly the National Advisory Committee for the North American Agreement on Labor Cooperation, is necessary and in the public interest.

The Bureau of International Labor Affairs is the point of contact within the U.S. Department of Labor for the NAALC and the labor provisions of the United States—Singapore, United States—Chile, and United States—Australia Free Trade Agreements.

The committee shall provide its views to the Secretary of Labor through the Bureau of International Labor Affairs of the U.S. Department of Labor on the implementation of the NAALC and the labor chapters of the United States—Singapore Free Trade Agreement, the United States—Chile Free Trade Agreement, and the United States—Australia Free Trade Agreement. The committee may be asked to provide advice on labor provisions of other free trade agreements to which the United States may be a party or become a party. The committee should provide advice on issues within the scope of the NAALC and the labor provisions of the free trade agreements, including cooperative activities and the labor cooperation mechanism of each free trade agreement as established in the labor provisions and the corresponding annexes. The committee may provide advice on these and other matters as they arise in the course of administering the NAALC and the labor provisions of other free trade agreements to which the United States may be a party or become a party.

The committee is to be comprised of twelve members, four representing the labor community, four representing the business community, and four representing the public. Unless already

employees of the United States Government, none of these members shall be deemed to be employees of the United States Government.

Persons seeking additional information may contact the Office of Trade Agreement Implementation, Bureau of International Labor Affairs, U.S. Department of Labor, telephone (202) 693–4900.

Signed in Washington DC, this 18th day of March, 2005.

**Elaine L. Chao,**

*Secretary of Labor.*

[FR Doc. 05–5805 Filed 3–23–05; 8:45 am]

**BILLING CODE 4510–28–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### Federal Advisory Council on Occupational Safety and Health: Notice of Meeting

Notice is hereby given of the date and location of the next meeting of the Federal Advisory Council on Occupational Safety and Health (FACOSH), established under Section 1–5 of Executive Order 12196 on February 6, 1980, published in the **Federal Register**, February 27, 1980 (45 FR 1279).

FACOSH will meet on April 12, 2005 starting at 1:30 p.m., in Room N–3437 A/B/C of the Department of Labor Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210. The meeting will adjourn at approximately 4:30 p.m., and will be open to the public. Anyone wishing to attend this meeting must exhibit photo identification to security personnel upon entering the building.

Agenda items will include:

1. Call to Order
2. Old Business
   a. Federal Recordkeeping Change
   b. SHARE Initiative
   c. Field Safety and Health Council Awards Ceremony and Training Conference
   d. Federal Agency Training Week
   e. VPP/Partnerships
   f. Seatbelt Safety
3. New Business
4. Adjournment

Written data, views, or comments may be submitted, preferably with 20 copies, to the Office of Federal Agency Programs at the address provided below. All such submissions received by April 5, 2005 will be provided to the Federal Advisory Council members and included in the meeting record.

Anyone wishing to make an oral presentation should notify the Office of Federal Agency Programs by the close of business on April 7, 2005. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the presentation's content. Those who request the opportunity to address the Federal Advisory Council may be allowed to speak, as time permits, at the discretion of the Chairperson. Individuals with disabilities who need special accommodations and wish to attend the meeting should contact Diane Brayden at the address indicated below.

For additional information, please contact Diane Brayden, Director, Office of Federal Agency Programs, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3622, 200 Constitution Avenue, NW., Washington, DC 20210, telephone number (202) 693–2187. An official record of the meeting will be available for public inspection at the Office of Federal Agency Programs.

Signed at Washington, DC, this 18th day of March 2005.

**Jonathan L. Snare,**

*Acting Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 05–5804 Filed 3–23–05; 8:45 am]

**BILLING CODE 4510–26–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 05–058]**

### National Environmental Policy Act; Environmental Assessment and Finding of No Significant Impact; NASA Shared Services Center (NSSC)

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Finding of No Significant Impact.

**SUMMARY:** Pursuant to the National Environmental Policy Act of 1969, as amended (NEPA), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA, and NASA's implementing regulations, the National Historic Preservation Act, as amended, NASA regulations for implementing Executive Order (EO) 11988, Floodplain Management, and EO 11990, Protection of Wetlands, and the NASA Environmental Justice Strategy (1994) for implementing EO 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; NASA has made a Finding of No Significant Impact (FONSI) for the three proposed alternatives including: the Proposed and Preferred Action (Alternative A, lease and operation of the NASA Shared Services Center (NSSC) at any of the following three sites: NASA Stennis Space Center, Mississippi, Aerospace Technology Park, Brook Park, Ohio, and Cummings Research Park, Huntsville, Alabama); Alternative B (Virtual Consolidation); and Alternative C (No Action). Accordingly, an environmental impact statement is not required.

**ADDRESSES:** The Environmental Assessment (EA Phase 2) for the NSSC Facility that supports this FONSI may be reviewed on the NSSC Web site *http://nssc.nasa.gov,* or at the NASA Headquarters Library, 300 E Street, SW., Washington, DC 20546.

A limited number of copies of the EA are available by contacting Ms. Bridget Mackall, Environmental Management Division (Code LD020), NASA Headquarters, 300 E Street, SW., Washington, DC 20546–0001; phone: 202–358–0230; e-mail: *bridget.d.mackall@nasa.gov* or contact the following NASA Center NEPA Document Managers: NASA Glenn Research Center: Ms. Trudy F. Kortes, 216–433–3632. NASA Marshall Space Flight Center: Ms. Donna L. Holland, 256–544–7201. NASA Stennis Space Center: Ms. Carolyn D. Kennedy, 228–688–1445.

**SUPPLEMENTARY INFORMATION:** NASA is proposing to consolidate certain transactional functions currently performed across NASA Centers to a new business unit known as the NASA Shared Services Center (NSSC) (*NASA Shared Services Center (NSSC) Implementation Plan Report* (NSSC–RPT–02 Volume 1, September 2003, recommending continued planning for early implementation of the NSSC) (*Implementation Plan*), available at *http://nssc.nasa.gov.* The purpose of the Proposed Action (Alternative A), which is also the Preferred Alternative, is to locate the NSSC consistent with the recommendations of the *Implementation Plan* addressing the need for NASA to improve the use of resources and foster greater efficiencies at reduced costs for transactional functions. The Proposed Action would create a functionally and environmentally efficient NSSC to meet the need for a single shared-services facility, consistent with and furthering other goals for the NSSC. The Virtual NSSC (Alternative B) would consolidate the same functions into an NSSC, but in a virtual environment. The No Action NSSC (Alternative C) would allow continued administrative re-organization, but not into a consolidated NSSC.

**Alternative A (Proposed Action and Preferred Alternative)**

The Proposed Action (and Preferred Alternative) (Alternative A) would be to consolidate and co-locate certain currently dispersed transactional and administrative activities performed at NASA Centers in human resources, procurement, financial management, and information technology (IT) and identified in the NSSC *Implementation Plan.* IT functions consolidated to NASA Marshall Space Flight Center would remain at Marshall Space Flight Center and be consolidated organizationally into the NSSC. Other types of functional activities or services may be consolidated into the NSSC in the future.

The NSSC would become operational on or about October 2005 and employ approximately 500 civil service employees and contractors at full transition after five years and may expand later by up to 40 percent. Most personnel currently performing the functional activities at existing Centers would remain at their respective Centers to concentrate on Center mission activities. Some personnel would leave due to normal attrition, while other personnel would be relocated to the NSSC. In addition to labor cost and availability, NASA siting criteria included workforce diversity, local transportation access, access by other NASA Centers, safe and healthful working conditions, opportunities for further employee development in the vicinity of the proposed NSSC, and opportunities for partnering with local educational institutions, including minority institutions.

The NSSC would require Class A office space in a facility comparable to a mid-size office building of approximately 12,150 square meters ($m^2$) (135,000 square feet ($ft^2$)) with associated infrastructure, parking, and temporary swing space. No new computer ''data centers'' are planned. NASA would construct or lease the facility in partnership with State or local agencies or commercial partners. All proposals under Alternative A would include swing space in existing facilities during construction of the NSSC facility.

In addition to facility size, NASA required nominations to comply with NASA's sustainable design policy for new and renovated facilities (NASA Policy Directive (NPD) 8820.3, Facility Sustainable Design, NASA 2003, and NASA Memorandum on Policy for LEED® Leadership in Energy and Environmental Design Ratings for NASA New Facilities Projects, NASA Facilities Engineering Division, September 5, 2003). NASA also committed to designating a part or full-time NASA NSSC Environmental Manager and NASA NSSC Energy Manager and developing or applying an Environmental Management System (EMS) (NASA Procedural Requirements (NPR) 8553.1, NASA Environmental Management System, developed in response to EO 13148, Greening the Government Through Environmental Leadership), and would develop an Environmental Justice Strategy for the NSSC in response to NASA's Environmental Justice Strategy and EO 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

Additional siting criteria included location of the NSSC in accordance with the priorities and procedures established in the Rural Development Act of 1972, as amended (requiring Federal agencies to implement policies and procedures for giving first priority to rural areas); EO 12072, Federal Space Management (requiring Federal agencies to locate facilities according to listed criteria); EO 13006, Locating Federal Facilities on Historic Properties in Our Nation's Central Cities (directing Federal agencies to give priority to locating in historic properties and districts); other applicable Federal, State, Tribal, and local requirements; and the ability of local communities to provide adequate housing, schools, health care, recreational opportunities, and other amenities.

To demonstrate efficiencies not only in functional performance, but also in facility management supporting the NSSC, and to meet the timetable for implementing the NSSC, NASA's siting criteria included the ability to mitigate environmental impacts in the design and operation of the NSSC to below applicable significance levels.

NASA invited each NASA Center to nominate one proposed site according to NASA siting criteria. The proposed sites could be located on a NASA Center or off Center and use existing facilities or propose new construction.

Six sites were nominated, all involving new construction by the partner(s) and lease to NASA. No existing buildings, historic sites, or facilities within historic districts were identified that could meet the technical requirements for the NSSC. After review, NASA decided to retain all six site nominations for further consideration in the Phase 2 EA. As a result of the subsequent service provider procurement process, three of the six sites were incorporated by prospective service providers and retained by NASA for consideration as the decision-making process proceeded. The retained sites under Alternative A include NASA Stennis Space Center, Mississippi; Aerospace Technology Park, Brook Park, Ohio; and Cummings Research Park, Huntsville, Alabama.

**Alternative B (Virtual Consolidation)**

Under Alternative B, NASA would consolidate the functions into an NSSC in a virtual environment. Under this alternative, NASA would reorganize and relocate personnel and equipment and make minor upgrades or modifications to facilities and equipment.

**Alternative C (No Action)**

Under the No Action alternative (Alternative C), NASA would not consolidate functions into an NSSC but may continue to reorganize and relocate personnel and equipment and make minor upgrades or modifications to facilities and equipment in its on-going effort to improve administrative performance.

**Summary of Environmental Assessment**

Under NASA's NEPA implementing regulations, the administrative reorganization and facility selection and operation associated with implementing the proposed NSSC may qualify as a categorical exclusion (14 CFR 1216.305(d)(7) or (8)), *i.e.*, actions that may not require more detailed environmental analysis after review of any unique or extraordinary circumstances, public controversy on environmental grounds, and risks to public health and safety. However, because the proposed action might have lead, depending on the circumstances, to proposals that would normally require more detailed environmental analysis, NASA initiated a phased environmental evaluation process, beginning with a Phase 1 EA, in accordance with § 102(2)(E) of NEPA and NASA implementing regulations. The Phase 1 EA was used internally as a resource in developing the site nomination guidelines to minimize the potential for environmental impacts, and all nominations were required to include a NASA Environmental Checklist and draft Record of Environmental Consideration (REC). The Phase 2 EA, incorporating by reference the Phase 1 EA, NASA Environmental Checklists, and draft REC's, has been prepared in accordance with the above regulatory requirements and NPR 8580.1, Implementing the National Environmental Policy Act and EO 12114 (November 2001), and NPD 8500.1A, NASA Environmental

Management (April 2004), which require NASA to consider environmental factors throughout the lifecycle of an action, including planning, development, and operations.

Six NASA Centers proposed sites for the NSSC, all of which involve new construction by the partner(s) and lease to NASA. Alternatives A.1 and A.3, using existing facilities on a NASA Center and outside of a NASA Center, respectively, thus, were not carried forward for analysis in the site-specific Phase 2 EA. The Phase 1 EA, NASA Environmental Checklists, and draft RECs were incorporated by reference into the EA Phase 2. As a result of the procurement process in which prospective service providers had the flexibility of incorporating any one of the six sites into their respective proposals, NASA announced on January 7, 2005, as the draft EA was being completed, that three sites under Alternative A would be carried forward (A.2.2 (Stennis Space Center), A.4.1 (Aerospace Technology Park), and A.4.4 (Cummings Research Park)). These latter three alternative sites remained under consideration (in italics); along with Alternatives B and C, as the decision-making process proceeded. Alternative A: Consolidation and co-location of functions at an NSSC:

On an existing NASA Center, new construction required (Alternative A.2 in Phase 1 EA):

A.2.1 NASA Johnson Space Center in Clear Lake, Texas.

A.2.2 NASA Stennis Space Center in Hancock County, Mississippi. Not on an existing NASA Center, new construction required (Alternative A.4 in Phase 1 EA):

*A.4.1 Aerospace Technology Park, City of Brook Park, Ohio, nominated by the Glenn Research Center.*

A.4.2 Central Florida Research Park in Orlando, Florida, nominated by the Kennedy Space Center.

A.4.3 City Center at Oyster Point, in Newport News Virginia, nominated by the Langley Research Center.

*A.4.4 Cummings Research Park in Huntsville, Alabama, nominated by the Marshall Space Flight Center.*

Alternative B: Consolidation of functions into a virtual NSSC.

Alternative C: No consolidation of functions into an NSSC (No Action alternative).

The analysis and findings of the alternatives and planned mitigation considered in EA Phase 2 are incorporated by reference and summarized in this FONSI.

**Findings**

On the basis of the EA Phase 2, NASA has determined that the environmental impacts associated with this project under any of the proposed alternatives are negligible or can be easily prevented and mitigated, and no individual or cumulatively significant effect, either direct or indirect, on the quality of the environment would occur.

*Alternative A (Proposed Action and Preferred Alternative)*

Issues commonly associated with construction or modification and operation of a mid-size office building include air emissions from site clearing and construction; noise during construction and operation; impacts to cultural resources, stormwater drainage, wetlands, floodplains, and wildlife due to site clearing, excavation, and increased traffic and other human activity; aesthetic or other impacts to historic properties; and changes in local traffic patterns and levels.

NASA required all nominations to include a completed NASA Environmental Checklist and draft REC. For all new construction alternatives at existing Centers, NASA also reviewed environmental baseline information and other relevant information. For those alternatives requiring construction of new facilities off-Center, NASA reviewed information from Federal, State, and local planning and environmental agencies and other relevant sources. Table 1 summarizes the key findings and planned mitigation.

None of the alternatives (Alternatives A (A.2.2, NASA Stennis Space Center, A.4.1, Aerospace Technology Park, and A.4.4, Cummings Research Park), B, and C) would affect floodplains or the coastal zone. Under Alternative A, development of the NSSC at the Aerospace Technology Park site may require a wetlands permit, which is anticipated to result in wetlands mitigation off site comparable to mitigation required for the expansion of the adjacent Cleveland-Hopkins International Airport, but on a much smaller scale. All sites would comply with stormwater management plans and permits. The Cummings Research Park site would require a State-approved stormwater management plan.

No federally listed threatened or endangered species or critical habitat or other federally protected species would be affected under any Alternative. NASA would require pre-construction surveys for migratory birds and the Indiana bat at the Aerospace Technology Park site. If the presence of these species is indicated, NASA would consult with the U.S. Fish and Wildlife Service. Mitigation may include adjusting the construction schedule. At any of the sites, if threatened or endangered species or other protected species are discovered during construction, NASA would consult with the U.S. Fish and Wildlife Service in accordance with the applicable statutes and regulations.

Traffic and associated air quality impacts are expected to be minimal due to site locations near major arterials and the availability of traffic management options. NASA would require that precautions be taken to minimize dust and noise impacts at all sites.

Level 1 Site Assessments for contamination were completed at the Cummings Research Park site and an extensive Center-wide survey was conducted at NASA Stennis Space Center. None of these assessments indicated that contamination was likely or that a Level 2 Site Assessment would be needed. Based on current information available to NASA, contamination is also not anticipated at the Aerospace Technology Park site, but NASA would require a confirmatory Level 1 Site Assessment prior to contract or lease for this site. If contamination requiring remediation is discovered at a site and NASA decides to proceed with development of the NSSC at the site, NASA would require that a remediation plan be developed and implemented prior to construction. Similarly, if contamination requiring remediation is discovered during construction, NASA would require development and implementation of a remediation plan.

Cultural resources surveys have been completed for the Cummings Research Park site and for NASA Stennis Space Center, and the proposed action would not affect cultural resources at or in the vicinity of these proposed sites. Based on current information available for the Aerospace Technology Park site and surrounding areas, no historic structures would be affected and NASA does not anticipate the presence of major archeological resources, but would require confirmatory test borings for archeological resources prior to lease or contract as recommended by the Ohio Historic Preservation Office. If archeological resources are discovered at a site prior to construction or unanticipated discovery occurs during construction, NASA would consult with the respective State Historic Preservation Officer. If NASA decided to proceed with implementation of the NSSC at the site and mitigation is required, NASA would develop and

implement a mitigation plan. A mitigation plan may include adjusting the footprint, phasing construction, recovering data, curating artifacts, and providing the public with information about the site's history.

The proposed action would not result in disproportionately high and adverse environmental impacts on minority or low-income populations or affect children's environmental health or safety. NASA would develop an environmental justice strategy for the NSSC.

NASA would implement an EMS for the NSSC to prevent any potentially adverse impacts during operations.

*Alternative B (Virtual Consolidation)*

Under Alternative B, NASA would consolidate functions in a virtual environment without co-locating employees and contractors to a new location. NASA would relocate some personnel and equipment among existing Centers and require minor upgrades in facilities and equipment at existing Centers. Virtual consolidation, however, is unlikely to result in substantial direct, indirect, or cumulative environmental impacts not covered under existing Center permits and environmental reviews. In specific instances, and depending upon the circumstances, minor modifications of a facility at a Center could result in additional environmental review and permitting. NASA would continue to implement Center EMSs to prevent any potentially adverse impacts during operation of a Virtual NSSC. Alternative B would not fully meet the purpose and need for the NSSC.

*Alternative C (No Action Alternative)*

Under the No Action Alternative, NASA would not create an NSSC but may continue to relocate personnel and equipment among existing Centers and require minor upgrades in facilities and equipment at existing Centers as part of its on-going effort to improve efficiency and performance of its administrative operations. Such efforts are unlikely to result in substantial direct, indirect, or cumulative environmental impacts that are not covered under existing Center permits and environmental reviews. However, in specific instances, and depending upon the circumstances, minor modifications of a facility at a Center could result in additional environmental review and permitting. NASA would continue to implement Center EMSs to prevent any potentially adverse impacts during on-going operations. The No Action Alternative would not meet the purpose and need for the NSSC.

Based on these findings, NASA has determined that neither the Proposed Action under Alternative A to locate the NSSC at any of the three sites currently under consideration (A.2.2 (NASA Stennis Space Center), A.4.1 (Aerospace Technology Park), and A.4.4 (Cummings Research Park), Alternative B (Virtual Consolidation), nor Alternative C (No Action) would have a significant impact on the environment, and thus, an Environmental Impact Statement is not required.

NASA solicited comments on the draft EA and draft FONSI through notices published in the **Federal Register** and in the local papers. No comments were received. NASA will take final action immediately.

Dated: March 17, 2005.

**Jeffrey E. Sutton,**

*Assistant Administrator for Infrastructure and Administration.*

TABLE 1.—SUMMARY OF POTENTIAL ENVIRONMENTAL IMPACTS OF ALTERNATIVES A, B, AND C (MITIGATION INDICATED IN FOOTNOTES)

| Resource [1] | Alternative A: Consolidation | | | | | | Alternative B: Virtual consolidation | Alternative C: No action |
|---|---|---|---|---|---|---|---|---|
| | A.2.1 NASA Johnson Space Center | A.2.2 NASA Stennis Space Center | A.4.1 Aerospace Technology Park | A.4.2 Central Florida Research Park | A.4.3 City Center at Oyster Point | A.4.4 Cummings Research Park | | |
| NSSC Location | Clear Lake, TX. | Hancock County, MS. | Brook Park, OH. | Orlando, FL | Newport News, VA. | Huntsville, AL | | |
| Construction Required [2] | Yes, on-site | Yes, on-site | Yes, off-site | Yes, off-site | Yes, off-site | Yes, off-site | No | No. |
| Transportation and Traffic. | Low impact | Low impact | Low impact | Low impact | Low impact | Low impact | No impact | No impact. |
| Solid and Hazardous Waste Generation and Management. | Low to no impact [3]. | Low to no impact [4]. | Low to no impact [5]. | Low to no impact [6]. | Low to no impact [7]. | Low to no impact [8]. | No impact | No impact. |
| Public Services and Utilities [9]. | Low to no impact. | Low to no impact. | Low to no impact. | Low to no impact. | Low to no impact. | Low to no impact. | Low to no impact. | No impact. |
| Communication | Low to no impact. | Low to no impact. | Low to no impact. | Low to no impact. | Low to no impact. | Low to no impact. | Low to no impact. | No impact. |
| Land Use | Low impact | Low impact | Low impact | Low impact | Low impact | Low impact | No impact | No impact. |
| Noise | Low impact | Low impact | Low impact [10]. | Low impact | Low impact | Low impact | No impact | No impact. |
| Air Quality | Low to no impact [11]. | Low to no impact. | Low to no impact. | Low to no impact. | Low to no impact. | Low to no impact. | No impact | No impact. |
| Water Resources | Low to no impact. | Low to no impact. | Low to no impact. | Low to no impact [12]. | Low to no impact. | Low to no impact [13]. | No impact | No impact. |
| Soils and Geology | Low to no impact. | Low to no impact. | Low to no impact. | Low to no impact. | Low to no impact. | Low to no impact. | No impact | No impact. |
| Biological Resources [14] | Low to no impact [15]. | Low to no impact. | Low to no impact [16]. | Low to no impact. | No impact | No impact | No impact | No impact. |
| Ecological Resources | No impact | No impact | Wetlands impact to be mitigated [17]. | No impact | No impact | No impact | No impact | No impact. |
| Cultural and Historic Resources [18]. | Low to no impact [19]. | No impact | Low to no impact [20]. | Low to no impact [21]. | Low to no impact [22]. | No impact | No impact | No impact. |

TABLE 1.—SUMMARY OF POTENTIAL ENVIRONMENTAL IMPACTS OF ALTERNATIVES A, B, AND C (MITIGATION INDICATED IN FOOTNOTES)—Continued

| Resource [1] | Alternative A: Consolidation | | | | | | Alternative B: Virtual consolidation | Alternative C: No action |
|---|---|---|---|---|---|---|---|---|
| | A.2.1 NASA Johnson Space Center | A.2.2 NASA Stennis Space Center | A.4.1 Aerospace Technology Park | A.4.2 Central Florida Research Park | A.4.3 City Center at Oyster Point | A.4.4 Cummings Research Park | | |
| Environmental Justice [23] | No adverse impact. | No adverse impact. | No adverse impact. | No adverse impact. | No adverse impact. | No adverse impact. | No adverse impact. | No adverse impact. |

[1] Alternative A: NASA NSSC Environmental Management System to be developed and full-or part-time NASA NSSC Environmental Manager to be designated. Alternatives B and C: Current NASA Center EMS would apply.
[2] Alternative A: All nominations required consistency with NASA's sustainable facilities policy.
[3] No Level/Phase 1 Site Assessment. Available information does not indicate contamination likely. Confirmatory Environmental Site Assessment for contamination required prior to lease or contract.
[4] Center-wide survey completed. No contamination indicated at the proposed site. State of Mississippi concurred.
[5] No Level/Phase 1 Site Assessment. Available information does not indicate contamination likely. Confirmatory Environmental Site Assessment for contamination required prior to lease or contract.
[6] No LevelPhase 1 Site Assessment. Available information does not indicate contamination likely. Confirmatory Environmental Site Assessment for contamination required prior to lease or contract.
[7] Level/Phase 1 Site Assessment completed. Level 2 Site Assessment not indicated.
[8] Level/Phase 1 Site Assessment completed. Level 2 Site Assessment not indicated.
[9] Alternative A: NASA NSSC Energy Manager, full-or part-time, to be designated. Alternatives B and C: Current on-site NASA Center Energy Manager.
[10] Noise impacts from adjoining airport to be mitigated in accordance with occupational health and safety regulations and local noise codes.
[11] Confirmatory Clean Air Act General Conformity Determination ($NO_X$ and VOCs) may be required; construction scheduling adjustment and other mitigation may be required if results for relevant emissions exceed de minimus levels. Preliminary analysis indicated that levels would be well below de minimus levels.
[12] State Environmental Resources Permit would be required.
[13] State approved stormwater management plan would be required.
[14] All: If protected species are subsequently discovered on site or species on site are later designated for protection, NASA will consult with the U.S. Fish and Wildlife Service.
[15] Pre-construction survey required for migratory birds and, if results indicate presence, adjustment of construction schedule may be required.
[16] Pre-construction survey required for migratory birds and Indiana bat and if results indicate presence, adjustment of construction schedule may be required.
[17] Clean Water Act sec. 404 wetlands permit from the Army Corps of Engineers required; wetlands mitigation planned off-site.
[18] Alternative A: If unanticipated discovery occurs during excavation or construction, consultation with SHPO would be required to development mitigation plan if needed that may include adjustment of the footprint or construction schedule, data recovery, curation, and public education display.
[19] No impact to National Historic Landmarks at Johnson Space Center. Confirmatory site testing for archeological resources may be required, and if results indicate presence, consultation with SHPO would be required to development mitigation plan if needed that may include adjustment of the footprint or construction schedule, data recovery, curation, and public education display.
[20] Site testing for archeological resources would be required as recommended by SHPO, and if results indicate presence, consultation with SHPO would be required to development mitigation plan if needed that may include adjustment of the footprint or construction schedule, data recovery, curation, and public education display.
[21] Confirmatory site testing for archeological resources may be required, and if results indicate presence, consultation with SHPO would be required to development mitigation plan if needed that may include adjustment of the footprint or construction schedule, data recovery, curation, and public education display.
[22] Confirmatory site testing for archeological resources may be required, and if results indicate presence, consultation with SHPO would be required to development mitigation plan if needed that may include adjustment of the footprint or construction schedule, data recovery, curation, and public education display.
[23] Alternative A: NASA NSSC EJ Strategy would be developed. Alternatives B and C: Current NASA Center EJ Strategy would apply.

[FR Doc. 05–5772 Filed 3–23–05; 8:45 am]
BILLING CODE 7510–13–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 05–061]**

## NASA Exploration Transportation System Strategic Roadmap Committee; Meeting

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Exploration Transportation System Strategic Roadmap Committee.

**DATES:** Monday, April 18, 2005, 8 a.m. to 6 p.m.; and Tuesday, April 19, 2005, 8 a.m. to 5 p.m.

**ADDRESSES:** Hilton Crystal City Hotel, 2399, Jefferson Davis Highway, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** Dr. Dana Gould, MS 149, National Aeronautics and Space Administration Langley Research Center, Hampton, VA 23681–2199 (757) 864–7747.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the capacity of the room. Visitors to the meeting will be requested to sign a visitor's register.

The agenda for the meeting includes the following topics:

—Summary of Relevant Strategic Roadmaps.

—Summary of Relevant Capability Roadmaps.

—Overview of Roadmap Integration.

—Transportation Roadmap Update and Deliberations.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: March 18, 2005.

**P. Diane Rausch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 05–5832 Filed 3–23–05; 8:45 am]
BILLING CODE 7510–13–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 05–060]**

### NASA Universe Exploration Strategic Roadmap Committee; Meeting by Telephone Conference

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting by teleconference of the NASA Universe Exploration Strategic Roadmap Committee.

**DATES:** Friday, April 8, 2005, from 3 p.m. to 5 p.m., eastern standard time.

*Phone Number:* Public Access Listen Only—1–800–358–0735, passcode 8920561.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael Salamon, 202–358–0441.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the line capacity of the conference telephone system.

The agenda for the meeting is as follows:

—Discussion of draft interim strategic roadmap.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: March 18, 2005.

**P. Diane Rausch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 05–5831 Filed 3–23–05; 8:45 am]

**BILLING CODE 7510–13–P**

## NEIGHBORHOOD REINVESTMENT CORPORATION

### Sunshine Act Meeting; Regular Board of Directors Meeting

**TIME AND DATE:** 3 p.m., Monday, March 28, 2005.

**PLACE:** Neighborhood Reinvestment Corporation, 1325 G Street NW., Suite 800, Boardroom, Washington, DC 20005.

**STATUS:** Open.

**CONTACT PERSON FOR MORE INFORMATION:** Jeffrey T. Bryson, General Counsel/Secretary, 202–220–2372; *jbryson@nw.org.*

**AGENDA:**

I. Call to Order.
II. Approval of Minutes: December 6, 2004 Regular Meeting.
III. Corporate Administration Committee.
  A. Meeting—1/19/05.
  B. Meeting—2/03/05 teleconference.
  C. Meeting—3/15/05.
IV. Audit Committee Meeting—1/31/05.
V. Finance and Budget Committee Meeting—1/11/05.
VI. Corporate Fundraising Committee Meeting—1/24/05.
VII. Treasurer's Report.
VIII. CEO Quarterly Management Report.
IX. Adjournment.

**Jeffrey T. Bryson,**

*General Counsel/Secretary.*

[FR Doc. 05–5981 Filed 3–15–05; 3:02 pm]

**BILLING CODE 7570–01–M**

## PENSION BENEFIT GUARANTY CORPORATION

### Submission of Information Collections for OMB Review; Comment Request; Payment of Premiums

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of request for OMB approval of revision of collection of information.

**SUMMARY:** The Pension Benefit Guaranty Corporation (''PBGC'') is requesting Office of Management and Budget (''OMB'') approval, under the Paperwork Reduction Act, of a revision of the collection of information under its regulation on Payment of Premiums (29 CFR part 4007) (OMB control number 1212–0009; expires November 30, 2006). This collection of information also includes a certification of compliance with requirements to provide certain notices to participants under the PBGC's regulation on Disclosure to Participants (29 CFR part 4011). The PBGC is revising the collection of information to provide for an alternative means of electronic filing of premium information, in addition to the PBGC's existing e-filing method using ''My Plan Administration Account'' (''My PAA'') through the PBGC's Web site. The alternative e-filing method is being developed in connection with a PBGC proposal to require electronic premium filing in the near future. This notice informs the public of the PBGC's request to OMB and solicits public comment on the collection of information.

**DATES:** Comments should be submitted by April 25, 2005.

**ADDRESSES:** Comments should be mailed to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, 725 17th Street, NW., Washington, DC 20503. Copies of the request for approval (including the collection of information) may be obtained without charge by writing to or visiting the PBGC's Communications and Public Affairs Department, suite 240, 1200 K Street, NW., Washington, DC 20005–4026, or calling 202–326–4040. (TTY and TDD users may call 800–877–8339 and request connection to 202–326–4040). The PBGC's regulations on Payment of Premiums (29 CFR part 4007), Disclosure to Participants (29 CFR part 4011), and Filing, Issuance, Computation of Time, and Record Retention (29 CFR part 4000) and the paper premium forms and instructions can be accessed on the PBGC's Web site at *http://www.pbgc.gov;* the My PAA forms and instructions can also be accessed through the Web site by My PAA users.

**FOR FURTHER INFORMATION CONTACT:** Deborah C. Murphy, Attorney, Legislative & Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

**SUPPLEMENTARY INFORMATION:** Section 4007 of Title IV of the Employee Retirement Income Security Act of 1974 (''ERISA'') requires the Pension Benefit Guaranty Corporation (''PBGC'') to collect premiums from pension plans covered under Title IV pension insurance programs. Pursuant to ERISA section 4007, the PBGC has issued its regulation on Payment of Premiums (29 CFR part 4007). Section 4007.3 of the premium payment regulation requires plans, in connection with the payment of premiums, to file forms prescribed by the PBGC and refers filers to subpart A of its regulation on Filing, Issuance, Computation of Time, and Record Retention (29 CFR part 4000) for rules on permissible filing methods. (Payments are treated as filings.) Section 4007.10 of the premium payment regulation requires plans to retain and make available to the PBGC records supporting or validating the computation of premiums paid.

The PBGC has prescribed a series of paper premium forms: Form 1–ES, Form 1–EZ, and Form 1 and (for single-employer plans only) Schedule A to Form 1. Form 1–ES is issued, with instructions, in the PBGC's Estimated Premium Payment Package. Form 1–EZ, Form 1, and Schedule A are issued, with instructions, in the PBGC's Annual

Premium Payment Package. The PBGC issues these forms on paper and also makes them available on its Web site so that filers can print them out. In addition, a number of private-sector software developers have created software that prints out filers' premium information on PBGC-approved forms; filers can use this private-sector computer software to prepare their premium declarations and can then file the paper forms generated by that software.

In addition, the PBGC provides for premium filing through an electronic facility, ''My Plan Administration Account'' (''My PAA''), on its Web site at *http://www.pbgc.gov.* The forms that filers prepare using My PAA are not in the same format as the paper premium forms, but they solicit the same premium information.

Premium forms are used to report the computation, determine the amount, and record the payment of PBGC premiums. The submission of premium information and retention and submission of premium records are needed to enable the PBGC to perform premium audits. The plan administrator of each pension plan covered by Title IV of ERISA is required to file one or more premium forms each year. The PBGC uses the information on the premium forms to identify the plans paying premiums; to verify whether plans are paying the correct amounts; and to help the PBGC determine the magnitude of its exposure in the event of plan termination. That information and the retained records are used for audit purposes.

In addition, section 4011 of ERISA and the PBGC's regulation on Disclosure to Participants (29 CFR part 4011) require plan administrators of certain underfunded single-employer pension plans to provide an annual notice to plan participants and beneficiaries of the plans' funding status and the limits on the PBGC's guarantee of plan benefits. In general, the Participant Notice requirement applies (subject to certain exemptions) to plans that must pay a variable-rate premium. In order for the PBGC to monitor compliance with part 4011, single-employer plan administrators must indicate in their premium filings whether the Participant Notice requirements have been complied with.

The collection of information under the regulation on Payment of Premiums, including Form 1–ES, Form 1–EZ, Form 1, and Schedule A to Form 1, corresponding My PAA electronic forms, and related instructions has been approved by the Office of Management and Budget (''OMB'') under control number 1212–0009. The collection of information also includes the certification of compliance with the Participant Notice requirements (but not the Participant Notices themselves).

The PBGC is developing a new electronic filing method, in addition to the existing My PAA application, that will be tied to the private-sector software that many filers currently use to print out pre-filled PBGC-approved forms that they then file. Under this new e-filing method, the PBGC will establish standards for the structure and submission of electronic files containing premium filing information and procedures for PBGC approval of files created with such software as meeting the established standards. Developers of private-sector premium filing preparation software will be invited to incorporate in their software packages the capacity to create electronic premium information files that meet these standards. Users of such software will then be able to submit their premium filings to the PBGC electronically as an alternative to both paper submissions and the use of My PAA. This alternative e-filing method is being developed in connection with a PBGC proposal to require electronic premium filing in the near future.

In connection with and as part of the new filing standards, the PBGC is providing for a new method for certifying premium filings made using private-sector software. Currently, a plan's premium filing must be certified by the plan administrator and, in many cases, also by an enrolled actuary. My PAA, which uses interactive software on the PBGC's Web site, permits both a plan administrator and an enrolled actuary to certify the same filing, but the PBGC anticipates that private-sector software developers will find it difficult or impossible to implement such a feature, which requires both the plan administrator and the enrolled actuary to access the same filing electronically.

Accordingly, the PBGC is introducing a new premium filing certification methodology for premium e-filings made with private-sector software. The new methodology requires one responsible person (who may but need not be either the plan administrator or the enrolled actuary) to certify a private-sector software premium e-filing. If the responsible person is not the plan administrator, the certification will also state that the responsible person is authorized to act by the plan administrator and has a written representation from the plan administrator that the filing is proper. If the responsible person is not the enrolled actuary, the certification for a filing that includes actuarial items (variable-rate premium computations or certain variable-rate premium exemptions) will also state that the responsible person has a written representation from the enrolled actuary that the actuarial items in the filing are proper. The responsible person may be either the plan administrator or the enrolled actuary, and if not, must be at an appropriate level of authority.

The PBGC is requesting that OMB approve this revision of the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The PBGC estimates that it will receive premium filings annually from about 28,900 plan administrators and that the total annual burden of the collection of information will be about 3,478 hours and $18,172,550. (These estimates include paper and electronic filings.)

Issued in Washington, DC, this 18th day of March, 2005.

**Richard W. Hartt,**

*Assistant Executive Director and Chief Technology Officer, Pension Benefit Guaranty Corporation.*

[FR Doc. 05–5828 Filed 3–23–05; 8:45 am]

BILLING CODE 7708–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51391; File No. SR–CTA/CQ–2004–01]**

## Consolidated Tape Association; Order Approving the Seventh Substantive Amendment to the Second Restatement of the Consolidated Tape Association Plan and the Fifth Substantive Amendment to the Restated Consolidated Quotation Plan

March 17, 2005.

### I. Introduction

On December 3, 2004, the Consolidated Tape Association (''CTA'') Plan and Consolidated Quotation (''CQ'') Plan participants (''Participants'') [1] submitted to the Securities and Exchange Commission

[1] Each Participant executed the proposed amendments. The current Participants are the American Stock Exchange LLC (''Amex''); Boston Stock Exchange, Inc. (''BSE''); Chicago Board Options Exchange, Inc. (''CBOE''); Chicago Stock Exchange, Inc. (''CHX''); Cincinnati Stock Exchange, Inc. (now known as the National Stock Exchange) (''NSX''); National Association of Securities Dealers, Inc. (''NASD''); New York Stock Exchange, Inc. (''NYSE''); Pacific Exchange, Inc. (''PCX''); and Philadelphia Stock Exchange, Inc. (''Phlx'').

(''Commission'') a proposal to amend the CTA and CQ Plans (collectively, the ''Plans''),[2] pursuant to Rule 11Aa3–2 under the Act.[3] The proposal represents the 7th substantive amendment made to the Second Restatement of the CTA Plan (''7th Amendment'') and the 5th substantive amendment to the Restated CQ Plan (''5th Amendment''), and reflects changes unanimously adopted by the Participants. The proposed amendments would modify the procedures for joining the Plans as a new Participant. In addition, the proposed amendments would perform a ''housekeeping'' function of incorporating into the text of the Plans changes to the corporate names and addresses of some Participants. Notice of the proposed amendments was published in the **Federal Register** on January 19, 2005.[4]

The Commission received no comments on the proposed amendments. This order approves the 7th Amendment to the CTA Plan and the 5th Amendment to the CQ Plan.

## II. Description of the Proposed Amendments

The proposed amendments would modify the procedures pursuant to which a national securities exchange or a national securities association may join the Plans as a new Participant. More specifically, the proposed amendments would modify the process for determining the fee that a national securities exchange or a national securities association must pay in order to join the Plans.

Currently, both Plans require a new entrant to pay the current Participants an amount that ''attributes an appropriate value to the assets, both tangible and intangible, that CTA has created and will make available to such new Participant.'' [5] The Plans allow for the Participants to consider one or more of six factors in assessing the appropriate value.[6] The Commission approved the addition of these entry-fee criteria to both Plans in 1993.[7] However, since the criteria were adopted, no entity has joined the Plans. CBOE was the last Participant to join the Plans, having done so in 1991.

In 1999, the Options Price Reporting Authority (''OPRA'') Plan participants sought to adopt the same criteria adopted by the CTA to determine the appropriate entrance fee to join the OPRA Plan.[8] The Commission received negative comments regarding the previously approved factors OPRA proposed to consider in determining the amount of its participation fee. The commenters asserted that the proposed OPRA Plan criteria could create a barrier to entry into the options industry that could harm competition. In response, OPRA modified and adopted new, more objective factors to be considered in determining the appropriate new entrant participation fee.[9] Consequently, in light of the comments received on the current CTA Plan and CQ Plan criteria that OPRA was proposing to adopt, at the October 2001 CTA meeting, a representative of the Division of Market Regulation (''Division'') suggested that the CTA consider amending its Plan criteria for determining new entrant fees to conform to the criteria that had been adopted by OPRA.

In 2002, The Nasdaq Stock Market, Inc. (''Nasdaq'') and Island ECN expressed interest in joining the Plans and inquired as to the amount of the entry fee. In response, the Participants engaged Deloitte & Touche, asking it to assign a value to each of the six current Plan criteria for determining a new entrant's fee. The Division expressed concerns to the Participants regarding the methodology contemplated by the CTA because it believed that the methodology contained factors that should not be considered in determining a proper entrance fee for new entrants.[10] The Division further noted that the entrance fee amount the Participants were considering at the time might have an anti-competitive effect on potential new entrants.[11]

In light of the Division's concerns that the current Plan standards do not provide an objective basis for determining entrance fees for new Participants and that the fees should be based solely on objective criteria and costs that could be easily calculated and readily discernable (similar to the methodology currently used for determining such fees in the OPRA Plan),[12] the Participants proposed new standards for determining a new Participant's entry fee based on the OPRA Plan criteria. The proposed amendments would allow the Participants to consider one or both of the following in determining a new entrant's fee: (1) The portion of costs previously paid by the CTA for the development, expansion and maintenance of CTA's facilities which, under generally accepted accounting principles (''GAAP''), could have been treated as capital expenditures and, if so treated, would have been amortized over the five years preceding the admission of the new Participant (and for this purpose all such capital expenditures shall be deemed to have a five-year amortizable life); and (2) previous amounts paid by other Participants when they joined the Plans. In addition, the proposed amendments would require the new Participant to reimburse the Plan Processor for the costs that the Processor incurs in modifying CTS and CQS systems to accommodate the new Participant and for any additional capacity costs. Any disagreement regarding the fee calculation would be subject to Commission review pursuant to Section 11A(b)(5) of the Act.[13]

Finally, the proposed amendments would perform the ''housekeeping'' function of updating the names and addresses of the Plans' Participants. In the last few years, the ''Pacific Stock Exchange, Inc.'' has become the ''Pacific Exchange, Inc.,'' the ''American Stock

[2] *See* Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR 17799 (order approving CTA Plan); 15009 (July 28, 1978), 43 FR 34851 (August 7, 1978) (order temporarily approving CQ Plan); and 16518 (January 22, 1980), 45 FR 6521 (order permanently approving CQ Plan). The most recent restatement of both Plans was in 1995. The CTA Plan, pursuant to which markets collect and disseminate last sale price information for listed securities, is a ''transaction reporting plan'' under Rule 11Aa3–1 of the Securities Exchange Act of 1934 (''Act''), 17 CFR 240.11Aa3–1 and a ''national market system plan'' under Rule 11Aa3–2 of the Act, 17 CFR 240.11Aa3–2. The CQ Plan, pursuant to which markets collect and disseminate bid/ask quotation information for listed securities, is also a ''national market system plan'' under Rule 11Aa3–2 of the Act, 17 CFR 240.11Aa3–2.

[3] 17 CFR 240.11Aa3–2.

[4] *See* Securities Exchange Act Release No. 51012 (January 10, 2005), 70 FR 3075 (''Notice'').

[5] Section III(c) of the Plans.

[6] *See id.*

[7] *See* Securities Exchange Act Release No. 33319 (December 10, 1993), 58 FR 66040 (December 17, 1993) (File No. S7–27–93).

[8] *See* Securities Exchange Act Release No. 42002 (October 13, 1999), 64 FR 56543 (October 20, 1999) (notice of File No. SR–OPRA–99–01).

[9] *See* Securities Exchange Act Release No. 43697 (December 8, 2000), 65 FR 78518 (December 15, 2000) (order approving File No. SR–OPRA–00–08); *see also* Securities Exchange Act Release Nos. 43347 (September 26, 2000), 65 FR 59035 (October 3, 2000) (notice of File No. SR–OPRA–00–08); and 42817 (May 24, 2000), 65 FR 35147 (June 1, 2000) (notice of filing and order granting accelerated effectiveness to File No. SR–OPRA–99–01).

[10] *See* letters to William J. Brodsky, Chairman and Chief Executive Officer, CBOE; David Colker, President and Chief Executive Officer, NSX; Philip D. DeFeo, Chairman and Chief Executive Officer, PCX; Meyer S. Frucher, Chairman and Chief Executive Officer, Phlx; Richard Grasso, Chairman and Chief Executive Officer, NYSE; David A. Herron, Chief Executive Officer, CHX; Richard Ketchum, President and Deputy Chairman, Nasdaq; Kenneth L. Leibler, Chairman and Chief Executive Officer, BSE; and Salvatore F. Sadano, Chairman and Chief Executive Officer, Amex, from Annette L. Nazareth, Director, dated March 13, 2003.

[11] *See id.*

[12] *See* letters to Thomas E. Haley, Chairman, CTA, from Annette L. Nazareth, Director, Division, Commission, dated August 3, and November 3, 2004.

[13] 15 U.S.C. 78k–1(b)(5).

Exchange, Inc.'' has become the ''American Stock Exchange LLC,'' and the Cincinnati Stock Exchange, Inc.'' has become the ''National Stock Exchange.''

## III. Discussion

After careful review, the Commission finds that the proposed amendments to the Plans are consistent with the requirements of the Act and the rules and regulations thereunder,[14] and, in particular, Section 11A(a)(1) of the Act[15] and Rule 11Aa3–2 thereunder.[16]

The Commission notes that the Plans currently provide procedures pursuant to which a national securities exchange or a national securities association may join the Plans as a new Participant, including payment of a participation/new entrant fee. The Commission further notes that the current six criteria in the Plans that may be considered by Participants in determining a new Participant's entrance fee were questioned when OPRA participants sought to incorporate them into the OPRA Plan in 1999.[17] The Commission believes that some of these current criteria are inappropriate, overly broad, and subjective, and believes that they could potentially have an anti-competitive impact on and/or pose a barrier to entry for an entity that wants to join the Plans.[18] In fact, over the last few years, the Commission has repeatedly urged the Participants to amend the Plans to adopt more objective standards for ascertaining a new party's entrant fee, similar to the more recently approved standards in the OPRA Plan.[19] The Commission believes that a more transparent process for determining a proper new entrant fee should help to ensure fairness to new parties and address any potential anti-competitive concerns.

The Commission believes that the main purpose of a participation fee is to require each new party to the Plans to pay a fair share of the costs previously paid by the CTA for the development, expansion, and maintenance of CTA's facilities. Consistent with this purpose, the standards now proposed to be embodied in the Plans for the determination of the participation fee are concerned with these categories of costs. In particular, the Commission notes that the Participants should only consider the costs of tangible assets that could have been treated as capital expenditures under GAAP in the fee calculation,[20] and if so treated, would have been amortized for a five-year period preceding the new party's admission to the Plans.[21] In addition, the Commission notes that the Participants must not consider any historical costs of operating the systems prior to the time a new party joins the Plans, or any subjective or intangible costs such as ''good will'' or any future benefits to the new party.

Another factor proposed to be considered in determining a new Participant's entrance fee is any previous fees paid by other Participants when they joined the Plans. The Commission notes that in considering the amounts that have been paid by other Participants who joined the Plans, the Participants should only consider such fees on a ''going forward'' basis, *i.e.,* only fees that have been determined by the proposed methodology.[22] The Commission believes that, in the interest of fairness and consistency, the closer in time that any such prior fees were paid in relation to when the new party wants to join the Plans, the greater should be the weight given to this factor.

Finally, the Commission notes that the Participants propose that a new Participant would be required to reimburse the Plan Processor for the costs that the Processor incurs in connection with any modifications to the CTS and CQS systems necessary to accommodate the new Participant, unless these costs have otherwise been paid or reimbursed by the new Participant. The Commission stresses that when utilizing the proposed new standards, the Participants should not consider any costs that would result in a ''double counting'' of costs because the new entrant and other Participants are required to individually pay the Processor for their own costs (*e.g.,* capacity needs).

In sum, the Commission believes that it is reasonable for the Plans to provide for an initial participation fee to be paid by new parties to the Plans. The Commission further believes that the proposed amendments to the Plans would establish specific, objective factors for determining the amount of the fee payable by new Participants based on costs that could easily be calculated and that are readily discernable. The Commission also believes that the proposed new standards, if appropriately employed by the Participants, should foster a fair and reasonable method for determining the amount of a new Participant's entrance fee to be paid to the Plans.[23] Accordingly, the Commission finds the proposed standards for determining the amount of the participation fee to be appropriate and consistent with the Act.

Furthermore, the Commission believes that updating the names and addresses of the Plans' Participants is important with respect to the accuracy of the Plans, and therefore finds such changes to be consistent with the Act.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 11A of the Act[24] and paragraph (c)(2) of Rule 11Aa3–2 thereunder,[25] that the proposed 7th Amendment to the CTA Plan and the proposed 5th Amendment to the CQ Plan are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5–1292 Filed 3–23–05; 8:45 am]

**BILLING CODE 8010–01–P**

[14] In approving the proposed Plan amendments, the Commission has considered the proposed amendments' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78k–1(a)(1).

[16] 17 CFR 240.11Aa3–2.

[17] *See supra* notes 8–11 and accompanying text.

[18] The Commission notes that while the current standards in the Plans were approved in 1993, they were never employed by the Participants. The last Participant to join the Plans was CBOE in 1991.

[19] *See supra* notes 8–12 and accompanying text.

[20] The Commission understands from the Participants and the Plan Processor that, based on how the Processor bills the CTA and because the Processor does its accounting based on leases rather than ownership of CTA facilities, unless such costs were deemed to be capitalized costs under GAAP, they could not otherwise be considered in calculating the participation fee. Footnote 12 of the Notice provided, in part, that the Participants should only consider tangible assets that ''are capital expenditures under GAAP'' in the participation fee calculation. The footnote should have instead provided that the costs to be included in the calculation should be those that ''could have been treated as capital expenses under GAAP.''

[21] For this purpose, all such capital expenditures would be deemed to have a five-year amortizable life.

[22] The Commission further notes that the fee that CBOE paid to join the Plans in 1991 should not be considered because it was not based on the proposed new factors and therefore does not constitute a relevant fee for comparison purposes.

[23] The Commission notes that amount of the new entrant fee would be determined in discussions between the Participants and each new party in light of the standards embodied in the Plans, and under the general oversight of the Commission. Discussions between the Participants and any new party should not take place without Commission staff present. The Commission further notes that any disagreement among the Participants and a new party regarding the fee calculation would be subject to Commission review pursuant to Section 11A(b)(5) of the Act. *See* 15 U.S.C. 78k–1(b)(5).

[24] 15 U.S.C. 78k–1.

[25] 17 CFR 240.11Aa3–2(c)(2).

[26] 17 CFR 200.30–3(a)(27).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51388; File No. SR–BSE–2004–58]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, and Amendments No. 1, 2, 3 and 4 Thereto, by the Boston Stock Exchange, Inc. Relating to the Composition of the Board of Directors and Executive Committee of Boston Options Exchange Regulation LLC

March 17, 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 December 9, 2004, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the BSE. On December 13, 2004, the BSE filed Amendment No. 1 to the proposed rule change.[3] On December 16, 2004, the BSE filed Amendment No. 2 to the proposed rule change.[4] On March 8, 2005, the BSE filed Amendment No. 3 to the proposed rule change.[5] On March 10, 2005, the BSE filed Amendment No. 4 to the proposed rule change.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain sections of the By-laws of Boston Options Exchange Regulation LLC (''BOXR'') relating to BSE representation on BOXR's Board of Directors and its Executive Committee.

Below is the amended text of the proposed rule change. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

**Rules of the Boston Stock Exchange**

**Boston Options Exchange Regulation LLC By-Laws**

Secs. 1–2 no change.

Sec. 3

Number of Directors

The Board shall consist of no fewer than seven nor more than thirteen Directors, the exact number to be determined by resolution adopted by the BSE Board from time to time. The BSE Board shall appoint directors to the BOXR Board, 50% of whom will serve until the first annual meeting of the BOXR Board, and 50% of whom will serve until the second consecutive annual meeting of the BOXR Board, in accordance with Section 5, below. [In accordance with Section 4, below, the Chairman of the BSE will be considered a member of the Board of Directors for voting purposes, but not for qualification percentage purposes.] The General Counsel of the BSE will not be considered a member of the Board of Directors for voting purposes or qualification percentage purposes.

Sec. 4

Qualifications

Directors need not be Participants of BOX, or members of BSE. Industry Directors must be representatives of the securities industry as provided in Article II of the BSE Constitution. At least fifty percent (50%) of the Directors will be Public Directors. The Board shall include [the Chairman] *at least one member* of the BSE *Board of Governors* [, who will not be considered for the purposes of determining the qualification percentages for the Board set forth herein]. The General Counsel of the BSE shall act as an advisor to the Board for all legal and regulatory matters, and shall not be a member or director of the Board. At least twenty percent (20%) of the Directors (but no fewer than two (2) Directors) will be officers or directors of a firm approved as a BOX Option Participant. An officer or director of a facility of the BSE may serve on the Board of Directors. The term of office of a Director shall not be affected by any decrease in the authorized number of Directors.

As soon as practicable, following the annual appointment of Directors, the Board shall elect from its members a Chair and Vice Chair and such other persons having such titles as it shall deem necessary or advisable to serve until the next annual appointment or until their successors are chosen and qualify. The persons so elected shall have such powers and duties as may be determined from time to time by the Board. The Board, by resolution adopted by a majority of Directors then in office, may remove any such person from such position at any time.

Secs. 5–13 no change.

Sec. 14

*Committees*

(a)–(c) no change

(d) The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by Delaware Law and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of BOXR between meetings of the Board. The Executive Committee shall consist of five Directors, including at least two Public Directors, and at least one Options Participant Director. [The Chairman of the BSE] *At least one Governor of the BSE Board who is also a Director of the BOXR Board* shall be a member of the Executive Committee, and the General Counsel of the BSE will act in advisory role to the Executive Committee on legal and regulatory matters. Executive Committee members shall hold office for a term of one year. At all meetings of the Executive Committee, a quorum for the transaction of business shall consist of a majority of the Executive Committee, including at least fifty percent of the Public Directors and at least one Options Participant Director.

* * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the BSE included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The BSE 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 proposed rule change, as amended, is to amend certain sections of BOXR's By-Laws concerning the requirement that the Exchange's

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange revised the proposed rule text. Amendment No. 1 replaced the BSE's original filing in its entirety.

[4] In Amendment No. 2, the Exchange withdrew its request that the proposed rule change become immediately effective and requested that the proposed rule change become effective pursuant to Section 19(b)(2) of the Act.

[5] In Amendment No. 3, the Exchange revised the purpose section of the proposed rule change as well as the proposed rule text. Amendment No. 3 replaced Amendment No. 1, as amended by Amendment No. 2, in its entirety.

[6] In Amendment No. 4, the Exchange amended its filing to reflect that Amendment No. 3 was incorrectly filed pursuant to Rule 19(b)(3)(A) of the Act and should have been filed pursuant to Section 19(b)(2) of the Act.

Chairman be a member of the BOXR Board of Directors and Executive Committee.

The BSE's Constitution permits, but does not mandate, that the Exchange's Chairman and chief executive officer (''CEO'') roles be separated so as to provide for a separation of the Exchange's regulatory and business functions.[7] Presently, BOXR's By-Laws require that the Exchange's Chairman be a Director on the BOXR Board. BOXR is, as set forth in Chapter XXXVI of the Exchange's rules, in the Plan of Delegation of Functions and Authority by the BSE to Boston Options Exchange Regulation, LLC, a wholly owned subsidiary of the BSE. The Exchange has delegated certain functions to BOXR, so that BOXR is responsible for the regulatory oversight of the Boston Options Exchange, a facility of the BSE.

If the Exchange's Board of Governors deems it prudent to separate the Exchange's Chairman and CEO positions, so that the Chairman would be responsible for only the regulatory functions of the Exchange, then the mandate that the Exchange's Chairman be a member of the BOXR Board would be in congruence with BOXR's regulatory mandate. If, however, the Exchange's Board of Governors did not separate the Chairman and CEO roles, then the Exchange's Chairman would not be responsible for only the regulatory functions of the BSE, but, as CEO, for the business functions as well.

Accordingly, the Exchange seeks to make BOXR's By-Laws more flexible to reflect the corresponding flexibility in the Exchange's Constitution regarding the separation of the Chairman and CEO roles. Rather than mandating that the Exchange's Chairman be a member of the BOXR Board, the BSE would change certain provisions of BOXR's By-Laws to provide that at least one Governor of the BSE Board of Governors be a member of the BOXR Board. Also, the Exchange is seeking to mandate that at least one Governor of the BSE Board of Governors, who is also a member of the BOXR Board, be a member of the BOXR Executive Committee. In this way, the Exchange is assuring adequate and informed representation on its subsidiary's Board and Executive Committee, while not being constrained to limit its representation on the BOXR Board and its Executive Committee to strictly the Exchange's Chairman. The Exchange believes that this approach ensures not only proper representation on the BOXR Board and its Executive Committee, but also serves to provide the Exchange a mechanism by which it can maintain an adequate separation of its business and regulatory functions, regardless of the status of the BSE's Chairman and CEO positions.

The Exchange is also seeking to eliminate language in both Sections 3 (Number of Directors) and 4 (Qualifications) of BOXR's By-laws, which explains that the BSE Chairman would not be considered a member of the BOXR Board for ''qualification purposes.'' The referenced qualification purposes are set forth in Section 4, which establishes the percentage of the BOXR Board that must be constituted by Industry Directors, Public Directors and Directors who represent BOX Options Participants. Pursuant to the existing rule, the BSE Chairman is not considered to be qualified as an Industry, Public or BOX Participant representative, and thus does not serve to fill either percentage requirement as set forth, although the Chairman is a voting member of the BOXR Board. The BSE is seeking to eliminate the language regarding qualification percentages as they relate to the BSE Chairman because by replacing the BSE's Chairman on the BOXR Board with a member of the BSE Board, the member of the BSE Board who is also a member of the BOXR Board would be considered for the purposes of determining the qualification percentages of the BOXR Board. Thus, for example, if the member of the BSE Board who also served on the BOXR Board was an Industry Director, he or she would be considered as such in determining the percentage of Industry Directors on the BOXR Board.

The BSE understands that the Commission has recently proposed rules relating to the governance of self-regulatory organizations.[8] If enacted, the Exchange represents that it is cognizant of the fact that certain of these proposed governance rules could mandate further changes to the BSE Constitution, Rules, and BOXR's By-Laws, beyond the scope of the changes proposed herein.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with the requirements of Section 6(b) of the Act,[9] in general, and, in particular, furthers the objectives of Section 6(b)(1) of the Act,[10] in that the proposal is designed so that the Exchange is organized and has the capacity to carry out the purposes of the Act; Section 6(b)(3) of the Act,[11] in that the proposal is designed so the rules of the Exchange assure a fair representation of its members in the selection of its directors and the administration of its affairs; and Section 6(b)(5) of the Act,[12] in that the proposal is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and is not designed to permit unfair discrimination between customers, issuer, brokers, or dealers, or to regulate by virtue of any authority conferred by Title I of the Act matters not related to the purposes or Title I of the Act or the administration of the Exchange.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received written comments with respect to the proposed rule change, as amended.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, as amended; or

(B) institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

[7] *See* Securities Exchange Act Release No. 49611 (April 12, 2004), 69 FR 23833 (April 30, 2004) (order approving proposed rule change to permit the separation of the rules of Chairman and CEO).

[8] *See* Securities Exchange Act Release No. 50699 (November 18, 2004), 69 FR 71125 (December 8, 2004).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(1).

[11] 15 U.S.C. 78f(b)(3).

[12] 15 U.S.C. 78f(b)(5).

*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–BSE–2004–58 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–BSE–2004–58. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the BSE. 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–BSE–2004–58 and should be submitted on or before April 14, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5–1291 Filed 3–23–05; 8:45 am]

**BILLING CODE 8010–01–P**

[13] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51395; File No. SR–NYSE–2005–14]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto of the New York Stock Exchange, Inc. Relating to Arbitration

March 18, 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 February 7, 2005, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed amendment to its arbitration rules as described in Items I and II below, which Items have been prepared by the Exchange. On March 10, 2005, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an extension, until September 30, 2005, of Exchange Rule 600(g), relating to arbitration.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below and is set forth in Sections A, B and C below.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The proposed rule change is intended to extend until September 30, 2005, Exchange Rule 600(g), a pilot program that was most recently extended for a six-month period ending March 31, 2005.[3]

Exchange Rule 600(g) states:

> This paragraph applies to the Ethics Standards for Neutral Arbitrators in Contractual Arbitrations promulgated by the Judicial Council of California (the ''California Standards''), which, were they to have effect in connection with arbitrations conducted pursuant to this Code, would conflict with this Code. In light of this conflict, the affected customer(s) or an associated person of a member or member organization who asserts a claim against the member or member organization with which she or he is associated may:
>
> - Request the Director to appoint arbitrators and schedule a hearing outside California, or
> - Waive the California Standards and request the Director to appoint arbitrators and schedule a hearing in California. A written waiver by a customer or associated person who asserts a claim against the member or member organization with which he or she is associated on a form provided by the Director of Arbitration under this Code shall also constitute and operate as a waiver for all other parties to the arbitration who are members, allied members, member organizations, and/or associated persons of a member or member organization.

According to the NYSE, Exchange Rule 600(g) was adopted by the Exchange in response to the purported imposition of California state law on arbitrations conducted under the auspices of the Exchange and pursuant to a set of nationally-applied rules approved by the Commission.[4] The Exchange states that on July 1, 2002, as a result of the purported application of the Ethics Standards for Neutral Arbitrators in Contractual Arbitrations (the ''California Standards'') to Exchange arbitrations and arbitrators, the Exchange suspended the appointment of arbitrators for cases pending in California. The Exchange and NASD Dispute Resolution, Inc. sought a declaratory judgment that the California Standards are preempted by federal law. On November 12, 2002, Judge Samuel Conti dismissed the action on Eleventh Amendment grounds.[5] A Notice of Appeal from Judge Conti's decision has been filed with the United States Court of Appeals for the Ninth Circuit.[6] The Exchange has

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 50449 (September 24, 2004), 69 FR 58985 (October 1, 2004) (SR–NYSE–2004–50).

[4] *See* Securities Exchange Act Release No. 46816 (November 12, 2002), 67 FR 69793 (November 19, 2002) (SR–NYSE–2002–56).

[5] *NASD Dispute Resolution, Inc. and New York Stock Exchange, Inc. v. Judicial Council of California*, No. C 02 3485 (N.D. Cal.).

[6] The appeal from Judge Conti's decision in *NASD Dispute Resolution, Inc. and New York Stock Exchange, Inc. v. Judicial Council of California* is

Continued

determined that, in the absence of a final judicial determination or legislative resolution of the preemption issue, there is a continuing need for the waiver option provided by Exchange Rule 600(g).

2. Statutory Basis

The Exchange states that the proposed change is consistent with Section 6(b)(5) of the Act[7] in that it promotes just and equitable principles of trade by ensuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

currently stayed. In another district court decision, *Mayo v. Dean Witter Reynolds, Inc., Morgan Stanley Dean Witter & Co. dba Morgan Stanley Dean Witter, and Does 1–50*, No. C–01–20336 JF, 2003 WL 1922963 (N.D. Cal. Apr. 22, 2003), Judge Jeremy Fogel held that application of the California Standards to the Exchange and other self-regulatory organizations (''SROs'') is preempted by the Act, the comprehensive system of federal regulation of the securities industry established pursuant to the Act, and the Federal Arbitration Act (''FAA''). The *Mayo* decision was not appealed. Since the decision in *Mayo*, the question of the applicability of the California Standards to SROs has been presented in another case in federal court in California, *Credit Suisse First Boston Corp.* v. *Grunwald*, No. C 02–2051 SBA (N.D. Cal. Mar. 31, 2003). The District Court in *Grunwald* concluded that the California Standards cannot apply to SRO-appointed arbitrators because such arbitrators do not fall within the statutory definition of ''neutral arbitrators.'' On appeal, the Ninth Circuit disagreed that SRO-appointed arbitrators did not fall within the statutory definition of ''neutral arbitrators'' but held that the California Standards are preempted by the Act. *See Credit Suisse First Boston Corp. v. Grunwald*, No. 03–15695 (9th Cir. Mar. 1, 2005). NASD Dispute Resolution and the Exchange also submitted an *amicus* brief in *Jevne* v. *Superior Court*, 6 Cal. Rptr. 3d 542, 113 Cal. App. 4th 486 (2d Dist. 2003), in which the California Court of Appeal, Second District held that the Judicial Council acted within its authority in drafting the California Standards, that the California Standards are not preempted by the FAA, but that they are preempted by the Act. On March 17, 2004, the California Supreme Court granted review in *Jevne*. NASD Dispute Resolution and the Exchange were allowed to intervene on appeal before the California Supreme Court. The *Jevne* appeal has been fully briefed and was argued before the California Supreme Court on March 8, 2005.

[7] 15 U.S.C. 78f(b)(5).

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2005–14 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–NYSE–2005–14. 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, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2005–14 and should be submitted on or before April 14, 2005.

**IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change**

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange.[8] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[9] in that it promotes just and equitable principles of trade by ensuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

The Commission also believes that the proposed rule change raises no issues that have not been previously considered by the Commission. Granting accelerated approval here will merely extend a pilot program that is designed to inform aggrieved parties about their options regarding mechanisms that are available for resolving disputes with broker-dealers. The NYSE adopted the pilot program under Rule 600(g) in response to the purported imposition of the California Standards on Exchange arbitrations and arbitrators. The pilot rule is currently extended until March 31, 2005, and must be extended in order to continue to provide the waiver option until a final judicial determination is reached. During the period of this extension, the Commission and NYSE will continue to monitor the status of the previously discussed litigation.

After careful consideration, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[10] for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission notes that the current extension of the pilot program under Exchange Rule 600(g) expires on March 31, 2005. Accordingly, the Commission believes that there is good cause, consistent with Section 6(b)(5) of the Act,[11] to approve the proposal on an accelerated basis.

**V. Conclusion**

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–NYSE–2005–14), as amended, is hereby approved on an accelerated basis, and Exchange Rule 600(g) is extended until September 30, 2005.

[8] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5–1293 Filed 3–23–05; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51392; File No. SR–PCX–2004–65]**

## Self-Regulatory Organizations; Notice of Filing and Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Pacific Exchange, Inc. Relating to the Deletion of Obsolete or Unnecessary Rules

March 17, 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 July 9, 2004, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On February 9, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On March 10, 2005, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to delete certain of its rules, or portions thereof, which have been determined by the Exchange to be obsolete or unnecessary. The text of the proposed rule change, as amended, is set forth below.

Proposed deletions are in brackets.

* * * * *

**Rule 4**

* * * * *

**Exemptions**

Rule 4.7 An OTP Holder or OTP Firm shall be exempt from the filing requirements prescribed by Rules 4.5 and 4.6 under the following conditions:

(a) Any Floor Broker, Market Maker in listed options, or Lead Market Maker in listed options, registered with the Exchange in any such capacity, who is exempt from the minimum net capital requirements prescribed by Rule 4.1.

[An OTP Holder or OTP Firm qualifying for an exemption from the regular filing requirements pursuant to this Paragraph shall file with the Exchange for each calendar quarter a balance sheet and income statement in such form as prescribed by the Exchange. Such balance sheet and income statement shall be due by the fifteenth calendar day following the end of each calendar quarter in which the exemption provided in this Paragraph is applicable.]

(b) Any OTP Holder or OTP Firm that is a member of another self-regulatory organization, which has been designated the examining authority for such OTP Holder or OTP Firm by the Securities and Exchange Commission.

[An OTP Holder or OTP Firm qualifying for an exemption pursuant to this Paragraph shall file with the Exchange a copy of Notice and Part II of SEC Form X–17A–5, including such supplementary schedules as may be required, pursuant to the provisions of Rule 17a-11 under the Securities Exchange Act of 1934, as amended, at such time and at such frequency as prescribed by such other Designated Examining Authority or by any applicable rule.]

* * * * *

**Rule 11**

**Business Conduct**

* * * * *

**Joint Accounts**

Rule 11.12(a)—No change.

[(b) Reporting. No OTP Holder or OTP Firm, nor any participant therein shall directly or indirectly hold any interest or participation in any substantial joint account for buying or selling any security through the facilities of the Exchange, unless such joint account is reported to and not disapproved by the Exchange. Such reports, in form prescribed by the Exchange, shall be filed with the Exchange before any transaction is completed through the facilities of the Exchange for such joint account.

The Exchange shall require weekly reports, in form prescribed by the Exchange, to be filed with it with respect to every substantial joint account for buying or selling any specific security on the Exchange and with respect to every joint account which actively trades in any security on the Exchange in which any OTP Holder, OTP Firm or participant therein holds any interest or participation or of which such OTP Holder, OTP Firm or participant therein has knowledge by reason of transactions executed by or through such OTP Holder, OTP Firm or participant therein; provided, however, that this paragraph shall not apply to joint accounts specifically permitted by this Rule.

In the event the requirements hereof should be applicable to a security also dealt in on another national securities exchange having requirements substantially equivalent hereto and an OTP Holder or OTP Firm is a member or member firm of such other exchange and complies with such requirements of such other exchange, then such OTP Holder or OTP Firm need not comply with the reporting provisions hereof.]

* * * * *

**Options Floor Procedure Advices**

* * * * *

**Orders**

* * * * *

[D–10

Subject: Imprinting the Name of OTP Holder or OTP Firm on Trade Tickets

Rule 6.66 requires an OTP Holder or OTP Firm to immediately give up the name of the clearing member through whom the transaction will be cleared and Rule 6.67 requires that orders be in a written form approved by the Exchange.

In order to reduce confusion and potential errors, the Exchange has ruled that OTP Holders or OTP Firms ordering trade tickets, other than Market Maker trade tickets, either from the Exchange or from other approved sources, shall cause to be imprinted or written thereon the name of the OTP Holder or OTP Firm that will be given up in transactions effected by the use of that ticket.]

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original proposal.

[4] In Amendment No. 2, PCX deleted the proposed changes to PCX Rule 6.68(a), which would have required an OTP Holder or OTP Firm to write its name or badge number on the trade ticket, since the necessary changes were made to PCX Rule 6.68(a) on January 7, 2005. *See* Securities Exchange Act Release No. 50998 (January 7, 2005), 70 FR 2443 (January 13, 2005)(approving File No. SR–PCX–2004–122). In SR–PCX–2004–122, PCX amended its rules relating to the systematization of orders in connection with the requirement to design and implement a consolidated options audit trail system, which included PCX Rule 6.68(a). PCX represents that the information in PCX Rule 6.68(a) is the same information required in PCX Options Floor Procedure Advice D–10. Amendment No. 2 also deleted language in the filing related to PCX Rule 6.68(a). In addition, Amendment No. 2 corrected a typographical error in the proposed rule text.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of 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

On December 9, 2003, the Exchange responded to a request from the Commission's Office of Compliance Inspections and Examinations for obligation compliance with respect to Section 19(g) of the Act.[5] The Exchange performed a complete review of PCX rules, as well as the surveillance procedures thereto, and found a number of PCX rules that are obsolete or superfluous in the current market structure. Thus, the Exchange proposes to delete these inapplicable rules, or portions thereof, at this time. The proposed rules, or portions thereof, to be deleted are:

1. PCX Rule 4.7—This rule requires OTP Holders that are exempt from the net capital requirement filings (Options Market Makers without proprietary trading and inactive lessors) to file with the Exchange a balance sheet and income statement every calendar quarter. The Exchange represents that this rule is obsolete because the Exchange never implemented this reporting requirement as unnecessary. According to the Exchange, under Rule 17a–10 of the Act,[6] exempt OTP Holders are only required to file an annual FOCUS Report, which includes a balance sheet and income statement on an annual basis.

2. PCX Rule 11.12(b)—This rule relates to PCX Joint Accounts reporting requirements. The Exchange proposes to delete this provision as unnecessary. According to the Exchange, PCX, by policy, does not allow the use of joint accounts by OTP Holders or OTP Firms for which the Exchange serves as the Designated Examining Authority, with one exception. Joint accounts are allowed for Market Makers who trade on the floor. The use of these accounts is controlled by Shareholder and Registration Services (''SRS''). SRS assigns the acronyms for use of these accounts (*e.g.*, J68). Since these accounts are assigned by SRS, and all trades are monitored daily and fed through PCX's existing surveillance systems, the Exchange does not require a separate weekly reporting requirement.

3. PCX Options Floor Procedure Advice D–10 (Imprinting the Name of OTP Holder or OTP Firm on Trade Tickets)—The Exchange no longer requires that the name of the OTP Holder or OTP Firm be imprinted on the trade tickets. The required ticket information is now set forth in PCX Rule 6.68.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to 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 will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2004–65 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–PCX–2004–65. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2004–65 and should be submitted on or before April 14, 2005.

[5] 15 U.S.C. 78s(b).

[6] 17 CFR 240.17a–10.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5–1294 Filed 3–23–05; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51394; File No. SR–Phlx–2004–83]**

## Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Matching of Certain Incoming Orders With Certain Phlx Existing Orders

March 18, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4[2] thereunder, notice is hereby given that on November 26, 2004, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III, below, which items have been prepared by the Phlx. On March 10, 2005, the Phlx filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to modify Phlx Rule 229 to permit the PACE[4] System to match certain incoming orders with certain Phlx existing orders (the ''Matching Rule'').

The text of amended Phlx Rule 229 is set forth below. New text is *italicized* and [brackets] indicate deletions.

**Rule 229. Philadelphia Stock Exchange Automated Communication and Execution System (PACE)**

* * * * *

Supplementary Material: * * *

* * * * *

.01 No Change.

.02 Specialists are required to provide, at a minimum, PACE execution parameters, as defined by the Rule, to agency orders received through the system, except as provided below.

Although specialists are not required to provide PACE execution parameters, *except enhanced matching in Supplementary Material .04A,* to non-agency orders received through PACE, if the specialists choose to execute non-agency orders automatically through PACE, they must provide the same PACE executions to non-agency orders as they provide to agency orders. If however, the specialists choose to execute non-agency orders manually, they must adhere to existing Exchange rules governing orders not on the system with respect to such orders.

For purposes of the PACE System, an agency order is any order entered on behalf of a public customer, and does not include any order entered for the account of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest. Non-agency orders are not permitted on PACE except where the Exchange has been provided with a Specialist Agreement, signed by the respective specialist, acknowledging the acceptance of such non-agency orders from the specific firm(s), and any minimum execution parameters (order size guarantees) agreed to be provided to such orders by the respective specialist. Any such Specialist Agreement must provide the same minimum execution parameters to all non-agency orders by that specialist and will not provide for greater order size guarantees to non-agency orders than those provided to agency orders. Specialists' agreements to execute non-agency orders on PACE, and the termination of such agreements, shall be in accordance with the procedures set by the Exchange.

The specialist may choose to accept orders through PACE, without participating in the PACE execution guarantees for agency orders, where the entering member organization has generally elected not to receive automatic execution or primary market print protection for electronically delivered limit orders, in accordance with the procedures established by the Floor Procedure Committee.

.03–.04 No Change.

*.04A (a) Definitions. For purposes of this Supplementary Material:*

*(i) Midpoint Price means the midpoint of the Modified PACE Quote as rounded, if applicable. Rounding will be applicable if the midpoint of the Modified PACE Quote is not a penny increment, in which case the Midpoint Price shall be rounded down (up) to the nearest penny if the existing Phlx order is an order to buy (sell). When the Modified PACE Quote is locked, the Midpoint Price is the locked price.*

*(ii) Modified PACE Quote means the PACE Quote, unless the PACE Quote is comprised of another market's quote of 100 shares or less (''100 Share Away Quote''), in which case the Modified PACE Quote will be 1 cent away from such 100 Share Away Quote.*

*(b) Enhanced Matching*

*(i) Round-lot market and limit orders (except as provided in (ii) below) and the round-lot portion of non-all-or-none PRL market and limit orders entered after the opening when the PACE Quote is not crossed will execute against existing round-lot market and limit orders and the round-lot portion of non-all-or-none PRL market and limit orders that have not been marked for lay-off and are executable at or within the Modified PACE Quote, if any, before being processed according to Supplementary Material .05, .07(b), (c)(i)–(ii) or .10(a)(i) of this rule or Rule 229A.*

*(ii) If the round-lot order entered after the opening is an all-or-none order, then such order will only receive the treatment described in the previous sentence if the size of the first potential existing order it would execute against is equal to or greater than such order.*

*(iii) No order for which the entering member organization has elected primary market high-low protection (as provided in .07(a)(ii)) will be matched in (i) above, if the execution price of such execution would be outside the primary market high-low range for the day.*

*(iv) Enhanced Matching Priority. Notwithstanding Supplementary Material .01 regarding priority, existing Phlx orders will be executed in price/time priority with the highest bid/lowest offer executed first, with existing market orders, for purposes of enhanced matching priority, being treated as limit orders priced at the Midpoint Price.*

*(c) Execution Price*

*(i) If the orders to be matched in (b) above are both market orders, then the execution price of these orders is the Midpoint Price.*

*(ii) If the orders to be matched in (b) above are both limit orders, then the execution price of these orders is the*

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, which replaced the original proposal in its entirety, Phlx modified two concepts contained in the original proposed rule change (those of the Midpoint Price and the Modified PACE Quote), clarified the operation of the proposed rule change, reorganized the rule text of proposed new Supplementary Material .04A to Phlx Rule 229 into subsections, and made corresponding changes to other portions of the Supplementary Material to Phlx Rule 229 to reflect the applicability of the proposed rule change.

[4] PACE is the Exchange's automated order routing, delivery, execution and reporting system for equities. *See* Phlx Rule 229.

*price closest to the Midpoint Price that will allow both orders to execute.*

*(iii) If the orders to be matched in (b) above are a market order and a limit order, the execution price of these orders is the price closest to the Midpoint Price that will allow the limit order to execute.*

.05 Subject to Supplementary Material Section .07, all round-lot market orders up to 500 shares and PRL market orders up to 599 shares entered after the opening will be automatically executed at the PACE Quote.

Subject to these procedures, the specialist may voluntarily agree to execute round-lot market orders of a size greater than 500 shares and PRL market orders of a size greater than 599 shares upon entry into the system. Where the specialist has voluntarily agreed to automatically execute market orders greater than 599 shares and the market order size is greater than 599 shares, but less than or equal to the size of the PACE Quote, the order is automatically executable at the PACE Quote; if such order is greater than the size of the PACE Quote, the order shall receive an execution at the PACE Quote up to the size of the PACE Quote, either manually or automatically (once this feature is implemented) with the balance of the order *available to be executed as an existing order pursuant to Supplementary Material .04A(b)(i) above, or* receiving a professional execution, in accordance with Supplementary Material, .10(b) below; provided that the specialist may guarantee an automatic execution at the PACE Quote up to the entire size of such specialist's automatic execution guarantee (regardless of the size of the PACE Quote).

When the PACE Quote is locked, automatically executable market orders entered after the opening will be automatically executed at the locked price, if all the specialists assigned to a security determine to elect this feature for a particular security.

.06–.07(a) No Change.

.07(b) Market orders (round-lots of 600 to 2000 shares or such greater size which the specialist agrees to accept and PRL's of 601 to 2099 shares or such greater size which the specialist agrees to accept) which are entered after the opening and which the specialist has not agreed to accept for automatic execution shall not be subject to the execution parameters set forth in Supplementary Material .05 and shall be *available to be executed as an existing order pursuant to Supplementary Material .04A(b)(i) above, or* executed in accordance with Supplementary Material .10(b) and other applicable rules of the Philadelphia Stock Exchange; provided, however, that the odd-lot portion of PRL's of 601 or more shares shall be executed at the same price as the round-lot portion. In the case of a PRL order, the round-lot portion(s) of which is executed at more than one price, the odd-lot portion shall be executed at the same price as the first round-lot portion is executed.

.07(c)–.09 No Change

.10(a) [In the case of stocks for which the PACE quote bid is less than $ 1.00, the provisions of paragraph .10(b) shall apply.

In the case of stocks for which the PACE quote bid is $1.00 or more:]

(i) Marketable Limit Orders—round-lot orders up to 500 shares and the round-lot portion of PRL limit orders up to 599 shares which are entered at the PACE Quote shall be executed at the PACE Quote. Such orders shall be executed automatically unless the member organization entering orders otherwise elects. Specialists may voluntarily agree to execute marketable limit orders greater than 599 shares. Where the specialist has voluntarily agreed to automatically execute marketable limit orders greater than 599 shares and the order size is greater than 599 shares, but less than or equal to the size of the PACE Quote, the marketable limit order is automatically executable at the PACE Quote; if the order size is greater than 599 shares and greater than the size of the PACE Quote, the marketable limit order shall manually receive an execution at the PACE Quote up to the size of the PACE Quote, with the balance of the order *available to be executed as an existing order pursuant to Supplementary Material .04A(b)(i) above, or* receiving a professional execution, in accordance with Supplementary Material, .10(b) below; provided that the specialist may guarantee an automatic execution at the PACE Quote up to the entire size of such specialist's automatic execution guarantee.

When the PACE Quote is locked, automatically executable marketable limit orders entered after the opening will be automatically executed at the locked price, if all the specialists assigned to a security determine to elect this feature for a particular security.

Marketable limit orders may be eligible for automatic price improvement or manual double-up/double-down price protection pursuant to Supplementary Material .07(c) above.

.10(a)(ii)–.15 No Change.

.16 For securities in which the Exchange is the primary market or for over-the-counter securities which the Exchange trades on an unlisted trading privileges basis, the specialist in that security may receive orders over the PACE System, in which case such orders will be subject to enhanced matching in Supplementary Material .04A but such orders will not be subject to the *other* automatic execution parameters set forth in this rule.

.17–.22 No Change

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx 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 Phlx 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 proposed rule change is to increase automated handling of equity orders. Under the Matching Rule, PACE will check incoming orders against existing orders, and if possible, execute those incoming orders against the existing orders, therefore helping to preserve the priority of those existing orders and reducing the incidents of inadvertent trading ahead of customer orders.

The rule change proposes that round-lot market and limit orders (except as noted below) and the round-lot portion of non-all-or-none PRL [5] market and limit orders entered after the opening will execute against existing round-lot market and limit orders and the round-lot portion of non-all-or-none PRL market and limit orders that have not been marked for layoff, if executable within the Modified PACE Quote [6] (thereby preventing a violation of

[5] PRL means a combined round-lot and odd-lot order. *See* Phlx Rule 229.

[6] The ''PACE Quote'' means the best bid/ask quote among the American, Boston, National, Chicago, New York, or Philadelphia Stock Exchanges, the Pacific Exchange, or the Intermarket Trading System/Computer Assisted Execution System (''ITS/CAES'') quote, as appropriate. *See* Phlx Rule 229. As further discussed by the Phlx below, the ''Modified PACE Quote'' is defined in the proposed rule change to mean the PACE Quote, unless the PACE Quote is comprised of another market's quote of 100 shares or less, in which case the Modified PACE Quote will be 1 cent away from such 100 share away quote.

applicable trade-through rules).[7] The Phlx notes that for incoming round lot all-or-none orders, the Phlx will only automatically match such orders if the size of the incoming all-or-none order is equal to or smaller than the first existing order it would match against. Conversely, if the incoming all-or-none order is larger than the first existing order it could match against, the incoming order will not automatically match, but will be handled manually by the specialist. (*See* Example 1 below.)

The Phlx also notes that orders that have been marked for lay-off[8] (*i.e.*, orders that are being sent to other marketplaces for execution and appropriately marked by the specialist within PACE) will not be eligible to be matched against an incoming order. (*See* Example 2 below.) Additionally, no order for which the entering member organization has elected primary market high-low protection (as provided in Phlx Rule 229, Supplementary Material .07(a)(ii)) will be matched if the execution price of such execution would be outside the primary market high-low range for the day. Finally, notwithstanding Phlx Rule 229, Supplementary Material .01 regarding priority, existing Phlx orders will be executed in price/time priority with the highest bid/lowest offer executed first, with existing market orders, for purposes of enhanced matching priority, being treated as limit orders priced at the Midpoint Price.[9]

**Example 1**

The Phlx receives an order to buy 500 shares all-or-none at the market (''Incoming Order'') when the Phlx has an existing order to sell 1000 shares at the market (''Existing Order''). At the time of the receipt of the Incoming Order, the PACE Quote shows the National Stock Exchange (''NSX'') bidding for 1,000 shares at $10.50 and the Pacific Exchange (''PCX'') offering 600 shares at $10.52. In this case, the PACE System would execute the Incoming Order with 500 shares of the Existing Order at $10.51 (which is the Midpoint Price). If the Incoming Order were instead a 1,500 share all-or-none order, then the Incoming Order and the Existing Order would not match automatically and would remain for the specialist to execute manually or be available to be matching by a later incoming order.

**Example 2**

The Phlx receives an order to buy 1,200 shares at the market (''Incoming Order'') when the Phlx has two existing orders to sell, one for 1,000 shares at the market (''Existing Order #1''), followed in time by one for 1,000 shares at $10.51, which has been marked by the specialist for lay-off because the specialist is seeking execution of that order on another exchange (''Existing Order #2''). At the time of the receipt of the Incoming Order, the PACE Quote shows the NSX bidding for 1,000 shares at $10.51 and the PCX offering 2,000 shares at $10.51. In this case, the PACE System would execute the 1,000 shares of the Incoming Order with Existing Order #1 at $10.51 (which is the Midpoint Price). This would leave 200 shares of the Incoming Order unexecuted to be handled manually by the specialist or available to be matched by a later incoming order.

Under the Matching Rule, the price of the execution will be dependent on the Midpoint Price and the type of orders that are being matched. The Midpoint Price means the midpoint of the Modified PACE Quote as rounded, if applicable. Rounding will be applicable if the midpoint of the Modified PACE Quote is not a penny increment, in which case the Midpoint Price shall be rounded down (up) to the nearest penny if the existing Phlx order is an order to buy (sell). (*See* Example 3 below.) The Modified PACE Quote means the PACE Quote, unless the PACE Quote is comprised of another market's quote of 100 shares or less (''100 Share Away Quote''), in which case the Modified PACE Quote will be 1 cent away from such 100 Share Away Quote. (*See* Example 4 below.) When the Modified PACE Quote is locked, the Midpoint Price is the locked price. Regarding different types of orders, if the orders to be matched are both market orders, then the execution price of these orders is the Midpoint Price. If the orders to be matched are both limit orders, then the execution price of these orders is the price closest to the Midpoint Price that will allow both orders to execute. If the orders to be matched are a market order and a limit order, the execution price of these orders is the price closest to the Midpoint Price that will allow the limit order to execute. (*See* Examples 5 and 6 below for illustrations of these three situations.)

**Example 3**

The Phlx receives an order to sell 1,200 shares at the market (''Incoming Order'') when the Phlx has two existing orders to buy, one for 1,000 shares at $10.51 (''Existing Order #1''), followed in time by one for 1,000 shares at the market (''Existing Order #2''). At the time of the receipt of the Incoming Order, the PACE Quote shows the Phlx bidding for 1,000 shares at $10.51 and the Chicago Stock Exchange (''CHX'') offering 1,600 shares at $10.52. In this case, the PACE System would execute the 1,000 shares of the Incoming Order with Existing Order #1 at $10.51. Then PACE would execute the remaining 200 shares of the Incoming Order with 200 shares of Existing Order #2 at $10.51 (which is the midpoint of the Modified PACE Quote rounded down because the Existing Order #2 is an order to buy). This would leave 800 shares of Existing Order #2 to be handled manually by the specialist or available to be matched by a later incoming order.

**Example 4**

The Phlx receives an order to sell 3,500 shares at the market (''Incoming Order'') when the Phlx has two existing orders to buy, one for 1,000 shares at the market (''Existing Order #1''), followed in time by one for 1,000 shares at $10.05 (''Existing Order #2''). At the time of the receipt of the Incoming Order, the PACE Quote shows the NSX bidding for 100 shares at $10.10 and the PCX offering 100 shares at $10.12. The next best quotes are Phlx bidding for 1,000 shares at $10.05 and the CHX offering 200 shares at $10.13. In this case, the PACE System would execute the 1,000 shares of the Incoming Order with Existing Order #1 at $10.11 (which is the Midpoint Price, being the midpoint of the Modified PACE Quote of $10.09 and $10.13). Order #2 will not be executed at this time pursuant to the Matching Rule because it is outside of the Modified PACE Quote. This would leave 2,500 shares of the Incoming Order to be handled manually by the specialist or available to be matched by a later incoming order.

**Example 5**

The Phlx receives an order to sell 1,200 shares at the market (''Incoming Order'') when the Phlx has two existing orders to buy, one for 1,000 shares at $10.50 (''Existing Order #1''), followed in time by one for 1,000 shares at the market (''Existing Order #2''). At the time of the receipt of the Incoming Order, the PACE Quote shows the Phlx bidding for 1,000 shares at $10.50 and the PCX offering 600 shares at $10.52. In this case, the PACE System would execute the 1,000 shares of the Incoming Order with Existing Order #2 at $10.51 (which is the Midpoint Price). Then PACE would execute the remaining 200 shares of the Incoming Order with 200

[7] The price at which the orders will be executed will be dependent, generally, on the ''Midpoint Price'' of the Modified PACE Quote and the type of orders that are being matched, as further discussed by the Phlx below, following Example 2.

[8] *See* 17 CFR 240.11Ac1–4(c)(5).

[9] *See, e.g.*, Example 5 below.

shares of Existing Order #1 at $10.50 (which is the price closest to Midpoint Price that will allow the limit order to execute). This would leave 800 shares of Existing Order #1 displayed at $10.50 to be handled manually by the specialist or available to be matched by a later incoming order. The Phlx then receives another order to sell 500 shares at $10.50 (Incoming Order #2). In this case, the PACE System would execute Incoming Order #2 with 500 shares of Existing Order #1 at $10.50 (which is the price closest to the Midpoint Price that will allow both orders to execute). This would leave 300 shares of Existing Order #1 displayed at $10.50 to be handled manually by the specialist or available to be matched by a later incoming order.

**Example 6**

The Phlx receives an order to sell 1,200 shares at $10.11 (''Incoming Order'') when the Phlx has an existing order to buy for 1,200 shares all-or-none at $10.13 (''Existing Order''). At the time of the receipt of the Incoming Order, the PACE Quote shows the PCX bidding for 1,000 shares at $10.10 and the CHX offering 1,600 shares at $10.14 (the Phlx is not displaying the all-or-none order [10]). In this case, the PACE System would execute the Incoming Order with Existing Order at $10.12 ($10.12 is the price closest to the Midpoint Price (in this case it is the Midpoint Price) that will allow both orders to execute). Note that the outcome will be the same if the Incoming Order is instead an order to sell 1,200 shares at the market because $10.12 is the price closest to the Midpoint Price that will allow the limit order to execute.

The Phlx is also modifying language in other sections of Phlx Rule 229. Specifically, language is being added to Phlx Rule 229, Supplementary Materials .05, .07(b) and .10(a)(i) to clarify that market and limit orders available for profession execution, as described in those sections, will also be available to be executed as an existing order pursuant to proposed Phlx Rule 229, Supplementary Material .04A(b)(i). Phlx Rule 229, Supplementary Material .02 is being modified to clarify that if specialists offer access to PACE for non-agency orders, those orders will be eligible for enhanced matching in Phlx Rule 229, Supplementary .04A, whether or not those specialists choose to provide other PACE execution parameters to such orders. Phlx Rule 229, Supplementary Material .16 is being modified to clarify that orders described in that section will be subject to enhanced matching in Phlx Rule 229, Supplementary Material .04A, even though they are not subject to other automatic execution parameters. Finally, Phlx Rule 229, Supplementary Material .10(a) is being modified to remove language which directs a different treatment for orders when the PACE Quote bid is less than $1.00, so that such orders will receive the same treatment regardless of the PACE Quote bid.[11]

2. Statutory Basis

The Exchange believes that its proposal is consistent with sections 6(b) and 11A(a)(1)(C) of the Act [12] in general, and furthers the objectives of sections 6(b)(5) and 11A(a)(1)(C)(v) of the Act [13] in particular, in that it should to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest by increasing the number of orders that are matched without the participation of a dealer.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx consents, the Commission will:

(a) By order approve such proposed rule change; or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2004–83 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–Phlx–2004–83. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. 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–Phlx–2004–83 and should be submitted on or before April 14, 2005.

[10] All-or-none orders are an exception to the Limit Order Display Rule. *See* 17 CFR 240.11Ac1–4(c)(7).

[11] According to the Phlx, the proposed change to Supplementary Material .10(a) codifies the current system of processing orders in PACE. Previously, under the Intermarket Trading System (''ITS'') Plan, orders quoting less than $1.00 were not ITS eligible and thus were not eligible for the automatic execution guarantees in the PACE system. Since the $1.00 threshold has been eliminated from the ITS Plan, orders quoting less than $1.00 are subject to the same processing and automatic execution guarantees in the PACE system as orders quoting more than $1.00. Telephone conversation between John Dayton, Assistant Secretary and Counsel, Phlx, and Leah Mesfin, Special Counsel, Division of Market Regulation, Commission, on March 17, 2005.

[12] 15 U.S.C. 78f(b) and 15 U.S.C. 78k–1(a)(1)(C).

[13] 115 U.S.C. 78f(b)(5) and 15 U.S.C. 78k–1(a)(1)(C)(v).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5–1295 Filed 3–23–05; 8:45 am]

**BILLING CODE 8010–01–P**

## DEPARTMENT OF STATE

**[Public Notice 5035]**

## Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: International Sports Programming Initiative

*Announcement Type:* New Grant.

*Funding Opportunity Number:* ECA/PE/C/WHAEAP–05–54.

*Catalog of Federal Domestic Assistance Number:* 00.000.

*Key Dates: Application Deadline:* May 2, 2005.

### Executive Summary

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs announces an open competition for International Sports Programming Initiative. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to discuss approaches designed to enhance and improve the infrastructure of youth sports programs in the countries of Africa, South East Asia, Near East and North Africa, and South Asia with significant Muslim populations. The focus of all programs must be reaching out to youth ages 8–18. Programs designed to train elite athletes will not be considered. In Africa, the following countries are eligible: Senegal, Mali, Nigeria and Cameroon. In South East Asia eligible countries are: Cambodia, Indonesia, Malaysia, Philippines and Thailand. In the Near East and North Africa eligible countries are: Algeria, Egypt, Iraq, Jordan, Kuwait, Lebanon, Morocco, Oman, Saudi Arabia, Tunisia, the West Bank/Gaza, and Yemen. Eligible countries in South Asia are Afghanistan, Bangladesh, India and Pakistan. Only single country projects are eligible.

### I. Funding Opportunity Description

*Authority:* Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

*Purpose*

Overview: The Office of Citizen Exchanges welcomes proposals that directly respond to the following thematic areas. Given budgetary limitations, projects for other themes and other countries not listed below will not be eligible for consideration under the FY–2005 International Sports Program Initiative. In Africa, eligible countries: Senegal, Mali, Nigeria and Cameroon. In South East Asia eligible countries are: Cambodia, Indonesia, Malaysia, Philippines and Thailand. In the Near East and North Africa eligible countries are: Algeria, Egypt, Iraq, Jordan, Kuwait, Lebanon, Morocco, Oman, Saudi Arabia, Tunisia, the West Bank/Gaza, and Yemen. Eligible countries in South Asia are Afghanistan, Bangladesh, India and Pakistan. Only single country projects are eligible.

*Themes*

(1) Training Sports Coaches

The World Summit on Physical Education (Berlin, 1999) stated that a ''quality physical education helps children to develop the patterns of interest in physical activity, which are essential for healthy development and which lay the foundation for healthy, adult lifestyles.'' Coaches are critical to the accomplishment of this goal. A coach not only needs to be qualified to provide the technical assistance required by young athletes to improve, but must also understand how to aid a young person to discover how success in athletics can be translated into achievement in the development of life skills and in the classroom. Projects submitted in response to this theme would be aimed at aiding youth, secondary school and university coaches in the target countries in the development and implementation of appropriate training methodologies, through seminars and outreach. The goal is to ensure the optimal technical proficiency among the coaches participating in the program while also emphasizing the role sports can play in the long-term economic well being of youth.

(2) Youth Sports Management Exchange

Exchanges funded under this theme would help American and foreign youth sport coaches, adult sponsors, and sports associations officials share their experience in managing and organizing youth sports activities, particularly in financially challenging circumstances, and would contribute to a better understanding of the role of sports as a significant factor in educational success. Americans are in a good position to convey to foreign counterparts the importance of linking success in sports to educational achievement and how these two factors can contribute to short-term and long-term economic prospects.

(3) Youth With Disability

Exchanges supported by this theme are designed to promote and sponsor sports, recreation, fitness and leisure events for children and adults with physical disabilities. Project goals include improving the quality of life for people with disabilities by providing affordable inclusive sports and recreational experiences that build self-esteem and confidence, enhancing active participation in community life and making a significant contribution to the physical and psychological health of people with disabilities. Physically and developmentally challenged individuals will be fully included in the sports and recreation opportunities in their communities.

(4) Sports and Health

Projects funded under this category will focus on effective and practical ways to use sport personalities and sports health professionals to increase awareness among young people of the importance of following a healthy life style to reduce illness, prevent injuries and speed rehabilitation and recovery. Emphasis will be on the responsibility of the broader community to support healthy behavior. The project goals are to promote and integrate scientific research, education, and practical applications of sports medicine and exercise science to maintain and enhance physical performance, fitness, health, and quality of life. (Actual medical training and dispensing of medications are outside the purview of this theme.)

### II. Award Information

*Type of Award:* Grant Agreement.

*Fiscal Year Funds:* 2005.

*Approximate Total Funding:* $400,000.

[14] 17 CFR 200.20–3(a)(12).

*Approximate Number of Awards:* Three.

*Approximate Average Award:* $130,000.

*Floor of Award Range:* $60,000.

*Ceiling of Award Range:* $135,000.

*Anticipated Award Date:* Pending availability of funds, September 15, 2005.

*Anticipated Project Completion Date:* June 30, 2007.

## III. Eligibility Information

III.1. *Eligible applicants:* Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. *Cost Sharing or Matching Funds:* There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs that are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced proportionately to the contribution.

III.3. *Other Eligibility Requirements:* (a) Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

(b) *Technical Eligibility:* All proposals must comply with the following: directly address theme and focus on eligible countries. Failure will result in your proposal being declared technically ineligible and given no further consideration in the review process.

## IV. Application and Submission Information

**Note:** Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. *Contact Information to Request an Application Package:* Please contact the Office of Citizens Exchanges, ECA/PE/C, room 220, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone number: 202–453–8163, fax number: 202–453–8169, *HarveyRH@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number located at the top of this announcement when making your request.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document that consists of required application forms, and standard guidelines for proposal preparation.

Please specify Raymond H. Harvey and refer to the Funding Opportunity Number located at the top of this announcement on all other inquiries and correspondence.

IV.2. *To Download a Solicitation Package Via Internet:* The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm.* Please read all information before downloading.

IV.3. *Content and Form of Submission:* Applicants must follow all instructions in the Solicitation Package. The original and twelve copies of the application should be sent per the instructions under IV.3e. ''Submission Dates and Times section'' below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. *Adherence to All Regulations Governing the J Visa.*

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the ''Responsible Officer'' for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving grants under this RFGP will be third parties ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of grantee program organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR part 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 et seq.

The Bureau of Educational and Cultural Affairs places great emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantee program organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR part 62 et seq., including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–

2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

IV.3d.2. *Diversity, Freedom and Democracy Guidelines.* Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106—113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. *Program Monitoring and Evaluation.* Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.
2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.
3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.
4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

**Please note:** Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please review the following information when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. Awards will not exceed $135,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. Allowable costs for the program include the following:

*Travel costs:* International and domestic airfares; visas; transit costs; ground transportation costs. Please note that all air travel must be in compliance with the Fly America Act. There is no charge for J–1 visas for participants in Bureau sponsored programs. Please note that Tibetan participants may not travel to the U.S. primarily for English language instruction.

*Per Diem:* For the U.S. program, organizations have the option of using a flat $160/day for program participants or the published U.S. Federal per diem rates for individual American cities. For activities outside the U.S., the published Federal per diem rates must be used. NOTE: U.S. escorting staff must use the published Federal per diem rates, not the flat rate. Per diem rates may be accessed at *http://www.policyworks.gov/.*

*Interpreters:* If needed, interpreters for the U.S. program are available through the U.S. Department of State Language Services Division. Typically, a pair of simultaneous interpreters is provided for every four visitors who need

interpretation. Bureau grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $160/day per diem for each Department of State interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget. Locally arranged interpreters with adequate skills and experience may be used by the grantee in lieu of State Department interpreters, with the same 1:4 interpreter to participant ratio. Costs associated with using their services may not exceed rates for U.S. Department of State interpreters.

*Book and cultural allowance:* Foreign participants are entitled to and escorts are reimbursed a one-time cultural allowance of $150 per person, plus a participant book allowance of $50. U.S. program staff members are not eligible to receive these benefits.

*Consultants:* Consultants may be used to provide specialized expertise, design or manage development projects or to make presentations. Honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal. Subcontracts should be itemized in the budget.

*Room rental:* Room rental may not exceed $250 per day.

*Materials development:* Proposals may contain costs to purchase, develop, and translate materials for participants.

*Equipment:* Proposals may contain limited costs to purchase equipment crucial to the success of the program, such as computers, fax machines and copy machines. However, equipment costs must be kept to a minimum, and costs for furniture are not allowed.

*Working Meal:* The grant budget may provide for only one working meal during the program. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one. Interpreters must be included as participants.

*Return travel allowance:* A return travel allowance of $70 for each foreign participant may be included in the budget. This may be used for incidental expenses incurred during international travel.

*Health Insurance:* Foreign participants will be covered under the terms of a U.S. Department of State-sponsored health insurance policy. The premium is paid by the U.S. Department of State directly to the insurance company. Applicants are permitted to include costs for travel insurance for U.S. participants in the budget.

*Administrative Costs:* Costs necessary for the effective administration of the program may include salaries for grant organization employees, benefits, and other direct or indirect costs per detailed instructions in the proposal submission instructions.

Please refer to the proposal submission instructions for complete budget guidelines and formatting instructions.

IV.3f. *Submission Dates and Times: Application Deadline Date:* May 2, 2005.

*Explanation of Deadlines:* In light of recent events and heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, *etc.*) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. ECA will *not* notify you upon receipt of application. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered. Applications may not be submitted electronically at this time.

Applicants must follow all instructions in the Solicitation Package.

**Important note:** When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and twelve copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/WHAEAP–05–54, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3g. *Intergovernmental Review of Applications:* Executive Order 12372 does not apply to this program.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Section(s) at the U.S. embassy(ies) for its(their) review.

## V. Application Review Information

### *V.1. Review Process*

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. The program office, as well as the Public Diplomacy section overseas, where appropriate will review all proposals. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards grants resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Program Planning and Ability to Achieve Objectives: Program objectives should be stated clearly and should reflect the applicant's expertise in the subject area and region. Objectives should respond to the priority topics in this announcement and should relate to the current conditions in the target country/countries. A detailed agenda and relevant work plan should explain how objectives will be achieved and should include a timetable for completion of major tasks. The substance of workshops, internships, seminars and/or consulting should be described in detail. Sample training schedules should be outlined.

Responsibilities of proposed in-country partners should be clearly described.

2. Institutional Capacity: Proposals should include (1) the institution's mission and date of establishment; (2) detailed information about proposed in-country partner(s) and the history of the partnership; (3) an outline of prior awards-U.S. government and/or private support received for the target theme/country/region; and (4) descriptions of experienced staff members who will implement the program. The proposal should reflect the institution's expertise in the subject area and knowledge of the conditions in the target country/countries. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals. The Bureau strongly encourages applicants to submit letters of support from proposed in-country partners.

3. Cost Effectiveness and Cost Sharing: Overhead and administrative costs in the proposal budget, including salaries, honoraria and subcontracts for services, should be kept to a minimum. Priority will be given to proposals whose administrative costs are less than thirty (30) per cent of the total funds requested from the Bureau. Applicants are strongly encouraged to cost share a portion of overhead and administrative expenses. Cost sharing, including contributions from the applicant, proposed in-country partner(s), and other sources should be included in the budget request. Proposal budgets that do not reflect cost sharing will be deemed not competitive in this category.

4. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities). Applicants should refer to the Bureau's Diversity, Freedom and Democracy Guidelines in the Proposal Submission Instructions (PSI) and the Diversity, Freedom and Democracy Guidelines section above for additional guidance.

5. Post-Grant Activities: Applicants should provide a plan to conduct activities after the Bureau-funded project has concluded in order to ensure that Bureau-supported programs are not isolated events. Funds for all post-grant activities must be in the form of contributions from the applicant or sources outside of the Bureau. Costs for these activities should not appear in the proposal budget, but should be outlined in the narrative.

6. Evaluation: Proposals should include a detailed plan to evaluate the program. Applicants must identify objectives that respond to our goals listed in the RFGP. Objectives should state what the concrete results of the program would be. Clearly stated objectives are needed to enable an evaluation plan to determine whether the program has done what it has set out to do. Applicant's staff must plan to evaluate the project's success, after each program phase and at the completion of the program activity. As part of the evaluation process, your evaluation plan should clearly distinguish between program outputs and outcomes. Outputs are the units of service (number of participants, number of events conducted, number of documents translated or distributed). *Outcomes* are the impacts on individual participants in the exchanges, the larger beneficiary audience, and institutional structures. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes. The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the stronger will be the evaluation. The Bureau also requires that grantee institutions submit a final narrative and financial report.

## VI. Award Administration Information

### *VI.1. Award Notices*

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

### *VI.2. Administrative and National Policy Requirements*

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations

Please reference the following websites for additional information: *http://www.whitehouse.gov/omb/grants. http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.*

### *VI.3. Reporting Requirements*

You must provide ECA with a hard copy original plus two copies of the following reports:

1. A final program and financial report no more than 90 days after the expiration of the award;

2. A program report should be submitted after a program phase.

3. A financial report will be submitted quarterly.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

## VII. Agency Contacts

For questions about this announcement, contact: Raymond H. Harvey, Office of Citizen Exchanges, ECA/PE/C, Room 216, ECA/PE/C/WHAEAP–05–54, U.S. Department of State, SA–44, 301 4th Street, SW.,

Washington, DC 20547, telephone number 202–453–8163, fax number 202–453–8168, or *HarveyRH@state.gov*.

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/WHAEAP–05–54.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

**VIII. Other Information**

*Notice*

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: March 14, 2005.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 05–5830 Filed 3–23–05; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF STATE

**[Public Notice 5034]**

## Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: International Visitor Leadership Program Assistance Awards

*Announcement Type:* New Cooperative Agreement.

*Funding Opportunity Number:* ECA/PE/V–06–01.

*Catalog of Federal Domestic Assistance Number:* 19.402.

*Key Dates:* October 1, 2005–September 30, 2006.

*Application Deadline:* June 16, 2005.

*Executive Summary:*

The Office of International Visitors, Division of Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs (ECA/PE/V), United States Department of State (DoS) announces an open competition for three assistance awards to develop and implement International Visitor Leadership Programs (IVLP). The IVLP seeks to increase mutual understanding between the U.S. and foreign publics through carefully designedprofessional programs for approximately 4,700 foreign visitors per year from all regions of the world. The three awards will fund programming for a minimum of 200 and a maximum of 850 International Visitors (IVs). Award A will fund up to approximately 200 visitors ($370,000); Award B up to approximately 300 visitors ($586,000); and Award C up to 850 visitors ($1,586,000). Funding will be for FY–2006 (October 1, 2005–September 30, 2006). Applicant organizations may bid on one or all awards. Pending availability of funds, one assistance award will be made for each of the three categories described above. If an organization is interested in bidding on more than one award, a separate proposal and budget is required for each award. [See Project Objectives, Goals, and Implementation (POGI) for definitions of program-related terminology.]

The intent of this announcement is to provide the opportunity for organizations to develop and implement a variety of programs for International Visitors from multiple regions of the world. (Please refer to the POGI for breakdown of regions.) The award recipients will function as national program agencies (NPAs) and will work closely with Department of State Bureau (DoS) staff, who will guide them through programmatic, procedural, and budgetary issues for the full range of IVLP programs. (Hereafter, the terms ''award recipient'' and ''national program agency'' will be used interchangeably to refer to the grantee organization(s).)

**I. Funding Opportunity Description**

*Authority:* Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * * to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

*Purpose: Program Information*

*Overview:* The International Visitor Leadership Program seeks to increase mutual understanding between the U.S. and foreign publics through carefully designed professional programs. IVL programs support U.S. foreign policy objectives. Participants are current or potential foreign leaders in government, politics, media, education, science, labor relations, NGOs, the arts, and other key fields. They are selected by officers of U.S. embassies overseas and approved by the DoS staff in Washington, DC. Since the program's inception in 1940, there have been more than 140,000 distinguished participants in the program. Over 225 program alumni subsequently became heads of state or government in their home countries. All IVL programs must maintain a non-partisan character.

The Bureau seeks proposals from nonprofit organizations for development and implementation of professional programs for Bureau-sponsored International Visitors to the U.S. Once the awards are made, separate proposals will be required for each group project [Single Country (SCP), Sub-Regional (SRP), Regional (RP), and Multi-Regional (MRP)] as well as less formal proposals for Individual and Individuals Traveling Together (ITT) programs. At this time proposals are not required for Voluntary Visitor (VolVis) programs. Each program will be focused on a substantive theme. Some typical IVL program themes are: (1) U.S. foreign policy; (2) U.S. government and political system; (3) economic development; (4) education; (5) media; (6) information technology; (7) freedom of information; (8) NGO management; (9) women's issues; (10) tolerance and diversity; (11) counterterrorism; (12) democracy and human rights; (13) rule of law; (14) international crime; and (15) environmental issues. IVL programs must conform to all Bureau requirements and guidelines. Please refer to the Program Objectives, Goals, and Implementation (POGI) document for a more detailed description of each type of IVL program.

*Guidelines:* Goals and objectives for each specific IVL program will be shared with the award recipients at an appropriate time following the announcement of the assistance awards. DoS will provide close coordination and guidance throughout the duration of the awards. Award recipients will consult closely with the responsible ECA/PE/V program officer throughout the development, implementation, and

evaluation of each IVL program. They should demonstrate the potential to develop the following types of programs.

1. Programs must contain substantive meetings that focus on foreign policy goals and program objectives and are presented by experts. Meetings, site visits, and other program activities should promote dialogue between participants and their U.S. professional counterparts. Programs must be balanced to show different sides of an issue.

2. Most programs will be three weeks long and will begin in Washington, DC, with an orientation and overview of the issues and a central examination of federal policies regarding these issues. Well-paced program itineraries usually include visits to four or five communities. Program itineraries ideally include urban and rural small communities in diverse geographical and cultural regions of the U.S., as appropriate to the program theme.

3. Programs should provide opportunities for participants to experience the diversity of American society and culture. Participants in RPs or MRPs are divided into smaller sub-groups for simultaneous visits to different communities, with subsequent opportunities to share their experiences with the full group once it is reunited.

4. Programs should provide opportunities for the participants to share a meal or similar experience (home hospitality) in the homes of Americans of diverse occupational, age, gender, and ethnic groups. Some individual and group programs might include an opportunity for an overnight stay (home stay) in an American home.

5. Programs should provide opportunities for participants to address student, civic and professional groups in relaxed and informal settings.

6. Participants should have appropriate opportunities for site visits and hands-on experiences that are relevant to program themes. The award recipients may propose professional ''shadowing'' experiences with U.S. professional colleagues for some programs; (A typical shadowing experience means spending a half- or full-workday with a professional counterpart.)

7. Programs should also allow time for participants to reflect on their experiences and, in group programs, to share observations with program colleagues. Participants should have opportunities to visit cultural and tourist sites; and

8. The award recipients must make arrangements for community visits through affiliates of the National Council for International Visitors (NCIV). In cities where there is no such council, the award recipients will arrange for coordination of local programs.

*Qualifications:*

1. Applicants' proposals must demonstrate at a minimum four years of successful experience in coordinating international exchanges.

2. Applicants' proposals must demonstrate the ability to develop and administer IVL programs.

3. Proposals should demonstrate an applicant's broad knowledge of international relations and U.S. foreign policy issues.

4. Proposals should demonstrate an applicant's broad knowledge of the United States and U.S. domestic issues.

5. The award recipients must have a Washington, DC presence. Applicants who do not currently have a Washington, DC presence must include a detailed plan in their proposal for establishing such a presence by October 1, 2005. The costs related to establishing such a presence must be borne by the award recipient. No such costs may be included in the budget submission in this proposal. The award recipient must have e-mail capability, access to Internet resources, and the ability to exchange data electronically with all partners involved in the International Visitor Leadership program.

6. Proposals should demonstrate that an applicant has an established resource base of programming contacts and the ability to keep the base continuously updated. This resource base should include speakers, thematic specialists, or practitioners in a wide range of professional fields in both the private and public sectors.

7. All proposals must demonstrate sound financial management.

8. All proposals must contain a sound management plan to carry out the volume of work outlined in the Solicitation. This plan should include an appropriate staffing pattern and a work plan/time frame.

9. Applicants must include in their proposal narrative a discussion of ''lessons learned'' from past exchanges coordination experience, and how these will be applied in implementing the International Visitor Leadership Program.

10. The award recipients must have the capability to utilize the world wide web for the electronic retrieval of program data from the Department of State's IVL program Web site. The award recipient's office technology must be capable of exchanging information with all partners involved in the International Visitor Leadership program. The award recipient must have the capability to electronically communicate through eNPA (Electronic National Program Agency), the software application that allows award recipients to share information and data electronically through the Department of State's Exchange Visitor Database (EVDB) and with the Councils for International Visitors (CIVs), as well as to produce a national program book and other supporting documents (*e.g.*, evaluations, appointment requests and confirmations, participant welcome letters and mailing labels) generated directly into Microsoft Word.

11. Applicants must include as a separate attachment under TAB G of their proposals the following:

a. Samples of at least two schedules for international exchange or training programs that they have coordinated within the past four years that they are particularly proud of and that they feel demonstrate their organization's competence and abilities to conduct the activities outlined in the RFGP;

b. Samples of orientation and evaluation materials used in past international exchange or training programs.

*Requirements for Past Performance References*

Instead of Letters of Endorsement, DoS will use past performance as an indicator of an applicant's ability to successfully perform the work. TAB E of the proposal must contain between three and five references who may be called upon to discuss recently completed or ongoing work performed for professional exchange programs (may include the IVL program). The reference must contain the information outlined below. Please note that the requirements for submission of past performance information also apply to all proposed sub recipients when the total estimated cost of the sub award is over $100,000.

At a minimum, the applicant must provide the following information for each reference:

- Name of the reference organization.
- Project name.
- Project description.
- Performance period of the contract/grant.
- Amount of the contract/grant.
- Technical contact person and telephone number for referenced organization.
- Administrative contact person and telephone number for referenced organization.

DoS may contact representatives from the organizations cited in the examples to obtain information on the applicant's

past performance. DoS also may obtain past performance information from sources other than those identified by the applicant.

*Personnel:* Applicants must include complete and current resumes of the key personnel who will be involved in the program management, design and implementation of IVL programs. Each resume is limited to two pages per person.

*Budget Guidelines:* Applicants are required to submit a comprehensive line-item administrative budget in accordance with the instructions in the Solicitation Package (Proposal Submission Instructions). The submission must include a summary budget and a detailed budget showing all administrative costs. Proposed staffing and costs associated with staffing must be appropriate to the requirements outlined in the RFGP and in the Solicitation Package. Cost sharing is encouraged and should be shown in the budget presentation.

The Department of State is seeking proposals from public and private nonprofit organizations that are not already in communication with DoS regarding an FY–2006 assistance award from ECA/PE/V. All applicants must have at a minimum four years experience conducting international exchanges; an ability to closely consult with DoS staff throughout program administration; and proven fiscal management integrity. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

The Bureau of Educational and Cultural Affairs, as sponsor and manager of the International Visitor Leadership Program, plays a significant role in the planning, implementation, and evaluation of all types of International Visitor Leadership Programs and is responsible for all communication with overseas missions. The Bureau will provide close coordination and guidance throughout the duration of the awards. Award recipients will consult closely with the responsible ECA/PE/V program officer throughout the development, implementation, and evaluation of each IVL program.

All liaison shall be with the designated elements of the DoS relative to the following responsibilities incurred by the Recipient under this agreement:

A. Program—Bureau of Educational and Cultural Affairs, Office of International Visitors, Community Resources Division, ECA/PE/V/C.

B. Financial—Bureau of Educational and Cultural Affairs, Grants Division, ECA–IIP/EX/G.

## II. Award Information

*Type of Award:* Cooperative Agreement.

ECA's level of involvement in this program is listed under number I above.

*Fiscal Year Funds:* FY–2006.

*Approximate Total Funding:* ($2,542,000—Administrative funding only, program funds provided as needed).

*Approximate Number of Awards:* Three.

*Approximate Average Award:* $500,000.

*Floor of Award Range:* $370,000 (200 visitors).

*Ceiling of Award Range:* $1,586,000 (850 visitors).

*Anticipated Award Date:* Pending availability of funds, October 1, 2005.

*Anticipated Project Completion Date:* September 30, 2006.

*Additional Information:* Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew these cooperative agreements for five additional fiscal years, before openly competing them again.

## III. Eligibility Information

III.1. *Eligible applicants:* Applications may be submitted by public and private nonprofit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. *Cost sharing or Matching Funds:* There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved cooperative agreement.

Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs, which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching.

In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. *Other Eligibility Requirements:* (a) Bureau cooperative agreement guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates awarding three cooperative agreements: Award A ($370,000); Award B ($586,000) and Award C ($1,586,000); in an amount up to $2,542,000 to support administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. Program costs will be transferred directly to the award recipient based upon visitor workload, and should not be included in your proposal. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

(b) Technical Eligibility: All proposals must comply with the technical eligibility requirements specified in the Proposal Submission Instructions (PSI) and the Project Objectives, Goals, and Implementation (POGI). Failure to do so will result in proposals being declared technically ineligible and given no further consideration in the review process.

## IV. Application and Submission Information

**Note:** Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

*IV.1. Contact Information to Request an Application Package:* Please contact the Office of International Visitors, Multi-Regional Programs Division (ECA/PE/V/M), Room 266-A, U.S. Department of State, SA–44, 301 4th St., SW., Washington, DC 20547, (*BeardJB@state.gov*) to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/PE/V–06–01 located at the top of this announcement when making your request.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific

information, award criteria and budget instructions tailored to this competition.

Please specify Janet B. Beard, and refer to the Funding Opportunity Number (ECA/PE/V/M–06–01) located at the top of this announcement on all other inquiries and correspondence.

IV.2. *To Download a Solicitation Package Via Internet:* The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm.* Please read all information before downloading.

IV.3. *Content and Form of Submission:* Applicants must follow all instructions in the Solicitation Package. The original and 10 copies of the application should be sent per the instructions under IV.3e. ''Submission Dates and Times section'' below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 *Adherence to All Regulations Governing the J Visa.* The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR part 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. ECA/PE/V will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

Please refer to the Solicitation Package for further information.

IV.3d.2 *Diversity, Freedom and Democracy Guidelines.* Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3 *Program Monitoring and Evaluation.* Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress toward outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes*, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.

2. *Participant learning*, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. *Participant behavior*, concrete actions to apply knowledge in work or

community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. *Institutional changes*, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

**Please note:** Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3d.4. Describe your plans for: *i.e.* sustainability, overall program management, staffing, coordination with ECA and PAS or any other requirements, etc.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. Funding levels are listed under Sec. II of this announcement. There must be a summary budget as well as breakdowns reflecting only the administrative budget. Program funds will be provided by the IVLP office on a quarterly basis according to each award recipient's visitor workload. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. Allowable costs for the program include the following:

(1) Staff Salaries and Benefits;

(2) Office and Program Supplies;

(3) Telephone and Communications;

(4) Staff Travel and Per Diem;

(5) ADP Equipment Maintenance and IT Costs;

(6) Indirect Costs

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. *Submission Dates and Times: Application Deadline Date:* Thursday, June 16, 2005.

*Explanation of Deadlines:* Due to heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. ECA will *not* notify you upon receipt of application. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered. Applications may not be submitted electronically at this time.

Applicants must follow all instructions in the Solicitation Package.

**Important note:** When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and 10 copies of the application should be sent to:

U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/V–06–01, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3g. *Intergovernmental Review of Applications:* Executive Order 12372 does not apply to this program.

## V. Application Review Information

### *V.1. Review Process*

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards or cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Evidence of Effectiveness/Program Planning:* The proposal should convey that the applicant has a good understanding of the overall goals and objectives of the IVL program. It should exhibit originality, substance, precision, and be responsive to requirements stated in the RFGP and the Solicitation Package. The proposal should contain a detailed and relevant work plan that demonstrates substantive intent and logistical capacity. The agenda and plan should adhere to the program overview and guidelines described in the RFGP and the POGI.

2. *Support of Diversity:* The proposal should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials, and follow-up activities).

3. *Institutional Capacity:* The award recipient must have a Washington, DC presence. Applicants who do not currently have a Washington, DC presence must include a detailed plan in their proposal for establishing such a presence by October 1, 2005. The costs related to establishing such a presence must be borne by the award recipient.

No such costs may be included in the budget submission in this proposal. The proposal should clearly demonstrate the applicant's capability for performing the type of work required by the IVL program and how the institution will execute its program activities to meet the goals of the IVL program. It should reflect the applicant's ability to design and implement, in a timely and creative manner, professional exchange programs which encompass a variety of project themes. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program goals. The proposal must demonstrate that the applicant has or can recruit adequate and well-trained staff. All recipients must submit their IVL Program and national itinerary data electronically to the DoS by utilizing either the eNPA tool provided by the Department or the mandated standard data format submission that has been established as an interface to existing legacy systems.

4. *Institution's Record/Ability:* The proposal should demonstrate an institutional record of a minimum of four years of successful experience in conducting IVL or other professional exchange programs, which are similar in nature and magnitude to the scope of work outlined in this solicitation. The applicant must demonstrate the potential for programming IVL participants from multiple regions of the world. Applicants should demonstrate that their organizations would consult with DoS program officers on a regular basis to ensure that the assigned visitor projects would consistently meet program objectives. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau cooperative agreements as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

5. *Project Evaluation:* The proposal should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended.

6. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. This includes acquiring and retaining capable staff. All other costs, such as building maintenance, should be necessary and appropriate.

7. *Cost sharing:* Proposals should maximize cost sharing through other private sector support as well as institutional direct funding contributions. Describe any cost sharing, including contributions from your organization as well as other institutions. Cost sharing figures should comply with OMB Circulars included in the Guidelines. If you believe that the OMB Circular does not capture in-kind or other cost sharing by your organization, feel free to include a narrative description of that cost sharing.

## VI. Award Administration Information

VI.1a. *Award Notices:* Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2 *Administrative and National Policy Requirements:* Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Nonprofit Organizations.

Please reference the following websites for additional information: *http://www.whitehouse.gov/omb/grants; and http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.*

VI.3. *Reporting Requirements:* You must provide ECA with a hard copy original plus one copy of the following reports:

Mandatory:

(1) A final program and financial report no more than 90 days after the expiration of the award. This report must disclose cost sharing and be certified by the award recipient's chief financial officer or an officer of comparable rank.

(2) Quarterly financial reports within thirty (30) days following the end of the calendar year quarter. These reports should itemize separately international visitor costs, voluntary visitor costs, English language officer/Interpreter costs for international visitors, English language officer/Interpreter costs for voluntary visitors, special project costs by projects, and administrative costs for the previous quarter on a cash basis. These reports should also list separately the number of English language officers/Interpreters accompanying international visitors, and the number of English language officers/Interpreters accompanying voluntary visitors for whom funds are expended. Quarterly financial reports must be certified by the award recipient's chief financial officer or an officer of comparable rank. For further information, please refer to the 2006 Program Objectives, Goals, and Implementation.

(3) Such operating, statistical, and financial information relating to the program as may be requested by the DoS to meet its reporting requirements and answer inquiries concerning the operation of the program, as stipulated in the FY 2006 Program Objectives, Goals, and Implementation.

(4) Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

## VII. Agency Contacts

For questions about this announcement, contact: Janet B. Beard, Chief, Multi-Regional Programs Division (ECA/PE/V/M), Room 266–A, ECA/PE/V–06–01, U.S. Department of State, SA–

44, 301 4th St., SW., Washington, DC 20547, *BeardJB@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/V–06–01.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

**VIII. Other Information**

*Notice:* The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: March 17, 2005.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 05–5829 Filed 3–23–05; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Availability of Record of Decision (ROD) on Final Environmental Impact Statement (FEIS) for Master Plan Development Including Runway Safety Area Enhancement/Extension of Runway 12–30 and Other Improvements at Gary/Chicago International Airport Located in Gary, IN

**AGENCY:** , Federal Aviation Administration (FAA) DOT.

**ACTION:** Notice of availability.

**SUMMARY:** The Federal Aviation Administration (FAA) is issuing this notice to advise the public that a Record of Decision (ROD) has been approved and issued for the Final Environmental Impact Statement (FEIS)—Master Plan Development Including Runway Safety Area Enhancement/Extension of Runway 12–30 and Other Improvements, Gary/Chicago International Airport. Written requests for the ROD can be submitted to the individual listed in the section **FOR FURTHER INFORMATION CONTACT.** The Record of Decision was approved on March 17, 2005.

*Public Availability:* Copies of the Record of Decision and the Final Environemtnal Impact Statement (the environmental document on which the decision is based) are available for public information review during regular business hours at the following locations:

1. Gary/Chicago International Airport, 6001 West Industrial Highway, Gary, Indiana 46406.
2. Chicago Airports District Office, Room 312, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.
3. Gary Public Library, 220 West 5th Avenue, Gary, Indiana 46402.
4. Hammond Public Library, 564 State Street, Hammond, Indiana 46320.
5. East Chicago Main Library, 2401 East Columbus Drive, East Chicago, Indiana 46312.
6. IU Northwest Library, 3400 Broadway, Gary Indiana 46408.
7. Lake County Main Library, 1919 West 81st Avenue, Merrillville, Indiana 46410–5382.
8. Purdue Calumet Library, 2200 169th Street, Hammond, Indiana 46323–2094.
9. Whiting Library, 1735 Oliver Street, Whiting, Indiana 46394.

**FOR FURTHER INFORMATION CONTACT:** Prescott C. Snyder, Airports Environmental Program Manager, Federal Aviation Administration, Airports Division, Room 315, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Mr. Snyder can be contacted at (847) 294–7538 (voice), (847) 294–7036 (facsimile) or by e-mail at *9–AGL–GYY–EIS–Project@faa.gov.*

**SUPPLEMENTARY INFORMATION:** At the request of the Gary/Chicago Airport Authority, the FAA prepared an Environemtnal Impact Statement, which has now culminated in FAA issuing a Record of Decision. The environmental process summarized in the Record of Decision addressed specific improvements at the Gary/Chicago International Airport as identified during the 2001 Airport Master Plan process and the 2003 Railroad Relocation Study, and shown on the 2001 Airport Layout Plan. The following improvements have been grouped into four categories and are identified as ripe for review and decision: (1) Improvements associated with the existing Runway 12–30, the primary air carrier runway at the airport, relocate the E.J. & E. Railroad, acquire land northwest of the airport to allow for modifications to the runway safety area, relocate the airside perimeter roadway (including providing a southwest access roadway), relocate the Runway 12–30 navaids, improve the Runway Safety Area for Runway 12, relocate the Runway 12 threshold to remove prior displacement, and acquire land southeast of the airport, located within or immediately adjacent to the runway protection zone; (2) Extension of Runway 12–30, (1356 feet), relocate the Runway 12–30 navaids, extend parallel taxiway A to the new end of Runway 12, construct deicing hold pads on Taxiway A at Runway 12 and Runway 30, and develop two high-speed exit taxiways; (3) Expansion of the existing passenger terminal to accommodate current needs and forecast growth; and (4) acquisition/reservation and remediation as necessary site areas for potential aviation related development, but not including approval of construction new passenger terminal and air cargo facilities, which would be subject to separate environmental analysis and approval.

The purpose and need for these improvements is found in the FEIS and summarized in the Record of Decision. All reasonable alternatives have been considered including the no-action alternative. The Federal Aviation Administration's proposed actions in addition to the issuance of an environmental finding are:

A. Environmental approval under existing or future FAA criteria of project eligibility for Federal grant-in-aid funds (49 U.S.C. 47101 *et. seq.*) and/or Passenger Facility Charges (49 U.S.C. 40117), that include the elements as set forth in the FEIS, subject to the conditions set forth under ''FAA Determination'' in Chapter 1 of the Record of Decision as well as the restrictions set forth in Paragraph 583.b of FAA Order 5100.38B (''the AIP Handbook''):

B. Unconditional approval of a revised ALP, based on determinations through the aeronautical study process regarding obstructions to navigable airspace, and no FAA objection to the airport development proposal from an airspace perspective. Not included in this approval of the revised ALP are the following airport improvements shown on the ALP that require future environmental processing:

1. Construction of the south parallel taxiway to Runway 12–30
2. Future cargo area development (aprons, taxiways, auto parking lots, buildings, etc.) south of the end of extended Runway 12

3. Future passenger terminal area development (aprons, taxiways, auto parking lots, buildings, etc.) north of the end of extended Runway 12

4. Partial dual taxiway north of extended Taxiway A from Taxiway A to the proposed passenger terminal area

5. Proposed maintenance facility (Boeing Hangar) expansion

C. Approval for relocation and/or upgrade of various navigational aids. Also, the establishment or modification of existing instrument approach procedures by the National Flight Procedures Office for aircraft using instrument procedures to Runway 30.

D. Review and subsequent approval of an amended Airport Certification Manual for Gary/Chicago International Airport (per 14 CFR part 139).

Issued in Des Plaines, Illinois, on March 17, 2005.

**Larry H. Ladendorf,**

*Assistant Manager, Airports Division, FAA, Great Lakes Region.*

[FR Doc. 05–5840 Filed 3–23–05; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application 05–10–C–00–CLE To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Cleveland Hopkins International Airport, Cleveland, OH

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Cleveland Hopkins 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 April 25, 2005.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Detroit Airports District Office, 11677 South Wayne Road—Suite 107, Romulus, Michigan 48174.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. John C. Mok, Airport Director of the City of Cleveland at the following address: 5300 Riverside Drive, Cleveland, Ohio, 44135.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Cleveland under section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jason K. Watt, Program Manager, Detroit Airports District Office, 11677 South Wayne Road—Suite 107, Romulus, Michigan 48174, (734) 229–2906. 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 Cleveland Hopkins 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 March 7, 2005, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Cleveland 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 July 6, 2005.

The following is a brief overview of the application.

*Proposed charge effective date:* December 1, 2007.

*Proposed charge expiration date:* October 1, 2010.

*Level of the proposed PFC:* $4.50.

*Total estimated PFC revenue:* $53,448,000.

*Brief description of proposed projects:* Runway 6R–24L Uncoupling, Runway 28 Safety Improvements, Midfield Deicing Pad, and Taxiway M Improvements.

*Class or classes of air carriers, which the public agency has requested not be required to collect PFCs:* Air Taxi.

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 City of Cleveland.

Issued in Des Plaines, Illinois, on March 17, 2005.

**Elliott Black,**

*Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.*

[FR Doc. 05–5838 Filed 3–23–05; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application 05–07–U–00–MSP To 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 public comment on the application to 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 April 25, 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, Minnesota 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, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450–2706, (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 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 March 8, 2005, the FAA determined that the application to 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 July 2, 2005.

The following is a brief overview of the application.

*Actual charge effective date:* April 1, 2003.

*Estimated charge expiration date:* January 1, 2017.

*Level of the PFC:* $4.50.

*Total approved PFC revenue:* $26,410,939.

Brief description of proposed project: Fire/rescue replacement facility. 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 March 17, 2005.

**Elliott Black,**

*Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.*

[FR Doc. 05–5839 Filed 3–23–05; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Reports, Forms and RecordKeeping Requirements, Agency Information Collection Activity Under OMB Review

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60–day comment period was published on December 15, 2004 at Vol. 69, No. 240, p. 75104–05.

**DATES:** Comments must be submitted on or before April 25, 2005.

**FOR FURTHER INFORMATION CONTACT:** Larry Long at the National Highway Traffic Safety Administration, Recall Management Division, NVS–215, 400 Seventh Street, SW., Washington, DC 20590, phone 202–366–6281.

**SUPPLEMENTARY INFORMATION:**

**National Highway Traffic Safety Administration**

*Title:* Petitions for Hearings on Notification and Remedy of Defects.

*OMB Number:* 2127—0039.

*Type of Request:* Renewal of a currently approved information collection.

*Abstract:* NHTSA's statutory authority at 49 U.S.C. 30118(e) and 30120(e) specifies that on petition of any interested person, NHTSA may hold a hearing to determine whether a manufacturer of motor vehicles or motor vehicle equipment has met its obligation to notify owners, purchasers, and dealers of vehicles or equipment of a defect or noncompliance and to remedy a defect or noncompliance with a Federal motor vehicle safety standard for some of the products the manufacturer produces.

To address these areas, NHTSA has promulgated 49 CFR Part 557, Petitions for Hearings on Notification and Remedy of Defects, which adopts a uniform regulation that establishes procedures to provide for submissions and disposition of petitions, and to hold hearings on the issue of whether the manufacturer has met its obligation to notify owners, distributors, and dealers of safety related defects or noncompliance and to remedy the problems by repair, repurchase, or replacement.

*Affected Public:* Businesses or individuals.

*Estimated Total Annual Burden:* 2 annual hours burden (2 petitions times 1 hour per petition).

**ADDRESSES:** Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

**Kathleen C. DeMeter,**

*Director, Office of Defects Investigation.*

[FR Doc. 05–5845 Filed 3–23–05; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on December 15, 2004 at Vol. 69, No. 240 p. 75104–05.

**DATES:** Comments must be submitted on or before April 25, 2005.

**FOR FURTHER INFORMATION CONTACT:** Larry Long at the National Highway Traffic Safety Administration, Recall Management Division, NVS–215, 400 Seventh Street, SW., Washington, DC 20590, phone 202–366–6281.

**SUPPLEMENTARY INFORMATION:**

**National Highway Traffic Safety Administration**

*Title:* Record Retention.

*OMB Number:* 2127—0042.

*Type of Request:* Renewal of a currently approved information collection.

*Abstract:* Under 49 U.S.C. Section 30166(e), NHTSA ''reasonably may require a manufacturer of a motor vehicle or motor vehicle equipment to keep records, and a manufacturer, distributor or dealer to make reports, to enable [NHTSA] to decide whether the manufacturer, distributor, or dealer has complied or is complying with this chapter or a regulation prescribed under this chapter.''

To ensure that NHTSA will have access to this type of information, the agency exercised the authority granted in 49 U.S.C. Section 30166(e) and promulgated 49 CFR part 576 Record

Retention, initially published on August 20, 1974 and most recently amended on July 10, 2002 (67 FR 45873), requiring manufacturers to retain one copy of all records that contain information concerning malfunctions that may be related to motor vehicle safety for a period of five calendar years after the record is generated or acquired by the manufacturer. Manufacturers are also required to retain for five years the underlying records related to early warning reporting (EWR) information submitted under 49 CFR part 579.

*Affected Public:* Businesses or other for profit.

*Estimated Total Annual Burden:* 40,020 annual hours burden (20 respondents times 1 hour, plus 1,000 respondents times 40 hours).

**ADDRESSES:** Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention: NHTSA Desk Officer.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

**Kathleen C. DeMeter,**

*Director, Office of Defects Investigation.*

[FR Doc. 05–5846 Filed 3–23–05; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on December 15, 2004 at Vol. 69, No. 240 p. 75104–05.

**DATES:** Comments must be submitted on or before April 25, 2005.

**FOR FURTHER INFORMATION CONTACT:** Larry Long at the National Highway Traffic Safety Administration, Recall Management Division, NVS–215, 400 Seventh Street, SW., Washington, DC 20590, phone 202–366–6281.

**SUPPLEMENTARY INFORMATION:** National Highway Traffic Safety Administration

*Title:* Names and Addresses of First Purchasers of Motor Vehicles.

*OMB Number:* 2127–0044.

*Type of Request:* Renewal of a currently approved information collection.

*Abstract:* Pursuant to 49 U.S.C. 30117(b) a manufacturer of a motor vehicle or tire (except a retreaded tire) shall maintain a record of the name and address of the first purchasers of each vehicle or tire it produces and, to the extent prescribed by regulation of the Secretary, shall maintain a record of the name and address of the first purchaser of replacement equipment (except a tire) that the manufacturer produces. This agency has no regulation specifying how the information is to be collected or maintained. When NHTSA's authorizing statute was enacted in 1966, Congress determined that an efficient recall of defective or noncomplying motor vehicles required the vehicle manufacturers retain an accurate record of vehicle purchasers, in the event of a recall. Experience with this statutory provision has shown that manufacturers have retained this information in a manner sufficient to enable them to expeditiously notify vehicle purchasers in case of a recall. Based on this experience, NHTSA has determined that no regulation is needed.

*Affected Public:* Businesses or other for-profit.

*Estimated Total Annual Burden:* 1,075,000 burden hours (875,000 hours for first purchaser information, plus 200,000 hours for manufacturer recordkeeping).

**ADDRESSES:** Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: NHTSA Desk Officer.

*Comments are invited on:* Whether the statutorily mandated collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

**Kathleen C. DeMeter,**

*Director, Office of Defects Investigation.*

[FR Doc. 05–5847 Filed 3–23–05; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–33 (Sub–No. 195X)]**

### Union Pacific Railroad Company—Abandonment Exemption—in Salt Lake County, UT

On March 4, 2005, Union Pacific Railroad Company (UP) filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad, known as the Sugar House Branch, from milepost 0.0 near Roper to the end of the branch line at milepost 2.74 near Sugar House, a distance of 2.74 miles in Salt Lake County, UT. The line traverses U.S. Postal Service Zip codes 84106, 84115 and 84119.

The line does not contain federally granted rights-of-way. Any documentation in UP's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by June 22, 2005.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,200 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the

line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than April 13, 2005. Each trail use request must be accompanied by a $200 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–33 (Sub-No. 195X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Mack H. Shumate, Jr., 101 North Wacker Drive, Room 1920, Chicago, IL 60606. Replies to the petition are due on or before April 13, 2005.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

Decided: March 14, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 05–5773 Filed 3–23–05; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

### Proposed Agency Information Collection Activities; Comment Request—Loans in Areas Having Special Flood Hazards

**AGENCY:** Office of Thrift Supervision (OTS), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

**DATES:** Submit written comments on or before May 23, 2005.

**ADDRESSES:** Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

**FOR FURTHER INFORMATION CONTACT:** You can request additional information about this proposed information collection from Maurice E. McClung, Program Manager (Market Conduct), Thrift Policy, (202) 906–6182, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

*Title of Proposal:* Loans in Areas Having Special Flood Hazards.

*OMB Number:* 1550–0088.

*Form Number:* N/A.

*Regulation requirement:* 12 CFR part 572.

Description: Lending institutions are required by statute and OTS regulations to use the standard flood hazard determination form developed by FEMA when determining whether property securing the loan is or will be located in a special flood hazard and are required to retain a copy of the completed form.

*Type of Review:* Renewal.

*Affected Public:* Savings Associations.

*Estimated Number of Respondents:* 882.

*Estimated Number of Responses:* 202,860.

*Estimated Burden Hours per Response:* .25 hours.

*Estimated Frequency of Response:* Event-generated.

*Estimated Total Burden:* 50,715 hours.

*Clearance Officer:* Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

*OMB Reviewer:* Mark Menchik, (202) 395–3176, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503.

Dated: March 18, 2005.

By the Office of Thrift Supervision

**James E. Gilleran,**

*Director.*

[FR Doc. 05–5861 Filed 3–23–05; 8:45 am]

**BILLING CODE 6720–01–P**

## DEPARTMENT OF THE TREASURY

### United States Mint

**ACTION:** Amended notification of Citizens Coinage Advisory Committee 2005 public meeting schedule.

**SUMMARY:** Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee

(CCAC) meetings for the calendar year 2005. These meetings are open to the public. The purpose of the CCAC is to advise the Secretary of the Treasury on designs pertaining to the coinage of the United States and for other purposes.

The purpose of this notice is to provide updated information on such meetings as it becomes available.

January 25, 2005—Washington, DC.
March 15, 2005—Washington, DC.
May 24, 2005—Washington, DC.
*July 29, 2005—San Francisco, CA* (updated date & site change).
September 27, 2005—Washington, DC.
November 15, 2005—Washington, DC.

The meeting times and locations will be announced at least two weeks prior to each meeting. *Interested persons should call 202–354–7502 for the latest update on meeting time and location.*

The CCAC was established to:

- Advise the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional gold medals, and national and other medals.
- Advise the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Make recommendations with respect to the mintage level for any commemorative coin recommended.

**FOR FURTHER INFORMATION CONTACT:** Madelyn Simmons Marchessault, United States Mint Liaison to the CCAC; 801 Ninth Street, NW., Washington, DC 20220, or call 202–354–6700.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6830.

**Authority:** 31 U.S.C. 5135(b)(8)(C).

Dated: March 17, 2005

**Henrietta Holsman Fore,**

*Director, United States Mint.*

[FR Doc. 05–5787 Filed 3–23–05; 8:45 am]

BILLING CODE 4810–37–P

# Corrections

Federal Register

Vol. 70, No. 56

Thursday, March 24, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. 02–088–5]**

### Notice of Request for Emergency Approval of an Information Collection

*Correction*

In notice document 05–5065 beginning on page 13159 in the issue of Friday, March 18, 2005, make the following correction:

On page 13159, in the second column, in the **DATES** section, in the second and third lines, ''March 25, 2005'' should read ''March 28, 2005.''

[FR Doc. C5–5065 Filed 3–23–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
March 24, 2005

# Part II

# Department of Energy

## 10 CFR Part 300

## Voluntary Greenhouse Gas Reporting; Interim Final Rules

**DEPARTMENT OF ENERGY**

**10 CFR Part 300**

## Voluntary Greenhouse Gas Reporting

**AGENCY:** Office of Policy and International Affairs, Department of Energy.

**ACTION:** Notice of availability and opportunity to comment.

**SUMMARY:** The Department of Energy (DOE) today gives notice that draft Technical Guidelines for the revised Voluntary Reporting of Greenhouse Gases Program are available for review and comment. DOE will hold a public workshop to receive stakeholder views on the draft Technical Guidelines, as well as the interim final General Guidelines that DOE is publishing in the Rules and Regulations section of today's issue of the **Federal Register**. In addition, DOE and the United States Department of Agriculture will jointly hold a public workshop to receive stakeholder views on the draft Technical Guidelines for Agriculture and Forestry and related interim final General Guidelines.

**DATES:** Written comments must be received by May 23, 2005. The DOE public workshop will be held on April 26 from 8 a.m. to 5 p.m. and on April 27, from 8 a.m. to 12 noon. The public workshop on agricultural and forestry issues, jointly sponsored by DOE and the U.S. Department of Agriculture, will be held on May 5, 8 a.m. to 5 p.m.

**ADDRESSES:** Send e-mail comments to: *1605bguidelines.comments@hq.doe.gov.* Alternatively, written comments may be sent to: Mark Friedrichs, PI–40; Office of Policy and International Affairs; U.S. Department of Energy; 1000 Independence Ave., SW., Washington, DC 20585. The DOE public workshop will be held at the following location: Crystal City Marriott Hotel at Reagan National Airport, 1999 Jefferson Davis Highway, Arlington, Virginia 22202.

Persons interested in registering for, or in obtaining more information about, this workshop should visit the following Web site: *http://www.pi.energy.gov/enhancingGHGregistry/workshops.*

The joint DOE/USDA workshop for Agriculture and Forestry will be held on May 5 at the following location: USDA–APHIS Conference Center, 4700 River Road, Riverdale, MD.

Persons interested in registering for this workshop or in obtaining more information about USDA's efforts to develop accounting rules and guidelines for forestry and agriculture should visit the following Web site: *http://www.usda.gov/agency/oce/gcpo/greenhousegasreporting.htm.*

You may obtain electronic copies of this notice, the draft Technical Guidelines and other related documents, find additional information about the planned workshops, and review comments received by DOE and the workshop transcripts at the following Web site: *http://www.pi.energy.gov/enhancingGHGregistry/.* Those without internet access may access this information by visiting the DOE Freedom of Information Reading Room, Rm. 1E–190, 1000 Independence Avenue, SW., Washington, DC, 202–586–3142, between the hours of 9 a.m. and 4 p.m., Monday to Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mark Friedrichs, PI–40, Office of Policy and International Affairs, U.S. Department of Energy; 1000 Independence Ave., SW., Washington, DC 20585, or e-mail: *1605bguidelines.comments@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

Section 1605(b) of the Energy Policy Act of 1992 directed DOE, with the Energy Information Administration (EIA), to establish a voluntary reporting program and database on emissions of greenhouse gases, reductions of these gases, and carbon sequestration activities (42 U.S.C. 13385(b)). A specific purpose of the program is to enable the entities to report reductions of greenhouse gases. Section 1605(b) directs DOE to issue guidelines, after opportunity for public comment, that establish procedures for the voluntary reporting of specific greenhouse gas emissions information. In 1994, DOE issued General Guidelines and sector-specific guidelines, and EIA issued reporting forms, for the Voluntary Reporting of Greenhouse Gases Program.

On February 14, 2002, the President, as part of a larger initiative to address the issue of global climate change, directed the Secretary of Energy, in consultation with the Secretary of Commerce, the Secretary of Agriculture, and the Administrator of the Environmental Protection Agency, to propose improvements to the Voluntary Reporting of Greenhouse Gases Program. These improvements are to enhance measurement accuracy, reliability, and verifiability, working with and taking into account emerging domestic and international approaches.

On December 5, 2003, DOE proposed revised General Guidelines for the Voluntary Reporting of Greenhouse Gases Program and, simultaneously, announced that it intended to develop for public comment Technical Guidelines that would specify the methods and factors to be used in measuring and estimating greenhouse gas emissions, emission reductions, and carbon sequestration (68 FR 68204–05).

DOE is today making draft Technical Guidelines available for review and public comment. The draft Technical Guidelines complement and are inter-related with the interim final revised General Guidelines that DOE is publishing in the Rules and Regulations section of today's issue of the **Federal Register**. When issued as final, the revised General Guidelines and the Technical Guidelines, together with new reporting forms being developed by EIA, will fully implement the revised Voluntary Reporting of Greenhouse Gases Program.

The draft Technical Guidelines have three parts:

- Emissions Inventory Guidelines (Chapter 1), which includes detailed guidance on how to measure or estimate greenhouse gas emissions;
- Emission Reductions Guidelines (Chapter 2), which includes guidance on the selection and application of emission reduction calculation methods, including the establishment and modifications of base periods and base values; and
- Glossary, which defines terms used only in the Technical Guidelines and references the definitions in section 300.2 of the General Guidelines.

Components of the guidelines relevant for agriculture and forestry reporting have been shared with a selected set of evaluators with experience in greenhouse gas mitigation technologies in agriculture and forestry. The evaluators' views on the technical components and operability of the draft Technical Guidelines as they relate to the agriculture and forestry sectors will be made available during the public review process.

### II. Summary of Draft Technical Guidelines and Issues for Comment

The following discussion summarizes the content of the draft Technical Guidelines and identifies key issues upon which DOE would like to focus public review and comment.

#### *1. Emission Inventory Guidelines (Chapter 1)*

The Inventory Chapter identifies and rates methods for estimating emissions and sequestration from a wide range of sources. These guidelines build on (and reference) several publicly available documents related to the development

of emissions inventories. The Inventory Chapter consists of nine sections covering the major sources of greenhouse gas emissions: Overview; Collecting Information; Stationary Combustion; Transportation; Industrial Processes; Indirect Emissions; Engineered Sequestration; Agricultural Emissions and Sequestration; Forestry Emissions and Sequestration. The Agriculture and Forestry sections include technical appendices that can be found at the following Web site: *http://www.usda.gov/oce/gcpo/greenhousegasreporting*.

a. *Emissions Rating System.* As described in the preamble to the interim final General Guidelines (*see* section II. C. vi.), the emissions rating system ordinally rates estimation methods and is based on four criteria: Accuracy, reliability, verifiability and practical application. The best available method is rated ''A,'' and given a value of four points. The next best method is rated ''B'' and given a value of three points; the next best is rated ''C'' and given a value of two points; and the least accurate method is rated ''D'' and given a value of 1 point. If a reporter is seeking to register reductions, the weighted average rating for emissions for the years used to calculate such reductions must be 3.0 or greater. Comments are invited regarding the ordinal rating system in general (including comparisons with other systems, such as a cardinal rating system); the appropriateness of the estimation methods specifically identified and their assigned ratings; and other methods not covered in the draft Technical Guidelines.

b. *Alternative Inventory Methods.* The revised General Guidelines require reporters to use methods described in the Draft Technical Guidelines, unless an alternative method has been specifically approved by the Department (*see* § 300.6(c) of the revised General Guidelines). If a reporter wishes to propose the use of a method that is not described in the Draft Technical Guidelines, the reporter must submit to DOE a description of the method, an explanation of how the method is implemented (including information requirements), and empirical evidence of the method's validity and accuracy.

c. *Inventories of Indirect Energy.* DOE believes that the indirect emissions reflected in entity inventories should reflect, where practicable, the average emissions rate of the power being purchased. Since the average emissions rates of electricity generation vary widely by region, Chapter 1 of the draft Technical Guidelines specifies that entities reporting inventories of indirect emissions associated with the purchase of electricity within the U.S. must use regional values specified by EIA that correspond to the average emission rates of power generated within each of the twelve North American Electricity Reliable Council regions. Comparable methods for determining the emission rates of non-U.S. power generation must be used to estimate the indirect emissions from non-U.S. operations. If the entity's purchase contract specifies that the electricity supplied is from particular power generation sources, then it may use an emission coefficient that corresponds to these specific sources. However, entities should note that the emission reduction guidelines contained in Chapter 2 specify the use of a single emission coefficient for purchased electricity, based on the national average emissions rate for the electric sector as a whole. DOE believes that the national average emissions rate is a better indicator of the emission reductions resulting from reduced demand for electricity than are the regional values used in the development of emission inventories. This means that the indirect emissions associated with purchased electricity will differ depending on whether they are part of the entity's emissions inventory or emission reduction assessment. DOE specifically solicits comments on the effects of specifying the use of different emission coefficients for emission inventories and emission reductions.

One form of electricity demand, the losses associated with electricity transmission and distribution, is not explicitly addressed in the draft Technical Guidelines for emission inventories, although the emission reduction guidelines identify an action-specific method for calculating the emission reductions that result from reducing such losses. DOE solicits recommendations on appropriate methods for measuring or estimating such losses that would permit the associated emissions to be included in entity inventories.

*2. Emission Reduction Guidelines (Chapter 2)*

This chapter of the draft Technical Guidelines provides detailed guidance on the calculation of emission reductions as described in section 300.8 of the revised General Guidelines.

a. *Choosing calculation methods and identifying subentities.* The first step in the process of calculating emission reductions is the selection of the appropriate calculation method and the identification of the subentities, if necessary, depending on the number of calculation methods needed to capture the entity's total reductions. As entities change, it may be necessary to add or modify subentities. This part of the process is described in detail in section 2.2.3 of the Emission Reductions Guidelines.

The guidance on the selection of appropriate emission reduction calculation methods makes clear that the five methods identified in the revised General Guidelines usually have specific applications and are not generally interchangeable. Any entity that is using more than one method of calculating emission reductions must identify a distinct subentity for each method used. As entities change, it may be necessary to add or modify subentities, so this section also provides guidance on this process.

b. *Base periods.* The determination of emission reductions requires that current levels of emissions or some other measure be compared with a comparable measure for some previous year or time period of up to four years, referred to as the base period. Chapter 2 of the draft Technical Guidelines describes how to establish base periods and the circumstances under which they can be changed.

DOE permits this flexibility in defining the base period so that reporters can select the time period that is most representative of the actual past operations of the entity or subentity for which reductions are being estimated. However, DOE does limit this flexibility by requiring the last year of the base period to be the year immediately preceding the first year of reported reductions. Once established, the base period should remain fixed unless changes in the entity or its output require a change to the base period. For entities that intend to register reductions, all initial base periods must end in the start year. This requirement will limit the ability of reporters to select a base period for which a particular subentity had the highest emissions or emissions intensity in order to maximize the amount of emission reductions.

Reporters are permitted to change the base period used to calculate reductions for an entity or subentity in a subsequent reporting year only under limited circumstances where there has been a fundamental change in the activity or structure of the entity or subentity.

Public comment is specifically solicited on the flexibility to set and modify base periods, as well as on limits to this flexibility, which are designed to reduce the likelihood that reporters will manipulate base periods in order to maximize emission reductions.

c. *Base Values.* A base value is the emissions level, emissions intensity or other value to which a comparable reporting year value is compared in order to calculate an emission reduction. A base value can be a historic emissions level, historic emissions intensity, carbon stock, benchmark emissions intensity or other quantity. The Emission Reduction Guidelines describe how to establish base values and the circumstances under which they can be changed.

DOE believes that base values should be derived from or be directly correlated to historic data to ensure that registered reductions represent real reductions relative to past emissions or emissions intensity levels. In some cases, the draft Technical Guidelines specify the use of a benchmark provided by DOE or calculated by the reporting entity according the DOE's guidelines. DOE solicits comment on whether or not reporters should be given the flexibility to establish base values that are more stringent than (usually lower than) the base values derived from actual performance during the base period. While a more stringent base value would reduce the quantity of registered reductions for which an entity qualified, such flexibility would enable entities to use as the basis for calculating emission reductions an emissions intensity or technology threshold that might be more meaningful or relevant to their industry.

If the base value is based on historic conditions, it represents the emissions or emissions intensity in the base period of the entity or subentity as it is configured in the reporting year. The base value must be adjusted to reflect the acquisition and divestiture of business units and the insourcing and outsourcing of emissions-producing activities that has occurred since the base period. Such adjustments to the base value are necessary to ensure that the comparison between base period and reporting year emissions or emissions intensity is valid and the difference in emission or emissions intensity are not due to changes in the boundary of the entity or subentity. Without such adjustments, a reporter would be able to achieve a nominal reduction in emissions intensity by outsourcing an activity and related emissions sources contributing to the output of the entity or subentity. Likewise, a reporter could be penalized for insourcing emissions-producing activities that it previously purchased from outside sources.

Public comment is solicited on the flexibility to set and modify base values, as well as on limits to this flexibility, which are designed to reduce the likelihood that reporters will manipulate base periods in order to maximize emission reductions.

d. *Method-specific guidance.* The Emission Reduction Guidelines provide detailed guidance for each of the five calculation methods identified in section 300.8 of the revised General Guidelines.

i. *Emissions intensity.* This section of the draft Technical Guidelines provides detailed guidance on the use of emission intensity methods to calculate emission reductions.

Greenhouse gas intensity metrics, which measure improvements in emission intensity independent of economic growth or growth in production, use either a physical or an economic value for the denominator. The draft Technical Guidelines provide a list of criteria to assist reporters in selecting output metrics.

A number of trade associations and manufacturers were interviewed to test their comfort with physical metrics, and any desire to use composites or indices. Based on their responses, and comments from stakeholders at workshops and in writing, DOE has decided to urge the use of physical metrics; however, in some cases the use of physical metrics becomes increasingly difficult and the use of economic metrics may be an appropriate alternative * * * Section 2.4.1.1 of the draft Technical Guidelines lists acceptable measures of physical output to assist potential reporters. Public comment is specifically solicited on this list and the need for additional efforts to standardize the definition and application of output metrics.

ii. *Absolute emissions.* The change in absolute emissions method for calculating reductions compares an entity's current (reduction year) emissions with its emissions in the base period. However, when using this method, entities must demonstrate that any emission reductions have not been caused by reductions in the entity's output. This section of the draft Technical Guidelines provides further guidance on how to calculate emission reductions using this method.

To demonstrate that its output has not declined, a reporting entity must identify a physical or economic measure of the entity's activity that can serve as a sufficiently credible proxy for output. The relationship between this activity measure and entity output needs to be sufficiently close to indicate the direction of the change in activity. The draft guidelines describe some of the acceptable activity measures that might be used for this purpose.

Base period emissions used to calculate changes in absolute emissions must be adjusted to reflect boundary changes, including acquisition and divestiture of emission sources and outsourcing or insourcing of emissions-producing activities that existed during the base period. Base period emissions may include emissions from sources that are no longer emitting in the reduction year. However, no adjustment may be made to base period emissions resulting from the addition of new emissions sources unless the reporter can demonstrate that the addition of this source represents the insourcing or acquisition of an activity previously conducted by another entity, rather than the expansion of the existing activity of the entity (also referred to as organic growth).

This approach to calculating emission reductions from changes in absolute emissions is similar to the approach specified in the Greenhouse Gas Protocol developed by WRI/WBCSD, with the proviso that this method cannot be used if the entity's output has declined during the reporting period.

iii. *Avoided emissions.* Only entities or subentities that do not have emissions in their chosen base period may rely exclusively on the method specified in the Draft Technical Guidelines for calculating avoided emissions. Most entities that generate and export (sell) electricity, heat or hot/chilled water must use either changes in absolute emissions or a method that combines the consideration of changes in emissions intensity and changes in avoided emissions, which is described below and in section 2.4.6 of the draft Technical Guidelines.

*Avoided Emission Benchmarks and Indirect Emission Coefficients.* The draft Technical Guidelines specify various benchmarks that must be used in the calculation of reductions associated with avoided emissions. For electricity, the draft Technical Guidelines explain that an avoided emissions benchmark will be specified by EIA based on the average emissions intensity of the U.S. electric sector. Comparable benchmarks must be used by entities when reporting emissions reductions generated outside the United States. During the development of the draft Technical Guidelines, a number of alternative methods for establishing such benchmarks were considered. In theory, such benchmarks should approximate the emissions being displaced by the incremental generation of power from low or no emitting sources. However, there is no accepted methodology for identifying such marginal emissions. Various possible methods were explored, but none yielded values that were considered more reliable or useful

than the U.S. average emissions intensity value ultimately included in the draft Technical Guidelines. DOE specifically solicits comments on the selection of this benchmark value and the related benchmarks described in the draft Technical Guidelines.

iv. *Carbon storage.* DOE received comments proposing up-front registration of forest carbon sequestration. Forestry projects generally have high up-front costs with carbon sequestration benefits that accumulate gradually over long time frames. High initial costs coupled with delayed benefits may discourage forestry projects as well as other similar long-term investments. Up-front registration may over-or under-estimate actual sequestration over the lifetime of a project because it is based on estimated actions and timelines. DOE has decided not to adopt the proposed up-front registration of forest sequestration. DOE solicits additional comments on including provisions that would allow early recognition of long term carbon sequestration benefits.

The draft Technical Guidelines describe the procedures that should be followed to calculate annual volumes of reductions associated with increases in carbon stocks.

(1) *Reductions from increases in terrestrial carbon stocks (forest, agriculture, rangelands).* The terrestrial carbon pools described in the draft Technical Guidelines include forest trees, forest under-story, forest dead and downed wood (on-site), forest floor, forest soils, agricultural soils, range soils, and grazing land soils. Absolute increases in terrestrial carbon stocks can contribute to an entity's registered reductions. In addition, the draft Technical Guidelines specify how reductions associated with these pools should be treated when the reported lands are sold, purchased, converted to other uses, certified as sustainably managed, considered incidental lands, or affected by a natural disturbance.

Carbon losses associated with natural disturbance are generally beyond the control of landowners. In the interest of not penalizing entities for such uncontrollable losses, DOE has included the following provision for accounting for natural disturbance in emission reductions calculations in the draft Technical Guidelines:

> Entities that experience natural disturbance such as wildfire, pests, or extreme weather, can choose to separately account for the carbon stock losses associated with these natural phenomena. In this case, entities will report the disturbance-associated carbon stock changes as a separate item in their terrestrial carbon stock inventory; however, they will not include the carbon stock changes in their calculation of reductions. Entities will continue to track carbon stocks on the identified land in their inventory. Until the carbon stocks return to pre-disturbance levels, carbon fluxes on lands that have undergone disturbances cannot be included in calculating reductions.

(2) *Reductions from increases in carbon stored in wood products.* Significant quantities of carbon harvested from forest systems can be stored for long periods in the form of wood products or in materials deposited in landfills. Entities reporting changes in terrestrial carbon can include the expected storage of carbon in the wood products pool in their estimates of annual carbon stock changes. The draft Technical Guidelines describe two approaches for estimating the amount of carbon stored in the wood products pool. Entities may estimate the decay of materials stored in wood products over time and account for the carbon stock losses in the year in which they occur. Alternatively, entities may calculate the amount of carbon expected to remain in products and landfills after a 100-year period and include this amount in their terrestrial carbon stock inventory. The latter approach is intended to limit the complexity associated with tracking annual decay rates in the wood products pool. Recognizing that the simpler approach uses a 100-year time frame and does not reflect actual annual fluctuations in carbon storage, the method is included with the understanding that it cannot over-estimate carbon stored in wood products. Public comments on this option are specifically solicited.

(3) *Reductions from the preservation of existing carbon stocks.* Actions to legally protect existing terrestrial carbon stocks can result in emissions of greenhouse gases being avoided. While it is difficult to know with certainty if or when carbon that is currently stored in terrestrial systems will be released in the future, it is probable that actions to ensure the protection of existing stocks will result in greenhouse gas benefits in the future. As a consequence, the 1605(b) program would allow entities to register reductions associated with actions taken to protect existing terrestrial carbon stocks, equivalent to 1/100th of the start year carbon stocks in each reporting year. This provision requires an entity to document the action and follow the draft Technical Guidelines for estimating and reporting annual carbon stocks on legally protected lands.

v. *Action-specific.* There are a number of circumstances under which reporters may undertake specific actions (often referred to as ''projects'') that yield emission reductions that cannot be quantified using any of the other measurement or estimation methods provided for in the guidelines. In such cases, reporting entities would have to follow the guidance provided in section 2.4.5 of the draft Technical Guidelines.

There are a number of action-specific reductions that do not allow reporters to develop an estimate of base-year emissions based on an extant technology or process and base-year activity levels. DOE has provided guidance in the draft Technical Guidelines for a limited positive list of such action-specific reductions (*see* section 2.4.5.6). This positive list of actions includes: coalmine degasification; landfill methane recovery; transmission and distribution improvements; and geologic sequestration.

DOE solicits recommendations on other specific actions for which guidance should be provided.

There are other actions that have been reported to the current Voluntary Reporting of Greenhouse Gas Program that will not be eligible for registration as action-specific reductions. In some cases they might be reported as ''offsets'' under the revised guidelines, if the reporting entity enters into an agreement with the entity directly responsible for the reductions. In circumstances where no such agreement is feasible, the reduction would not qualify for registration. These actions typically fall within one of three categories:

—They result in avoided emissions from activities other than energy supply (increased use of less emissions intensive materials in manufactured products);

—They result in reduced emissions from highly diffuse sources (public education related to energy conservation); or

—The location and ownership of resulting reductions is impossible to determine (retail sales of discounted compact fluorescent bulbs).

Actions that often fall into these categories include: Utility-sponsored DSM programs; manufacturer improvement in the energy efficiency of products; employee commuting reduction; coal ash reuse; halogenated substance substitution; and materials recycling/source reductions. DOE seeks comment on the practicality of reporting these actions directly or as offsets, and suggestions on estimation methods that would mitigate the constraints identified above and allow reductions from a broader range of such actions to

be reported. In particular, DOE is open to future consideration of practical methods, consistent with the structure and objectives of the revised guidelines, to enable manufacturers of more energy efficient products to register the emission reductions resulting from the use of these products. DOE recognizes that product manufacturers often play an important role in accelerating the introduction of new, more energy efficient technologies, and that the revised guidelines might be designed to enable such manufacturers to register such emission reductions under certain circumstances. In theory, such reductions might be reported as offsets, but this would require an agreement between the manufacturer and the end-user, and the reporting requirements contained in the revised guidelines would likely discourage such arrangements. Further, some of the improvements in product efficiency are mandated by Federal law.

vi. *Estimating Reductions Associated with Energy Exports.* Entities that export (sell) electricity, steam or hot/chilled water and have emissions in their base period must calculate emission reductions using either changes in absolute emission reductions or a method that combines the consideration of changes in emissions intensity and avoided emissions. This combined method, described below and in section 2.4.6 of the draft Technical Guidelines, takes into account the effects of a wide range of actions that generators can take to reduce the emissions intensity of the generating sector. These actions can be categorized into two main types: (1) Those that reduce the emissions intensity of a generator's own, existing capacity, and (2) those that decrease generation from other, high-emissions intensity generators. DOE assessed the following four options for estimating the emission reductions in this sector in order to compare their ability to recognize reductions from both types of actions, and their tendency to favor or disadvantage generators according to their historical emissions rate. The four options were:

(1) *Average Intensity:* Reductions would be calculated from the change in entity-wide, average emissions intensity from the base period to the reporting year.

(2) *Plant-by-Plant:* Reductions would be calculated separately for each plant, either from changes in the emissions intensity of existing plants from the base period to the reporting year or from the emissions intensity of new plants compared to the emission intensity of a ''benchmark'' emissions intensity value.

(3) *Existing and New Plants:* Reductions would be calculated from the change in the average emissions intensity of existing plants from the base period to the reporting year; new plants would qualify for reductions if their emissions intensity was below a ''benchmark'' value.

(4) *Base and Incremental Generation:* Reductions would be calculated from entity-wide, average emissions intensity calculated in two parts. For quantities of power that are equal to or less than the quantity generated in the base period, the emissions intensity value would be entity's average for its base period. For quantities in excess of the base period generated, the average emissions intensity would be the ''benchmark'' value.

For all four methods, emissions reductions are calculated by multiplying the difference between the appropriate base period and reporting year generation intensity values ($CO_2$/MWh) by the reporting year generation (MWh).

Following analysis and review, DOE concluded that Method 4 best serves the purposes of the program. Method 1 allows high emitting entities to register reductions for actions that do not reduce the emissions intensity of the power sector on the whole, while making it very difficult for low emitting entities to register reductions, even if they were taking actions that did reduce the emissions intensity of the power sector as a whole. Method 2 would not capture reductions for certain actions that do lead to sector-wide reductions, including shifting load to lower-emitting generators. Method 4 is preferable to Method 3 in that it is able to recognize the benefits of a broader range of load shifting actions and tends to treat generators with substantially different characteristics more 'equitably'; increased generation output, for instance, is compared to the benchmark value regardless of whether it is from new capacity or increased output from existing generation. DOE solicits public comment on its selection of Method 4, Base and Incremental Generation, as the preferred method.

*Combined Heat and Power (CHP), and Thermal Energy Generators.* Some energy generators distribute heating and/or cooling to multiple end users, either exclusively or in addition to electric power.

Reductions from CHP or district heating/cooling systems are to be calculated using the same basic method specified for electricity generators, although reductions associated with electricity generation and with thermal generation must be calculated separately. Appropriate thermal energy benchmarks are to be specified by EIA or calculated by reporters according to guidelines provided by DOE. This approach would enable CHP and thermal energy generators to obtain recognition for reductions that result from a broad range of different actions, including increased generation (since most CHP plants are more efficient than conventional power and heat generation), fuel substitution or improved system performance.

## III. Public Workshop

A public workshop will be held to receive comment on all elements of the draft Technical Guidelines, as well as interim final General Guidelines that DOE is publishing in the Rules and Regulations section of today's issue of the **Federal Register**. DOE invites any person who has an interest in the draft Technical Guidelines and revised General Guidelines to participate in this workshop. Because space is limited, persons wishing to participate in the workshop should inform DOE by identifying the person or persons likely to attend, an e-mail or phone number for follow-up contacts, and providing a brief description of the specific issues of particular interest. This information may be provided electronically at the following Web site: *http://www.pi.energy.gov/enhancingGHGregistry/draftTechnicalGuidelines.html* or may be provided in writing to the person listed in the beginning of this notice.

DOE will designate a DOE official to preside at the workshop, and may also use a professional facilitator to facilitate discussion. The workshop will not be conducted under formal rules governing judicial or evidentiary-type proceedings, but DOE reserves the right to establish procedures governing the conduct of the workshop. The workshop will be organized so as to encourage the open discussion of specific issues by the range of stakeholders and government representatives present. Prior to the workshop a draft agenda, identifying specific issues for discussion, will be made available at the following Web site: *http://www.pi.energy.gov/enhancingGHGregistry/draftTechnicalGuidelines.html.* There will also be opportunities during the workshop for the identification and discussion of issues not specifically identified on the agenda. The presiding official will announce any further procedural rules, or modification of the above procedures, needed for the proper conduct of the workshop. Statements for the record of the workshop will be accepted at the workshop.

*Joint DOE/USDA Workshop*

DOE and USDA invite persons interested in the draft Technical Guidelines for Agriculture and Forestry and related revised General Guidelines to participate in this workshop. The workshop will provide an overview of the draft technical guidelines for agriculture and forestry sources and sinks, opportunities to ask questions about the proposed methods, and opportunities to discuss specific issues. Persons interested in registering for the meetings or in obtaining more information about USDA's efforts to develop accounting rules and guidelines for forestry and agriculture should visit the following Web site: *http://www.usda.gov/agency/oce/gcpo/greenhousegasreporting.htm.*

The Web site will also be used to make available draft and final meeting agendas, information on lodging, or other information made available before the meetings. Inquiries regarding the logistics for this meeting may be e-mailed to *sharon_barcellos@grad.usda.gov.*

**IV. Forms**

EIA, which is responsible for the operation of the 1605(b) program, is preparing a set of draft forms for reporting under the revised guidelines. Pursuant to the Paperwork Reduction Act of 1995, EIA plans to issue a **Federal Register** notice soliciting public comment on these draft forms as soon as practicable and to complete the comment review, and revisions resulting from that review, before the effective date of the guidelines.

Issued in Washington, DC, on March 16, 2005.

**Karen A. Harbert,**

*Assistant Secretary for Policy and International Affairs.*

[FR Doc. 05–5606 Filed 3–23–05; 8:45 am]

BILLING CODE 6450–01–P

---

## DEPARTMENT OF ENERGY

## 10 CFR Part 300

**RIN 1901–AB11**

## Guidelines for Voluntary Greenhouse Gas Reporting

**AGENCY:** Office of Policy and International Affairs, U.S. Department of Energy.

**ACTION:** Interim final rule and opportunity for public comment; revised general guidelines.

**SUMMARY:** Section 1605(b) of the Energy Policy Act of 1992 directed the Department of Energy (Department or DOE) to issue guidelines establishing a voluntary greenhouse gas reporting program. On February 14, 2002, the President directed DOE, together with other involved Federal agencies, to recommend reforms to enhance the Voluntary Reporting of Greenhouse Gases Program established by DOE in 1994. DOE is today issuing interim final General Guidelines that incorporate the key elements of revised General Guidelines proposed by DOE on December 5, 2003. DOE also is publishing in the ''Rules and Regulations'' section of today's issue of the **Federal Register** a notice of availability inviting public comment on draft Technical Guidelines that will, combined with these General Guidelines, fully implement the revised Voluntary Reporting of Greenhouse Gases Program.

**DATES:** The interim final rule will be effective September 20, 2005. The incorporation by reference of the Draft Technical Guidelines is approved by the Director of the Federal Register as of September 20, 2005. Written comments should be submitted on or before May 23, 2005.

**ADDRESSES:** You may submit comment, identified by RIN Number 1901–AB11, by any of the following methods:

- E-mail: *1605bguidelines.comments@hq.doe.gov.*
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow instructions for submitting comments.
- Mail: Mark Friedrichs, PI–40; Office of Policy and International Affairs; U.S. Department of Energy; 1000 Independence Ave., SW., Washington, DC 20585.

Interested persons also may present oral views and data at public workshops DOE will hold for discussing both these interim final General Guidelines and the draft Technical Guidelines that DOE is making available today. The locations, times, and other details of the public workshops are set forth in the Notice of Availability for the draft Technical Guidelines published in the ''Rules and Regulations'' section of today's issue of the **Federal Register**.

You may obtain electronic copies of this notice, the draft Technical Guidelines and other related documents, find additional information about the planned workshops, and review comments received by DOE and the workshop transcripts at the following Web site: *http://www.pi.energy.gov/enhancingGHGregistry/.* Those without internet access may access this information by visiting the DOE Freedom of Information Reading Room, Rm. 1E–190, 1000 Independence Avenue, SW., Washington, DC, 202–586–3142, between the hours of 9 a.m. and 4 p.m., Monday to Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mark Friedrichs, PI–40, Office of Policy and International Affairs, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, or e-mail: *1605bguidelines.comments@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

I. Introduction
A. Background
B. Process for Finalizing and Implementing Guidelines
II. Discussion of Revised General Guidelines
A. Overview and Purpose
B. Crosscutting Issues and Revisions
1. Whether to provide for reporting on international emissions and reductions
2. Whether to provide for registered emissions reductions
3. Whether to modify the proposed basic requirements for registration
a. Requiring large emitters to report entity-wide emissions and reductions
b. Limiting registration to post-2002 reductions
4. How to assign responsibility for reporting emissions and emissions reductions
5. ''Transferable credits''
6. Whether to include the General Guidelines in the *Code of Federal Regulations*
C. Section-by-Section Discussion of the General Guidelines
1. General (§ 300.1)
2. Definitions (§ 300.2)
3. Guidance for defining and naming the reporting entity (§ 300.3)
4. Selecting organizational boundaries (§ 300.4)
5. Submission of an entity statement (§ 300.5)
6. Emissions inventories (§ 300.6)
7. Net entity-wide emission reductions (§ 300.7)
8. Calculating emission reductions (§ 300.8)
9. Reporting and recordkeeping requirements (§ 300.9)
10. Certification of reports (§ 300.10)
11. Independent verification (§ 300.11)
12. Acceptance of reports and registration of entity emission reductions (§ 300.12)
13. Incorporation by reference (§ 300.13)
III. Regulatory Review and Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under the Regulatory Flexibility Act
C. Review Under the Paperwork Reduction Act
D. Review Under the National Environmental Policy Act
E. Review Under Executive Order 13132
F. Review Under the Treasury and General Government Appropriations Act, 2001

G. Review Under Executive Order 12988
H. Review Under the Unfunded Mandates Reform Act of 1995
I. Review Under the Treasury and General Government Appropriations Act, 1999
J. Review Under Executive Order 13211
K. Congressional Review

## I. Introduction

### *A. Background*

Section 1605(b) of the Energy Policy Act of 1992 (EPACT) directs the Department of Energy, with the Energy Information Administration (EIA), to establish a voluntary reporting program and database on emissions of greenhouse gases, reductions of these gases, and carbon sequestration activities (42 U.S.C. 13385(b)). Section 1605(b) requires that DOE's Guidelines provide for the ''accurate'' and ''voluntary'' reporting of information on: (1) Greenhouse gas emission levels for a baseline period (1987–1990) and thereafter, annually; (2) greenhouse gas emission reductions and carbon sequestration, regardless of the specific method used to achieve them; (3) greenhouse gas emission reductions achieved because of voluntary efforts, plant closings, or state or federal requirements; and (4) the aggregate calculation of greenhouse gas emissions by each reporting entity (42 U.S.C. 13385(b)(1)(A)–(D)). Section 1605(b) contemplates a program whereby voluntary efforts to reduce greenhouse gas emissions can be recorded, with the specific purpose that this record can be used ''by the reporting entity to demonstrate achieved reductions of greenhouse gases'' (42 U.S.C. 13385(b)(4)).

In 1994, after notice and public comment, DOE issued General Guidelines and sector-specific guidelines that established the Voluntary Reporting of Greenhouse Gases Program for recording voluntarily submitted data and information on greenhouse gas emissions and the results of actions to reduce, avoid or sequester greenhouse gas emissions. The 1994 General Guidelines and supporting documents may be accessed at *http://www.eia.doe.gov/oiaf/1605/guidelns.html.* The Guidelines were intentionally flexible to encourage the broadest possible participation. They permit participants to decide which greenhouse gases to report, and allow for a range of reporting options, including reporting of total emissions or emissions reductions or reporting of just a single activity undertaken to reduce part of their emissions. From its establishment in 1995 through the 2002 reporting year, 381 entities, including utilities, manufacturers, coal mine operators, landfill operators and others, have reported their greenhouse gas emissions and/or their emission reductions to EIA.

On February 14, 2002, the President directed the Secretary of Energy, in consultation with the Secretary of Commerce, the Secretary of Agriculture, and the Administrator of the Environmental Protection Agency, to propose improvements to the current section 1605(b) Voluntary Reporting of Greenhouse Gases Program. These improvements are to enhance measurement accuracy, reliability, and verifiability, working with and taking into account emerging domestic and international approaches.

On May 6, 2002, DOE published a Notice of Inquiry soliciting public comments on how best to improve the Voluntary Reporting of Greenhouse Gases Program (67 FR 30370). Written comments were received from electric utilities, representatives of energy, manufacturing and agricultural sectors, Federal and State legislators, State agencies, waste management companies, and environmental and other non-profit research and advocacy organizations.

DOE held public workshops in Washington, DC, Chicago, San Francisco and Houston during November and December of 2002 to receive oral views and information from interested persons. In addition, the U.S. Department of Agriculture sponsored two workshops in January 2003 to solicit input on the accounting rules and guidelines for reporting greenhouse gas emissions in the forestry and agriculture sectors. These workshops explored in greater depth many of the issues raised in the Notice of Inquiry and addressed in the written comments. The public comments covered a broad range of issues and views diverged widely on some key issues. Generally, there was substantial support for revising the current General Guidelines to enhance their utility and to accomplish the President's climate change goals.

On December 5, 2003, DOE proposed revised General Guidelines (68 FR 68204). A public workshop was held on January 12, 2004, to discuss that proposal and to receive public comment. Approximately 200 persons attended the workshop. In addition, over 300 written comments were received by the close of the public comment period on February 17, 2004.

DOE is today issuing interim final revised General Guidelines and, in a notice of availability published elsewhere in this issue of the **Federal Register,** makes available for public comment the draft Technical Guidelines necessary to fully implement the revisions to the Voluntary Program. Together, the General and Technical Guidelines will, when effective, replace the guidelines for the Voluntary Reporting of Greenhouse Gases issued by DOE in October 1994.

DOE previously indicated its intent to provide for further public comment on the General Guidelines, as revised after a round of public comments on the notice of proposed rulemaking published on December 5, 2003, through a supplemental notice of proposed rulemaking. However, DOE subsequently decided to provide for further comment through the device of a notice of interim final rulemaking rather than a supplemental notice of proposed rulemaking. DOE opted for an interim final rule because, after considering the public comments, the main revisions to the initially proposed General Guidelines were relatively few, involved issues within the scope of the initial proposal, and were not significant enough to warrant a re-proposal as another notice of proposed rulemaking. DOE also took account of the unusually varied and robust opportunities for written and oral comment both before and after publication of the proposed General Guidelines. These opportunities for public comment make it less likely that members of the public will have substantially new or different comments or information to offer in a further round of public comments on the revised General Guidelines. DOE recognizes that there is a possibility that public review of the draft Technical Guidelines may suggest the need for further changes to the General Guidelines. By publishing the General Guidelines as an interim final rule with a 180-day effective date, DOE has provided for making such changes and finalizing the draft Technical Guidelines before the end of the 180-day period.

The Secretary of Energy has approved issuance of this interim final rule.

### *B. Process for Finalizing and Implementing Guidelines*

After full consideration of the public comments received, DOE will finalize the General and Technical Guidelines. DOE has allowed 180 days after publication of the interim final General Guidelines so that there is sufficient time to consider and respond to all comments received. DOE will further delay the effective date of the revised General Guidelines if the 180-day period proves to be insufficient for considering public comments and finalizing the General and Technical Guidelines.

Before the General and Technical Guidelines become effective, EIA will, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), solicit public comment on the reporting elements to be contained in the reporting forms to be used under the revised program Guidelines. With respect to the existing 1994 General Guidelines, DOE intends to publish a **Federal Register** notice of termination that will take effect and terminate the existing Guidelines immediately prior to the revised General and Technical Guidelines taking effect.

## II. Discussion of Revised General Guidelines

The following section summarizes changes made to the revised General Guidelines and responds to public comments on the December 5, 2003 proposal.

### *A. Overview and Purpose*

The revised General Guidelines included in this interim final rule are designed to enhance the measurement accuracy, reliability and verifiability of information reported under the 1605(b) program and to contribute to the President's climate change goals. The key elements of the revised General Guidelines do the following:

- Enable larger emitters to register reductions if they provide entity-wide emissions data and can demonstrate they achieved entity-wide emission reductions after 2002 that contribute to the President's goal of reducing the greenhouse gas emissions of the U.S. economy.
- Provide for simplified procedures for small emitters to report and to register reductions.
- Provide for simplified reports from entities that do not want to register their reductions.
- Encourage companies and other reporting entities to report at the highest level.
- Require participants to ensure the accuracy and completeness of their reports, and encourage independent verification.
- Allow participants to report and register reductions achieved internationally.

These key elements of the revised Guidelines, except for the last, were included in the December 2003 proposal and, after careful consideration by the Department of the public comments received, have been retained in the revised General Guidelines contained in this notice.

The President specifically requested that DOE ''enhance measurement accuracy, reliability, and verifiability.'' DOE believes that today's interim final revised General Guidelines enhance:

- Measurement accuracy by creating a ranking system for methods to calculate emissions, incorporating the best available inventory methods, and enabling more sources to be covered;
- Reliability by creating a more systematic approach to reporting, stressing inventories and entity-wide reporting; and
- Verifiability by creating a more transparent reporting system for emissions and reductions, requiring recordkeeping and encouraging independent verification.

The revised General Guidelines establish the basic requirements for the enhanced reporting and registration program. The draft Technical Guidelines, which are referred to in this preamble and in the text of the General Guidelines, when final, will provide the specificity necessary to fully implement the emissions inventory and emissions reduction guidelines set forth in section 300.6 and section 300.8 of the revised General Guidelines. As explained in the notice of availability published in the ''Rules and Regulations'' section of today's **Federal Register**, the draft Technical Guidelines have two major parts:

- Emissions Inventory Guidelines (Chapter 1), which includes detailed guidance on how to measure or estimate greenhouse gas emissions; and
- Emission Reductions Guidelines (Chapter 2), which includes guidance on the selection and application of methods used to calculate emission reductions, including the establishment and modifications of base periods and base values.

After consideration of the hundreds of public comments received on the December 2003 proposal, DOE retained the key elements of the previously proposed General Guidelines, as described above. However, DOE has made a number of important changes, including the addition of guidelines to allow reporting and registration of international emissions and emission reductions, refinements in the procedures governing the definition of ''reporting entity,'' increased specificity regarding the requirements for registration, and a modification of the *de minimis* provision to permit the exclusion from emissions inventories of up to 3 percent of total emissions, with no quantitative maximum.

In addition to the changes described above, DOE has made changes to reflect or incorporate the further guidance included in the draft Technical Guidelines. A few sections of today's revised General Guidelines, such as those on entity statements, recordkeeping and independent verification, have been expanded to provide additional guidance to reporters. In a few instances, the December 5, 2003 proposed General Guidelines have been modified to reflect changes in the requirements for emissions inventories and emission reductions that are set forth in the draft Technical Guidelines.

Once the revised General and Technical Guidelines take effect, the 1605(b) program will serve as the primary public emission and emission reduction reporting mechanism for participants in EPA's Climate Leaders program and in DOE's Climate VISION program. The establishment of consistent reporting rules for all Federal greenhouse gas reporting programs was supported by many of the comments received by DOE. While the specific requirements of these other programs for reporting emissions and emission reductions may be more prescriptive in some areas than the requirements of the revised 1605(b) guidelines, these differences should not prevent the use of the 1605(b) program as the means by which participating entities publicly report on their emissions and emission reduction achievements under the Climate Leaders and Climate VISION programs. To support distinct program elements, each of these programs is likely, however, to have other additional reporting requirements.

Most of the basic requirements in the December 5, 2003 proposed General Guidelines have not changed. To register emission reductions, reporting entities with substantial emissions (average annual emissions of 10,000 or more tons of carbon dioxide ($CO_2$) equivalent) must provide an inventory of their total emissions and calculate the net reductions associated with entity-wide efforts to reduce emissions or sequester carbon. Entities with average annual emissions of less than 10,000 tons of $CO_2$ equivalent (small emitters) are eligible, under certain conditions, to register emission reductions associated with specific activities without completing an entity-wide inventory or entity-wide reduction assessment. DOE believes that these registered emission reductions represent the types of ''real reductions'' for which the President indicated there should be special recognition.

The revised General Guidelines enable entities to report (but not register) emission reductions achieved prior to 2003 as well as report emission reductions achieved during or after 2003 that do not qualify for registration. They also permit entities to report (but not

necessarily register) emission reductions associated with specific actions or with specific parts of the entity, even if these reports are not accompanied by entity-wide emissions and reductions reports.

For convenience, the basic elements of the revised General Guidelines being issued today are graphically represented in Figure 1.

BILLING CODE 6450–01–P

**FIGURE 1: CHECK LIST FOR REGISTERING EMISSIONS REDUCTIONS**

**All Reporters**

1. Entity Statement (§ 300.5) fully documenting:
   - Legal basis for entity, scope of defined entity and appropriate entity name (§ 300.3)
   - Organizational boundaries, determined by financial control or other basis (§ 300.4)
   - Leased and partially owned facilities (§ 300.5);
   - Statement of changes to the entity statement for each reporting year (§ 300.5)
2. Certification statement (§ 300.10) indicating:
   - Report is accurate and complete, and consistent with prior year reports;
   - Emission reductions were calculated using methods described in the revised Guidelines; and
   - Report was/was not independently verified.

Large Emitters
(Avg. annual emissions >= 10,000 tons $CO_2e$)

- Provide entity-wide emissions inventory (§ 300.6);
- Describe de minimis emissions excluded inventories (§ 300.6)
- Meet minimum data quality standards for emissions and removals (§ 300.6)
- Calculate net entity-wide reductions using methods provided; define subentities if using more than one method (§ 300.7)
- Demonstrate reductions and removals occurred after December 31, 2002 (§ 300.7)
- Maintain verifiable records for a minimum of 3 years (§ 300.7)

Small Emitters
(Avg. annual emissions <= 10,000 tons $CO_2e$)

- Provide a complete assessment of annual emissions and sequestration for activity (ies) being reported (§ 300.7);
- Meet minimum data quality standards for emissions and removals (§ 300.6);
- Determine the associated reductions using methods provided (§ 300.7);
- Demonstrate reductions and removals occurred after December 31, 2002 (§ 300.7);
- Certify the reductions reported were not caused by actions likely to cause increases in emissions elsewhere within the entity (§ 300.7)

Aggregators
**(Reporting on Behalf of 3rd Party Emitters)**

- Provide Entity Statement and Certification Statement for each 3rd party;
- Complete assessment of annual emissions and sequestration activity(ies) being reported (§ 300.7);
- Meet minimum data quality standards for emissions and removals (§ 300.7);
- Determine the associated reductions using methods provided (§ 300. 7);
- Certify that reductions reported were not caused by actions likely to cause increases in emissions elsewhere within the 3rd party (§ 300.7).

EIA accepts the report and registers the eligible emission reductions.

BILLING CODE 6450–01–C

*B. Crosscutting Issues and Revisions*

Many of the comments received on the December 5, 2003 proposed General Guidelines were directed at crosscutting issues that affect a number of different provisions. A discussion of these issues and DOE's response to major comments regarding these issues follows.

1. Whether To Provide for Reporting on International Emissions and Reductions

In the December 5, 2003 proposed General Guidelines, DOE did not propose provisions for the reporting or registration of emissions and emission reductions occurring outside the United States, but it solicited public comment on whether entities should be permitted to report and/or register non-U.S. emissions and reductions. DOE also solicited comments on other, more specific issues related to the inclusion of non-U.S. activities. A large number of commenters responded to this request, both at the public workshop and in written comments. The vast majority of comments favored the inclusion of international emissions and reductions, both for reporting and registration. Some comments, however, raised concern about the reliability of reports on non-U.S. emissions and reductions, and the potential for double-counting reductions that are also recognized or credited by other countries.

DOE has responded to the comments by allowing entities to both report and register emissions and emission reductions occurring outside the United States, subject to certain requirements. To register such international emission reductions, entities must first report on their domestic U.S. operations and meet all requirements for registration. Entities intending to register emission reductions derived from non-U.S. operations or offsets must meet all of the requirements for registering reductions from U.S. operations. For example, a large emitter will have to submit an emissions inventory for all non-U.S. operations covered by the entity's report. Registered emission reductions must reflect net reductions, based on an entity-wide assessment of changes in all emissions, including changes in sequestration and avoided emissions. A person or organization without domestic U.S. operations is not allowed to report or register international emissions and emission reductions, although that person or organization's non-U.S. emission reductions may be reported as an offset reduction by an entity participating in the 1605(b) program. Emissions reductions credited or required under the greenhouse gas programs of other countries must be specifically identified as such. Because of the need for this disclosure and other national differences, all reports on international emissions and emission reductions must be compiled and reported on a country-specific basis.

An entity that chooses to report on some portion of its non-U.S. operations must do so in a manner that is consistent with the definition of the entity, as set forth in its entity statement (*see* § 300.5). In this regard, the entity's coverage of non-U.S. operations must be done in way that is fully consistent with its management structure. For example, if an entity chooses to report on multiple elements of its North American operations, including some elements outside the U.S., then all such operations must be included. An entity may register emissions reductions in a portion of the countries in which it has operations only if the decision to include or exclude countries follows the entity's organizational structure. This approach is consistent with how the revised General Guidelines treat all parent or holding company relationships with subsidiaries.

2. Whether To Provide for Registered Emissions Reductions

In the December 5, 2003 proposed General Guidelines, DOE proposed to allow reporters to ''register'' reductions if they met specific, more stringent, reporting requirements designed to increase the credibility of reported emissions and emission reductions. DOE explained that allowing the option of registration would provide special recognition to those entities that were willing to meet additional requirements, while ensuring that all of the program elements set forth in section 1605(b) of EPACT would remain available to participants that did not choose to register their reductions.

Public comment on the registration option was mixed. There was some support for allowing an option to provide more comprehensive data to DOE, but other comments expressed concern that a system that differentiated between entities simply reporting and those registering would automatically devalue all reductions not registered. Many supported only one type of recognition, either reporting alone or registration alone, but not two classes of reporting. After considering the comments, DOE nevertheless has retained the distinction between reporting and registering in the revised General Guidelines. DOE continues to believe this is the most effective method for improving the program, including improving the accuracy of the reports, as directed by the President, while continuing to cover all of the program elements required by the statute. The main distinction between registering and reporting under the revised guidelines concerns the degree to which individual reports cover all of the entity's emissions and emission reductions. Under the revised guidelines, large emitters interested in ''registering'' reductions must submit entity-wide emission inventories and will be recognized only for net reductions in their entity-wide emissions. DOE believes that data that reflects entity-wide emissions and reductions are better indicators of the entity's overall contribution to greenhouse gas reductions and should, therefore, be clearly distinguished from reports that are not entity-wide. DOE believes this characteristic, together with the other additional requirements specified in the guidelines, are sufficiently significant to warrant a unique designation. Comments on the issue of registration were often linked to the issue of transferable credits, which is addressed below (II.B.4).

3. Whether To Modify the Proposed Basic Requirements for Registration

In addition to the general comments received on the desirability of allowing reductions to be ''registered,'' a number of more specific comments addressed two of the key requirements for registration: (1) The requirement for entity-wide reports by large emitters, and (2) the limiting of registered emission reductions to only those that were achieved after 2002.

a. *Requiring large emitters to report entity-wide emissions and reductions.* As a prerequisite for registration, DOE proposed to require large emitters to submit an inventory of their total emissions and to complete an entity-wide assessment of emission reductions. Many comments opposed one or both of these requirements. In particular, many commenters advocated a change to permit the registration of emission reductions resulting from individual projects (or actions), rather than reserving registration for those entities that could demonstrate net, entity-wide emission reductions.

Most of the emission reductions that have been reported under the existing program are based on identifiable ''projects'' or actions. Over 3,000 distinct projects have been reported to DOE since the inception of the program. The actions to reduce emissions vary widely and include recovery of landfill methane, improved energy efficiency, recycling, switching from coal or oil to natural gas, and the generation of electricity from nuclear power or

renewable energy, and many others. Because most large companies and institutions regularly take actions that have as one of their effects the reduction of greenhouse gas emissions, there are always many candidates for project-based emission reductions. But the net effect of such project-based reductions on an entity's total emissions is often questioned, because large entities may be taking actions that reduce certain emissions, while simultaneously taking other actions that increase other emissions. Furthermore, it is impossible to evaluate the significance of a particular entity's actions to reduce emissions unless the total emissions of that entity are known. For these reasons, a number of commenters favored retaining the entity-wide focus of the proposed revisions to the General Guidelines. DOE continues to find these arguments persuasive, and therefore has retained the provision requiring large emitters who register to complete an entity-wide inventory of emissions and to calculate emission reductions on the basis of an entity-assessment of changes in emissions.

The focus on entity-wide emission reductions does not, however, preclude entities from including in their entity-wide assessment the effects of ''projects,'' whether they are captured indirectly in measures of changes in greenhouse gas emissions intensity or their total emissions, or directly through the calculation of increased carbon storage resulting from tree plantings, increased avoided emissions from nuclear power and renewable energy generation, or reductions calculated using various action-specific methods, such as the recovery of landfill methane, that are specified in the draft Technical Guidelines.

b. *Limiting registration to post-2002 reductions.*

In the December 5, 2003 proposed General Guidelines, DOE proposed to permit the registration of only those emission reductions achieved after 2002. Most public comments opposed restricting registration to post-2002 reductions. Most argued that the revised guidelines should provide full recognition to any reduction achieved after the statutory base year of 1990, as long as the entity complied with the requirements of the revised guidelines. DOE has retained this restriction, however, because it believes the arguments against such restriction are contrary to the intended focus of the revised Guidelines. The restriction is intended to focus the program on recent and future efforts to reduce greenhouse gas emissions, rather than on actions taken many years ago. Limiting registered reductions to those achieved after 2002 will also provide an indication of reporting entities' contributions to the President's goal of reducing the greenhouse gas emissions intensity of the U.S. economy by 18 percent between 2002 and 2012. In addition, this forward-looking focus helps enhance the transparency and verifiability of the reported data. Even if the guidelines permitted entities to register reductions achieved prior to 2003, DOE believes it is unlikely that most entities would be technically capable of meeting all of the requirements of the revised guidelines for earlier years, unless they already had extensive emission measurement and recordkeeping processes in place. The revised General Guidelines still permit reporting of historical activity, however, and therefore fully comply with the statutory requirements of section 1605(b).

4. How To Assign Responsibility for Reporting Emissions and Emission Reductions

In the December 5, 2003 proposed General Guidelines, DOE proposed that: emission inventories cover all emissions from stationary or mobile sources within the organizational boundaries of the entity (proposed section 300.6(b)); and the entity responsible for emission reductions, avoided emissions or sequestered carbon would be the legal owner of the facility, land or vehicle which generated the affected emission, generated the energy that was sold so as to avoid other emissions, or was the place where the sequestration action occurred (proposed section 300.8(e)).

Few comments were received on these proposals and the revised General Guidelines contain provisions that closely parallel those included in the December 5 proposal (see sections 300.6(d) and 300.8(k)).

The draft Technical Guidelines further amplify the revised General Guidelines provisions and, in some cases, identify exceptions to these general rules. The relevant technical guidance falls into the following categories: indirect emissions, biogenic (or natural) emissions, avoided emissions, emissions from manufactured products and transfers of greenhouse gases to other entities.

*Indirect Emissions*: The draft Technical Guidelines specify that both the users and generators of electricity, steam and hot/chilled water report the emissions associated with these forms of distributed energy, and that each report a portion of the associated reductions. The guidelines recognize that the emission inventories associated with indirect emissions will overlap with those associated with the generation of electricity and other forms of distributed energy. This overlap is explicit and will be clearly identified in EIA's database of entity reports. With respect to emission reductions, the draft Technical Guidelines specify methods that will attribute reductions associated with the declines in the emissions intensity of generation to the owners of the energy generating facilities that resulted in these declines. Emission reductions associated with reductions in the use of electricity or other forms energy would be attributed to the end users.

*Biogenic (or natural) Emissions*: Emissions associated with the combustion or decay of biomass is another area where the draft Technical Guidelines would establish some special rules. Most of the carbon sequestered in growing trees is eventually reemitted after the trees have been harvested. These emissions occur at many sites: on the land where the trees grew, at lumber mills and other wood processing facilities, at landfills, and some in waste-to-energy plants or in plants burning methane recovered from landfills. Since entities that grow trees would report the reductions associated with sequestration but most of such sequestered carbon eventually would be reemitted if the trees were harvested, the guidelines would assign most of the responsibility for such emissions to the tree growers, rather than to the users or disposers of wood products. The guidelines would require most users and disposers of wood products to treat any resulting carbon emissions as biogenic. For example, any entity that directly combusted wood or wood products would treat the resulting emissions of carbon dioxide as biogenic. However, there is a further exception to this rule. The guidelines specify that increased production and distribution of methane recovered from landfills should be presumed to substitute for natural gas, based on its heat content. Note that methane emissions from landfills would be considered anthropogenic, while the carbon dioxide produced by the flaring of such methane would be considered biogenic.

*Avoided Emissions*: ''Changes in avoided emissions'' is one of the five methods of calculating emission reductions. While avoided emissions are not included in emission inventories, the draft Technical Guidelines would enable entities that increase the generation of electricity or other forms of distributed energy to account for the effects of this increased generation on the emissions of other generators. For example, the owner of the wind farm or

nuclear power plant may qualify to register the avoided emissions associated with these facilities, while the competing generator (that reduces its total generation and emissions directly), the utility that distributes the renewable or nuclear power to users, and the ultimate user may not register reductions resulting from the actions of the wind farm or nuclear power plant owner.

*Emissions from Manufactured Products*: A number of manufactured products or materials contain anthropogenic greenhouse gases that are emitted to the atmosphere during their normal life cycle. In general, the draft Technical Guidelines require the owner, rather than the manufacturer, of the product or material to report as part of its emissions inventory these emissions at the time the emissions occur.

*Transfers of Greenhouse Gases to Other Entities:* Entities that capture greenhouse gases and sell or otherwise transfer them to another entity usually would have to report such transactions, but their total emissions inventory would reflect only those gases actually released by the reporting entity, not those quantities transferred. Entities that purchase or otherwise receive greenhouse gases from other entities would also have to report such transactions, but should also include in their emissions inventory only those quantities of gases actually released. The receiving entity should also record the amount of transferred gas either destroyed or permanently sequestered. To qualify for a registered emission reduction in such cases, an entity would have to increase the net quantity of emissions destroyed or permanently sequestered relative to its base period. The entity responsible for the destruction or sequestration may report or register such reductions, or may assign the reporting rights for such reductions to other entities, such as the entity that initially captured the gas.

5. ''Transferable Credits''

DOE received many public comments on whether the December 5, 2003 proposed General Guidelines would faithfully carry out the President's February 14, 2002 statement that the Government would give ''transferable credits'' to entities that can show real reductions of greenhouse gas emissions. Although there appears to be a deeply felt disagreement on this question, the disagreement seems to be completely over form, and not substance. There is substantial if not complete agreement among the commenters on the permissible reach of the Guidelines, on what the President intended the Guidelines to accomplish, and on the extent of and limitations on the Guidelines' ability to provide protection to reporting entities in some future potential greenhouse gas legal or regulatory regime.

No commenter on the December 5, 2003 proposal argued that DOE has the legal authority to give emissions reductions that are reported or registered in the 1605(b) program a regulatory or financial value under some future climate policy. For example, the Edison Electric Institute (EEI), which has argued that DOE's Guidelines should do something more to award ''transferable credits'' (and ''baseline protection'') to entities reporting or registering reductions in the 1605(b) program, has also stated that the 1605(b) program can only provide ''a nonbinding hedge against current and future climate regulatory policy.'' (EEI, Feb. 17, 2004). EEI incorporated earlier written comments of the Electric Power Industry Climate Initiative (EPICI) that also reflected the view that DOE may not issue ''transferable credits'' guaranteed to have value under a future climate policy:

> [W]e know of no plans by the President, in calling for these distinctly different reforms [transferable credits and baseline protection], to attempt by guidelines to bind a future President or Congress, and we are not suggesting that he attempt to do so. A recognition or certification by DOE of reductions reported accurately pursuant to revised 1605 guidelines could not be said to have such a binding effect.

EPICI, Sept. 25, 2002, at 16. Similarly, the Competitive Enterprise Institute (CEI), the Natural Resources Defense Council (NRDC), and several other commenters who urged that the Guidelines either could not or should not do anything further with respect to ''transferable credits'' also conclude that DOE lacks the authority to provide credits that would have a regulatory or financial value under a future climate policy. CEI, Jan. 9, 2004; NRDC, Feb. 17, 2004; NESCAUM, Feb. 16, 2004; Pew Center, Feb. 11, 2004; and State of New Jersey, Feb. 17, 2004.

DOE has carefully considered all of these comments and has decided that its revised General Guidelines and draft Technical Guidelines appropriately meet the objectives the President sought to accomplish on this point. In particular, the Guidelines provide more detail on the criteria by which reporting entities can be credited with ''registered reductions''. DOE believes that its substantial revisions to the 1605(b) General Guidelines, accompanied by the detailed Technical Guidelines, including the provisions regarding registered reductions, fully carry out the President's objectives for improvements to the program.

As stated by the Chairman of the Council on Environmental Quality in his opening remarks at the Washington workshop on the Notice of Inquiry in this proceeding, the revised 1605(b) Guidelines can ''create a building block of recognition that * * * will be acknowledged and recognized with respect to any future climate policy'' (Transcript 3–4, November 18, 2002). By establishing a more credible database of emission inventories and net, entity-wide emission reductions, the reductions that may be registered under the revised General Guidelines and draft Technical Guidelines appropriately carry out the policy objectives set forth by the President's statement. It is important to note that under both current law and the President's policy, the decisions to make and report emission reductions remain voluntary.

6. Whether To Include the General Guidelines in the Code of Federal Regulations

Some commenters argued that it is unlawful or inappropriate for DOE to issue the revised General Guidelines as a proposed rule and, when final, place them in the *Code of Federal Regulations*. One commenter wrote to the Director of the Federal Register, who oversees the publication of both the **Federal Register** and the *Code of Federal Regulations,* asserting that it is unlawful and inappropriate to codify the General Guidelines. The Director responded in a letter that has been added to the other public comments filed in this proceeding (*see* Letter, Raymond A. Mosley, Director of the Federal Register, to William L. Fang, January 23, 2004).

DOE has considered these comments, but continues to believe it is both lawful and desirable that the revised General Guidelines be included in the *Code of Federal Regulations.* The revised General Guidelines clearly are a ''rule'' within the meaning of that term in the Administrative Procedure Act (5 U.S.C. 551(4)), and they were properly classified as a ''rule document'' by the Office of the Federal Register. The Director of the Federal Register also concluded that it is proper under the Federal Register Act (44 U.S.C. 1501–1511) for DOE to include the revised General Guidelines in the *Code of Federal Regulations*. The revised General Guidelines will be more accessible to the public if they are preserved in the *Code of Federal Regulations*. Placing the General Guidelines in the *Code of Federal*

*Regulations* also will not affect the rights of reporting entities because codification of rule documents does not affect their nature as substantive or procedural or legally-binding or non-binding. Lastly, codification is handled by the Office of the Federal Register, and it will not add any time to the notice and comment process required by section 1605(b).

*C. Section by-Section Discussion of the General Guidelines*

1. General (§ 300.1)

A new paragraph (f) has been added to this section to indicate that DOE intends to periodically review and update the General Guidelines and the Technical Guidelines. These periodic reviews would consider possible additions to the list of covered greenhouse gases, changes to the minimum, quantity-weighted quality rating for emission inventories, modifications to the benchmarks specified by DOE, changes to the minimum requirements for registered emission reductions, and other possible changes to the General and Technical Guidelines. DOE intends to coordinate any changes to the Guidelines in order to minimize the number of times such changes are made and to ensure that such changes are made only after a thorough, public review by DOE and interested stakeholders.

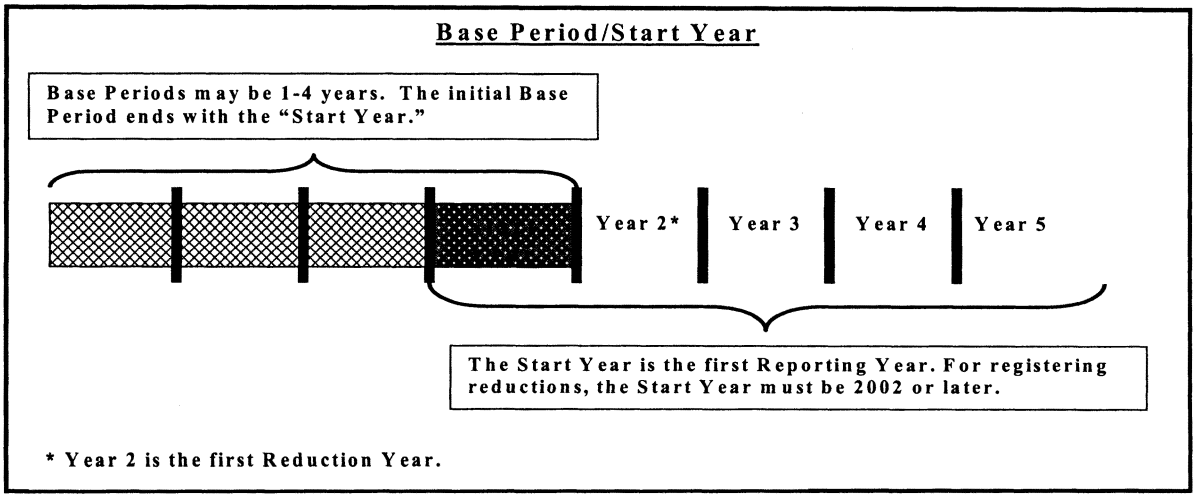
2. Definitions (§ 300.2)

The Definitions section of the revised General Guidelines defines the key terms used in the General Guidelines. The draft Technical Guidelines contain a Glossary that references all of the terms defined in the General Guidelines and contains additional terms used only in the draft Technical Guidelines. Although comparatively few changes have been made to the definitions contained in the proposed General Guidelines published on December 5, 2003 a few new terms have been added in response to public comments on the proposal and the completion of the draft Technical Guidelines. The new terms defined in today's revised General Guidelines are: ''aggregator,'' ''start year,'' ''base period,'' and ''base value.'' The definitions of other terms have been modified to improve their clarity.

*Aggregator.* Under the existing program, a number of organizations have aggregated the emission reductions of many small entities and submitted a single report to EIA. Some comments suggested that a role for such aggregators be more clearly defined under the revised General Guidelines. In response to these comments, DOE has defined and used the term ''aggregator'' in the revised General Guidelines. As defined, an aggregator might be any trade association, company or organization that collects or compiles information and reports to EIA on behalf of businesses, organizations, households or other entities that could report directly, but have chosen not to do so. Because the aggregator would be the entity reporting to EIA, EIA would recognize the aggregator as the entity responsible for any registered emission reductions. An aggregator may be a small or a large emitter and must report on its own emissions in accordance with whatever rules are applicable to its entity type, except that an aggregator that is a small emitter may choose not to report on any of its own emissions. In reporting on behalf of third-party businesses, organizations, or households, the aggregator must follow the reporting rules that would apply to those entities if they had themselves reported. DOE encourages trade associations and other organizations to serve as aggregators or to assist third parties to report directly.

*Start year.* ''Start year'' is a new term introduced to identify when an entity begins to report under the revised guidelines and to establish more clearly the first year for which an entity reports an emissions inventory. The start year is the last year of the base period(s) initially established by an entity and the year immediately preceding the first year for which an entity reports emissions reductions. For a particular entity, the start year remains fixed, even if changes in the entity require adjustments in base periods or base values.

*Base period and Base value.* In the December 5, 2003 proposed General Guidelines, the terms ''base year'' and ''base period'' were used, but definitions for those terms were not included in section 300.2. ''Base year'' was a single year upon which emission reduction calculations were often based. ''Base period'' was a period of 2–4 years that might also be the basis for emission reduction calculations. In today's revised General Guidelines, the term ''base year'' has been dropped and the term ''base period'' has been modified to include time periods of 1–4 years. Consequently, the term ''base period'' now encompasses the meanings originally given to both terms. DOE also has included a definition for the term ''base value,'' which is used to specify the quantitative value (*e.g.*, emissions, emissions intensity, megawatt hours (MWhs), carbon stock) used to calculate reductions. This value is usually derived from emissions and/or performance of an entity (or subentity) during the base period. The following graphic depicts the relationships between a start year, base period, first reduction year and reporting years.



*De minimis emissions.* The revised General Guidelines include a *de minimis* provision that allows reporters to omit emissions from their inventories that are, in total, less than 3 percent of the entity's emissions. This provision spares reporters the sometimes disproportionate cost of accounting for small emission quantities whose contribution to total emissions is small. The definition has been changed from the initial proposal as a result of public comment. Public comments supported a variety of modifications to the earlier proposal to allow exclusion of 3 percent or 10,000 tons, whichever is less. Some favored expanding the *de minimis* level to 5 percent of total emissions, although some also endorsed the 3 percent *de minimis* level, with no physical maximum, and a few opposed any *de minimis* exclusion. The revised General Guidelines retain the 3 percent level, but eliminate the 10,000-ton maximum exclusion. The 3 percent level appears to be the minimum level considered practical by many potential reporters. Given the inherent uncertainty of some of the measurement and estimation methods specified in the guidelines, emissions representing less than 3 percent of an entity's total could be considered immaterial. This approach ensures that all reporters may exclude the same percentage share of their total emissions. The revised General Guidelines also make clear that a large emitter, when starting to report, must provide an estimate of the emissions that are being excluded, and that *de minimis* emissions must be periodically re-estimated, at least every five years, to ensure that they do not exceed the 3 percent maximum. The *de minimis* exemption would not be applicable to small emitters that choose to report on the emissions of specific activities, rather than on their total, entity-wide emissions.

*Greenhouse gases.* This definition has been slightly modified from the proposal to indicate that entities may report on other gases or particles that have been demonstrated to have significant, quantifiable climate forcing effects when released to the atmosphere in significant quantities only if DOE has established or approved methods for estimating the emissions and emission reductions associated with such greenhouse gases. DOE will consider public recommendations on appropriate methods for estimating the emissions and emission reductions associated with any gases that have significant, quantifiable climate forcing effects. Once DOE has concluded that an anthropogenic emission meets the definition of greenhouse gases specified in the guidelines and has modified the Technical Guidelines to establish methods for accurately quantifying such emissions, DOE will begin accepting reports on such emissions and will initiate the interagency and public review process necessary to add the new emission to the list of gases in section 300.5 of the General Guidelines. Only after DOE has formally added the identified emission to the list of greenhouse gases specifically identified in the General Guidelines would entities be permitted to register reductions associated with such emissions.

3. Guidance for Defining and Naming the Reporting Entity (§ 300.3)

Public comments on this section of the revised General Guidelines varied widely. Some advocated that DOE require entities to report only at the highest meaningful level of aggregation, while others recommended that entities be given more flexibility in determining how best to define themselves. As revised, this section of the General Guidelines now addresses three distinct issues: (1) The basis for defining entities; (2) the level of aggregation; and (3) the choice of an entity name. This section also has been modified from the December 5, 2003 proposal to accommodate entities with non-U.S. operations that report reductions from those operations.

With respect to the basis for defining entities, public comments have suggested that DOE consider a variety of different bases, both more general and more specific than the ''legal basis'' originally proposed and now included in the definition of ''entity'' in section 300.2. DOE has made no change in this section because it continues to believe that the basis for defining a reporting entity should be found in existing Federal, State, or local law. DOE believes it is reasonable to define entities according to their legal status because that status provides a definable, identifiable basis for determining reporting parameters.

A variety of comments were also submitted on DOE's guidance regarding the appropriate level of aggregation of entities. DOE had proposed to encourage entities to report at the highest meaningful level of aggregation, but to provide entities with the flexibility to choose an appropriate level of aggregation. Some comments supported requiring that entities report at the highest level of aggregation, such as parent or holding company, while others wanted the flexibility to define their entity at the subsidiary or plant level. DOE is allowing reporting entities to decide on the level of aggregation, subject to the condition that they report at the next higher level of aggregation any time they choose to report on two or more subsidiaries of that level. For example, an entity may be the aggregation of three subsidiary entities: A, B, and C. If A and B want to report together, then they must also include C. DOE chose this approach because it permits entities some flexibility in determining how to define themselves, while at the same time it discourages entities from reporting only on those subsidiaries that had achieved significant reductions in emissions.

Finally, this section now includes guidance on the selection of a name for reporting entities, which previously appeared in the requirements for the Entity Statement.

4. Selecting Organizational Boundaries (§ 300.4)

Because many entities are involved in joint or shared financial and/or managerial operations, such as joint ventures, partnerships, leases, and parent/subsidiary relationships, guidelines are needed for defining entity boundaries. DOE has considered several options, including operational control; financial control; and equity share, as these terms are used in the Greenhouse Gas Protocol developed by the World Business Council for Sustainable Development/World Resources Institute (WBCSD/WRI). Public comments voiced support for all the options, though the comments provided little input on ways to preserve flexibility in the establishment of boundaries while also preventing or further discouraging the shifting of emissions to non-reporting parts of the entity in order to create the appearance of net emission reductions. Some comments argued in favor of fixed rules for deciding whether to include leased and partially owned operations, while others argued that the choice should be left to the discretion of the reporting entity. Commenters also raised concerns regarding the differences between the terminology used in DOE's proposed General Guidelines and the terms used in the WBCSD/WRI Protocol.

A number of changes have been made to respond to these comments. The term ''operational'' used in the DOE's original proposal has been changed to ''organizational'' in the revised General Guidelines. The section now indicates that the primary basis for defining organizational boundaries should be financial control, although entities retain the flexibility to use other approaches, such as equity share or operational control if necessary. DOE believes that financial control should be

used where feasible because it is the best indicator of which entity is most likely to control both the operational and investment decisions necessary to affect greenhouse gas emissions. The use of a single method, financial control, also minimizes potential conflicts between different entities that share ownership of a facility. In such situations, the use of different methods for determining organization boundaries might lead to conflicting claims regarding reported emission reductions.

5. Submission of an Entity Statement (§ 300.5)

A range of comments touched on DOE's proposed requirements for the entity statement, including some that advocated differentiating among large emitters intent on registering emissions reductions, small emitters intent on registration, and entities that do not intend to register emission reductions. In response to these comments and in an effort to more clearly define the early steps in the reporting process, DOE has made a number of changes to this section.

Two new sub-sections, ''Choosing a start year'' and ''Determining the type of reporting entity,'' have been added to more clearly define the first steps in the reporting process, and the requirements for entity statements have been differentiated for each of the three major categories of reporters.

DOE solicited comments concerning whether, and at what cutoff level, small emitters should be allowed to report emissions and register emissions reductions without having to meet all of the requirements for large emitters. Little feedback was received. DOE has retained the simplified reporting requirements for small emitters in the revised General Guidelines. EIA will provide a method that entities can use to quickly and inexpensively estimate their emissions to determine whether they qualify as small emitters. This method, the Simplified Emissions Inventory Tool (SEIT), will enable entities to prepare a rough estimate of their emissions inventory based on readily available quantities of fuel use, land type, livestock, or type and size of building(s) owned, although such rough estimates would not meet the minimum requirements for an emissions inventory. The SEIT is defined and referenced in the revised General Guidelines and discussed in Chapter 1 of the draft Technical Guidelines.

6. Emissions Inventories (§ 300.6)

A number of comments were received on this section of the proposed General Guidelines. Some opposed the requirement for entity-wide inventories as a precondition to the registration of emission reductions, while many others favored some type of inventory requirement. Because emission inventories provide a comprehensive assessment of an entity's total emissions in a given year, DOE is proposing to retain the requirement that large emitters complete an emissions inventory if they intend to register emission reductions. The major changes to section 300.6 involve the emissions estimation method rating system.

DOE has modified this section of the revised General Guidelines to reflect the quality rating system incorporated into Greenhouse Gas Emissions Inventory Guidelines (Chapter 1 of the draft Technical Guidelines). The emissions rating system is designed to: (1) Help achieve the President's stated objective of improving the ''accuracy, reliability, and verifiability'' of reported emissions; (2) ensure that the bulk of reported emissions that meet this standard are as accurate as available estimation methods permit; (3) create an incentive for reporters to use more accurate methods over time; and (4) be cost-effective and practical to implement.

The rating system is based on DOE rankings of available emissions and sequestration estimation methods by considering accuracy, reliability, verifiability, and practical application. Using these criteria, the best available methods are usually rated ''A,'' and given a value of 4 points. The next best methods are usually rated ''B'' and given a value of 3 points; the next best rated ''C'' and given a value of 2 points; and the least desirable methods rated ''D'' and given a value of 1 point. The revised General Guidelines require the weighted average rating of all reported emissions and sequestration to be 3.0 or higher to qualify for registration. This provision reflects DOE's belief that methods given an A or B rating are sufficiently accurate to serve as the basis for entity-wide reporting, while methods given a C or D rating should be used only for those gases or sources that represent a small share of the reporting entity's total emissions.

The emissions rating system is an *ordinal* rating system in the sense that while an A rating is considered better than a B rating, and B is better than C, the rating system doesn't specify how much better A is than B. Similarly, two ''A'' rated methods for different sources may not be of comparable quality. Both will be the best method available for a given source, but they may vary in degree of accuracy, reliability, verifiability or cost.

Paragraph (c) of section 300.6 permits and describes how reporters may obtain approval for the use of estimation methods not included in the Technical Guidelines. DOE encourages reporters to improve their emissions inventory methods over time, and DOE will periodically consider the desirability of raising the minimum acceptable weighted average.

7. Net Entity-Wide Emission Reductions (§ 300.7)

A number of comments addressed entity-wide reductions, including the requirement for entity-wide assessments of emission reductions by large emitters, the simplified requirements proposed for small emitters, the procedures for third party emission reductions (offsets), and adjusting for year-to-year increases in net emissions. After full consideration of these comments, DOE has made changes to its original proposal.

DOE proposed to allow the reporting of third party emissions reductions, referred to as offsets, because it would encourage large emitters to actively support emission reductions by non-reporting entities, especially small emitters. Comments were received both in support of and in opposition to DOE's proposal. Some advocated that DOE permit reporting entities to register the ''project-based'' emission reductions achieved by third parties, without requiring those third parties to meet the requirements of reporting directly to the program. Others felt that offset reductions, especially if based on individual projects, should meet ''additionality'' tests, to try to ensure that the reductions would not have occurred anyway, or at least that there be some assurance that the third party did not have net increasing emissions.

DOE has retained the provision allowing reporters to register the emission reductions achieved by third parties, as long as those third parties meet the requirements of reporting directly to the program. DOE believes that this provision will provide an incentive for emitters with limited options for reducing their own emissions to support other efforts to reduce or sequester greenhouse gas emissions. The revised General Guidelines state that the third party achieving the offset reductions cannot also report directly to the program, at least not in the same year as the offset reductions are reported (see related discussion on Aggregators in II.B.4 of this preamble).

The provision that requires entities to adjust for year-to-year increases in net

emissions has been modified and expanded to improve its clarity.

8. Calculating Emission Reductions (§ 300.8)

A number of comments were received on this section. In response to these comments and its own further analysis, DOE has significantly expanded this section in order to more clearly define the necessary steps in the process of calculating emission reductions. It now begins with guidance on the selection of the appropriate calculation methods and the establishment of subentities for the purpose of calculating reductions.

The revised General Guidelines are now clearer about how subentities are defined and used in the calculation of emissions reductions. An entity is required to define a subentity, which is a discrete component of the reporting entity with clearly defined emissions and reductions, if the entity must use more than one emissions reduction calculation method. This approach provides the flexibility needed by many entities whose reductions cannot be comprehensively estimated with a single calculation method, while at the same time creating a transparent way to track multiple types of reductions. Reporting entities have considerable flexibility in defining such subentities, but they must ensure that they are not overlapping and that the sum of the emissions of all subentities equals the total emissions reported by the entity.

Changes have been made to the descriptions of the five calculation methods identified in the proposal. Because of the important interactions between the emission intensity and avoided emissions methods in the energy distribution sector, the revised General Guidelines provide, in section 300.8(h)(4), that this interaction must be accounted for by using the special calculation methods described in Chapter 2 of the draft Technical Guidelines, which provides detailed guidance on the selection and application of calculation methods. This technical guidance and some of the issues upon which DOE hopes to focus public comment are described in the separate Notice of Availability published in today's **Federal Register**.

The name for the fifth calculation method has been changed to Action-Specific Method. DOE hopes that this term will help minimize some of the confusion that seems to accompany the use of the term ''project''.

9. Reporting and Recordkeeping Requirements (§ 300.9)

DOE received comparatively few comments on this section of the proposed guidelines, but DOE has included additional guidance in the revised General Guidelines to clarify the intent of these requirements, especially with respect to the types of records that must be maintained. Because the purpose of the 3-year record maintenance requirement is to permit verification of entity reports, DOE applies this requirement only to entities intent on registering their emission reductions.

Some comments noted the absence from the proposed General Guidelines of any provision on protection of confidential business information that may be included in an entity's section 1605(b) report. Section 1605(b)(3) of the Energy Policy Act of 1992 provides that any trade secret or commercial or financial information in 1605(b) reports shall be protected as provided in 5 U.S.C. 552(b)(4), one of the exemptions from mandatory disclosure set forth in the Freedom of Information Act (*see* 42 U.S.C. 13385(b)(3)). DOE, therefore, has added section 300.9(e) to the revised General Guidelines to address the protection of confidential information submitted in entity reports. The new paragraph references the statute and DOE's procedures for making determinations about information claimed by submitters to be entitled to exemption from public disclosure. If an entity requests confidentiality for information in its report, and DOE determines that the information falls within 5 U.S.C. 552(b)(4), then EIA will not make the information publicly available in its database. Because the primary purpose of the 1605(b) voluntary reporting program is to enable reporting entities to demonstrate achieved reductions of greenhouse gases, DOE believes few reporters will request confidentiality. This has been the experience under the current guidelines.

10. Certification of Reports (§ 300.10)

Public comments encouraged DOE to not require CEO certification of 1605(b) reports, but instead to require an entity officer or manager with signing authority for the entity and responsibility for ensuring environmental compliance to provide entity certification. One reason given for this suggested change was the burden it would place on a CEO and other senior managers. Some also indicated that the CEO may not be the most knowledgeable officer of the organization with respect to greenhouse gas emissions and reductions. In response to these comments, which DOE finds persuasive, DOE has modified the certification requirement to provide that the certifying official may be the officer or employee of the company or organization who is responsible for reporting the entity's compliance with environmental regulations.

A second concern voiced in the public comments was that reporting entities might not be able to certify that no double-reporting (double-counting or duplicate reporting) occurred because events may transpire beyond the reporting entity's knowledge and boundaries. DOE has retained the proposed requirement that entities take reasonable steps to assure that no double-reporting has occurred. For example, communicating with other companies or organizations that share financial or operational control of the facilities covered by an entity's report regarding the need to avoid double-reporting would be considered a reasonable step.

DOE has revised section 300.10 to include more detailed certification requirements for entities that request to have their emissions reductions registered. DOE believes the more specific certification statement requirements will enhance the reliability of reported reductions.

11. Independent Verification (§ 300.11)

Public comments generally supported DOE's proposal of optional, rather than mandatory, independent verification. In response to these comments and as a result of DOE's further consideration of this issue, DOE has substantially revised and expanded the guidance on independent verification to ensure that the revised General Guidelines contain sufficient guidance for full implementation of these requirements by EIA. Because of the terminology used by national standards organizations, DOE has revised the verification text to clarify that the independent verifier would ''attest'' to the accuracy and reliability of reports as established by professional standards. DOE also recognizes that independent ''verifiers'' cannot ensure a priori that reporting entities will keep verifiable records for at least three years. They can only attest to whether the current records, if kept for three years, would allow for verification. The reporting entity must certify it will keep verifiable records for at least three years.

12. Acceptance of Reports and Registration of Entity Emission Reductions (§ 300.12)

DOE received few substantive comments on this section of the proposed General Guidelines, but DOE has made some changes to more clearly

specify the procedures EIA should follow in reviewing and accepting or rejecting reports.

13. Incorporation by Reference (§ 300.13)

Although the rules of the Director of the Federal Register require incorporation by reference of the draft Technical Guidelines in these interim final General Guidelines, DOE plans to issue final General Guidelines that incorporate the final Technical Guidelines before the effective date of the interim final General Guidelines. If necessary, DOE will amend the effective date of the interim final General Guidelines in order to provide adequate time to fully consider all comments and issue final General and Technical Guidelines.

## III. Regulatory Review and Procedural Requirements

### *A. Review Under Executive Order 12866*

Today's action has been determined to be ''a significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

Because of new requirements associated with the revised General Guidelines and the Technical Guidelines, it is anticipated that the costs for participants to report and register reductions are likely to increase. The anticipated benefits of the new requirements include enhanced data quality associated with reported and registered reductions. The magnitude of these effects has not been assessed.

### *B. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking'' (67 FR 53461, August 16, 2002), DOE published procedures and policies to ensure that the potential impacts of its draft rules on small entities are properly considered during the rulemaking process (68 FR 7990, February 19, 2003), and has made them available on the Office of General Counsel's Web site: *http://www.gc.doe.gov.*

DOE has reviewed today's revised General Guidelines for the Voluntary Greenhouse Gas Reporting Program under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. The Guidelines establish procedures and guidance for the accurate voluntary reporting of information on greenhouse gas emissions and reductions. The Guidelines are voluntary, and the Agency anticipates that the small entities will weigh the benefits and costs when deciding to participate. On the basis of the foregoing, DOE certifies that these Guidelines will not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking.

### *C. Review Under the Paperwork Reduction Act*

EIA previously obtained Paperwork Reduction Act clearance by the Office of Management and Budget (OMB) for forms used in the current Voluntary Reporting of Greenhouse Gases program (OMB Control No. 1905–0194). EIA is preparing new forms and associated instructions to implement the revised guidelines for the program, and it will publish a separate notice in the **Federal Register** requesting public comment on the proposed collection of information in accordance with 44 U.S.C. 3506 (c)(2)(A). After considering the public comments, EIA will submit the new forms, instructions, and related guidelines to OMB for approval pursuant to 44 U.S.C. 3507 (a)(1).

### *D. Review Under the National Environmental Policy Act*

DOE has concluded that these revised General Guidelines fall into a class of actions that will not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). This action deals with the procedures and guidance for entities that wish to voluntarily report their greenhouse gas emissions and their reduction and sequestration of such emissions to EIA. Because the Guidelines relate to agency procedures, the Guidelines are covered under the Categorical Exclusion in paragraph A6 to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

### *E. Review Under Executive Order 13132*

Executive Order 13132, ''Federalism'' (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined today's action and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

### *F. Review Under the Treasury and General Government Appropriations Act, 2001*

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

### *G. Review Under Executive Order 12988*

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of

Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, these revised General Guidelines meet the relevant standards of Executive Order 12988.

*H. Review Under the Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to assess the effects of a Federal regulatory action on state, local, and tribal governments, and the private sector. The Department has determined that today's action does not impose a Federal mandate on state, local or tribal governments or on the private sector.

*I. Review Under the Treasury and General Government Appropriations Act, 1999*

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. These revised General Guidelines would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

*J. Review Under Executive Order 13211*

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) requires Federal agencies to prepare and submit to the OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

*K. Congressional Review*

As required by 5 U.S.C. 801, DOE will report to Congress the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**List of Subjects in 10 CFR Part 300**

Administrative practice and procedure, Energy, Gases, Incorporation by reference, Reporting and recordkeeping requirements.

Issued in Washington, DC, on March 16, 2005.

**Karen A. Harbert,**

*Assistant Secretary for Policy and International Affairs.*

■ For the reasons set forth in the preamble, DOE amends Chapter II of Title 10 of the Code of Federal Regulations by adding a new Subchapter B consisting of part 300 to read as follows:

**Subchapter B—Climate Change**

## PART 300—VOLUNTARY GREENHOUSE GAS REPORTING PROGRAM: GENERAL GUIDELINES

Sec.
300.1 General.
300.2 Definitions.
300.3 Guidance for defining and naming the reporting entity.
300.4 Selecting organizational boundaries for registering.
300.5 Submission of an entity statement.
300.6 Emissions inventories.
300.7 Net emission reductions.
300.8 Calculating emission reductions.
300.9 Reporting and recordkeeping requirements.
300.10 Certification of reports.
300.11 Independent verification.
300.12 Acceptance of reports and registration of entity emission reductions.
300.13 Incorporation by reference.

**Authority:** 42 U.S.C. 7101, *et seq.*, and 42 U.S.C. 13385(b).

### § 300.1 General.

(a) *Purpose.* This part and the Technical Guidelines referenced in paragraph (c) of this section govern the Voluntary Reporting of Greenhouse Gases Program authorized by section 1605(b) of the Energy Policy Act of 1992 (42 U.S.C. 13385(b)). The purpose of the Guidelines is to establish the procedures and requirements for filing voluntary reports, and to encourage corporations, government agencies, non-profit organizations, households and other private and public entities to submit annual reports of their greenhouse gas emissions, emission reductions, and sequestration activities that are complete, reliable and consistent. Over time, it is anticipated that these reports will provide a reliable record of the contributions reporting entities have made toward reducing their greenhouse gas emissions.

(b) *Registration option.* An entity may request to have its emission reductions registered under § 300.12(b) of this part if it complies with all of the requirements of this part, including the entity-wide reporting standards set forth in §§ 300.6 and 300.7. The requirements for registration, as distinguished from other reporting, are clearly stated in the provisions of these General Guidelines.

(c) *Technical Guidelines.* Further guidance on the interpretation and application of these General Guidelines is provided in the Draft Technical Guidelines for the Voluntary Reporting of Greenhouse Gases Program (hereafter ''Draft Technical Guidelines'' (incorporated by reference, see § 300.13).

(d) *Forms.* Annual reports of greenhouse gas emissions, emission reductions, and sequestration must be made on forms or software that are available from the Energy Information Administration of the Department of Energy (EIA).

(e) *Status of reports under previous Guidelines.* EIA continues to maintain in its Voluntary Reporting of Greenhouse Gases database all reports received pursuant to DOE's October 1994 Guidelines. Those Guidelines are available from the EIA at *http://www.eia.doe.gov/oiaf/1605/guidelns.html.*

(f) *Periodic review and updating of General and Technical Guidelines.* DOE intends periodically to review the General Guidelines and the Technical

Guidelines to determine whether any changes are warranted; DOE anticipates these reviews will occur approximately once every three years. These reviews will consider any new developments in climate science or policy, the participation rates of large and small emitters in the 1605(b) program, the general quality of the data submitted by different participants, and any changes to other emissions reporting protocols. Possible changes could include, but are not limited to:

(1) The addition of greenhouse gases that have been demonstrated to have significant, quantifiable climate forcing effects when released to the atmosphere in significant quantities;

(2) Changes to the minimum, quantity-weighted quality rating for emission inventories;

(3) Modifications to the benchmarks or emission conversion factors used to calculate avoided and indirect emissions; and

(4) Changes in the minimum requirements for registered emission reductions.

**§ 300.2 Definitions.**

This section provides definitions for commonly used terms in this part.

*Activity* means any single category of economic production or consumption that produces measurable emissions of greenhouse gases or sequestration, the annual changes of which can be assessed generally by using a single calculation method.

*Aggregator* means an entity that reports to the 1605(b) program on behalf of non-reporting third parties, usually small emitters.

*Avoided emissions* means the emissions displaced by increases in the generation and sale of electricity, steam, hot water or chilled water produced from energy sources that emit fewer greenhouse gases per unit than other competing sources of these forms of distributed energy.

*Base period* means a period of 1–4 years used to derive the average annual base emissions, emissions intensity or other values from which emission reductions are calculated.

*Base value* means the value from which emission reductions are calculated for an entity or subentity. The value may be annual emissions, emissions intensity, kilowatt-hours generated, or other value specified in the 1605(b) guidelines. It is usually derived from actual emissions and/or activity data derived from the Base Period.

*Biogenic emissions* mean emissions that are naturally occurring and are not significantly affected by human actions or activity.

*Carbon stocks* are the quantity of carbon stored in biological and physical systems including: trees, plants, wood products and other terrestrial biosphere sinks, soils, oceans, sedimentary and geological sinks, and the atmosphere.

*De minimis emissions* means emissions from one or more sources and of one or more greenhouse gases that, in aggregate, are less than or equal to 3 percent of the total annual carbon dioxide ($CO_2$) equivalent emissions of a reporting entity.

*Department or DOE* means the U. S. Department of Energy.

*Direct emissions* means greenhouse gas emissions resulting from stationary or mobile sources within the organizational boundary of an entity, including but not limited to emissions resulting from combustion of fuels, process emissions, and fugitive emissions.

*EIA* means the Energy Information Administration within the U.S. Department of Energy.

*Emissions* mean direct release of greenhouse gases to the atmosphere from any anthropogenic (human induced) source and certain indirect emissions (releases) specified in this part.

*Emissions intensity* means emissions per unit of output, where output is defined as the quantity of physical output, or a non-physical indicator of an entity's or subentity's productive activity.

*Entity or reporting entity* means the whole or part of any business, institution, organization or household that:

(1) Is recognized as an entity under any U.S. Federal, State or local law that applies to it;

(2) Is located, at least in part, in the United States; and

(3) Whose operations affect U.S. emissions of greenhouse gases.

*First reduction year* means the first year for which an entity intends to register emission reductions; it is the year that immediately follows the start year.

*Fugitive emissions* means uncontrolled releases to the atmosphere of greenhouse gases from the processing, transmission, and/or transportation of fossil fuels or other materials, such as HFC leaks from refrigeration, SF6 from electrical power distributors, and methane from solid waste landfills, among others, that are not emitted via an exhaust pipe(s) or stack(s).

*Greenhouse gases* means:

(1) Carbon dioxide ($CO_2$)

(2) Methane ($CH_4$)

(3) Nitrous oxide ($N_2O$)

(4) Hydrofluorocarbons (HFCs)

(5) Perfluorocarbons (PFCs)

(6) Sulfur Hexafluoride ($SF_6$)

(7) Other gases or particles that have been demonstrated to have significant, quantifiable climate forcing effects when released to the atmosphere in significant quantities and for which DOE has established or approved methods for estimating emissions and reductions (§ 300.1(f)) describes plans for periodically considering the addition of other gases or particles to this list).

*Indirect emissions* means greenhouse gas emissions from stationary or mobile sources outside the organizational boundary of an entity, including but not limited to the generation of electricity, steam and hot/chilled water that are the result of an entity's energy use or other activities.

*Net emission reductions* means the sum of all annual changes in emissions, avoided emissions and sequestration of the greenhouse gases specifically identified in § 300.6(f), and determined to be in conformance with §§ 300.7 and 300.8 of this part.

*Offset* means an emission reduction that meets the requirements of this part, but is achieved by a party other than the reporting entity and has not otherwise been reported under this program.

*Reporting Year* means the year that is the subject of a report to DOE.

*Sequestration* means the removal of atmospheric $CO_2$ (carbon dioxide), either through biologic processes or physical processes, including capture, long-term separation, isolation, or removal of greenhouse gases from the atmosphere, such as through cropping practices, forest and forest products management or injection into an underground reservoir.

*Simplified Emission Inventory Tool (SEIT)* is a computer-based method, to be developed and made readily accessible by EIA, for translating common physical indicators into an estimate of greenhouse gas emissions.

*Sink* means an identifiable discrete location, set of locations, or area in which carbon dioxide ($CO_2$) or some other greenhouse gas is sequestered.

*Source* means any process or activity that releases a greenhouse gas.

*Start year* means the year upon which the initial entity statement is based. For large emitters, it is the first year for which the entity submits a complete emissions inventory under this part. For all entities, it is the year immediately preceding the first year for which the entity intends to register reductions and the last year of the initial base period(s).

*Subentity* means a component of any entity, such as a discrete business line,

facility, plant, vehicle fleet, or energy using system, which has associated with it emissions of greenhouse gases that can be distinguished from the emissions of all other components of the same entity; and, when summed with the emissions of all other subentities, equal the entity's total emissions.

*Total emissions* means the total annual contribution of the greenhouse gases specifically identified in § 300.6(f) to the atmosphere by an entity, including both direct and indirect entity-wide emissions.

*United States or U.S.* means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, and any other territory of the United States.

**§ 300.3 Guidance for defining and naming the reporting entity.**

(a) A reporting entity must be composed of one or more legally distinct businesses, institutions, organizations or households that are located, at least in part, in the United States and whose operations affect U.S. emissions of greenhouse gases. For the purposes of this program, a legally distinct entity is any holding company, corporation, subsidiary, partnership, joint venture, business, operating entity, government, government agency, institution, organization or household that is treated as a distinct entity under an existing U.S. Federal, state or local law. Businesses may be defined by a certificate of incorporation or corporate charters, Federal tax identification numbers, or other level of organization recognized by specific laws. Similarly, public or private institutions and organizations can define their scope by referencing their charter, tax identification, or other legal basis.

(b) Entities that intend to register reductions are strongly encouraged to define themselves at the highest level of aggregation. To achieve this objective, DOE suggests the use of a corporate-level definition of the entity, based on filings with the Securities and Exchange Commission, or comparable institutional charters. While reporting at the highest level of aggregation is encouraged, it is recognized that certain businesses and institutions may conclude that reporting at some lower level is desirable. However, once an entity has determined the level of corporate or institutional management at which it will report (*e.g.,* the holding company, subsidiary, regulated stationary source, state government, agency, etc.), the entity must include all elements of the organization encompassed by that management level and exclude any organizations that are managed separately. For example, if two subsidiaries of a parent company are to be covered by a single report, then all subsidiaries of that parent company must also be included. Similarly, if a company decides to report on the U.S. and Canadian subsidiaries of its North American operations unit, it must also report on any other subsidiaries of its North American unit, such as a Mexican subsidiary.

(c) A name for the defined entity must be specified. For entities that intend to register reductions, this should be the name commonly used to represent the activities being reported, as long as it is not also used to refer to substantial activities not covered by the entity's reports. While DOE believes entities should be given considerable flexibility in defining themselves at an appropriate level of aggregation, it is essential that the name assigned to the reporting entity correspond closely to the scope of the operations and emissions covered by its report. If, for example, an individual plant or operating unit is reporting as an entity, it should be given a name that corresponds to the specific plant or unit, and not to the responsible subsidiary or corporate entity. In order to distinguish parent company from its subsidiaries, the name of the parent company generally should not be incorporated into the name of the reporting subsidiary, but if it is, the name of the parent company usually should be secondary.

(d) An entity that does not intend to register reductions must report the legal basis for their entity and must specify a name for reporting purposes.

**§ 300.4 Selecting organizational boundaries for registering.**

(a) An entity that intends to register its entity-wide emissions reductions must determine, document, and maintain its organizational boundary for accounting and reporting purposes.

(b) Each such entity must disclose in its entity statement the approach used to establish its organizational boundaries, which should be consistent with the following guidelines:

(1) In general, entities should use financial control as the primary basis for determining their organizational boundaries, with financial control meaning the ability to direct the financial and operating policies of the entity with a view to gaining economic or other benefits from its activities. This approach should ensure that all sources, including subsidiaries, that are wholly or largely owned by the entity are covered by its reports.

(2) Entities may establish organizational boundaries using approaches other than financial control, such as equity share or operational control, but must disclose how the use of these other approaches result in organizational boundaries that differ from those resulting from using the financial control approach.

(3) Emissions from facilities or vehicles that are partially owned or leased, or not directly controlled or managed by the entity, may be included at the entity's discretion, provided that the entity has taken reasonable steps to assure that doing so does not result in the double counting of emissions, sequestration or emission reductions.

(4) If the scope of a defined entity extends beyond the United States, the reporting entity should use the same approach to determining its organizational boundaries in the U.S. and outside the U.S.

**§ 300.5 Submission of an entity statement.**

(a) *Determining the type of reporting entity.* The entity statement requirements vary by type of entity. For the purposes of these guidelines, there are three types of entities:

(1) Large emitters that intend to register emission reductions;

(2) Small emitters that intend to register emission reductions; and

(3) Emitters that intend to report, but not register emission reductions.

(b) *Choosing a start year.* Entities that intend to register reductions must first choose a start year. The first entity statement describes the make-up, operations and boundaries of the entity, as they existed in the start year. For a large emitter, the start year is the first year for which the entity submits a complete emissions inventory under this part. For all entities, it is the year immediately preceding the first year for which the entity intends to register emission reductions and the last year of the initial base period(s). The entity's emissions in its start year or its average annual emissions over a period of up to four years ending in the start year determine whether it qualifies to begin reporting as a small emitter. For entities intending to register emission reductions, the start year may be no earlier than 2002. For entities not intending to register reductions, the start year may be no earlier than 1990.

(c) *Determining and maintaining large or small emitter reporting status.* (1) Any entity that intends to register emission reductions can choose to participate as a large emitter, but only entities that have demonstrated that their annual emissions are less than or equal to 10,000 metric tons of $CO_2$

equivalent may participate as small emitters. To demonstrate that its annual emissions are less than or equal to 10,000 metric tons of $CO_2$ equivalent, an entity must submit either an estimate of its emissions during its chosen start year or an estimate of its average annual emissions over a continuous period not to exceed four years of time ending in its chosen start year, as long as the operations and boundaries of the entity have not changed significantly during that period.

(2) An entity must estimate its total emissions using methods specified in Chapter 1 of the Draft Technical Guidelines (incorporated by reference, see § 300.13) or by using the Simplified Emission Inventory Tool (SEIT) provided by EIA and also discussed in Chapter 1. The results of this estimate must be reported to EIA. [Note that emission estimates developed using SEIT would have quality ratings of less than 3.0 and therefore would not meet the emissions inventory requirements of the revised Guidelines.]

(3) After starting to report, each small emitter must annually certify that the emissions-related operations and boundaries of the entity have not changed significantly since the previous report. A new estimate of total emissions must be submitted after any significant increase in emissions, any change in the operations or boundaries of the small emitter, or every five years, whichever occurs first. Small emitters with estimated annual emissions of over 9,000 metric tons of $CO_2$ equivalent should re-estimate and submit their emissions annually. If an entity determines that it must report as a large emitter, then it must continue to report as a large emitter in all future years in order to ensure a consistent time series of reports. Once a small emitter becomes a large emitter, it must begin reporting in conformity with the reporting requirements for large emitters.

(d) *Entity statements for large emitters intending to register reductions.* When a large emitter intending to register emission reductions first reports under these guidelines, it must provide the following information in its entity statement:

(1) The name to be used to identify the participating entity;

(2) The legal basis of the named reporting entity;

(3) The criteria used to determine:

(i) The organizational boundaries of the reporting entity, if other than financial control; and

(ii) The sources of emissions included or excluded from the entity's reports, such as sources excluded as *de minimis* emissions.

(4) The names of any parent or holding companies the activities of which will not be covered comprehensively by the entity's reports;

(5) The names of any large subsidiaries or organizational units covered comprehensively by the entity's reports. All subsidiaries of the reporting entity must be covered by the entities reports, but only large subsidiaries must be specifically identified in the entity statement;

(6) A list of each country where operations occur, if the entity is including any non-U.S. operations in its report;

(7) A description of the entity and its primary U.S. economic activities, such as electricity generation, product manufacturing, service provider or freight transport; for each country listed under paragraph (d)(6) of this section, reporters should describe the economic activity in that country.

(8) A description of the types of emission sources or sinks to be covered in the entity's emission inventories, such as fossil fuel power plants, manufacturing facilities, commercial office buildings or heavy-duty vehicles;

(9) The names of other entities that substantially share the ownership or operational control of sources that represent a significant part of the reporting entity's emission inventories, and a certification that, to the best of the certifier's knowledge, the direct greenhouse gas emissions and sequestration in the entity's report are not included in reports filed by any of these other entities to the 1605(b) program; and

(10) Identification of the start year.

(e) *Entity statements for small emitters intending to register reductions.* When a small emitter intending to register emission reductions first reports under these guidelines, it must provide the following information in its entity statement:

(1) The name to be used to identify the participating entity;

(2) An identification or description of the legal basis of the named reporting entity;

(3) An identification of the entity's control over the activities covered by the entity's reports, if other than financial control;

(4) The names of any parent or holding companies the activities of which will not be covered comprehensively by the entity's reports;

(5) An identification or description of the primary economic activities of the entity, such as agricultural production, forest management or household operation; if any of the economic activities covered by the entity's reports occur outside the U.S., a listing of each country in which such activities occur;

(6) An identification or description of the specific activity (or activities) and the emissions, avoided emissions or sequestration covered by the entity's report, such as landfill gas recovery or forest sequestration;

(7) A certification that, to the best of the certifier's knowledge, the direct greenhouse gas emissions and sequestration in the entity's report are not included in reports filed by any other entities reporting to the 1605(b) program; and

(8) Identification of the start year.

(f) *Entity statements for reporters not registering reductions.* When a participant not intending to register emission reductions first reports under this part, it must, at a minimum, provide the following information in its entity statement:

(1) The name to be used to identify the reporting entity;

(2) A description of the entity and its primary economic activities, such as electricity generation, product manufacturing, service provider, freight transport, agricultural production, forest management or household operation; if any of the economic activities covered by the entity's reports occur outside the United States, a listing of each country in which such activities occur; and

(3) A description of the types of emission sources or sinks, such as fossil fuel power plants, manufacturing facilities, commercial office buildings or heavy-duty vehicles, covered in the entity's reports of emissions or emission reductions.

(g) *Changing entity statements.* (1) Reporters are required to annually review and, if necessary, update their entity statements.

(2) From time to time, an entity may choose to change the scope of activities included within the entity's reports or the level at which the entity wishes to report. An entity may also choose to change its organizational boundaries, its base period, or other elements of its entity statement. For example, companies buy and sell business units, or equity share arrangements may change. In general, DOE encourages changes in the scope of reporting that expand the coverage of an entity's report and discourages changes that reduce the coverage of such reports unless they are caused by divestitures or plant closures. Any such changes should be reported in amendments to the entity statement, and major changes may warrant or require changes in the base values used to calculate emission reductions and, in some cases, the entity's base periods. However, in no case should there be an

interruption in the annual reports of entities registering emission reductions. Chapter 2 of the Draft Technical Guidelines (incorporated by reference, see § 300.13), the Emission Reduction Guidelines, provides more specific guidance on how such changes should be reflected in entity statements, reports, and emission reduction calculations.

(h) *Documenting changes in amended entity statements.* A reporter's entity statement in subsequent reports should focus primarily on changes since the previous report. Specifically, the subsequent entity statement should report the following information:

(1) For significant changes in the entity's scope or organizational boundaries, the entity should document:

(i) The acquisition or divestiture of discrete business units, subsidiaries, facilities, and plants;

(ii) The closure or opening of significant facilities;

(iii) The transfer of economic activity to or from specific operations covered by the entity's reports, such as the transfer of operations to non-U.S. subsidiaries;

(iv) Significant changes in land holdings (applies to entities reporting on greenhouse gas emissions or sequestration related to land use, land use change, or forestry);

(v) Whether the entity is reporting at a higher level of aggregation than it did in the previous report, and if so, a listing of the subsidiary entities that are now aggregated under a revised conglomerated entity, including a listing of any non-U.S. operations to be added and the specific countries in which these operations are located; and

(vi) Changes in its activities or operations (*e.g.,* changes in output, contractual arrangements, equipment and processes, outsourcing or insourcing of significant activities) that are likely to have a significant effect on emissions, together with an explanation of how it believes the changes in economic activity influenced its reported emissions or sequestrations.

**§ 300.6 Emissions inventories.**

(a) *General.* The objective of an emission inventory is to provide a full accounting of an entity's emissions for a particular year, including direct emissions of all six categories of greenhouse gases identified in § 300.2, indirect emissions specified in paragraph (e) of this section, and all sequestration or other changes in carbon stocks. An emission inventory must be prepared in accordance with Chapter 1 of the Draft Technical Guidelines (incorporated by reference, see § 300.13). An inventory does not include avoided emissions or any offset reductions, and is not subsequently adjusted to reflect future acquisitions, divestitures or other changes to the reporting entity. Entity-wide inventories are a prerequisite for the registration of emission reductions by entities with average annual emissions of more that 10,000 metric tons of $CO_2$ equivalent. Entities that have average annual emissions of less than 10,000 metric tons of $CO_2$ equivalent are eligible to register emission reductions associated with specific activities without also reporting an inventory of the total emissions.

(b) *Quality requirements for emission inventories.* The Draft Technical Guidelines (incorporated by reference, see § 300.13) usually identify more than one acceptable method of measuring or estimating greenhouse gas emissions. Each acceptable method is rated A, B, C or D, with A methods usually corresponding to the highest quality method available and D methods representing the lowest quality method that may be used. Each letter is assigned a numerical rating reflecting its relative quality, 4 for A methods, 3 for B methods, 2 for C methods and 1 for D methods. Entities that intend to register emission reductions must use emission inventory methods that result in a quantity-weighted average data quality rating of at least 3.0. Each emission source or sink that uses a distinct emissions measurement or estimation method must be reported separately to permit independent calculation of the entity's quantity-weighted quality rating.

(c) *Using estimation methods not included in the Technical Guidelines.* A reporting entity may obtain DOE approval for the use of an estimation method not included in the Draft Technical Guidelines (incorporated by reference, see § 300.13) if the method covers sources not described in the Draft Technical Guidelines, or if the proposed method provides more accurate results for the entity's specific circumstances than the methods described in the Draft Technical Guidelines. If an entity wishes to propose the use of a method that is not described in the Draft Technical Guidelines, the entity must provide a written description of the method, an explanation of how the method is implemented (including data requirements), empirical evidence of the method's validity and accuracy, and a suggested rating for the method to DOE's Office of Policy and International Affairs (with a copy to EIA). DOE reserves the right to deny the request, or to assign its own rating to the method. By submitting this information, the reporter grants permission to DOE to incorporate the method in a future revision of the Technical Guidelines.

(d) *Direct emissions inventories.* Direct greenhouse gas emissions that must be reported are the emissions resulting from stationary or mobile sources within the organizational boundaries of an entity, including but not limited to emissions resulting from combustion of fossil fuels, process emissions, and fugitive emissions. Process emissions (*e.g.,* PFC emissions from aluminum production) must be reported along with fugitive emissions (*e.g.,* leakage of greenhouse gases from equipment).

(e) *Inventories of indirect emissions associated with purchased energy.* (1) To provide a clear incentive for the users of electricity and other forms of purchased energy to reduce demand, the indirect emissions from the consumption of purchased electricity, steam, and hot or chilled water must be included in a reporting entity's inventory as indirect emissions. To avoid double counting among entities, the reporting entity must report all indirect emissions separately from its direct emissions. Reporting entities should use the methods for quantifying indirect emissions specified in the Draft Technical Guidelines (incorporated by reference, see § 300.13).

(2) Reporting entities may choose to report other forms of indirect emissions, such as emissions associated with employee commuting, materials consumed or products produced, although such other indirect emissions are not to be included in the entity's emission inventory and may not be the basis for registered emission reductions. All such reports of other forms of indirect emissions must be distinct from reports of indirect emissions associated with purchased energy and must be based on emission measurement or estimation methods identified in the Draft Technical Guidelines (incorporated by reference, see § 300.13) or approved by DOE.

(f) *Entity-level inventories of changes in terrestrial carbon stocks.* Annual changes in managed terrestrial carbon stocks should be comprehensively assessed and reported across the entity and the net emissions resulting from such changes included in the entity's emissions inventory. Entities should use the methods for estimating changes in managed terrestrial carbon stocks specified in the Draft Technical Guidelines (incorporated by reference, see § 300.13).

(g) *Treatment of de minimis emissions and sequestration.* (1) Although the goal

of the entity-wide reporting requirement is to provide an accurate and comprehensive estimate of total emissions, there may be small emissions from certain sources that are unduly costly or otherwise difficult to measure or reliably estimate annually. A reporting entity may exclude particular sources of emissions or sequestration if the total quantities excluded represent less than or equal to 3 percent of the total annual $CO_2$ equivalent emissions of the entity. The entity must identify the types of emissions excluded and provide an estimate of the annual quantity of such emissions using methods specified in the Draft Technical Guidelines (incorporated by reference, see § 300.13) or by the Simplified Emissions Inventory Tool (SEIT). The results of this estimate of the entity's total annual emissions must be reported to DOE together with the entity's initial entity statement.

(2) After starting to report, each entity that excludes from its annual reports any *de minimis* emissions must re-estimate the quantity of excluded emissions after any significant increase in such emissions, or every five years, whichever occurs sooner.

(h) *Separate reporting of domestic and international emissions.* Any non-U.S. emissions included in an entity's emission inventory must be separately reported, by country of origin, and clearly distinguished from emissions originating in the U.S.

(i) *Covered gases.* Entity-wide emissions inventories must include all emissions of the named greenhouse gases listed in § 300.2 or subsequently included in this list through the process described in § 300.1(f). Entities may report other greenhouse gases, but such gases must be reported separately and emission reductions, if any, associated with such other gases are not eligible for registration.

(j) *Units for reporting.* Emissions and sequestration should be reported in terms of the mass (not volume) of each gas, using metric units (*e.g.,* metric tons of methane). Entity-wide and subentity summations of emissions and reductions from multiple sources must be converted into $CO_2$ equivalent units using the global warming potentials for each gas in the International Panel on Climate Change's Third Assessment (or most recent) Report, as specified in the Draft Technical Guidelines (incorporated by reference, see § 300.13). Entities should specify the units used (*e.g.,* kilograms, or metric tons). Reporting entities may need to use the standard conversion factors specified in the Draft Technical Guidelines to convert existing data into the common units required in the entity-level report. Emissions from the consumption of purchased electricity must be reported by region (from the list provided by DOE in the Draft Technical Guidelines) or country, if outside the United States. Consumption of purchased steam or chilled/hot water must be reported according to the type of system and fuel used to generate it (from the list provided by DOE in the Draft Technical Guidelines). Entities must convert purchased energy to $CO_2$ equivalents using the conversion factors in the Draft Technical Guidelines. Entities should also provide the physical quantities of each type of purchased energy covered by their reports.

**§ 300.7 Net emission reductions.**

(a) Entities that intend to register emission reductions achieved after 2002 must comply with the requirements of this section. Entities may voluntarily follow these procedures if they want to demonstrate the achievement of net, entity-wide reductions prior to 2003. Only large emitters must follow the requirements of paragraph (b) of this section, but small emitters may do so voluntarily. Only entities that qualify as small emitters may use the special procedures in paragraph (c) of this section. Entities seeking to register emission reductions achieved by third parties (offsets) must certify that these emission reductions were calculated in a manner consistent with the requirements of paragraph (d) of this section and use the emission reduction calculation methods identified in § 300.8. All entities seeking to register emission reductions must comply with the requirements of paragraph (e) of this section. Only reductions in the emissions of the named greenhouse gases listed in § 300.2 are eligible for registration.

(b) *Assessing net emission reductions for large emitters.* (1) Entity-wide reporting is a prerequisite for registering emission reductions by entities with average annual emissions more than 10,000 metric tons of $CO_2$ equivalent. Net annual entity-wide emission reductions must be based, to the maximum extent practicable, on a full assessment and sum total of all changes in an entity's emissions, avoided emissions and sequestration relative to the entity's established base period(s). This assessment must include all entity emissions, including the emissions associated with any non-U.S. operations covered by the entity statement. It must include the annual changes in the total emissions of the entity or, alternatively, the total emissions of each of the subentities identified in its entity statement. All changes in emissions, avoided emissions, and sequestration must be determined using methods that are consistent with the guidelines described in § 300.8.

(2) If it is not practicable to assess the changes in net emissions resulting from certain entity activities using at least one of the methods described in § 300.8, the reporting entity may exclude them from its estimate of net emission reductions. The reporting entity must identify as one or more distinct subentities the sources of emissions excluded for this reason and describe the reasons why it was not practicable to assess the changes that had occurred. DOE believes that few emission sources will be excluded for this reason, but has identified at least two situations where such an exclusion would be warranted. For example, it is likely to be impossible to assess the emission changes associated with a new manufacturing plant that produces a product for which the entity has no historical record of emissions or emissions intensity (emissions per unit of product output). However, once the new plant has been operational for a full year, a base period and base value(s) for the new plant could be established and its emission changes might be assessed in the following year. Until the emission changes of this new subentity could be assessed, it should be identified in the entity's report as a subentity for which no assessment of emission changes is practicable. The other example involves a subentity that has reduced its output below the levels of its base period. In such a case, the subentity could not use the absolute emissions method and may also be unable to identify an effective intensity metric or other method.

(3) A reporting entity should also exclude from the entity-wide assessment of changes in emissions, avoided emissions and sequestration any emissions or sequestration that have been excluded from the entity's inventory. All *de minimis* or biogenic emissions excluded from the entity's inventory of greenhouse gas emissions should also be excluded from its assessments of emission changes.

(c) *Assessing emission reductions for entities with small emissions.* (1) Entities with average annual emissions of less than or equal to 10,000 metric tons of $CO_2$ equivalent are not required to inventory their total emissions or assess all changes in their emissions, avoided emissions and sequestration to qualify for registered reductions. These entities may register emission reductions that have occurred since

2002 and that are associated with one or more specific activities, as long as they:

(i) Perform a complete assessment of the annual emissions and sequestration associated with each of the activities upon which they report, using methods that meet the same data quality requirements applicable to entity-wide emission inventories; and

(ii) Determine the changes in the emissions, avoided emissions or sequestration associated with each of these activities.

(2) An entity reporting as a small emitter must report on one or more specific activities and is encouraged, but not required to report on all activities occurring within the entity boundary. Examples of small emitter activities include: Vehicle operations; product manufacturing processes; building operations or a distinct part thereof, such as lighting; livestock operations; crop management; or power generation. For example, a farmer managing several woodlots and also producing a wheat crop may report emission reductions associated with managing an individual woodlot. However, the farmer must also assess and report the net sequestration resulting from managing all the woodlots within the entity's boundary. The small emitter is not required to report on emissions or reductions associated with growing the wheat crop.

(3) A small emitter must certify that the reductions reported were not caused by actions likely to cause increases in emissions elsewhere within the entity's operations. This certification should be based on an assessment of the likely direct and indirect effects of the actions taken to reduce greenhouse gas emissions.

(d) *Net emission reductions achieved by third parties (offset reductions or emission reductions submitted by aggregators).* A reporting entity or aggregator under certain conditions may register net emission reductions achieved by third parties. A large emitter that is reporting on behalf of other entities must meet all of the requirements applicable to large emitters, including submission of an entity statement, an emissions inventory, and an entity-wide assessment of emission reductions. If an aggregator is a small emitter, it may choose to report only on the activities, emissions and emission reductions of the third parties on behalf of which it is reporting and not to report on any of its own activities or emission reductions. The reporting entity or aggregator must include in its report all of the information on the third party, including an entity statement, an emissions inventory (when required), an assessment of emission reductions and appropriate certifications, that would be required if the third party were directly reporting to EIA. The report to DOE must also include a certification by the third party indicating that it has agreed that the reporting entity or aggregator should be recognized as the entity responsible for any registered reductions and that the third party does not intend to report directly to DOE. The net emissions reductions (or increases) of each third party will be evaluated separately by EIA to determine whether they are eligible for registration. The registered reductions for each third party will be included in EIA's summary of all registered reductions reported by the responsible entity. EIA will also include in the entity's summary report any emission increases by such a third party. If the agreement between the reporting entity and any third party is discontinued, for any reason, all emission reductions or emissions attributable to the third party would be removed by EIA from the records of the reporting entity.

(e) *Adjusting for year-to-year increases in net emissions.* (1) Normally, net annual emission reductions for an entity are calculated by summing the net annual changes in emissions, avoided emissions and sequestration, as determined using the calculation methods identified in § 300.8 and according to the procedures described in § 300.7 (b) for large emitters, § 300.7 (c) for small emitters, and § 300.7 (d) for offsets. However, if the entity experienced a net increase in emissions for one or more years, these increases must be reported and taken into account in calculating any future year reductions. If the entity subsequently achieves net annual emission reductions, the net increases experienced in the preceding year(s) must be more than offset by these reductions before the entity can once again register emission reductions. For example, if an entity achieved a net emission reduction of 5,000 metric tons of $CO_2$ equivalent in its first year, a net increase of 2,000 metric tons in its second year, and a net reduction of 3,000 metric tons in its third year, it would be able to register a 5,000 metric ton reduction in its first year, no reduction in its second year, and a 1,000 metric ton reduction in its third year (3,000–2,000). The entity must file full reports for each of these three years. Its report for the second year would indicate the net increase in emissions and this increase would be noted in EIA's summary of the entity's report for that year and for any future year, until the emissions increase was entirely offset by subsequent emission reductions. If this same entity achieved a net reduction of only 1,000 metric tons in its third year, it would not be able to register additional reductions until it had, in some future year, offset more than its second year increase of 2,000 metric tons.

**§ 300.8 Calculating emission reductions.**

(a) *Choosing Appropriate Emission Reduction Calculation Methods.* (1) An entity must choose the method or methods it will use to calculate emission reductions from the list provided in paragraph (h) of this section. Each of the calculation methods has special characteristics that make it applicable to only certain types of emissions and activities. An entity should select the appropriate calculation method based on several factors, including: how the reporter's subentities are defined, how the reporter will gather and report emissions data; and the availability of other types of data that might be needed, such as production or output data.

(2) For some entities, a single calculation method will be sufficient, but many entities may need to apply more than one method because discrete components of the entity require different calculation methods. In such a case, the entity will need to select a method for each subentity (or discrete component of the entity with identifiable emission or reductions). The emissions and output measure (generally a physical measure) of each subentity must be clearly distinguished and reported separately. Guidance on the selection and specification of calculation methods is provided in Chapter 2 of the Draft Technical Guidelines (incorporated by reference, see § 300.13).

(b) *Identifying subentities for calculating reductions.* If more than one calculation method is to be used, an entity must specify the portion of the entity (the subentity) to which each method will be applied. Each subentity must be clearly identified. From time to time, it may be necessary to modify existing or create new subentities. The entity must provide to DOE a full description of such changes, together with an explanation of why they were required.

(c) *Choosing a base period for calculating reductions.* In general, the base period used in calculating emission reductions is the single year or up to four-year period average immediately preceding the first year of calculated emission reductions.

(d) *Establishing base values.* To calculate emission reductions reporters must establish a base value against which to compare reporting year performance. The minimum requirements for base values for each type of calculation method are specified in Chapter 2 of the Draft Technical Guidelines (incorporated by reference, see § 300.13). In most cases, an historic base value, derived from emissions or other data gathered during the base period, is the minimum requirement specified.

(e) *Emission reduction and subentity statements.* For each emission reduction calculation method and subentity, an entity must submit to EIA the following information:

(1) An identification and description of the method used to calculate emission reductions, including:

(i) The type of calculation method;

(ii) The measure of output used (if any); and

(iii) The method-specific base period for which any required base value will be calculated.

(2) When starting to report, the base period used in calculating reductions must end in the start year. However, over time it may be necessary to revise or establish new base periods and base values in response to significant changes in processes or output of the subentity.

(3) A description of the subentity and its primary economic activity or activities, such as electricity generation, product manufacturing, service provider, freight transport, or household operation; and

(4) A description of the emission sources or sinks covered, such as fossil fuel power plants, manufacturing facilities, commercial office buildings or heavy-duty vehicles.

(f) *Changes in calculation methods, base periods and base values.* When significant changes occur in the composition or output of reporting entities, an entity may need to change previously specified calculation methods, base periods or base values. An entity should make such changes only if necessary and it should fully document the reasons for any changes. The Draft Technical Guidelines (incorporated by reference, see § 300.13) describe when such changes should be made and what information on such changes must be provided to DOE.

(g) *Continuous reporting.* To ensure that the summation of entity annual reports accurately represents net, multi-year emission reductions, an entity must submit a report every year, beginning with the first reduction year. An entity may use a specific base period to determine emission reductions in a given future year only if the entity has submitted qualified reports for each intervening year. If an interruption occurs in the annual reports of an entity, the entity must subsequently report on all missing years prior to qualifying for the registration of additional emission reductions.

(h) *Calculation methods.* An entity must calculate any change in emissions, avoided emissions or sequestration using one or more of the methods described in this paragraph and in the Draft Technical Guidelines (incorporated by reference, see § 300.13).

(1) *Changes in emissions intensity.* A reporting entity may use emissions intensity as a basis for determining emission reductions as long as the reporting entity selects a measure of output that is:

(i) A reasonable indicator of the output produced by the reporting entity;

(ii) A reliable indicator of changes in the reporting entity's activities;

(iii) Related to emissions levels; and

(iv) Any appropriate adjustments for acquisitions, divestitures, insourcing, outsourcing, or changes in products have been made, as described in the Draft Technical Guidelines (incorporated by reference, see § 300.13).

(2) *Changes in absolute emissions.* A reporting entity may use changes in the absolute (actual) emissions (direct and/or indirect) as a basis for determining net emission reductions as long as the reporting entity makes only those adjustments required by the Draft Technical Guidelines (incorporated by reference, see § 300.13). An entity intending to register emission reductions may use this method only if the entity demonstrates in its report that any reductions derived from such changes were not achieved as a result of reductions in the output of the reporting entity, and certifies that emission reductions are not the result of major shifts in the types of products or services produced.

(3) *Changes in carbon storage (for actions within entity boundaries).* A reporting entity may use changes in carbon storage as a basis for determining net emission reductions as long as the entity uses estimation and measurement methods that comply with the Draft Technical Guidelines (incorporated by reference, see § 300.13), and has included an assessment of the net changes in all sinks in its inventory.

(4) *Changes in avoided emissions (for actions within entity boundaries).* A reporting entity may use changes in the avoided emissions associated with the sale of electricity, steam, hot water or chilled water generated from non-emitting or low-emitting sources as a basis for determining net emission reductions as long as:

(i) The measurement and calculation methods used comply with the Draft Technical Guidelines (incorporated by reference, see § 300.13);

(ii) The reporting entity certifies that any increased sales were not attributable to the acquisition of a generating facility that had been previously operated, unless the entity's base period includes generation values from the acquired facility's operation prior to its acquisition; and

(iii) Generators of distributed energy that have net emissions in their base period and intend to report reductions resulting from changes in avoided emissions, use a method specified in the Draft Technical Guidelines (incorporated by reference, see § 300.13) that integrates that calculation of reductions resulting from both changes in emissions intensity and changes in avoided emissions.

(5) *Action-specific emission reductions (for actions within entity boundaries).* An entity-wide reporter may use the action-specific approach only if it is not possible to measure accurately emission changes by using one of the methods identified in paragraphs (h)(1) through (h)(4) of this section. A reporting entity may determine emission reductions based on an estimate of the effects on emissions of a specific action, as long as the entity demonstrates that the estimate is based on analysis that:

(i) Uses output, utilization and other factors that are consistent, to the maximum extent practicable, with the action's actual performance in the year for which reductions are being reported;

(ii) Excludes any emission reductions that might have resulted from reduced output or were caused by actions likely to be associated with increases in emissions elsewhere within the entity's operations; and

(iii) Uses methods that are in compliance with the Draft Technical Guidelines (incorporated by reference, see § 300.13).

(i) *Summary description of actions taken to reduce emissions.* Each reported emission reduction must be accompanied by an identification of the types of actions that were the likely cause of the reductions achieved. Entities are also encouraged to include in their reports information on the benefits and costs of the actions taken to reduce greenhouse gas emissions, such as the expected rates of return, life

cycle costs or benefit to cost ratios, using appropriate discount rates.

(j) *Emission reductions associated with plant closings, voluntary actions and government (including non-U.S. regulatory regimes) requirements.*

(1) Each report of emission reductions must indicate whether the reported emission reductions were the result, in whole or in part, of plant closings, voluntary actions, or government requirements. DOE will presume that reductions that were not the result of plant closings or government requirements are the result of voluntary actions.

(2) If emission reductions were, in whole or in part, the direct result of plant closings that caused a decline in output, the report must identify the reductions as such; these reductions do not qualify for registration. DOE presumes that reductions calculated using the emissions intensity method do not result from a decline in output.

(3) If the reductions were associated, in whole or part, with U.S. or non-U.S. government requirements, the report should identify the government requirement involved and the type of effect these requirements had on the reported emission reductions. If, as a result of the reduction, a non-U.S. government issued to the reporting entity a credit or other financial benefit or regulatory relief, the report should identify the government requirement involved and describe the specific form of benefit or relief provided.

(k) *Determining the entity responsible for emission reductions.* The entity that DOE will presume to be responsible for emission reduction, avoided emission or sequestered carbon is the entity with financial control of the facility, land or vehicle which generated the reported emissions, generated the energy that was sold so as to avoid other emissions, or was the place where the sequestration action occurred. If control is shared, reporting of the associated emission reductions should be determined by agreement between the entities involved so as to avoid double-counting; this agreement must be reflected in the entity statement and in any report of emission reductions. DOE will presume that an entity is not responsible for any emission reductions associated with a facility, property or vehicle excluded from its entity statement.

**§ 300.9 Reporting and recordkeeping requirements.**

(a) *Starting to report under the Guidelines.* An entity may report emissions and sequestration on an annual basis beginning in any year, but no earlier than the base period of 1987–1990 specified in the Energy Policy Act of 1992. To be recognized under these Guidelines, all reports must conform to the measurement methods established by the Draft Technical Guidelines (incorporated by reference, see § 300.13). This requirement applies to entities that report to the revised Voluntary Reporting of Greenhouse Gases Program registry for the first time as well as those entities that have previously submitted emissions reports pursuant to section 1605 (b) of the Energy Policy Act of 1992.

(b) *Revisions to reports submitted under the Guidelines.* (1) Once DOE has accepted a report under this part, it may be revised by the reporting entity only under certain conditions specified in this paragraph (b)(1) of this section and related provisions of the Draft Technical Guidelines (incorporated by reference, see § 300.13). In general:

(i) Revised reports may be submitted to correct errors that have a significant effect on previously estimated emissions or emission reductions; and

(ii) Emission inventories may be revised in order to create a consistent time series based on significant improvements in the emission estimation or measurement techniques used.

(2) Reporters must provide the corrected or improved data to DOE, together with an explanation of the significance of the change and its justification.

(3) If a change in calculation methods (for inventories or reductions) is made for a particular year, the entity must, if feasible, revise its base value to assure methodological consistency with the reporting year value.

(c) *Definition and deadline for annual reports.* Entities should, if practicable, report emissions on a calendar year basis, from January 1 to December 31. In all cases, the time period covered by annual reports should be specified and used consistently in all reports. To be included in the earliest possible DOE annual report of greenhouse gas emissions reported under this part, entity reports must be submitted to DOE no later than July 1 for emissions occurring during the previous calendar year.

(d) *Recordkeeping.* Entities intending to register reductions must maintain adequate supporting records for at least three years to enable verification of all information reported. The records should document the basis for the entity's report to DOE, including:

(1) The content of entity statements, including the identification of the specific facilities, buildings, land holding and other operations or emission sources covered by the entity's reports and the legal, equity, operational and other bases for their inclusion;

(2) Information on the identification and assessment of changes in entity boundaries, processes or products that might have to be reported to DOE;

(3) Any agreements or relevant communications with other entities or third parties regarding the reporting of emissions or emission reductions associated with sources the ownership or operational control of which is shared;

(4) Information on the methods used to measure or estimate emissions, and the data collection and management systems used to gather and prepare this data for inclusion in reports;

(5) Information on the methods used to calculate emission reductions, including the basis for:

(i) The selection of the specific output measures used, and the data collection and management systems used to gather and prepare output data for use in the calculation of emission reductions;

(ii) The selection and modification of all base years, base periods and baselines used in the calculation of emission reductions;

(iii) Any baseline adjustments made to reflect acquisitions, divestitures or other changes;

(iv) Any models or other estimation methods used; and

(v) Any internal or independent verification procedures undertaken.

(e) *Confidentiality.* DOE will protect trade secret and commercial or financial information that is privileged or confidential as provided in 5 U.S.C. 552(b)(4). An entity must clearly indicate in its 1605(b) report the information for which it requests confidentiality. DOE will handle requests for confidentiality of information submitted in 1605(b) reports in accordance with the process established in the Department's Freedom of Information regulations at 10 CFR 1004.11.

**§ 300.10 Certification of reports.**

(a) *General requirement and certifying official:* All reports submitted to EIA must include a certification statement, as provided in paragraph (b) of this section, signed by a certifying official of the reporting entity. A household report may be certified by one of its members. All other reports must be certified by the chief executive officer, agency head, or an officer or employee of the entity who is responsible for reporting the entity's compliance with environmental regulations.

(b) *Certification statement requirements.* All entities, whether

reporting or registering reductions, must certify the following:

(1) The information reported is accurate and complete;

(2) The information reported has been compiled in accordance with this part; and

(3) The information reported is consistent with information submitted in prior years, if any, or any inconsistencies with prior year's information are documented and explained in the entity statement.

(c) *Additional requirements for registering.* The certification statement of an entity registering reductions must also certify that:

(1) The reporting entity took reasonable steps to ensure that direct emissions, emission reductions, and/or sequestration reported are neither double counted nor reported by any other entity;

(2) Any emissions, emission reductions, or sequestration reported that were achieved by a third party are included in the report only if there exists a written agreement with each third party providing that the reporting entity is the entity entitled to report these emissions, emission reductions, or sequestration;

(3) None of the emissions, emission reductions, or sequestration reported are a product of shifting emissions to other entities or to non-reporting parts of the entity;

(4) None of any reported changes in avoided emissions associated with the sale of electricity, steam, hot or chilled water generated from non-emitting or low-emitting sources are attributable to the acquisition of a generating facility that has been previously operated, unless the entity's base period includes generation values from the acquiring facility's operation prior to its acquisition;

(5) The reporting entity maintains records documenting the analysis and calculations underpinning the data reported on this form for a period of not less than three years; and

(6) The reporting entity has, or has not, obtained independent verification of the report, as described in § 300.11.

**§ 300.11 Independent verification.**

(a) Reporting entities are encouraged to have their annual reports reviewed by independent and qualified auditors, as described in paragraphs (b), (c), and (f) or this section.

(b) *Qualifications of verifiers.* (1) DOE envisions that independent verification will be performed by professional verifiers (i.e. individuals or companies that provide verification or ''attestation'' services). EIA will consider a report to the program to be independently verified if:

(i) The lead individual verifier and other members of the verification team are accredited by one or more independent and nationally-recognized accreditation programs, described in paragraph (c) of this section, for the types of professionals needed to determine compliance with DOE's 1605(b) Guidelines; and

(ii) All members of a verification team have education, training and/or professional experience that matches the tasks performed by the individual verifiers, as deemed necessary by the verifier accreditation program.

(2) As further guidance, individual verifiers should have a professional degree or accreditation in engineering (environmental, industrial, chemical), accounting, economics, or a related field, supplemented by specific training and/or experience in emissions reporting and accounting, and should have their qualifications and continuing education periodically reviewed by an accreditation program. The skills required for verification are often cross-disciplinary. For example, an individual verifier reviewing a coal electric utility should be knowledgeable about mass balance calculations, fuel purchasing accounting, flows and stocks of coals, coal-fired boiler operation, and issues of entity definition.

(3) Companies that provide verification services must use professionals that possess the necessary skills and proficiency levels for the types of entities they provide verification services to. Maintaining such skills and proficiency levels may require continuing training to ensure all individuals have up-to-date knowledge regarding the tasks they perform.

(c) *Qualifications of organizations accrediting verifiers.* Organizations that accredit individual verifiers must be nationally recognized certification programs. They may include, but are not limited to the: American Institute of Certified Public Accountants; American National Standards Institute's Registrar Accreditation Board program for Environmental Management System auditors (ANSI–RAB–EMS); Board of Environmental, Health and Safety Auditor Certification: California Climate Action Registry; Clean Development Mechanism Executive Board; and the United Kingdom Accreditation Scheme.

(d) *Scope of verification.* As part of any independent verification, qualified verifiers shall use their expertise and professional judgment to verify for accuracy, completeness and consistency with DOE's guidelines of:

(1) The content of entity statements, annual reports and the supporting records maintained by the reporter;

(2) The representation in entity statements (or lack thereof) of any significant changes in entity boundaries, products, or processes;

(3) The procedures and methods used to collect emissions and output data, and calculate emission reductions (for entities with widely dispersed operations, this process should include on-site reviews of a sample of the facilities);

(4) Relevant personnel training and management systems; and

(5) Relevant quality assurance/quality control procedures.

(e) *Verification statement:* Both the verifier and, if relevant, an officer of the company providing the verification service must sign the verification statement. The verification statement shall attest to the following:

(1) The verifier has examined all components listed in paragraph (d) of this section;

(2) The information reported in the verified entity report and this verification statement is accurate and complete;

(3) The information reported by the reporting entity has been compiled in accordance with this part;

(4) The information reported on the entity report is consistent with information submitted in prior years, if any, or any inconsistencies with prior year's information are documented and explained in the entity statement;

(5) The verifier used due diligence to assure that direct emissions, emission reductions, and/or sequestration reported are not double reported by any other entity;

(6) Any emissions, emission reductions, or sequestration that were achieved by a third party are included in this report, if and only if there exists a written agreement with each third party indicating that they have agreed that the reporting entity should be recognized as the entity entitled to report these emissions, emission reductions, or sequestration;

(7) None of the emissions, emission reductions, or sequestration reported is a product of shifting emissions to other entities or to non-reporting parts of the entity;

(8) No reported changes in avoided emissions associated with the sale of electricity, steam, hot or chilled water generated from non-emitting or low-emitting sources are attributable to the acquisition of a generating facility that has been previously operated, unless the base year generation values are derived

from records of the facility's operation prior to its acquisition;

(9) The verifying entity will maintain sufficient records to document the analysis and calculations underpinning this verification for a period of no less than three years; and

(10) The independent verifier is not owned in whole or part by the reporting entity, nor provides any ongoing operational or support services to the entity, except services consistent with independent financial accounting or independent certification of compliance with government or private standards.

(f) *Qualifying as an independent verifier.* An independent verifier may not be owned in whole or part by the reporting entity, nor may it provide any ongoing operational or support services to the entity, except services consistent with independent financial accounting or independent certification of compliance with government or private standards.

**§ 300.12 Acceptance of reports and registration of entity emission reductions.**

(a) *Acceptance of reports.* EIA will review all reports to ensure they are consistent with this part and with the Draft Technical Guidelines (incorporated by reference, see § 300.13). Subject to the availability of adequate resources, EIA intends to notify reporters of the acceptance or rejection of any report within six months of its receipt.

(b) *Registration of emission reductions.* EIA will review each accepted report to determine if emission reductions were calculated using the reporting entity's base period emissions (no earlier than 2002) or the average annual emissions of its base period (a period of up to four sequential years ending no earlier than 2002), and to confirm that the report complies with the other provisions of this part. EIA will also review its records to verify that the entity has submitted accepted annual reports for each year between the establishment of its base period and the year covered by the current report. DOE will notify the entity that reductions meeting these requirements have been credited to the entity as ''registered reductions'' which can be held by the reporting entity for use (including transfer to other entities) in the event a future program that recognizes such reductions is enacted into law.

(c) *Rejection of reports.* If EIA does not accept a report or if it determines that emission reductions intended for registration do not qualify, the report will be returned to the sender with an explanation of its inadequacies. The reporting entity may resubmit a modified report for further consideration at any time.

(d) *EIA database and summary reports.* The Administrator of EIA will establish a publicly accessible database composed of all reports that meet the definitional, measurement, calculation, and certification requirements of these Guidelines. A portion of the database will provide summary information on the emissions and registered emission reductions of each reporting entity.

**§ 300.13 Incorporation by reference.**

The Draft Technical Guidelines for the Voluntary Reporting of Greenhouse Gases Program (August 5, 2004) referenced in § 300.1(c) and other sections of this part have been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of the Draft Technical Guidelines from the Office of Policy and International Affairs, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, or by visiting the following Web site: *http://www.policy.energy.gov/enhancingGHGregistry/drafttechnicalguidelines/.* The Draft Technical Guidelines also are available for inspection at the National Archives and Record Administration (NARA). For more 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.*

[FR Doc. 05–5607 Filed 3–23–05; 8:45 am]

BILLING CODE 6450–01–P

Federal Register

Thursday,
March 24, 2005

# Part III

# Department of Transportation

## Federal Aviation Administration

**14 CFR Part 121**
**Emergency Medical Equipment; Final Rule**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 121**

**[Docket No. FAA–2000–7119; Amendment No. 121–309]**

**RIN 2120–AI55**

## Emergency Medical Equipment

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations for emergency medical equipment to allow approved power sources that do not have TSO markings to be used in automated external defibrillators carried on board aircraft. We have found that in at least one instance, power sources manufactured before the manufacturer received TSO marking approval are identical to those manufactured with a TSO marking. Allowing already-purchased power sources to be used through their effective life will save operators money and will not result in decreased safety when the agency has made a finding of equivalency.

**DATES:** This rule is effective March 24, 2005.

**FOR FURTHER INFORMATION CONTACT:** David H. Rich, AIR–120, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7141.

### Availability of Final Rule

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm;* or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

### Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBRFA on the Internet at our site, *http://www.faa.gov/avr/arm/sbrefa.cfm.*

**SUPPLEMENTARY INFORMATION:**

### Background

On April 12, 2001 (66 FR 19028), the FAA amended the aircraft operating rules of 14 CFR part 121 to require air carriers to carry automated external defibrillators (AEDs) on their aircraft as of April 12, 2004. When used on board aircraft, all required electronic equipment that uses lithium batteries as a separate power source must meet the power source requirements of Technical Standard Order (TSO) C97 or C142.

Despite several years notice, a primary supplier of AEDs to the airline industry applied for TSO approval of its batteries only shortly before the effective date of the rule. Since the batteries for these AEDs were neither interchangeable nor commercially available, the FAA granted relief from the regulation by extending the date for compliance with the power source TSO until April 30, 2005 (69 FR 19761, April 14, 2004).

In November 2004, the Air Transportation Association (ATA), on behalf of 12 of its member carriers, petitioned the FAA for further relief from the rule in the form of a long-term exemption (docket number FAA–2004–17481). The ATA stated that the batteries used in two AEDs manufactured by Philips Medical Systems (Philips) before it received TSO marking approval were identical in every respect to the ones that were manufactured later with the TSO marking. The ATA noted that its carriers had in use or in inventory more than 6,700 of the non-TSO-marked batteries.

Philips was granted TSO marking approval for its two batteries in July 2004. As part of our consideration of the exemption petition, the FAA recently made an engineering determination that the two Philips batteries manufactured before TSO marking approval was granted were the equivalent in fit, form and function as those carrying the TSO marking.

We decided, however, that while relief from the TSO marking requirement may be appropriate for the previously manufactured Philips batteries, relief in the form of an exemption to a limited number of operators is not. The FAA anticipates that there are other carriers that use the same Philips AEDs and batteries and are not members of the ATA so as to be included in their petition for relief. In fact, we received a comment to the ATA petition from Comair indicating that the relief requested should be expanded to all air carriers using the subject Philips AED and battery combinations.

We also determined that exemption relief was inappropriate because a large portion of the affected air carrier fleet could potentially be included. When that happens, it is the responsibility of the agency to re-examine the rule and determine whether it needs to be changed. In this case, the FAA finds that the public interest is better served by a rule that allows for power sources that are found to be equivalent to continue to be used, regardless of the carrier or the AED manufacturer.

Accordingly, the FAA is changing the rule to state that AED power sources manufactured before July 30, 2004, and not TSO marked, may continue to be used until their expiration date provided that the power source manufacturer has requested and received from the FAA a finding of TSO equivalency for its product. The FAA is not withdrawing the rule that requires the power sources for AEDs to comply with the appropriate TSO requirements. TSOs play an important role in maintaining the fit, form and function of items used aboard aircraft, and ensure their continued quality of manufacture. Only because one manufacturer was able to show the FAA that its previously manufactured batteries were equivalent did we consider modifying this requirement for the life of the already manufactured batteries. Maintaining the TSO requirement for all power sources manufactured after July 30, 2004, ensures that no other replacement power sources, or ones not approved by the FAA, will be allowed on board aircraft.

By changing the rule, rather than granting an exemption, we are allowing for another manufacturer to request and receive the same findings of equivalency and approval, if appropriate. A manufacturer that seeks the same determination should contact the Aircraft Certification Office (ACO) that issued the TSO approval of its AED power source for an equivalency finding.

The April 30, 2005, compliance date for the power source TSO remains in effect for carriers using an AED power source that has not been specifically

found by the FAA to be equivalent to the TSO-marked item.

The FAA is issuing this rule without prior notice or opportunity for public comment. When the ATA filed its petition, eight commenters responded, all of which supported a grant of relief. Five of the comments were from ATA-member air carriers that would have been included in the exemption relief. A comment was received from the Air Carriers Association of America, requesting that three of its member airlines be included in the relief requested by the ATA. One comment was from Comair, requesting that all carriers using the subject Philips AEDs be included for relief, not just ATA members. The eighth commenter, the Allied Pilots Association, supported the requested relief.

In reviewing the comments to the ATA petition, we found that the compliance requirement is well-recognized in the air carrier industry. The exemption petition from the ATA and the comments received have already served to provide the same information that we would expect from a notice of proposed rulemaking, and have given us confidence that this rule change is appropriate. Further, this rule change is relieving in nature and affects compliance that would be required in the near future. Accordingly, we are adopting this final rule without prior notice and opportunity for prior public comment since later relief would negate the benefit of not having to purchase TSO-marked batteries and replace them before the compliance date.

Part 121, Appendix A is being amended to allow the use of AED power sources that were manufactured before July 30, 2004, and do not have the TSO marking required, provided that the manufacturer of the power source has received a finding of equivalency from the appropriate ACO. The FAA chose the July 30, 2004, date based on the information presented by the ATA in its petition for exemption. The ATA stated that Philips received its TSO marking authorization for one battery on June 9, 2004, and the other on June 17, 2004, and that the batteries became available for shipment approximately July 17, 2004. The manufacturing date of July 30, 2004 we have chosen allows time for orders in process at the time of approval to have been fulfilled. Once the TSO batteries became available, non-TSO'd batteries should no longer have been purchased, since the requirements of the rule and the shelf life of the batteries were well known.

**Authority for This Rulemaking**

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

This rulemaking is promulgated under the authority described in subtitle VII, part A, section 44701 regarding safety regulations. Under that section, the FAA is charged with prescribing regulations for equipment and procedures that the Administrator finds necessary for safety in air commerce. The regulations requiring AEDs were promulgated in 2001 in response to the Aviation Medical Assistance Act of April 24, 1998 [Pub. L. 105–170]. This regulation is within the scope of that authority since it affects the use of emergency medical equipment, which has been found as necessary for safety in air commerce.

**Paperwork Reduction Act**

There are no new requirements for information collection associated with this amendment. It is voluntary for a manufacturer to seek an equivalency finding for its products manufactured prior to receiving approval to mark its product as compliant with the applicable TSO.

**International Compatibility**

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

**Good Cause for Immediate Adoption**

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. Sections 553(b)(3)(B)) authorizes agencies to dispense with certain notice procedures for rules when they find ''good cause'' to do so. Under section 553(b)(3)(B), the requirements of notice and opportunity for comment do not apply when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.''

As noted, the rule being amended takes effect April 30, 2005. Prior notice and public comment is not feasible before that date. Allowing the rule to take effect while the change is under consideration would result in significant expenditures to purchase TSO-marked batteries and replace those in service that have already been found to be equivalent, making the delay contrary to the public interest. Also as noted, the petition from the ATA and the comments filed in response serve the same purpose and have most likely resulted in the same comments that would have been generated by an NPRM. Accordingly, the FAA finds that notice and public comment to this final rule are unnecessary, and contrary to the public interest.

**Executive Order 12866 and DOT Regulatory Policies and Procedures**

Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both the costs and benefits of a regulatory change. We are not allowed to propose or adopt a regulation unless we make a reasoned determination that the benefits of the intended regulation justify its costs. Our assessment of this proposed rule indicates that it will have a positive economic impact by saving numerous carriers the cost of replacing serviceable batteries.

In its petition requesting an exemption, the ATA estimated that an exemption would save its 12 member operators $829,661 over the next ten years. This figure represents the value of batteries already purchased, plus the additional cost of TSO-marked batteries that would have to be purchased and installed by April 30, 2005. Comments submitted in response to the ATA petition indicate that several other air carriers not represented by the ATA that use Philips AEDs are in the same situation of currently using non-TSO marked batteries and having others in replacement inventory. The FAA considers the cost savings of this rule to be at least the amount stated by the ATA.

Since the costs and benefits of this change do not make it a ''significant regulatory action'' as defined in the Order, we have not prepared a ''regulatory impact analysis.'' Similarly, we have not prepared a ''regulatory evaluation,'' which is the written cost/benefit analysis ordinarily required for all rulemaking proposals under the DOT Regulatory and Policies and Procedures. We do not need to do the latter analysis where the economic impact of a proposal is minimal. This rule does not impose any new costs. The costs of compliance with this rule were already accounted for when the AED requirement was adopted in 2001.

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency

to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, FAA has determined this rule (1) has benefits which do justify its costs, is not a ''significant regulatory action'' as defined in the Executive Order nor ''significant'' as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant impact on a substantial number of small entities; (3) presents no barriers to international trade; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA) of 1980, 5 U.S.C. 601–612, directs the FAA to fit regulatory requirements to the scale of the business, organizations, and governmental jurisdictions subject to the regulation. We are required to determine whether a proposed or final action will have a ''significant economic impact on a substantial number of small entities'' as defined in the Act. If we find that the action will have a significant impact, we must prepare a ''regulatory flexibility analysis.''

This final rule has no associated costs but provides benefits to all air carriers using AEDs for which a power source equivalent to the TSO-marked source exists. Any economic impact is minimal. Therefore, we certify that this action will not have a significant economic impact on a substantial number of small entities.

**Trade Impact Assessment**

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this rulemaking and has determined that it will impose the same costs on domestic and international entities and thus has a neutral trade impact.

**Unfunded Mandates Assessment**

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted periodically for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

**Executive Order 13132, Federalism**

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this final rule does not have federalism implications.

**Environmental Analysis**

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this final rule qualifies for the categorical exclusion identified in paragraph 312f of the Order and involves no extraordinary circumstances.

**Energy Impact**

The energy impact of the final rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA Pub. L. 94–163), as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

**List of Subjects in 14 CFR Part 121**

Air carriers, Aircraft, Airmen, Alcohol abuse, Aviation safety, Charter flights, Drug abuse, Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

**The Amendment**

In consideration of the foregoing the Federal Aviation Administration amends Chapter I of Title 14 Code of Federal Regulations as follows:

## PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 1. The authority citation for part 121 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

■ 2. In Appendix A to part 121, revise paragraph 2 of ''Automated External Defibrillators,'' to read as follows:

*Appendix A to Part 121—First Aid Kits and Emergency Medical Kits*

* * * * *

*Automated External Defibrillators*

* * * * *

2. After April 30, 2005:

(a) Have a power source that meets FAA Technical Standard Order requirements for power sources for electronic devices used in aviation as approved by the Administrator; or

(b) Have a power source that was manufactured before July 30, 2004, and been found by the FAA to be equivalent to a power source that meets the Technical Standard Order requirements of paragraph (a) of this section.

* * * * *

Issued in Washington, DC, on March 17, 2005.

**Marion C. Blakey,**

*Administrator.*

[FR Doc. 05–5764 Filed 3–18–05; 2:16 pm]

BILLING CODE 4910–13–P

Federal Register

Thursday,
March 24, 2005

# Part IV

# Department of Transportation

## Office of the Secretary

## Notices of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits and Aviation Proceeding Agreements; Notices

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending March 11, 2005

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (see 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* OST–2004–19850.

*Date Filed:* March 11, 2005.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* April 1, 2005.

*Description:* Application of Air Comet S.A., requesting that its foreign air carrier permit be renewed and amended to include authority to engage in scheduled foreign air transportation between Spain and New York.

**Renee V. Wright,**

*Acting Program Manager, Docket Operations, Alternate Federal Register Liaison.*

[FR Doc. 05–5854 Filed 3–23–05; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Aviation Proceedings, Agreements Filed the Week Ending March 11, 2005

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

*Docket Number:* OST–2005–20580.

*Date Filed:* March 7, 2005.

*Parties:* Members of the International Air Transport Association.

*Subject:*

PTC2 ME–AFR 0129 dated 8 March 2005, Resolution 002L—Special Amending Resolution between Middle East and Africa.

Intended effective date: 15 April 2005.

*Docket Number:* OST–2005–20624.

*Date Filed:* March 9, 2005.

*Parties:* Members of the International Air Transport Association.

*Subject:*

PTC12 NMS–ME 0221 dated 4 March 2005, TC12 North Atlantic-Middle East (except USA-Jordan) Resolutions.

PTC12 NMS–ME 0222 dated 4 March 2005, TC12 North Atlantic USA-Jordan Resolutions.

PTC12 NMS–ME 0223 dated 4 March 2005, TC12 Mid Atlantic-Middle East Resolutions.

PTC12 NMS–ME 0224 dated 4 March 2005, TC12 South Atlantic-Middle East Resolutions r1–r47.

PTC12 NMS–ME 0225 dated 8 March 2005.

PTC12 NMS–ME Fares 0125 dated 11 March 2005, TC12 North Atlantic-Middle East Fares.

PTC12 NMS–ME Fares 0126 dated 11 March 2005, TC12 Mid Atlantic-Middle East Fares.

PTC12 NMS–ME Fares 0127 dated 11 March 2005, TC12 South Atlantic-Middle East Fares.

Intended effective date: 1 April 2005.

*Docket Number:* OST–2005–20644.

*Date Filed:* March 10, 2005.

*Parties:* Members of the International Air Transport Association.

*Subject:*

PTC12 USA–EUR Fares 0096 dated 25 January 2005, Resolution 015h-USA Add-Ons between USA and UK.

Intended effective date: 1 April 2005.

**Renee V. Wright,**

*Acting Program Manager, Docket Operations, Alternate Federal Register Liaison.*

[FR Doc. 05–5853 Filed 3–23–05; 8:45 am]

BILLING CODE 4910–62–P

# Reader Aids

**Federal Register**

Vol. 70, No. 56

Thursday, March 24, 2005

## CUSTOMER SERVICE AND INFORMATION

| | |
|---|---|
| **Federal Register/Code of Federal Regulations** | |
| General Information, indexes and other finding aids | **202–741–6000** |
| **Laws** | **741–6000** |
| **Presidential Documents** | |
| Executive orders and proclamations | **741–6000** |
| **The United States Government Manual** | **741–6000** |
| **Other Services** | |
| Electronic and on-line services (voice) | **741–6020** |
| Privacy Act Compilation | **741–6064** |
| Public Laws Update Service (numbers, dates, etc.) | **741–6043** |
| TTY for the deaf-and-hard-of-hearing | **741–6086** |

### ELECTRONIC RESEARCH
### World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register/**

### E-mail

**FEDREGTOC-L** (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

**PENS** (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

**FEDREGTOC-L** and **PENS** are mailing lists only. We cannot respond to specific inquiries.

**Reference questions.** Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

## FEDERAL REGISTER PAGES AND DATE, MARCH

9843–10020 ..... 1
10021–10312 ..... 2
10313–10484 ..... 3
10485–10860 ..... 4
10861–11108 ..... 7
11109–11530 ..... 8
11531–11826 ..... 9
11827–12110 ..... 10
12111–12400 ..... 11
12401–12582 ..... 14
12585–12786 ..... 15
12787–12960 ..... 16
12961–13088 ..... 17
13089–13342 ..... 18
13343–14384 ..... 21
14385–14522 ..... 22
14523–14966 ..... 23
14967–15198 ..... 24

## CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Proclamations:**
7871 ..... 10483
7872 ..... 10857
7873 ..... 11531
7874 ..... 11533
7875 ..... 14965

**Executive Orders:**
11926 (Amended by EO 13373) ..... 12579
12293 (Amended by 13374) ..... 12961
12957 (See Notice of March 10, 2005) ..... 12581
12959 (See Notice of March 10, 2005) ..... 12581
13059 (See Notice of March 10, 2005) ..... 12581
13286 (See EO 13373) ..... 12579
13288 (See Notice of March 2, 2005) ..... 10859
13325 (Revoked by 13374) ..... 12961
13373 ..... 12579
13374 ..... 12961

**Administrative Orders:**
Memorandums:
Memorandum of February 18, 2005 ..... 11109
Memorandum of March 14, 2005 ..... 14967
Notices:
Notice of March 2, 2005 ..... 10859
Notice of March 10, 2005 ..... 12581
Presidential Determinations:
No 2005–21 of February 15, 2005 ..... 10313

**5 CFR**

630 ..... 13343
2634 ..... 12111
2635 ..... 12111
Ch. XIV ..... 11535, 12583

**Proposed Rules:**
213 ..... 12812

**6 CFR**

**Proposed Rules:**
5 ..... 14427

**7 CFR**

301 ..... 10315, 10861, 11111
331 ..... 13242
925 ..... 11112
955 ..... 11114
983 ..... 9843
985 ..... 14969
987 ..... 11117
1131 ..... 9846
1160 ..... 11535, 14974
1924 ..... 10862

**Proposed Rules:**
56 ..... 9883
70 ..... 9883
319 ..... 11886
800 ..... 13411
927 ..... 11155
1033 ..... 10337
1466 ..... 14578

**8 CFR**

**Proposed Rules:**
214 ..... 11585

**9 CFR**

94 ..... 12112
95 ..... 12112
121 ..... 13242

**Proposed Rules:**
113 ..... 12813, 12814
301 ..... 15017
303 ..... 15017
317 ..... 15017
318 ..... 15017
319 ..... 15017
320 ..... 15017
325 ..... 15017
331 ..... 15017
381 ..... 12420, 15017
417 ..... 15017
430 ..... 15017

**10 CFR**

300 ..... 15164, 15169

**Proposed Rules:**
50 ..... 10901
727 ..... 12974

**11 CFR**

100 ..... 13089
104 ..... 13089
300 ..... 12787

**12 CFR**

208 ..... 11827
225 ..... 11827
509 ..... 10021
563e ..... 10023
622 ..... 12583

**Proposed Rules:**
25 ..... 12148
210 ..... 10509
228 ..... 12148
229 ..... 10509
Ch. III ..... 13413
345 ..... 12148
712 ..... 14579
1731 ..... 15018

**13 CFR**

125 ..... 14523

**14 CFR**

13 ....13345
23 ....11838, 11841
39 ....9848, 9851, 9853, 10030, 10032, 10034, 10035, 10485, 11536, 11844, 11846, 11848, 12113, 12115, 12117, 12119, 12120, 12124, 12125, 12401, 12402, 12404, 12406, 12408, 12410, 12790, 12791, 12963, 13074, 13092, 13094, 13345, 13347, 13349, 13353, 13356, 13359, 13362, 13365, 13368
71 ....10318, 10862, 11850, 11851, 11852, 11853, 11854, 11855, 11857, 12127, 12128, 12129, 12130, 12412, 12414, 13240, 13370, 14529, 14976
97 ....12131, 13095
121 ....15194
158 ....14928
1214 ....12966
1310 ....10037

**Proposed Rules:**

39 ....10337, 10339, 10342, 10344, 10513, 10517, 11165, 11166, 11168, 11170, 11172, 11585, 11588, 12421, 12612, 12614, 12616, 12618, 12815, 12816, 12819, 12978, 12981, 12982, 12986, 14428, 14430, 14432, 14580, 14585, 14587, 14589, 14592, 14594, 14597, 14599, 15019
71 ....10346, 10917, 11886, 12161, 12162, 12423, 12428, 12619, 14601, 15022
413 ....9885
415 ....9885
417 ....9885

**15 CFR**

700 ....10864
730 ....14385
738 ....14387
740 ....11858, 14387
742 ....14387
744 ....10865, 11858
764 ....14387
772 ....11858
774 ....11858, 14387
902 ....9856, 10174, 13097

**16 CFR**

801 ....11502
802 ....11502
803 ....11502

**Proposed Rules:**

320 ....12823

**17 CFR**

210 ....11528
228 ....11528
229 ....11528
240 ....11528
249 ....11528
270 ....13328

**Proposed Rules:**

150 ....12621
239 ....10521
240 ....10521
274 ....10521

**18 CFR**

381 ....14393

**19 CFR**

10 ....10868
12 ....11539
24 ....10868
162 ....10868
163 ....10868
178 ....10868
191 ....10868
360 ....12133

**20 CFR**

404 ....11863, 14977
422 ....14977
1002 ....12106

**Proposed Rules:**

418 ....10558
498 ....14603
655 ....11592

**21 CFR**

1 ....14978
25 ....14978
26 ....14978
99 ....14978
101 ....12414
184 ....14530
201 ....14978
203 ....14978
206 ....14978
310 ....14978
312 ....14978
314 ....14978
510 ....11120, 13098
520 ....13098
573 ....13099
600 ....14978
601 ....14978
606 ....14978
607 ....14978
610 ....14978
640 ....14978
660 ....14978
680 ....14978
807 ....14978
822 ....14978
862 ....11865, 11867
866 ....14532

**Proposed Rules:**

864 ....11887
1310 ....9889

**25 CFR**

15 ....11804

**Proposed Rules:**

542 ....11893

**26 CFR**

1 ....9869, 10037, 10319, 10488, 11121, 12439, 12793, 13100, 14394, 14395, 14494
301 ....10885, 12140
602 ....10319

**Proposed Rules:**

1 ....10062, 10349, 11903
31 ....12164
301 ....10572, 12166

**27 CFR**

**Proposed Rules:**

9 ....11174, 11178

**28 CFR**

28 ....10886
67 ....12141
83 ....12141

**29 CFR**

1915 ....13370
4000 ....11540
4010 ....11540
4022 ....12585
4044 ....12585

**Proposed Rules:**

2200 ....10574
2204 ....10574
2520 ....12046
2550 ....12046
2578 ....12046
4000 ....11592
4007 ....11592
4044 ....12429

**30 CFR**

206 ....11869
906 ....14986
917 ....11121

**Proposed Rules:**

250 ....12626, 14607
256 ....12626
816 ....13076
817 ....13076

**31 CFR**

315 ....14940
316 ....14940
351 ....14940
353 ....14940
359 ....14940
360 ....14940
363 ....14940

**32 CFR**

199 ....12798
725 ....12966

**33 CFR**

100 ....10887, 10889
117 ....12805, 13101
165 ....11546, 11549, 12416
166 ....11551
174 ....13102
401 ....12967

**Proposed Rules:**

Ch. I ....11912
100 ....13122
110 ....9892
117 ....9895, 10349
147 ....14612, 14614
165 ....11595, 11598
402 ....15029

**34 CFR**

225 ....14999
606 ....13371
607 ....13371
611 ....13371
637 ....13371
648 ....13371
656 ....13371
657 ....13371
658 ....13371
660 ....13371
661 ....13371
662 ....13371
663 ....13371
664 ....13371
669 ....13371

**36 CFR**

242 ....13377

**Proposed Rules:**

7 ....12988
1195 ....14435

**37 CFR**

1 ....10488
102 ....10488
104 ....10488
150 ....10488

**Proposed Rules:**

270 ....12631

**39 CFR**

111 ....14534

**40 CFR**

52 ....11123, 11125, 11552, 11553, 11879, 11882, 12416, 12587, 13105
61 ....13396
62 ....9872, 10490, 10891, 12591
63 ....13108
81 ....11553, 11882
122 ....11560
180 ....11563, 11572, 14535, 14546, 14551
228 ....10041
260 ....10776
261 ....10776
262 ....10776
263 ....10776
264 ....10776
265 ....10776
271 ....10776, 12416, 12593, 12973, 14556
272 ....11132

**Proposed Rules:**

51 ....9897
52 ....11179, 11913, 12632, 13124, 13125, 13425, 14616
62 ....9901, 10581, 10918
63 ....13127
78 ....9897
81 ....13425
97 ....9897
152 ....12276
158 ....12276
180 ....14618
194 ....11913
228 ....12632
271 ....12435, 12634, 13127, 14623
372 ....10919
721 ....9902

**41 CFR**

105 ....14559
302-17 ....12598, 14560

**42 CFR**

72 ....13294
73 ....13294
400 ....13397
401 ....11420
403 ....13397
405 ....11420
411 ....13397
417 ....13397, 13401
422 ....13401
423 ....13397
1003 ....13294

**Proposed Rules:**

414 ....10746

**43 CFR**

4 ....11804

1600 ....14561

**44 CFR**

64 ....12600
**Proposed Rules:**
67 ....10582, 10583

**45 CFR**

1611 ....10327
**Proposed Rules:**
1801 ....12436

**46 CFR**

401 ....12083, 13574
502 ....10328
503 ....10328
515 ....10328
520 ....10328
530 ....10328
535 ....10328
540 ....10328
550 ....10328
555 ....10328
560 ....10328

**47 CFR**

Ch. I ....12601
54 ....10057
64 ....9875, 10894, 12605, 14567, 14568
73 ....9876, 10895, 10896, 12807, 13116, 14570, 14571
76 ....14412, 14572
90 ....15005
**Proposed Rules:**
Ch. I ....12828, 15030
15 ....13139
22 ....11916
64 ....10930
73 ....10351, 10352, 12832, 12833, 12834, 13001, 13002, 13003, 13004, 13139, 15044, 15045, 15046, 15047
76 ....11314, 15048
90 ....13143

**48 CFR**

Ch. 1 ....11736, 11764, 14950, 14962
2 ....11737
4 ....14950
5 ....14950
6 ....11739
8 ....11737
13 ....11740, 14950
15 ....14950
16 ....11737
19 ....11740, 14950
25 ....11742
28 ....11763
30 ....11743
31 ....11763
36 ....11737
42 ....11763, 14950
44 ....11761, 11762, 14950
52 ....11740, 11743, 11761, 11763
53 ....14950
207 ....14572
209 ....14573
219 ....14574
234 ....14574
237 ....14576
242 ....14574
252 ....14574
Ch. 3 ....11583
**Proposed Rules:**
Ch. 2 ....14623
207 ....14623
215 ....14624
225 ....14625, 14628
243 ....14629
546 ....12167, 13005
252 ....14625, 14628
552 ....12167, 13005
904 ....12974
952 ....12974

**49 CFR**

23 ....14495
190 ....11135
191 ....11135
192 ....10332, 11135
193 ....11135
194 ....11135
195 ....10332, 11135
198 ....11135
199 ....11135
209 ....11052
222 ....13117
229 ....13117
234 ....11052
236 ....11052
571 ....14420
1540 ....9877
**Proposed Rules:**
23 ....14520
107 ....11768
171 ....11768
172 ....11768
173 ....11768
178 ....11768
180 ....11768
541 ....10066
544 ....12635
571 ....11184, 11186
572 ....11189

**50 CFR**

17 ....10493, 11140
100 ....13377
622 ....9879, 13117
635 ....10896, 12142
648 ....11584, 12808, 13402, 13406
660 ....13118
679 ....9856, 9880, 9881, 10174, 10507, 10508, 11884, 12143, 12808, 12809, 12810, 12811, 13119, 13120, 14577, 14756, 15010
680 ....10174
**Proposed Rules:**
17 ....15052
223 ....13151
224 ....13151
622 ....10931, 10933, 11600, 13152
635 ....11190, 11922, 14630
648 ....10585, 12168, 12639, 13156
679 ....15063

## REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

## RULES GOING INTO EFFECT MARCH 24, 2005

**ENVIRONMENTAL PROTECTION AGENCY**

Air quality implementation plans; approval and promulgation; various States:

California; published 2-22-05

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

Organization, functions, and authority delegations:

Drug and biological product consolidation; addresses information; techncial amendment; published 3-24-05

**HOMELAND SECURITY DEPARTMENT**

**Customs and Border Protection Bureau**

Inspection, search, and seizure:

Administrative forfeiture notices; publication; published 2-22-05

**HOUSING AND URBAN DEVELOPMENT DEPARTMENT**

Community development block grants:

Small cities and insular areas programs; published 2-22-05

**INTERIOR DEPARTMENT**

**Surface Mining Reclamation and Enforcement Office**

Permanent program and abandoned mine land reclamation plan submissions:

Colorado; published 3-24-05

**INTERNATIONAL TRADE COMMISSION**

Practice and procedure:

Antidumping and countervailing duty investigations; improvement; published 2-22-05

**SOCIAL SECURITY ADMINISTRATION**

Social Security benefits:

Federal old age, survivors, and disability insurance—

Credit for quarters of coverage before 1978, cross-reference changed; form SSA-1388, report of student beneficiary at end of school year, reference removed; published 3-24-05

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Air carrier certification and operations:

Emergency medical equipment; approved power sources for automated external defibrillators on aircraft; published 3-24-05

Airworthiness directives:

Empresa Brasileira de Aeronautica, S.A. (EMBRAER); published 2-17-05

Rolls-Royce plc; published 3-9-05

## COMMENTS DUE NEXT WEEK

**AGRICULTURE DEPARTMENT**

**Agricultural Marketing Service**

Cotton classing, testing and standards:

Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

Egg, poultry, and rabbit products; inspection and grading:

Fees and charges increase; comments due by 3-31-05; published 3-1-05 [FR 05-03929]

Hops produced in—

Various States; comments due by 3-28-05; published 2-24-05 [FR 05-03481]

**AGRICULTURE DEPARTMENT**

**Animal and Plant Health Inspection Service**

Plant-related quarantine, domestic:

Asian longhorned beetle; comments due by 3-29-05; published 1-28-05 [FR 05-01615]

**ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD**

Americans with Disabilities Act:

Accessibility guidelines—

Large passenger vessels; comments due by 3-28-05; published 11-26-04 [FR 04-26000]

Small passenger vessels; comments due by 3-28-05; published 11-26-04 [FR 04-25999]

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Pollock; comments due by 3-29-05; published 3-18-05 [FR 05-05345]

Northeastern United States fisheries—

Spiny dogfish; comments due by 3-28-05; published 3-11-05 [FR 05-04840]

Summer flounder, scup and black sea bass; comments due by 3-30-05; published 3-15-05 [FR 05-05108]

Meetings:

Pacific Fishery Management Council; comments due by 3-29-05; published 1-26-05 [FR 05-01337]

**COMMERCE DEPARTMENT**

**Patent and Trademark Office**

Patent cases:

Fee revisions (2005 FY); comments due by 3-30-05; published 2-28-05 [FR 05-03743]

**CONSUMER PRODUCT SAFETY COMMISSION**

Flammable Fabrics Act:

Mattresses and mattress and foundation sets; flammability (open flame) standard; comments due by 3-29-05; published 1-13-05 [FR 05-00416]

**COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA**

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

**DEFENSE DEPARTMENT**

Acquisition regulations:

Pilot Mentor-Protege Program; Open for comments until further notice; published 12-15-04 [FR 04-27351]

Restoration Advisory Boards; general, operating, administrative support, funding, and reporting requirements; comments due by 3-29-05; published 1-28-05 [FR 05-01550]

**EDUCATION DEPARTMENT**

Grants and cooperative agreements; availability, etc.:

Vocational and adult education—

Smaller Learning Communities Program; Open for comments until further notice; published 2-25-05 [FR E5-00767]

**ENERGY DEPARTMENT**

Meetings:

Environmental Management Site-Specific Advisory Board—

Oak Ridge Reservation, TN; Open for comments until further notice; published 11-19-04 [FR 04-25693]

**ENERGY DEPARTMENT**

**Energy Efficiency and Renewable Energy Office**

Commercial and industrial equipment; energy efficiency program:

Commercial package air conditioners and heat pumps; energy conservation standards; joint stakeholders comments; comments due by 4-1-05; published 2-15-05 [FR 05-02875]

Test procedures and efficiency standards—

Commercial packaged boilers; Open for comments until further notice; published 10-21-04 [FR 04-17730]

**ENERGY DEPARTMENT**

**Federal Energy Regulatory Commission**

Electric rate and corporate regulation filings:

Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

**ENVIRONMENTAL PROTECTION AGENCY**

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Connecticut; comments due by 3-28-05; published 2-25-05 [FR 05-03682]

Maine; comments due by 3-31-05; published 3-1-05 [FR 05-03908]

Air quality implementation plans:

Interstate ozone transport; nitrogen oxides (NOx) SIP call, technical amendments, and Section 126 rules; response to court decisions

Georgia; significant contribution findings and rulemaking; stay; comments due by 3-31-05; published 3-1-05 [FR 05-03450]

Air quality implementation plans; approval and promulgation; various States:

Indiana; comments due by 3-30-05; published 2-28-05 [FR 05-03676]

Texas; comments due by 3-28-05; published 2-24-05 [FR 05-03526]

Environmental statements; availability, etc.:

Coastal nonpoint pollution control program—

Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Bifenazate; comments due by 3-29-05; published 1-28-05 [FR 05-01624]

Chlorfenapyr; comments due by 3-28-05; published 1-26-05 [FR 05-01439]

Fluroxypyr; comments due by 3-28-05; published 1-26-05 [FR 05-01440]

Imidacloprid; comments due by 3-28-05; published 1-26-05 [FR 05-01438]

Quinoxyfen; comments due by 3-29-05; published 1-28-05 [FR 05-01638]

Superfund program:

National oil and hazardous substances contingency plan—

National priorities list update; comments due by 3-28-05; published 2-24-05 [FR 05-03452]

Water pollution control:

National Pollutant Discharge Elimination System—

Concentrated animal feeding operations in New Mexico and Oklahoma; general permit for discharges; Open for comments until further notice; published 12-7-04 [FR 04-26817]

Ocean dumping; site designations—

Columbia River mouth, OR and WA; comments due by 3-30-05; published 3-15-05 [FR 05-05049]

Water pollution; effluent guidelines for point source categories:

Meat and poultry products processing facilities; Open for comments until further notice; published 9-8-04 [FR 04-12017]

**FEDERAL COMMUNICATIONS COMMISSION**

Committees; establishment, renewal, termination, etc.:

Technological Advisory Council; Open for comments until further notice; published 3-18-05 [FR 05-05403]

Common carrier services:

Interconnection—

Incumbent local exchange carriers unbounding obligations; local competition provisions; wireline services offering advanced telecommunications capability; Open for comments until further notice; published 12-29-04 [FR 04-28531]

Satellite communications—

Multichannel video programming distribution market; competition; review of rules and statutory provisions; comments due by 3-31-05; published 3-23-05 [FR 05-05835]

Satellite earth station use on board vessels in 5925-6425 M/Hz/ 3700-4200MHz Bands and 14.0-14.5 GHz/11.7-12.12 GHz Bands; comments due by 4-1-05; published 1-31-05 [FR 05-01359]

Telephone Consumer Protection Act; implementation—

TSA Stores, Inc.; Florida Statutes; declaratory ruling petition; comments due by 3-31-05; published 3-1-05 [FR 05-03931]

Radio stations; table of assignments:

Georgia; comments due by 3-28-05; published 2-18-05 [FR 05-03213]

Michigan; comments due by 3-28-05; published 2-18-05 [FR 05-03214]

Texas; comments due by 3-28-05; published 2-18-05 [FR 05-03211]

Texas and Louisiana; comments due by 3-28-05; published 2-18-05 [FR 05-03209]

Various States; comments due by 3-31-05; published 2-18-05 [FR 05-03208]

**FEDERAL ELECTION COMMISSION**

Bipartisan Campaign Reform Act; implementation:

Candidate solicitation at State, district, and local party fundraising events; exception for attending, speaking, or appearing as featured guest; comments due by 3-28-05; published 2-24-05 [FR 05-03471]

**FEDERAL RESERVE SYSTEM**

Truth in lending (Regulation Z):

Open-end (revolving) credit rules; disclosures and protections; comments due by 3-28-05; published 12-8-04 [FR 04-26935]

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Children and Families Administration**

Foster care eligibility and administrative cost provisions; comments due by 4-1-05; published 1-31-05 [FR 05-01307]

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Centers for Medicare & Medicaid Services**

Health coverage portability; tolling certain time periods and interaction with Family and Medical Leave Act; comments due by 3-30-05; published 12-30-04 [FR 04-28113]

Health Insurance Portability and Accountability Act; benefit-specific waiting periods; comments due by 3-30-05; published 12-30-04 [FR 04-28114]

Medicare:

Long-term care hospitals; prospective payment system; annual payment rate updates and policy changes; comments due by 3-29-05; published 2-3-05 [FR 05-01901]

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

Biological products:

Bacterial vaccines and toxoids; efficacy review implementation; comments due by 3-29-05; published 12-29-04 [FR 04-28322]

Reports and guidance documents; availability, etc.:

Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]

Medical devices—

Dental noble metal alloys and base metal alloys; Class II special controls; Open for comments until further notice; published 8-23-04 [FR 04-19179]

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**National Institutes of Health**

Fellowships, internships, training:

Pediatric research training grants; comments due by 3-29-05; published 1-28-05 [FR 05-01621]

**HOMELAND SECURITY DEPARTMENT**

**Coast Guard**

Anchorage regulations:

Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]

Drawbridge operations:

Louisiana; comments due by 3-29-05; published 1-28-05 [FR 05-01654]

Pollution:

Great Lakes; regulation of non-hazardous and non-toxic dry cargo residues discharges; comments due by 3-28-05; published 12-27-04 [FR 04-28227]

Ports and waterways safety:

HOVENSA refinery, St. Croix, Virgin Islands; security zone; comments due by 3-28-05; published 2-10-05 [FR 05-02595]

Port Lavaca-Point Comfort et al., TX; security zones; comments due by 3-28-05; published 2-25-05 [FR 05-03605]

**HOUSING AND URBAN DEVELOPMENT DEPARTMENT**

Public and Indian housing:

Indian Housing Block Grant Program; minimum funding extension; comments due by 3-28-05; published 1-27-05 [FR 05-01454]

**HOUSING AND URBAN DEVELOPMENT DEPARTMENT**

**Federal Housing Enterprise Oversight Office**

Safety and soundness:

Mortgage fraud reporting; comments due by 3-28-

05; published 2-25-05 [FR 05-03590]

**INTERIOR DEPARTMENT**

**Fish and Wildlife Service**

Endangered and threatened species permit applications

Recovery plans—

Paiute cutthroat trout; Open for comments until further notice; published 9-10-04 [FR 04-20517]

Endangered and threatened species:

Critical habitat designations—

Southwestern willow flycatcher; comments due by 3-31-05; published 12-13-04 [FR 04-27330]

**INTERIOR DEPARTMENT**

**Surface Mining Reclamation and Enforcement Office**

Surface coal mining and reclamation operations:

Transfer, assignment, or sale of permit rights; comments due by 3-28-05; published 1-26-05 [FR 05-01311]

**JUSTICE DEPARTMENT**

DNA identification system:

Qualifying Federal offenses for purposes of DNA sample collection; comments due by 4-1-05; published 1-31-05 [FR 05-01691]

Executive Office for Immigration Review:

Background and security investigations in proceedings before immigration judges and Immigration Appeals Board; comments due by 4-1-05; published 1-31-05 [FR 05-01782]

**LABOR DEPARTMENT**

**Employee Benefits Security Administration**

Health coverage portability; tolling certain time periods and interaction with Family and Medical Leave Act; comments due by 3-30-05; published 12-30-04 [FR 04-28113]

Health Insurance Portability and Accountability Act; benefit-specific waiting periods; comments due by 3-30-05; published 12-30-04 [FR 04-28114]

**NUCLEAR REGULATORY COMMISSION**

Environmental statements; availability, etc.:

Fort Wayne State Developmental Center; Open for comments until further notice; published 5-10-04 [FR 04-10516]

Safeguards information protection from inadvertent release and unauthorized disclosure; comments due by 3-28-05; published 2-11-05 [FR 05-02665]

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:

Approved spent fuel storage casks; list; comments due by 3-30-05; published 2-28-05 [FR 05-03737]

**PERSONNEL MANAGEMENT OFFICE**

Pay administration:

Compensatory time off for travel; comments due by 3-28-05; published 1-27-05 [FR 05-01457]

**SMALL BUSINESS ADMINISTRATION**

Disaster loan areas:

Maine; Open for comments until further notice; published 2-17-04 [FR 04-03374]

Hearings and Appeals Office proceedings:

Service-disabled veteran-owned small business concerns; practice for appeals rules; comments due by 3-28-05; published 2-24-05 [FR 05-03445]

**OFFICE OF UNITED STATES TRADE REPRESENTATIVE**

**Trade Representative, Office of United States**

Generalized System of Preferences:

2003 Annual Product Review, 2002 Annual Country Practices Review, and previously deferred product decisions; petitions disposition; Open for comments until further notice; published 7-6-04 [FR 04-15361]

**TRANSPORTATION DEPARTMENT**

Americans with Disabilities Act:

Accessibility guidelines—

Passenger vessels; comments due by 3-28-05; published 11-26-04 [FR 04-26093]

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness directives:

Airbus; comments due by 3-30-05; published 2-28-05 [FR 05-03783]

Boeing; comments due by 3-28-05; published 2-10-05 [FR 05-02575]

DG Flugzeugbau GmbH; comments due by 3-31-05; published 2-14-05 [FR 05-02765]

Honeywell International, Inc.; comments due by 3-31-05; published 3-14-05 [FR 05-04404]

McDonnell Douglas; comments due by 4-1-05; published 2-15-05 [FR 05-02837]

Precise Flight, Inc.; comments due by 3-29-05; published 3-4-05 [FR 05-04239]

Airworthiness standards:

Special conditions—

Cessna Aircraft Co. Model 501 airplanes; comments due by 3-28-05; published 2-25-05 [FR 05-03614]

Class E airspace; comments due by 3-28-05; published 2-25-05 [FR 05-03615]

**TRANSPORTATION DEPARTMENT**

**Federal Railroad Administration**

Railroad workplace safety:

Working over or adjacent to water; comments due by 3-28-05; published 2-10-05 [FR 05-02560]

**TREASURY DEPARTMENT**

**Internal Revenue Service**

Excise taxes:

Health coverage portability; tolling certain time periods and interaction with Family and Medical Leave Act; comments due by 3-30-05; published 12-30-04 [FR 04-28113]

Health Insurance Portability and Accountability Act; benefit-specific waiting periods; comments due by 3-30-05; published 12-30-04 [FR 04-28114]

**TREASURY DEPARTMENT**

**Alcohol and Tobacco Tax and Trade Bureau**

Alcohol; viticultural area designations:

Russian River Valley, CA; comments due by 4-1-05; published 1-31-05 [FR 05-01667]

## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

**S. 686/P.L. 109–3**

For the relief of the parents of Theresa Marie Schiavo. (Mar. 21, 2005; 119 Stat. 15)

**Last List January 23, 2005**

## Public Laws Electronic Notification Service (PENS)

**PENS** is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

**Note:** This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.