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WHEN: Tuesday, May 17, 2005
9:00 a.m.–Noon

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RESERVATIONS: (202) 741–6008

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

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

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–200C]

RIN 1218–AB60

Notice of Availability of the Regulatory Flexibility Act Review of the Occupational Health Standard for Ethylene Oxide

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of availability.

SUMMARY: The Occupational Safety and Health Administration (OSHA) has conducted a review of its Ethylene Oxide (EtO) Standard pursuant to section 610 of the Regulatory Flexibility Act and section 5 of Executive Order 12866 on Regulatory Planning and Review. EtO is used as a chemical intermediate to produce antifreeze and as a sterilant. In 1984, OSHA promulgated a standard to lower exposure to EtO from 50 parts per million (ppm) to 1 ppm based on evidence EtO exposure was associated with cancer in animals. The regulatory review has concluded that new studies indicate that EtO is associated with cancer in humans, that employee exposures have been substantially reduced thereby lowering risk to employees, that the standard has not had a negative impact on small businesses, that EtO production has increased, and that EtO sterilizers have been developed that meet the standard and cost less than older non-compliant sterilizers. Public commenters agree that the standard should remain in effect. Based on this review, OSHA concludes the EtO standard should remain in effect, but will issue new guidance materials in response to some commenters requests for clarification.

ADDRESSES: Copies of the entire report may be obtained from the OSHA Publication Office, Room N3101, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–1888, Fax (202) 693–2498. The full report, comments, and referenced documents are available for review at the OSHA Docket Office, Docket No. H–200C Room N2625, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–2350. The main text of the report will become available on the OSHA Web page at *www.OSHA.gov*.

FOR FURTHER INFORMATION CONTACT: Joanna Dizikes Friedrich, Directorate of Evaluation and Analysis, Room N3641, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–1939, fax (202) Direct technical inquiries about the EtO standard to Gail Brinkerhoff, telephone (202) 693–2190, or visit the OSHA Homepage at *www.OSHA.gov*. Direct press inquiries to Bill Wright, Room N3647, telephone (202) 693–1999.

SUPPLEMENTARY INFORMATION: The Occupational Safety and Health Administration (OSHA) has completed a ''look back'' review of its EtO Standard, 29 CFR 1910.1047, titled ''Regulatory Review of the Occupational Safety and Health Administration's Ethylene Oxide Standard, March 2005.'' This **Federal Register** document announces the availability of the Regulatory Review and briefly summarizes it. The review was undertaken pursuant to Section 610 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and Section 5 of Executive Order 12866 (59 FR 51739, Oct 4, 1993) and all issues raised by those provisions. The purpose of a review under section 610 of the Regulatory Flexibility Act ''Shall be to determine whether such rule should be continued without change, or should be rescinded, or amended consistent with the stated objectives of applicable statutes to minimize any significant impact of the rule on a substantial number of small entities.''

''The Agency shall consider the following factors:

(1) The continued need for the rule;

(2) The nature of complaints or comments received concerning the rule from the public;

(3) The complexity of the rule;

(4) The extent to which the rule overlaps, duplicates or conflicts with other Federal rules; and, to the extent feasible, with state and local governmental rules; and

(5) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the areas affected by the rule.''

The review requirements of Section 5 of the Executive Order 12866 require agencies:

''To reduce the regulatory burden on the American people, their families, their communities, their state, local and tribal governments, their industries to determine whether regulations promulgated by the [Agency] have become unjustified or unnecessary as a result of changed circumstances; to confirm that regulations are both compatible with each other and not duplicative or inappropriately burdensome in the aggregate; to ensure that all regulations are consistent with the President's priorities and the principles set forth in the Executive Order, within applicable law; and to otherwise improve the effectiveness of existing regulations.''

OSHA published a **Federal Register** document requesting public comments on the EtO Standard and specifically all issues raised by those provisions, and held a public meeting on those matters (62 FR 28649, May 27, 1997). The Review summarizes the public comments and responds to them.

Ethylene Oxide is an industrial chemical that has high volume uses as an intermediate to produce other chemicals such as antifreeze. It is also used as a sterilant principally in the hospital, medical device and spice processing industries.

In 1984, principally based on evidence of carcinogenicity in animals, OSHA issued a standard (29 CFR 1910. 1047) lowering exposures from 50 parts per million (ppm) to 1 ppm. That standard also included requirements for monitoring, medical surveillance, training and other provisions.

OSHA has reviewed the studies, information and public comments about the standard. Based on those, it has reached the following conclusions pursuant to the section 610 review discussed in greater length in the full report.

There is a continued need for the rule. Workers exposed to EtO in a range of

industries would continue to be at risk of cancer, genetic changes and other adverse health effects, without the standard. Since the standard was developed, the International Agency for Research on Cancer reclassified EtO as a known human carcinogen and the National Toxicology program reclassified EtO as a one ''known to be a human carcinogen.'' Based on the significant scientific information, OSHA finds that the potential carcinogenicity of EtO and the risk posed to workers continues to justify the need for the Standard.

Comprehensive studies, compliance information, and public comments indicate that the Standard has been effective in reducing exposure to EtO thereby achieving the predicted health benefits. The public comments evidenced widespread support for continuance of the EtO Standard and endorsed its effectiveness. No commenter argued that the standard should be rescinded.

The evidence indicates that the EtO Standard has not had a negative economic impact on the industries affected by the standard, generally, or on small businesses in those industries. Production of EtO has increased from 6.2 billion pounds to 8 billion pounds since the standard was issued. Most of the small businesses affected by the EtO Standard are hospitals, medical device manufacturers, and spice manufacturers. There are no indications that the regulation of occupational exposure to EtO has impaired the economic well being of businesses in any of these sectors or has disproportionately affected small businesses.

The rule is not unduly or unreasonably complex. Although most commenters did not directly address the issue of whether the standard was considered to be unduly or unreasonably complex, a few comments at the public meeting and comments submitted to the Docket requested clarification of a few requirements of the standard. OSHA intends to issue compliance assistance and outreach materials to aid employers' and employees' understanding of the standard.

The EtO Standard does not overlap with other regulations. Four major federal regulatory entities in addition to OSHA currently regulate various aspects of EtO use and transport. The only potential regulatory conflict raised by one commenter during this lookback review involved an Environmental Protection Agency standard under the Clean Air Act for EtO using commercial sterilization and fumigation operations. Commercial sterilization and fumigation operations using one ton or more of EtO per year are required to use emission control technology to comply with EPA standards. The two agencies' rules do not actually conflict and no employers have stated that they have not been able to comply with both.

Technological improvements have improved worker safety. OSHA's independent research, comments received, and the technical literature indicate that significant technological developments have occurred since the promulgation of the standard. Improvements in sterilizer technology, the growth in number and use of alternative sterilants and sterilizing processes, and use of contract sterilizers to perform EtO sterilization have contributed to an observed reduction in occupational exposure to EtO. None of the comments received by OSHA indicated that technology feasibility problems prevented affected businesses from complying with the EtO Standard.

The Standard encouraged the development of improved sterilizers, which achieved compliance with the standard and cost less than other sterilizers. The newer equipment costs about half the cost of the older equipment with add-on controls. This reduced costs for all employers including small businesses.

A 1995 Congressional Office of Technology Assessment study completed after the standard took effect concluded that the Feasibility Study, which OSHA performed before issuance of the standard, was accurate and well done.

The agency has also reviewed the record and standard pursuant to E.O. 12866. Pursuant to that review it has reached the following conclusions:

The EtO Standard remains both justified and necessary. As discussed in OSHA's Section 610 analysis, EtO poses significant health and safety risks to workers exposed to the substance. While the standard has resulted in dramatic reductions in occupational exposures to EtO, OSHA continues to document overexposures and non-compliance in the workplace. A study of Massachusetts hospitals demonstrated that enforcement actions were necessary before they came into compliance with the standard.

The EtO Standard is compatible with other OSHA standards and is not inappropriately burdensome in the aggregate. No public comment questioned the compatibility of the EtO standard with Federal OSHA or state standards.

The EtO Standard is compatible with E.O. 12866. The Executive Order essentially provides for a regulatory system that efficiently and effectively protects health and safety without imposing unacceptable or unreasonable costs on society. The regulations that are produced must be consistent, sensible, and understandable. This lookback review has received many comments supporting the standard's effectiveness in reducing occupational exposures to EtO. In addition, the industries that use EtO appear to be familiar with the standard and have adopted improved technology, use of substitutes, and other methods to improve efficiency. No evidence was submitted to the Docket or identified by OSHA in the course of this lookback review to suggest that the standard was imposing either a significant impact on a substantial number of small entities or that it was causing an excessive compliance burden. The EtO Standard is effective in achieving its mission. Uniform support for retaining the EtO standard is in the public record for this lookback review.

Therefore, based on the comments and testimony of participants in this lookback review process and the studies and other evidence submitted to the public docket, OSHA concludes, as discussed in depth in ''Regulatory Review of the Occupational Safety and Health Administration's Ethylene Oxide Standard'' March 2005, that the Agency's Standard should be continued without change. The evidence also demonstrates that the Standard does not need to be rescinded or substantially amended to minimize significant impacts on a substantial number of small entities.

OSHA also finds that the EtO Standard is necessary to protect employee health, is compatible with other OSHA standards, is not duplicative or in conflict with other Federal, state, or local government rules, is not inappropriately burdensome, and is consistent with the President's priorities and the principles of E.O. 12866. Further, no changes have occurred in technological, economic, or other factors that would warrant revision of the Standard at this time. No commenters recommended that the standard be repealed or made less protective.

As a result of this lookback review and the comments received from participants, OSHA will enhance some of its compliance assistance materials. The enhancements may cover emergency requirements, medical surveillance and other areas.

Signed at Washington, DC, this 12th day of April, 2005.

Jonathan L. Snare,

Acting Assistant Secretary of Labor.

[FR Doc. 05–8080 Filed 4–21–05; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–05–009]

RIN 1625–AA00

Safety Zone; Chicago Sanitary and Ship Canal, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone around the tank barge EMC423 during salvage operations. This safety zone is necessary to ensure the safety of workers and divers during salvage operations of the tank barge EMC423. The temporary safety zone prohibits persons or vessels from entering the zone unless authorized by the Captain of the Port Chicago or the designated on-scene representative.

DATES: This rule is effective from 5 p.m. on April 5, 2005, until 5 p.m on May 31, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of the docket (CGD09–05–009], and are available for inspection or copying at Commanding Officer, U.S. Coast Guard Marine Safety Office Chicago, 215 W. 83rd Street Suite D, Burr Ridge, IL 60527, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Cameron Land, U.S. Coast Guard Marine Safety Office Chicago, at (630) 986–2155.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This safety zone is temporary in nature and limited time existed for an NPRM. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be impracticable and contrary to public interest as boating season is resuming and immediate action is necessary to clear the barge from the canal and perform clean up of the surrounding area; further, immediate action is necessary to ensure the safety of persons and vessels during the salvage operations and to prevent possible loss of life or property. During the enforcement of this safety zone, comments will be accepted and reviewed and may result in a modification to the rule.

Background and Purpose

On January 19, 2005, the tank barge EMC423 was involved in a marine casualty on the Chicago Sanitary and Ship Canal (CSSC) at Mile Marker 317.5. The barge sustained an explosion and partially sank with a full load of clarified slurry oil on board. Salvage and recovery operations are underway. With the change in weather and increase in recreational vessel traffic in the area, the Captain of the Port Chicago finds it necessary to implement operational restrictions and control vessel traffic through the area to protect response workers, vessels transiting the zone, and to maintain the integrity of the site.

Discussion of Rule

This rule establishes a safety zone from bank-to-bank beginning at the Cicero Avenue Bridge at Mile Marker 317.3 and ending at the Belt Railroad Bridge at Mile Marker 317.5 on the Chicago Sanitary and Ship Canal.

Vessels will not be allowed to enter the safety zone, without the express permission of the Captain of the Port Chicago or the designated on-scene representative. It is anticipated that controlled passage of vessels will be possible on a case-by-case basis.

Barges transiting the area will be limited to dry cargo, 35 foot wide with drafts not exceeding 9-feet. Up bound tows are limited to one barge. Down bound tows are limited to one loaded barge or two empty barges. All down bound tows require a bow assist boat.

All commercial and recreational vessels must contact the Coast Guard Forward Command Post via VHF–FM Channel 19 or land line at 630–336–0291 to request permission to transit through the safety zone.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This finding is based on the relatively small percentage of vessels that would fall within the applicability of the regulation, the relatively small size of the limited access area around the EMC423 tank barge, the minimal amount of time that vessels will be restricted when the zone is being enforced. In addition, vessels that will need to enter the zone may request permission on a case-by-case basis from the Captain of the Port or the designated on-scene representatives.

Small Entities

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

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

This rule affects the following entities, some of which might be small entities: The owners or operators of vessels intending to transit through the safety zone in and around the sunken barge.

This rule would not have a significant impact on a substantial number of small entities because the restrictions affect only a limited area for a brief amount of time as this safety zone is effective only when salvage operations on the tank barge EMC423 is underway. Further, transit through the zone may be permitted with proper authorization from the Captain of the Port Chicago or his designated representative. Additionally, the opportunity to engage in recreational activities outside the limits of the safety zone will not be disrupted.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see*

ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LTJG Cameron Land, Coast Guard Marine Safety Office Chicago, at (630) 986–2155.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(g) of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. From 5 p.m. on April 5, 2005 until 5 p.m. on May 31, 2005 add § 165.T09.009 to read as follows:

§ 165.T09.009 Safety Zone; Chicago Sanitary and Ship Canal, Chicago, IL.

(a) *Location.* The following area is a safety zone: From bank-to-bank beginning at the Cicero Avenue Bridge at Mile Marker 317.3 and ending at the Belt Railroad Bridge at Mile Marker 317.5 on the Chicago Sanitary and Ship Canal.

(b) *Regulations*. (1) In accordance with the general regulations in 165.23 of this part, vessels will not be allowed to enter the safety zone without the express permission of the Captain of the Port Chicago or the designated on-scene representative. It is anticipated that controlled passage of vessels will be possible on a case-by-case basis.

(2) Barges transiting the area will be limited to dry cargo, 35 foot wide with drafts not exceeding 9-feet. Up bound tows are limited to one barge. Down bound tows are limited to one loaded barge or two empty barges. All down bound tows require a bow assist boat.

(3) All commercial and recreational vessels must contact the Coast Guard Forward Command Post via VHF–FM Channel 19 or land line at 630–336–0291 to request permission to transit through the safety zone.

(c) *Effective Date*. This regulation is effective from 5 pm on April 05, 2005, through 5 pm on May 31, 2005, unless cancelled sooner by the Captain of the Port Chicago by Broadcast Notice to Mariners.

Dated: April 5, 2005.

T.W. Carter,

Captain, U.S. Coast Guard, Captain of the Port, Chicago.

[FR Doc. 05–8071 Filed 4–21–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Mobile–04–057]

RIN 1625–AA87

Security Zone; Port of Mobile, Mobile Ship Channel, Mobile, AL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent security zones around all cruise ships while transiting or moored in the Port of Mobile and Mobile Ship Channel shoreward of the Mobile Sea Buoy. These security zones are needed to ensure the safety and security of these vessels. Entry into these zones is prohibited unless specifically authorized by the Captain of the Port Mobile or a designated representative.

DATES: This rule is effective at 6 p.m. on May 23, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (COTP Mobile 04–057) and are available for inspection or copying at Marine Safety Office Mobile, Brookley Complex, Bldg 102, South Broad Street, Mobile, AL 36615–1390 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (LT) Maurice York, Operations Department, Marine Safety Office Mobile, at (251) 441–5940.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On January 7, 2005, we published a notice of proposed rulemaking (NPRM) entitled ''Security Zone; Port of Mobile, Mobile Ship Channel, Mobile, AL'' in the **Federal Register** (70 FR 1400). We received no comments on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

On September 11, 2001, both towers of the World Trade Center and the Pentagon were attacked by terrorists. The President has continued the national emergencies he declared following those attacks (69 FR 55313 (Sep. 13, 2004) (continuing the emergency declared with respect to terrorist attacks); 69 FR 56923 (Sep. 22, 2004) (continuing emergency with respect to persons who commit, threaten to commit or support terrorism)). The President also has found pursuant to law, including the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is and continues to be endangered following the terrorist attacks (E.O. 13,273, 67 FR 56215 (Sep. 3, 2002) (security of U.S. endangered by disturbances in international relations of U.S. and such disturbances continue to endanger such relations)). In response to these terrorist acts and warnings, heightened awareness for the security and safety of all vessels, ports, and harbors is necessary.

On November 12, 2004, the Coast Guard published a temporary final rule entitled ''Security Zone; Port of Mobile, Mobile Ship Channel, Mobile, AL'' (69 FR 65373). This temporary final rule established temporary security zones around cruise ships when transiting the Mobile Ship Channel and Port of Mobile, as well as when moored in the Port of Mobile. This temporary final rule will expire at 6 p.m. on April 14, 2005. However, due to the increased security concerns surrounding the transit of cruise ships, the Captain of the Port Mobile is establishing permanent security zones around all cruise ships while such vessels are transiting the Mobile Ship Channel or Port of Mobile, and while moored in the Port of Mobile.

Discussion of Comments and Changes

We received no comments on the proposed rule, and no changes have been made from the proposed rule.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

These security zones will only be enforced while cruise ships are located shoreward of the Mobile Sea Buoy, are transiting the Mobile Ship Channel, and are moored in the Port of Mobile. Once a cruise ship is moored in the Port of Mobile, the security zone will be reduced to 25 yards. While the cruise ship is moored, other vessels will be able to safely transit around this zone provided they approach no closer than 25 yards. Additionally, while a cruise ship is in transit on the Mobile Ship Channel or in the Port of Mobile, the Captain of the Port or a designated representative may allow other persons or vessels to enter into the security zone for the purpose of passing or overtaking a cruise ship if such persons or vessels obtain permission from the on-scene Coast Guard representative prior to initiating such action.

Notifications of the enforcement periods of this security zone will be made to the marine community through broadcast notice to mariners. The impacts on routine navigation are expected to be minimal.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the waters of the Port of Mobile or the Mobile Ship Channel while cruise ships are shoreward of Mobile Sea Buoy.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (1) This rule will only be enforced while cruise ships are shoreward of the Mobile Sea Buoy; (2) Once a cruise ship is moored in the Port of Mobile, the security zone will be reduced to 25 yards and other vessels will be able to safely transit around this zone provided they approach no closer than 25 yards; (3) The Captain of the Port Mobile may permit vessels to transit through the security zone for the purpose of passing or overtaking a transiting cruise ship if permission is sought and obtained from the on-scene Coast Guard representative prior to initiating such action.

If you are a small business entity and are significantly affected by this regulation please contact LT Maurice York, Operations Department, Marine Safety Office Mobile, at (251) 441–5940.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

A final ''Environmental Analysis Checklist'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

requirements, Security measures, Waterways.

■ For reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.835 to read as follows:

§ 165.835 Security Zone; Port of Mobile, Mobile Ship Channel, Mobile, AL.

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

Cruise Ship means a passenger vessel over 100 gross tons, carrying more than 12 passengers for hire, making a voyage lasting more than 24 hours any part of which is on the high seas, and for which passengers are embarked or disembarked in the United States or its territories. This definition covers passenger vessels that must comply with 33 CFR parts 120 and 128.

(b) *Location.* The following areas are security zones: all waters of the Port of Mobile and Mobile Ship Channel—

(1) Within 100 yards of a cruise ship that is transiting shoreward of the Mobile Sea Buoy (located in approximate position 28°07′50″ N, 88°04′12″ W; NAD 83), and

(2) Within 25 yards of a cruise ship that is moored shoreward of the Mobile Sea Buoy.

(c) *Periods of enforcement.* This rule will only be enforced when a cruise ship is transiting the Mobile Ship Channel shoreward of the Mobile Sea Buoy, while transiting in the Port of Mobile, or while moored in the Port of Mobile. The Captain of the Port Mobile or a designated representative would inform the public through broadcast notice to mariners of the enforcement periods for the security zone.

(d) *Regulations.* (1) Under § 165.33 of this part, entry into a security zone is prohibited unless authorized by the Captain of the Port Mobile or a designated representative.

(2) While a cruise ship is transiting on the Mobile Ship Channel shoreward of the Mobile Sea Buoy, and while transiting in the Port of Mobile, all persons and vessels are prohibited from entering within 100 yards of a cruise ship.

(3) While a cruise ship is moored in the Port of Mobile, all persons and vessels are prohibited from entering within 25 yards of a cruise ship.

(4) Persons or vessels that desire to enter into the security zone for the purpose of passing or overtaking a cruise ship that is in transit on the Mobile Ship Channel or in the Port of Mobile must contact the on-scene Coast Guard representative, request permission to conduct such action, and receive authorization from the on-scene Coast Guard representative prior to initiating such action. The on-scene Coast Guard representative may be contacted on VHF–FM channel 16.

(5) All persons and vessels authorized to enter into this security zone must obey any direction or order of the Captain of the Port or designated representative. The Captain of the Port Mobile may be contacted by telephone at (251) 441–5976. The on-scene Coast Guard representative may be contacted on VHF–FM channel 16.

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

Dated: March 15, 2005.

Steven D. Hardy,

Captain, U.S. Coast Guard, Captain of the Port Mobile.

[FR Doc. 05–8072 Filed 4–21–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Mobile–05–007]

RIN 1625–AA87

Security Zone; Port of Mobile, Mobile Ship Channel, Mobile, AL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary security zones around all cruise ships while transiting or moored in the Port of Mobile and Mobile Ship Channel shoreward of the Mobile Sea Buoy. These security zones are needed to ensure the safety and security of these vessels. Entry into these zones is prohibited, unless specifically authorized by the Captain of the Port Mobile, or a designated representative.

DATES: This rule is effective from 6 p.m. on April 14, 2005, through May 23, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP Mobile–05–007] and are available for inspection or copying at Marine Safety Office Mobile, Brookley Complex, Bldg 102, South Broad Street, Mobile, AL 36615–1390 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (LT) Maurice York, Operations Department, Marine Safety Office Mobile, at (251) 441–5940.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On November 12, 2004, the Coast Guard published a temporary final rule (TFR) entitled ''Security Zone; Port of Mobile, Mobile Ship Channel, Mobile, AL'' (69 FR 65373). This temporary final rule will expire at 6 p.m. on April 14, 2005. On January 7, 2005, we published a notice of proposed rulemaking (NPRM) entitled ''Security Zone; Port of Mobile, Mobile Ship Channel, Mobile, AL'' (70 FR 1400). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held. That final rule is being published elsewhere in this same issue of the **Federal Register** and will become effective on May 23, 2005.

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM, and under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. It took longer to resolve issues related to the final rule than we expected at the time we issued the last TFR. Because the current TFR expires at 6 p.m. on April 14, 2005, this new TFR is necessary because it would be contrary to public interest not to maintain a security zone around transiting cruise ships in the Mobile Ship Channel or Port of Mobile until the final rule becomes effective on May 23, 2005, at which time this temporary rule will be removed.

Background and Purpose

On September 11, 2001, both towers of the World Trade Center and the Pentagon were attacked by terrorists. The President has continued the national emergencies he declared following those attacks (69 FR 55313 (Sep. 13, 2004) (continuing the emergency declared with respect to terrorist attacks); 69 FR 56923 (Sep. 22, 2004) (continuing emergency with

respect to persons who commit, threaten to commit or support terrorism)). The President also has found pursuant to law, including the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is and continues to be endangered following the terrorist attacks (E.O. 13,273, 67 FR 56215 (Sep. 3, 2002) (security of U.S. endangered by disturbances in international relations of U.S and such disturbances continue to endanger such relations)). In response to these terrorist acts and warnings, heightened awareness for the security and safety of all vessels, ports, and harbors is necessary. Due to the increased security concerns surrounding the transit of cruise ships, the Captain of the Port Mobile is establishing temporary security zones around all cruise ships while such vessels are transiting the Mobile Ship Channel or Port of Mobile, and while moored in the Port of Mobile.

Discussion of Rule

This temporary final rule is identical to the previous rule published in the **Federal Register** on November 12, 2004 (69 FR 65373). The Coast Guard was unable to publish an extension to this rule. However, the practical effect of this new temporary final rule is the same and continues the security zone currently in effect.

The Coast Guard is establishing temporary security zones for the Port of Mobile and Mobile Ship channel. This rule establishes security zones that prohibits movement within 25 yards of all cruise ships while moored in the Port of Mobile, and prohibits movement within 100 yards of any cruise ship while transiting the Mobile Ship Channel or the Port of Mobile. For the purpose of this rule the term ''cruise ship'' is defined as a passenger vessel over 100 gross tons, carrying more than 12 passengers for hire, making a voyage lasting more than 24 hours any part of which is on the high seas, and for which passengers are embarked or disembarked in the United States or its territories. This definition covers passenger vessels that must comply with 33 CFR parts 120 and 128.

These security zones will be enforced when a cruise ship transiting inbound passes the Mobile Sea Buoy in approximate position 28°07′50″ N, 88°04′12″ W, at all times during transit through the Mobile Ship Channel and Port of Mobile, and while moored in the Port of Mobile. A security zone will exist during each cruise ship's transit outbound the Port of Mobile and the Mobile Ship Channel. Enforcement of these security zones will cease once the cruise ship passes the Mobile Sea Buoy on its outbound voyage.

These security zones are needed to protect the safety of life, property and the environment in the area. All vessels are prohibited from moving within these zones unless specifically authorized by the Captain of the Port Mobile, or a designated representative.

Persons on vessels that desire to enter into one of these security zones for the purpose of passing or overtaking a cruise ship that is in transit on the Mobile Ship Channel or in the Port of Mobile must contact the on-scene Coast Guard representative, request permission to conduct such action, and receive authorization from the on-scene Coast Guard representative prior to initiating such action. The on-scene Coast Guard representative may be contacted on VHF–FM channel 16. All persons and vessels authorized to enter into a security zone shall obey any direction or order of the Captain of the Port or designated representative.

The Captain of the Port Mobile or a designated representative will inform the public through broadcast notice to mariners of the enforcement periods for these security zones.

Regulatory Evaluation

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

These security zones will only be enforced while cruise ships are located shoreward of the Mobile Sea Buoy, are transiting the Mobile Ship Channel, and are moored in the Port of Mobile. Once a cruise ship is moored in the Port of Mobile, the security zone will be reduced to only 25 yards. While the cruise ship is moored, other vessels will be able to safely transit around this zone provided they approach no closer than 25 yards. Additionally, while a cruise ship is in transit on the Mobile Ship Channel or in the Port of Mobile, the Captain of the Port or a designated representative may allow other persons or vessels to enter into the security zone for the purpose of passing or overtaking a cruise ship if such persons or vessels obtain permission from the on-scene Coast Guard representative prior to initiating such action.

Notifications of the enforcement periods of these security zones will be made to the marine community through broadcast notice to mariners. The impacts on routine navigation are expected to be minimal.

Small Entities

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

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

If you are a small business entity and are significantly affected by this regulation please contact LT Maurice York, Operations Department, Marine Safety Office Mobile, at (251) 441–5940.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so they may better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and

would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

A final ''Environmental Analysis Checklist'' and a final ''Categorical Exclusion Determination'' will be available for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Ppart 165

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A new § 165.T08–037 is added to read as follows:

§ 165.T08–037 Security Zone; Port of Mobile, Mobile Ship Channel, Mobile, AL.

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

Cruise ship means a passenger vessel over 100 gross tons, carrying more than 12 passengers for hire, making a voyage lasting more than 24 hours any part of which is on the high seas, and for which passengers are embarked or disembarked in the United States or its territories. This definition covers passenger vessels that must comply with 33 CFR parts 120 and 128.

(b) *Location.* The following areas are security zones: All waters of the Port of Mobile and Mobile Ship Channel—

(1) Within 100 yards of a cruise ship that is transiting shoreward of the Mobile Sea Buoy (located in approximate position 28°07′50″ N, 88°04′12″ W; NAD 83), and

(2) Within 25 yards of a cruise ship that is moored shoreward of the Mobile Sea Buoy.

(c) *Effective period.* This section is effective from 6 p.m. on April 14, 2005, through May 23, 2005.

(d) *Periods of Enforcement.* This rule will only be enforced when a cruise ship is transiting the Mobile Ship Channel shoreward of the Mobile Sea Buoy, while transiting in the Port of Mobile, or while moored in the Port of Mobile.

(e) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into a security zone is prohibited unless authorized by the Captain of the Port Mobile or a designated representative.

(2) While a cruise ship is transiting on the Mobile Ship Channel shoreward of the Mobile Sea Buoy, and while transiting in the Port of Mobile, all persons and vessels are prohibited from entering within 100 yards of a cruise ship.

(3) While a cruise ship is moored in the Port of Mobile, all persons and vessels are prohibited from entering within 25 yards of a cruise ship.

(4) Persons or vessels that desire to enter into the security zone for the purpose of passing or overtaking a cruise ship that is in transit on the

Mobile Ship Channel or in the Port of Mobile must contact the on-scene Coast Guard representative, request permission to conduct such action, and receive authorization from the on-scene Coast Guard representative prior to initiating such action. The on-scene Coast Guard representative may be contacted on VHF–FM channel 16.

(5) All persons and vessels authorized to enter into this security zone shall obey any direction or order of the Captain of the Port or designated representative. The Captain of the Port Mobile may be contacted by telephone at (251) 441–5976. The on-scene Coast Guard representative may be contacted on VHF–FM channel 16.

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

Dated: April 12, 2005.

J.D. Bjostad,

Captain, U.S. Coast Guard, Captain of the Port Mobile.

[FR Doc. 05–8073 Filed 4–21–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06–OAR–2004–TX–0002; FRL–7902–8]

Approval and Promulgation of Implementation Plans; Texas; Memorandum of Agreement Between Texas Council on Environmental Quality and the North Central Texas Council of Governments Providing Emissions Offsets to Dallas-Fort Worth International Airport

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Texas on February 23, 2004. This revision concerns the Dallas-Fort Worth ozone nonattainment area. Specifically, EPA is approving incorporation of a Memorandum of Agreement (MOA) between the Texas Commission on Environmental Quality (TCEQ) and the North Central Texas Council of Governments (NCTCOG) into the SIP. This MOA commits the NCTCOG to provide the Dallas-Fort Worth International Airport (DFWIA) with emissions offsets in the amount of 0.18 tons per day (tpd) of nitrogen oxides (NO_X) and 0.04 tpd of volatile organic compounds (VOCs) in 2007, and to adjust the modeled 2015 on-road emission estimates to reflect an increase of 1.17 tpd of NO_X and 0.26 tpd of VOCs, which must be accommodated in future transportation conformity determinations. This action is necessary in order for the Federal Aviation Administration (FAA) to address requirements under the general conformity regulations for the proposed DFWIA project. The rationale for the final approval action and other information are provided in this document.

DATES: This rule is effective on May 23, 2005.

ADDRESSES: EPA has established a docket for this action under Regional Materials in EDocket (RME) Docket ID No. R06–OAR–2004–TX–0002. All documents in the docket are listed in the Regional Materials in EDocket (RME) index at *http://docket.epa.gov/rmepub/;* once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information the disclosure of which 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 RME or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at (214) 665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Peggy Wade, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7247; fax number 214–665–7263; e-mail address *wade.peggy@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

Outline

I. What Action Is EPA Taking?
II. What Is the Background for This Action?
III. What Did the State Submit and How Did We Evaluate It?
IV. Responses to Comments on the Direct Final Action
V. Final Action
VI. Statutory and Executive Order Reviews

I. What Action Is EPA Taking?

On January 14, 2004, TCEQ adopted a Memorandum of Agreement (MOA) between TCEQ and NCTCOG's Regional Transportation Council (RTC). At the same time, TCEQ adopted a revision to the Texas SIP to incorporate this MOA into it, and has since submitted this SIP revision to EPA for approval. This MOA commits the RTC to provide the DWFIA with emissions offsets in the amount of 0.18 tpd of NO_X and 0.04 tpd of VOCs in 2007 and to adjust the modeled 2015 on-road mobile source emissions estimates by an increase of 1.17 tpd and 0.26 tpd of NO_X and VOCs, respectively, in future transportation conformity demonstrations by the FAA.

EPA is approving the incorporation of this MOA into the DFW SIP. This action by EPA will ensure that the MOA, and the resulting emission offsets, are enforceable at both the federal and state levels.

II. What Is the Background for This Action?

The DFW area is a nonattainment area for the air pollutant ozone, and is operating under a SIP to control the emissions of NO_X and VOCs, which are ozone precursor pollutants. Under the Texas general conformity rules (30 TAC 101.30), which implement the general conformity requirements of section 176(c) of the Clean Air Act, certain types of Federal actions, such as FAA approval of environmental documents developed in accordance with the National Environmental Policy Act (NEPA), require a determination as to whether the total emissions from the action conform with the applicable SIP, unless the resultant emissions are expected to be below the *de minimis* levels identified in these regulations (30 TAC 101.30(c)(2); see 40 CFR

51.853(b)(1)). The *de minimis* level for the DFW one-hour nonattainment area is 50 tons per year. The applicable SIP, in this case, is the Post 1996 Rate of Progress (ROP) SIP approved by EPA on March 28, 2005 (70 FR 15592, effective April 27, 2005).

The DFWIA notified TCEQ and EPA of upcoming aviation projects that would trigger the need for a general conformity determination by the FAA. These projects include construction of a new terminal (Terminal F), addition of a new cargo complex, improvement of airport parking, changes to current operating restrictions of existing terminal facilities, and other related projects included in the DFW Airport Master Plan.

Based on submitted estimates of direct and indirect NO_X and VOC emissions resulting from these projects, emissions are expected to exceed the *de minimis* level of 50 tons per year during some of the project years. As evaluated in 2007, only NO_X estimates exceed this level (0.18 NO_X tpd or 65.7 NO_X tpy), but in the peak operation year of 2015 both precursor pollutants are expected to exceed the *de minimis* level (1.16 NO_X tpd and 0.26 tpd VOC). As a result a general conformity determination by the FAA is required.

III. What Did the State Submit and How Did We Evaluate It?

The conformity regulations provide several options to show that an action conforms to an applicable implementation plan. One option is to establish enforceable measures that offset the expected emissions from the project. 30 TAC 101.30(h)(1)(B); see 40 CFR 51.858(a)(2). The DFWIA worked with the Regional Transportation Council in 2002 to identify emission reduction measures to be used to offset the emissions associated with these airport expansion projects. On December 12, 2002, the RTC resolved to implement emission reduction measures to provide offsets for use by the DFWIA to meet general conformity requirements for the year 2007. At a minimum, these measures will offset the 0.18 tpd of NO_X and 0.04 tpd of VOCs that are expected to be generated in 2007 by the Terminal F projects. In addition, the RTC resolved to provide emission reductions in the amount of 1.17 tpd of NO_X and 0.26 tpd of VOCs for the year 2015. This will be accomplished by incorporating these expected emissions into the Metropolitan Transportation Plan for the year 2015, for which the total estimated emissions cannot exceed the emissions cap set by the motor vehicle emissions budget for that year. Provisions in the general conformity regulations allow for such an interaction between the general conformity and transportation conformity processes. The general conformity regulations specifically state that a federal agency can demonstrate general conformity, in part, by showing that ''the action or portion thereof, as determined by the MPO, is specifically included in a current transportation plan and transportation improvement program which have been found to conform to the applicable SIP [under the transportation conformity regulations].'' 30 TAC 101.30(h)(1)(E)(ii); 40 CFR 51.858(a)(v)(ii). See also Question 1 on p. 30 of the General Conformity Guidance Questions and Answers, issued by EPA on July 13, 1994. Details on the emission reduction measures are available in the Technical Support Document associated with this action. These emission reduction commitments are intended to assist the FAA in making a general conformity determination for the planned airport expansion projects associated with construction of Terminal F.

The general conformity rules require these measures to be enforceable under both state and Federal law (30 TAC 101.30(h)(1)(B); see 40 CFR 51.858(a)(2)). Upon the effective date of our action, these measures will be federally enforceable. The MOA between TCEQ and the RTC was adopted by the state on January 14, 2004, and was incorporated into the State Implementation Plan for the DFW ozone nonattainment area on that same day. Thus, these measures are already enforceable by state law.

It is important to note that EPA is not making a general conformity determination itself nor are we approving a general conformity determination for this FAA action. Under the conformity regulations, each Federal agency must make its own conformity determination (30 TAC 101.30(d); see 40 CFR 51.854). With this approval action, EPA is simply approving into the SIP an MOU that will provide a means for the FAA to make future general conformity determinations for the DFWIA.

IV. Responses to Comments on the Direct Final Action

On October 29, 2004, EPA published a direct final rule approving a revision to incorporate the MOA into the Texas SIP for the DFW ozone nonattainment area. This rule contained the condition that if any adverse comments were received by the end of the public comment period on November 29, 2004, the direct final rule would be withdrawn and we would respond to the comments in a subsequent final action. One consolidated set of comments was received from a representative of Blue Skies Alliance, Downwinders at Risk, Public Citizen and Sierra Club. The following summarizes the comments and EPA's response to these comments.

Comment 1: The action allows Texas to avoid Clean Air Act obligations under the 1-hour ozone standard by allowing emission reduction measures to offset airport emissions. Any reductions from these measures should be included in the area's SIP to meet its outstanding 1-hour obligation.

Response: EPA action on the 1-hour ozone attainment demonstration SIP submitted by TCEQ to EPA on April 25, 2000, is outside the scope of this **Federal Register** action. The general conformity regulations authorize the use of emission offsets in conformity determinations (30 TAC 101.30(h)(1)(B); see 40 CFR 51.858(a)(2)). This provision states that emission offsets may be implemented through a revision to the SIP or a similarly enforceable measure so that sufficient emission reductions are achieved that there is no net increase in emissions of the criteria pollutant. The incorporation of this MOA into the Texas SIP is not specifically related to the attainment demonstration SIP. EPA action to incorporate this MOA into the general Texas SIP will render the provisions of the MOA federally enforceable as required by the general conformity regulations discussed above. Although there is currently not an approved 1-hour ozone attainment demonstration SIP for the DFW area, EPA has outlined several options that will allow States to fulfill unmet 1-hour obligations in the recent rulemaking related to promulgation of the 8-hour ozone NAAQS (69 FR 23951).

Comment 2: Comment questions the ability of 2015 MVEBs to accommodate emissions from the airport project and states that the proposed action blurs the distinction between the conformity rules that allow conformity to be determined by either inclusion of the emissions in the SIP or by providing separate offsets.

Response: EPA disagrees with this comment. The MOA commits the North Central Texas Council of Governments to accommodate expected emissions from the airport project by adjusting (*i.e.*, increasing) the modeled regional mobile emissions estimates for 2015. EPA action to incorporate this MOA into the general Texas SIP will render the provisions of the MOA federally enforceable as required by the general conformity regulations. Therefore, any

failure by the NCTCOG to adjust the regional emissions estimates in 2015 could result in a finding by EPA of a failure to implement the SIP and could jeopardize future transportation conformity determinations required for the area's Metropolitan Transportation Plan and Transportation Improvement Program. Further, the conformity rule provisions for demonstrating conformity allow a combination of approaches to be used. 30 TAC 101.30(h); see 40 CFR 51.858(a). The FAA has decided to demonstrate conformity by implementing emissions offsets and by ensuring that the 2015 emissions estimates will be included in a conforming Transportation Improvement Program as authorized by 30 TAC 101.30(h)(1)(E)(ii). See 40 CFR 51. 858(a)(5)(ii); Question 39 of General Conformity Guidance for Airports Questions and Answers (published jointly by EPA and FAA on September 25, 2002). The NCTCOG must continue to adjust the regional emissions analysis to accommodate this airport project in any transportation conformity determination undertaken prior to the MOA expiration date of December 31, 2015.

Comment 3: The general conformity determination would rely on inclusion of 2015 emissions in a future 1-hour SIP.

Response: EPA disagrees. Any conformity determination made by the FAA or other Federal agency is not dependent upon submission or approval of a 1-hour ozone attainment demonstration SIP. The conformity regulations provide several mechanisms to demonstrate conformity that are unrelated to whether an approved SIP is in place, including the provision related to emissions offsets (30 TAC 101.30(h)(1)(B); 40 CFR 51.858(a)(2)).

Comment 4: EPA should treat the 1999 [sic] attainment demonstration SIP as disapproved and find that no projects may proceed until current inventories are developed and an attainment demonstration is made.

Response: EPA believes the commenters are referring to the attainment demonstration SIP submitted in 2000, because EPA has taken final action on the 1999 attainment demonstration SIP. On June 2, 1999, EPA published a final rule finding that the 1999 SIP submitted by TCEQ was incomplete (64 FR 29570). To date, EPA has taken no action on the 2000 attainment demonstration SIP. Action on this SIP is outside the scope of this notice. The conformity regulations provide several mechanisms to demonstrate conformity that are unrelated to whether an approved SIP is in place, including the provision related to emissions offsets (30 TAC 101.30(h)(1)(B); 40 CFR 51.858(a)(2)).

Comment 5: Construction emissions in the SIP should first be mitigated to as low a level as possible, and then offset with emission reduction measures.

Response: Although EPA supports and encourages air quality mitigation measures and use of Best Management Practices in construction operations, mitigation is not required prior to determination of emission offsets.

Comment 6: Offset requirements are underestimated because the 90% NO_X emission reduction controls on airport Ground Support Equipment (GSE) are not part of an approved SIP. Agreed Orders do not assure that all future airport activity will be controlled to the assumed level.

Response: Agreed Orders and Memoranda of Agreement (MOAs) concerning emission reductions in Ground Support Equipment at DFW area airports were signed by the parties involved in 2001 and approved into the SIP by EPA on April 22, 2002 (67 FR 19515). Therefore, as measures approved into the Texas SIP, the Agreed Orders and MOAs are federally enforceable and subject to the enforcement provisions generally applicable to SIPs, including potential sanctions that could be triggered if EPA finds that TCEQ has failed to implement the SIP.

Comment 7: Emission estimates are likely erroneous. The commenters reference a Texas Transportation Institute (TTI) Airport Emissions Inventory study.

Response: The emissions estimates were based on inventories, emission factors and emission models that were available at the time the analysis was started. While emission inventories and models are updated periodically, EPA believes that the initial estimates provided by the DFWIA are reasonable and appropriate. The revised 2007 NO_X inventory, upon which the Agreed Orders and MOAs are based, is the result of a more refined survey of the GSE population in actual use at the affected airports. This inventory revision went through the State's administrative process for adoption and was subsequently accepted by EPA. The TTI study referenced by the commenters was cited in the DFW 5% Increment-of-Progress SIP, which is still under consideration by TCEQ. This study was not available at the time the GSE Agreed Orders were developed.

Please note that EPA is not making a general conformity determination itself; we are solely approving a mechanism that the FAA may use for a future general conformity determination for the DFWIA. Each Federal agency must make an independent conformity determination for its action. Prior to making conformity determination the FAA must evaluate the emission estimate methodology and inventory. Any conformity determination made by the FAA is subject to the public notice and involvement provisions of the general conformity regulations.

Comment 8: Current controls on existing sources expire and are not enforceable because the MOU containing the DFWIA emission reduction commitments expires in 2007.

Response: The GSE Agreed Orders and MOAs (among which is presumably the MOU referenced in the comment) have been signed and incorporated into the Texas SIP. Therefore, because EPA has already approved the orders and MOAs into the SIP in a separate final action (see 67 FR 19515), this comment is outside the scope of this action. Nonetheless, airport operators and major carriers in the affected areas have already made the required conversions of GSE to electric. Although the GSE MOA expires in 2007, it is unreasonable to expect that airport operators and carriers would then convert this equipment back to diesel.

Comment 9: The Technical Support Document must address the effectiveness of various elements of the SIP that generate the basis of the GSE emission factors.

Response: This request is beyond the scope of this action. EPA is not acting on the 2000 attainment demonstration SIP with this notice. The GSE emission factors used mirror those used to develop the Agreed Orders with DFWIA, the Cities of Dallas and Fort Worth and the GSE owners/operators at DFWIA. These Agreed Orders were approved by EPA and incorporated into the general Texas SIP on April 22, 2002 (67 FR 19515).

Comment 10: General conformity regulations require the use of the latest and most accurate emission estimation techniques available per 40 CFR 93.160(b), but MOA activity is based on 1996 data.

Response: The emissions inventory was prepared in accordance with methods and models approved by EPA and FAA, and used the latest available inventory at the time the analysis was begun. Please note that this **Federal Register** action is not a conformity determination and the FAA may require additional analyses with updated inventories and currently available models prior to any future conformity determination it may undertake.

Comment 11: The general conformity determination does not reference FAA's Emissions and Dispersion Modeling system (EDMS).

Response: This is not a general conformity determination but simply a mechanism by which to make available emission reduction credits or offsets for possible use by a Federal agency in making a conformity determination. Emission estimates for the Terminal F projects provided by DFWIA included use of the FAA's EDMS model, among others (*see* the Technical Support Document associated with the proposal for this action.)

Comment 12: The analysis is proposed using MOBILE5 and should be reevaluated using MOBILE6.

Response: At the time the analysis was developed, MOBILE5 was the latest EPA-approved model for estimating on-road mobile source emissions. EPA released a later version of the MOBILE model, MOBILE6, on January 29, 2002 (67 FR 4254). EPA regulations allow a grace period for emission analysis begun prior to the issuance of a new emissions model. In accordance with 30 TAC 101.30(i)(2)(A)(ii) and 40 CFR 58.859(b)(1)(ii), general conformity analyses for which the analysis was begun during the grace period or no more than three years before the **Federal Register** notice of availability of the latest emissions model may continue to use the previous version of the model specified by EPA. The initial emissions estimate prepared by DFWIA was submitted in January 2003, well within the three-year window of model acceptability. Depending on the timing of any conformity determination by FAA based on the submitted emissions estimates, that agency may choose to require an updated emissions analysis using MOBILE6. However, that decision is outside the scope of this action.

Comment 13: The FAA/EPA general conformity guidance for airports requires incorporation of mitigation measures into the project.

Response: The FAA is not making a general conformity determination at this time, and this comment is outside the scope of this action. Any conformity determination made by FAA will be subject to the mitigation and public notice and involvement provisions of the general conformity regulation.

Comment 14: The mitigation measures are ill-defined per 40 CFR 93.160 requirements.

Response: DFWIA is proposing to use offsets rather than mitigation to demonstrate conformity in this case. Although a draft list of candidate projects that could be used as offsets was provided by the NCTCOG, specific projects to be used as offsets have not been identified. We agree with the commenters that these measures must be specifically identified, along with a timeline for implementation, and included in a conformity determination if the FAA intends to use such measures as offsets. This action supports the requirements of 30 TAC 101.30(h)(1)(B) and 40 CFR 51.858(a)(2) by making use of any such measures federally enforceable. For further discussion of mitigation and offsets, please see Question 38 in the General Conformity Guidance for Airports: Questions and Answers jointly issued by EPA and FAA on September 25, 2002.

Comment 15: ''Signal improvement'' is not a sufficient description of the emission reduction measures.

Response: The list of emission reduction measures proposed by the NCTCOG and provided in the Technical Support Document of EPA's proposed approval of the MOA is draft and therefore subject to change. With this action, EPA is merely approving the mechanism to commit to use such measures in general conformity determinations. The appropriateness of individual measures is outside the scope of this action and will be addressed by the FAA if a conformity determination is conducted for the Terminal F project. The term ''signal improvement'' is a recognized term used in professional practice and with generally agreed upon methodologies to calculate emission reduction benefits from such measures.

Comment 16: Emission offsets are Reasonably Available Control Measures and should not be used to permit emissions growth.

Response: Under 30 TAC 101.30(b)(1) and 40 CFR 58.852, emissions reductions can be considered surplus when they are not required for use by or credited to other applicable SIP provisions. The applicable SIP (*i.e.*, the most recently approved SIP) is the Post 1996 ROP SIP, approved by EPA on March 28, 2005 (70 FR 15592, effective April 27, 2005). The emission offsets memorialized by this MOA are not part of the 15% ROP SIP, nor are they reserved for use elsewhere. The 15% ROP SIP does not contain an airport emission budget, so conformity may be demonstrated by one of the other means available under 30 TAC 101.30(h) and 40 CFR 51.858, including offsetting the expected emissions from the project so that no net increase in emissions occurs.

Comment 17: Minutes from TCEQ's modeling meetings disclose projections that enormous additional emission reduction measures will be needed for DFW to attain the 1-hour or 8-hour ozone standards. These offsets are not surplus reductions.

Response: As a result of recent promulgation of a new ozone standard, the 8-hour ozone standard, TCEQ must submit a SIP demonstrating that this standard can be attained in the DFW 8-hour nonattainment area no later than the statutory attainment date (69 FR 23951). As a result of the MOA signed between TCEQ and NCTCOG, the emission reductions identified to offset the expected increase in emissions due to construction and operation of Terminal F at DFWIA would not be available for use in demonstrating attainment of the 8-hour standard. TCEQ may include an airport emissions budget in the 8-hour attainment demonstration SIP for the DFW area. If so and if approved by EPA, this would offer the FAA another means to demonstrate conformity of airport projects to the SIP.

Comment 18: Deferring analysis of a project's conformity by assigning project emissions to a future MVEB is improper.

Response: The conformity regulations intend for federal agencies to be accountable for emissions resultant from their actions. In fact, the general conformity regulations specifically state that a federal agency can demonstrate general conformity, in part, by showing that ''the action or portion thereof, as determined by the MPO, is specifically included in a current transportation plan and transportation improvement program which have been found to conform to the applicable SIP [under the transportation conformity regulations].'' 30 TAC 101.30(h)(1)(E)(ii); 40 CFR 51.858(a)(v)(ii). See also, Question 1 on p. 30 of the General Conformity Guidance Questions and Answers, issued by EPA on July 13, 1994.

Comment 19: A finding of conformity does not meet § 93.160 mitigation requirements and does not constitute a finding that emissions in interim years will actually be achieved.

Response: Mitigation measures were not specifically included in the emission estimates for Terminal F provided by DWIA, but may be required by FAA prior to any conformity determination on this project. Any such requirement is outside the scope of this **Federal Register** action. The general conformity regulations do not require emissions offsets and/or mitigation for every year of a project. Specific analysis years are defined at 30 TAC 101.30(i)(4) and 40 CFR 51.859(d) and include the area's attainment year (currently 2007 for the DFW area under the 1-hour standard) and the year emissions from the action are expected to be at their greatest, and any year in which the

applicable SIP includes an emission budget.

Comment 20: The 2015 MVEBs have little relevance to future SIP goals, as future conformity determinations will be based on the DFW 5% Increment-of-Progress SIP.

Response: TCEQ has proposed a 5% Increment-of-Progress (IOP) SIP as a transition SIP between the 1-hour and 8-hour ozone standards in accordance with the 8-hour ozone rules promulgated at 69 FR 23951. However, this SIP has not yet been adopted nor submitted to EPA for approval. Until EPA approves of the proposed 5% IOP SIP, it is not considered the applicable SIP for general conformity demonstrations. As a result of the incorporation of the MOA into the general Texas SIP, the amount of emission reductions necessary to satisfy the terms of the MOA will need to be subtracted from any 2015 MVEB in effect at the time, regardless of which SIP they come from.

Comment 21: The general conformity determination calculates project emissions with MOBILE5.

Response: Please see response to Comment 12 above.

Comment 22: The project will cause or contribute to future ozone violations.

Response: The purpose of the criteria to demonstrate conformity found at 30 TAC 101.30(h) and 40 CFR 51.858 is to ensure that the actions of Federal agencies conform to the State's air quality plan. One way to demonstrate conformity is by committing to offset or mitigate any expected emissions increases that are not otherwise exempted from conformity. This action memorializes the commitment of the NCTCOG to work with the FAA in determining appropriate emission reduction measures that may be used to offset emission increases associated with specific projects at the DFWIA. The FAA may require other mitigation deemed necessary for a positive conformity determination. Offsetting the expected emissions by implementation of emission reduction measures elsewhere in the DFW nonattainment area and demonstrating conformity in this manner will, by law, result in a finding that any increases in emissions associated with the Terminal F suite of projects will not cause or contribute to future ozone violations. As noted previously, the FAA has the ultimate responsibility for making the general conformity determination for the Terminal F projects.

Comment 23: The DFW Rate of Progress SIP is no longer accurate or current enough to support a conformity finding.

Response: Incorporation of the MOA into the general Texas SIP by this **Federal Register** action will enable the FAA to demonstrate conformity by a means other than reliance on the ROP SIP and still meet the general conformity requirements of section 176 (c) of the Clean Air Act.

Comment 24: The risk from toxic emissions upon downwind communities must be identified.

Response: General conformity regulations apply only to the criteria pollutants defined at 40 CFR 51,853(b). For further information on mobile source air toxics, please see 66 FR 17229.

V. Final Action

EPA is approving the revision to the DFW ozone SIP providing emission reduction offsets to DFW International Airport for the year 2007 and a commitment that the NCTCOG will account for expected emissions from certain improvement projects planned for DFWIA in 2015 as part of its transportation conformity determination for the Metropolitan Transportation Plan.

VI. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 21, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 14, 2005.

Richard E. Greene,

Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart SS—Texas

■ 2. In § 52.2270, the table in paragraph (e) entitled ''EPA approved nonregulatory provisions and quasi-regulatory measures'' is amended by adding one new entry to the end of the table to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(e)* * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Comments
* *	* *	*	*	*
Memorandum of Agreement between Texas Council on Environmental Quality and the North Central Texas Council of Governments Providing Emissions Offsets to Dallas Fort Worth International Airport.	Dallas-Fort Worth	01/14/04	04/22/05 [Insert FR page number where document begins].	

[FR Doc. 05–8121 Filed 4–21–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0388; FRL–7702–4]

Tetraconazole; Time-Limited Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of tetraconazole, 1-[2-(2,4-dichlorophenyl)-3-(1,1,2,2-tetrafluoroethoxy)propyl]-1*H*-1,2,4-triazole in or on sugarbeet roots at 0.05 parts per million (ppm), sugarbeet top at 3.0 ppm, sugarbeet dried pulp at 0.15 ppm, sugarbeet molasses at 0.15 ppm, meat of cattle, goat, horse, and sheep at 0.05 ppm, liver of cattle, goat, horse, and sheep at 4.0 ppm, fat of cattle, goat, horse, and sheep at 0.30 ppm, meat byproducts except liver of cattle, goat, horse and sheep at 0.10 ppm and milk at 0.05 ppm. Sipcam Agro USA, Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). Registrations will be limited to the following States: Colorado, Minnesota, Michigan, Montana, North Dakota, Nebraska, and Wyoming where use has previously occurred under section 18 of FIFRA. The tolerances will expire on November 30, 2012.

DATES: This regulation is effective April 22, 2005. Objections and requests for hearings must be received on or before June 21, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under docket identification (ID) number OPP–2004–0388. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Mary Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9354; e-mail address: *waller.mary@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311),, e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be

affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET *(http://www.epa.gov/edocket/)*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**FederalRegister**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gpo/opptsfrs/home/guidelin.htm/*.

II. Background and Statutory Findings

In the **Federal Register** of October 14, 1999 (64 FR 55714) (FRL–6382–7), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of three pesticide petitions (9F5066, 9F6023 and 7E4830) by Sipcam Agro, USA, Inc., 300 Colonial Center Parkway, Roswell, GA 30076, formerly of 70 Mansell Court, Suite 230, Rosewell, GA 30076. The petitions requested that 40 CFR part 180 be amended by establishing tolerances for residues of the fungicide tetraconazole, in or on the following raw agricultural commodities: beets, sugar at 0.01 ppm, beets, sugar, roots at 0.1 ppm, beets, sugar, tops at 7.0 ppm, beets, sugar, pulp, dried at 0.3 ppm, and beets, sugar, molasses at 0.3 ppm, cattle, meat at 0.01 ppm, cattle meat byproducts at 2.0 ppm, cattle fat at 0.1 ppm, and milk at 0.02 ppm (9F5066); peanuts meat (hulls removed) at 0.03 ppm, peanuts meal at 0.03 ppm, and peanuts oil at 0.1 ppm (9F6023); and imported bananas at 0.2 ppm (7E4830). Petition 7E4830 was later withdrawn. Petition 9F6023 was placed in abeyance by the petitioner. There were no comments received in response to the notice of filing. The tolerances will expire on February 28, 2009.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances of November 26, 1997 (62 FR 62961) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for tolerances for residues of tetraconazole 1-[2-(2,4-dichlorophenyl)-3-(1,1,2,2-tetrafluoroethoxy)propyl]-1*H*-1,2,4-triazole in or on sugarbeet roots at 0.05 ppm; sugarbeet tops at 3.0 ppm; sugarbeet dried pulp at 0.15 ppm; sugarbeet molasses at 0.15 ppm; meat of cattle, goat, horse, and sheep at 0.05 ppm; liver of cattle, goat, horse, and sheep at 4.0 ppm; fat of cattle, goat, horse, and sheep at 0.30 ppm; meat byproducts except liver of cattle, goat, horse and sheep at 0.10 ppm; and milk at 0.05 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by tetraconazole are discussed below. Table 1 of this unit presents the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

1. *Acute toxicity*. Acute toxicity data were as follows: Acute oral lethal dose $(LD)_{50}$ = 1,031 milligrams/kilogram (mg/kg) (toxicity category III); acute dermal LD_{50} < 2,000 mg/kg (toxicity category III); acute inhalation lethal concentration $(LC)_{50}$ = 3.66 mg/liter (L) (toxicity category IV); primary eye irritation - clear by 72 hours (toxicity category III); primary skin irritation - slight irritation (toxicity category IV); and dermal sensitization - negative.

2. *Developmental toxicity in rats*. A developmental toxicity study was conducted using rats gavaged with doses of 0, 5, 22.5, 100 mg/kg/day from days 2 through 15 of gestation. The maternal toxicity LOAEL is 100 mg/kg/day based on decreased body weight gain, and food consumption and increased liver and kidney weights. The maternal toxicity NOAEL is 22.5 mg/kg/day. Developmental toxicity was noted at 100 mg/kg/day and consisted of an increased incidence of small fetuses, and supernumerary ribs. The LOAEL and NOAEL for developmental toxicity were 100 and 22.5 mg/kg/day, respectively.

3. *Development toxicity study in rabbits*. A developmental toxicity study was conducted using rabbits gavaged with doses of 0, 7.5, 15, and 30 mg/kg/day from days 6 through 18 of gestation. Compound-related maternal toxicity was limited to depressed body weight gain during the dosing period. No treatment-related effects occurred in maternal mortality, clinical signs, food consumption, or cesarean parameters. The maternal LOAEL is 30 mg/kg/day based on decreased body weight gain. The maternal NOAEL is 15 mg/kg/day. No treatment-related effects in developmental parameters were noted. The developmental LOAEL is greater than 30 mg/kg/day. The developmental NOAEL is 30 mg/kg/day, the highest dose tested (HDT).

4. *Two-generation reproduction study*. A two-generation reproduction study was conducted using rats fed diets with dose levels of 0, 10, 70, or 490 ppm (0, 0.7, 4.9, and 35.5 mg/kg/day for males or 0, 0.8, 5.9, and 40.6 mg/kg/day for females). The LOAEL for parental toxicity was 70 ppm (4.9 mg/kg/day in males and 5.9 mg/kg/day in females) based on increased mortality in P generation females. The NOAEL was 10 ppm (0.7 mg/kg/day in males and 0.8 mg/kg/day in females). The LOAEL for offspring toxicity was 490 ppm (40.6

mg/kg/day from the P generation female intake) based on decreased litter weight and mean pup weight in litters of all generations before weaning and increased relative liver weights at weaning in both sexes of all litters. The NOAEL was 70 ppm (5.9 mg/kg/day). The LOAEL for reproductive toxicity was 70 ppm (4.9 mg/kg/day for males and 5.9 mg/kg/day for females) based on increased mean gestation duration in P generation parental females and related evidence of compound toxicity in the parturition process. The NOAEL was 10 ppm (0.7 mg/kg/day for males and 0.8 for females).

5. *Chronic toxicity*. A chronic toxicity study was conducted using dogs fed diets containing 0, 22.5, 90, or 360 ppm for 52 weeks. Treatment-related effects at the high dose included slight but nonsignificant body weight reductions in both sexes from study week 3 to termination; significantly increased alkaline phosphatase, gamma-glutamyltransferase, alanine aminotransferase and ornithine carbamoyl transferase in both sexes from study week 13 to 52, increased absolute and relative liver and kidney weights for both sexes, and histopathological changes in both organs. In the mid-dose group, effects were manifested as increased absolute and relative kidney weights for males correlated with histopathological findings in the males (apparent hypertrophy in cortical tubules of the kidneys in one male). No adverse effects were seen at the low dose. The NOAEL is 22.5 ppm (equivalent to achieved intakes of 0.73 mg/kg/day for males or 0.82 mg/kg/day for females) and the LOAEL is 90 ppm (equivalent to achieved intakes of 2.95 mg/kg/day for males or 3.33 mg/kg/day for females) based on increased absolute and relative kidney weights and histopathological changes in the male kidney.

6. *Carcinogenicity study*—i. *Rats*. A 2-year carcinogenicity study was conducted using rats fed diets containing 0, 10, 80, 640 and 1,280 ppm for males and 0, 10, 80, and 640 ppm for females. The LOAEL is 640 ppm (27.7/39.4 mg/kg/day in male/female) based on histopathology of the bone (osseous hypertrophy of the cranium/parietal bone), pale and thickened incisors, and decreased absolute and relative adrenal and pituitary weights in males; decreased body weight (at terminal sacrifice) in females. The NOAEL is 80 ppm (3.4/4.4 mg/kg/day in male/female). Under the conditions of this study, there was no evidence of a treatment-related increase in tumor incidence when compared to controls. Therefore, tetraconazole is not a carcinogen in this study.

ii. *Mice*. An 80-week carcinogenicity study was conducted using mice fed diets containing 0, 10, 90, 800, or 1,250 ppm (0, 1.4, 12, 118, or 217 mg/kg/day for males; 0, 1.6, 14.8, 140, or 224 mg/kg/day for females). The systemic toxicity LOAEL is 90 ppm (12 and 14.8 mg/kg/day for males and females, respectively), based on increased liver weight and hepatocyte vacuolation in both sexes and increased kidney weights in males. The NOAEL is 10 ppm (1.4 and 1.6 mg/kg/day for males and females, respectively). There was evidence of increased incidence of combined benign and malignant liver tumors in mice of both sexes treated with 95.05% tetraconazole at 800 ppm (48% for males and 22% for females) and 1,250 ppm (84% for males and 64% for females) compared to the control (20% for males and 0% for females). The doses were found to be adequate to test the carcinogenic potential based on the reduction of body weight gain and increased mortality at the highest dose.

7. *Mutagenicity studies*. A battery of mutagenicity studies yielded negative results in *Salmonella typhimurium*, cultured Chinese hamster ovary (CHO) cells, and mouse lymphoma cells. There was no evidence of clastogenicity *in vitro* or *in vivo* and tetraconazole did not induce unscheduled DNA synthesis in human HeLa cells.

B. Toxicological Endpoints

The dose at which the NOAEL from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the LOAEL is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (aRfD or cRfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic population adjusted dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor (SF).

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for tetraconazole used for human risk assessment is shown in the following Table 1.

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR TETRACONAZOLE FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment UF	FQPA SF* and Special Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary general population (Infants and Children)	Not established	None	An end-point of concern attributable to a single dose was not identified An acute RfD was not established
Acute dietary, females (13– 50 years of age)	NOAEL = 22.5 mg/kg/day UF = 100 Acute RfD = 0.225 mg/kg	FQPA SF = 1X aPAD = acute RfD ÷ FQPA SF = 0.225 mg/kg	Oral developmental toxicity study - rat Developmental NOAEL = 22.5 mg/kg/day, based on increased incidence of small fetuses, and supernumerary ribs
Chronic dietary, all populations	NOAEL = 0.73 mg/kg/day UF = 100 Chronic RfD = 0.0073 mg/kg/day	FQPA SF = 1X cPAD = chronic RfD ÷ FQPA SF = 0.0073 mg/kg/day	Chronic oral toxicity - dog Systemic toxicity LOAEL = 2.95/3.33 (M/F) mg/kg/day, based on absolute and relative kidney weights and histopathological changes in the male kidney
Cancer (oral, dermal, inhalation)	"likely to be carcinogenic to humans"		Q_1 * = 2.30 x 10^{-2}, based on male mouse liver benign and/or malignant combined tumor rates

* The reference to the FQPA SF refers to any additional safety factor retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Section 18 tolerances have been established (40 CFR 180.557) for the residues of tetraconazole, in or on the following raw agricultural commodities: Sugarbeet roots, tops, molasses and dried pulp and cattle meat, meat byproducts and milk. The tolerances proposed in this assessment are numerically different from the current section 18 tolerance levels which were based on higher use rates. Additionally, tolerances are being proposed for goat, horse, and sheep commodities in addition to cattle. Since section 18 registrations have been authorized for the use of tetraconazole on soybeans to control soybean rust, this dietary assessment for use of tetraconazole on sugarbeets assumes residues on soybean products as well as poultry and swine commodities. Risk assessments were conducted by EPA to assess dietary exposures from tetraconazole in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM™-FCID™) analysis evaluated the individual food consumption as reported by respondents in the United States Department of Agriculture (USDA)1994–1996 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: Tolerance level residues were used for all commodities and it was assumed that 100% of all crops were treated.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the DEEM™-FCID™ analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 Nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Tolerance level residues were assumed for all soybean commodities, poultry liver, poultry meat byproducts, and eggs. Anticipated residues were assumed for poultry fat, poultry meat, milk, and all sugarbeet, goat, horse, sheep, cattle, and swine commodities. It was assumed that 100% of all crops were treated.

iii. *Cancer.* In conducting the cancer dietary risk assessment the Dietary Exposure Evaluation Model (DEEM™-FCID™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the cancer exposure assessments: Tolerance level residues were assumed for poultry liver, poultry meat byproducts, and eggs. Anticipated residues were assumed for poultry fat, poultry meat, milk, and all soybean, sugarbeet, cattle, goat, sheep, horse and swine commodities. For sugarbeets, 52 percent crop treated (PCT) was assumed and 67 PCT was assumed for soybeans. Additionally, water was included as a dietary commodity with a tetraconazole concentration of 0.00446 ppm, equal to the 30–year average surface water concentration.

iv. *Anticipated residue and PCT information.* Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E) of the FFDCA, EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of the FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the

Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required under section 408(b)(2)(F) of the FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

The cancer dietary exposure analysis used 52 PCT for sugarbeets and 67 PCT for soybeans. The sugarbeet 52 PCT was based on information from the United States Department of Agriculture (USDA) and from a propietary source used by the Agency. The soybean 67 PCT was taken from the maximum acreage per state allowed on Section 18 applications for tetraconizole on soybeans; the maximum acreages for the 28 States with these Section 18 applications were added together and divided by an estimate of the total number of acres where soybeans would be grown in the United States.

The Agency believes that the three conditions listed in Unit C.1.iv. have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data which are reliable and have a valid basis.For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which tetraconazole may be applied in a particular area.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for tetraconazole in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of tetraconazole.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The SCI-GROW (screenimg concentration in ground water) model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water EPA will use FIRST (a Tier 1 model) before using PRZM/EXAMS (a Tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop (PC) area factor as an adjustment to account for the maximum PC coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to tetraconazole they are further discussed in the aggregate risk sections in Unit III. E.

Based on the PRZM 3.12/ EXAMS 2.7.97 model, the estimated EECs of tetraconazole for acute exposures are estimated to be 8.38 parts per billion (ppb) for surface water, representing the 1 in 10 year annual peak concentrations. The surface water EECs are estimated to be 5.58 ppb for chronic non-cancer exposures (the 1 in 10 year annual average concentration) and 4.46 ppb for chronic cancer exposures (the 30 year annual average concentration).

Based on the SCI-GROW model the ground water EECs for all exposures are estimated to be 0.5 ppb.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Tetraconazole is not registered for use on any sites that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to tetraconazole and any other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that tetraconazole has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

However, the Agency does have concern about potential toxicity to 1,2,4-triazole and two conjugates, triazolylalanine and triazolyl acetic acid, metabolites common to most of the triazole fungicides. To support the extension of existing parent triazole-derivative fungicide tolerances, EPA conducted an interim human health assessment for aggregate exposure to 1,2,4-triazole. The exposure and risk estimates presented in this assessment are overestimates of actual likely exposures and therefore, should be considered to be highly conservative.

Based on this assessment EPA concluded that for all exposure durations and population subgroups, aggregate exposures to 1,2,4-triazole are not expected to exceed its level of concern. This assessment should be considered interim due to the ongoing series of studies being conducted by the U.S. Triazole Task Force (USTTF). Those studies are designed to provide the Agency with more complete toxicological and residue information for free triazole. Upon completion of the review of these data, EPA will prepare a more sophisticated assessment based on the revised toxicological and exposure databases.

i. *Toxicology*. The toxicological database for 1,2,4-triazole is incomplete. Preliminary summary data presented by the USTTF to EPA indicate that the most conservative endpoint currently available for use in a risk assessment for 1,2,4-triazole is a LOAEL of 15 mg/kg/day, based on body weight decreases in male rats in the reproductive toxicity study (currently underway). This endpoint, with an uncertainty factor of 1,000 was used for both acute and chronic dietary risk, resulting in an RfD of 0.015 mg/kg/day. The uncertainty factor of 1,000 includes an additional 10X safety factor for the protection of infants and children. The resulting PAD is 0.015 mg/kg/day.

ii. *Dietary exposure*. The USTTF conducted an acute dietary exposure assessment based on the highest triazole-derivative fungicide tolerance level combined with worst-case molecular weight and plant/livestock metabolic conversion factors. This approach provides a conservative estimate of all sources for 1,2,4-triazole except the *in vivo* conversion of parent compounds to free-triazole following dietary exposure. The degree of animal *in vivo* conversion is dependent on the identity of the parent fungicide. In rats, this conversion ranges from 0 to 77%—the *in vivo* conversion for tetraconazole is 77%. For purposes of this interim assessment, EPA used the dietary exposure estimates provided by the USTTF adjusted based on the highest rate of conversion observed for any of the parent triazole-derivative fungicides to account for this metabolic conversion. The assessment includes residue estimates for all food commodities with either existing or pending triazole-derivative fungicide registrations. The resulting acute dietary exposure estimates are extremely conservative and range from 0.0032 mg/kg/day for males 20+ years old to 0.014 mg/kg/day for children 1 to 6 years old. Estimated risks range from 22 to 93% of the PAD. In order to estimate chronic exposures via food, EPA used the 70th percentile of exposures from the acute assessment. The 70th percentile is a common statistic used to estimate central tendency from a distribution and its use to estimate chronic exposures is appropriate. Estimated risks range from 10 to 47% of the PAD. The dietary assessment does not include potential exposure via residues in water. It is emphasized that the use of both highest-tolerance-level residues and the highest *in vivo* conversion factor results in dietary risk estimates that far exceed the likely actual risk.

iii. *Non-dietary exposure*. Triazole-derivative fungicides are registered for use on turf, resulting in the potential for residues of free triazole in grass and/or soil. Thus, dermal and incidental oral exposures to children may occur. It is believed that residues of free triazole occur within the plant matrices and are not available as surface residues. Therefore, direct dermal exposure to 1,2,4-triazole due to contact with plants is not likely to occur. However, dermal exposure to parent fungicide and subsequent *in vivo* conversion to 1,2,4-triazole may occur. In order to account for this indirect exposure to free triazole, EPA used a conversion factor of 10%, which is the highest rate of *in-vivo* conversion observed in rats for any of the triazole-derivative fungicides with registrations on turf. Incidental oral exposure may occur by direct and indirect routes. To assess direct exposure, EPA used a conversion factor of 17%, which is the highest rate of conversion to free triazole observed in any of the plant metabolism studies. As with indirect dermal exposure, EPA used a conversion factor of 10% in its assessment of indirect oral exposure.

Based on residential exposure values estimated for propiconazole (0.0005 mg/kg/day via the dermal route and 0.03 mg/kg/day via the oral route) and the conversion factors described above, combined direct and indirect dermal exposures are estimated to be less than 0.0001 mg/kg/day and combined oral exposures are estimated to be less than 0.0019 mg/kg/day. The overall residential exposure is likely to be less than 0.0020 mg/kg/day. Relative to the 15 mg/kg/day point of departure, this gives an MOE of approximately 7,500 for children. Based on the current set of uncertainty factors, the target MOE is 1,000, indicating that the risk associated with residential exposure to 1,2,4-triazole for children is below EPA's level of concern. The adult dermal exposure estimate is slightly less than that of children. Incidental oral exposure is not expected to occur with adults.

iv. *Drinking water*. Modeled estimates of 1,2,4-triazole residues in surface and ground water, as reported by the USTTF, and the DWLOC approach were used to address exposure to free triazole in drinking water. Estimated environmental concentrations (EECs) of free triazole in ground water were obtained from the SCI-GROW model and range from 0.0 to 0.026 ppb, with the higher concentrations associated with uses on turf. Surface water EECs were obtained using the FIRST model. Acute surface water EECs ranged from 0.29 to 4.64 ppb for agricultural uses and up to 32.1 ppb from use on golf course turf. EPA notes that ground water monitoring studies in New Jersey and California showed maximum residues of 16.7 and 0.46 ppb, respectively, which exceed the SCI-GROW estimates significantly. Contrarily, preliminary monitoring data from USDA's Pesticide Data Program for 2004 show no detectable residues of 1,2,4-triazole in any drinking water samples, either treated or untreated (maximum limit of detection (LOD) = 0.73 ppb, n=40 each).

v. *Aggregate exposure*. In estimating aggregate exposure, EPA combined potential dietary and non-dietary sources of 1,2,4-triazole. To account for the drinking water component of dietary exposure, EPA used the DWLOC approach, as noted above. The DWLOC represents a maximum concentration of a chemical in drinking water at or below which aggregate exposure will not exceed EPA's level of concern. In considering non-dietary exposure, EPA used the residential exposure estimate for children and applied it to all population subgroups. As previously noted, this estimate is considered to be highly conservative for children. Since adults are not expected to have non-dietary oral exposure to 1,2,4-triazole and that pathway makes up the majority of the residential exposure estimate for children, application of that exposure estimate to adults is considered to be extremely conservative. Residential exposure is expected to occur for short-term and/or intermediate-term durations, and therefore, is not a component in the acute or chronic aggregate exposure assessment. In order to assess aggregate short-term and intermediate-term exposure, EPA combined the residential exposure estimate and the background level of exposure to free triazole via food. Less than 1% of lawns in the United States are expected to be treated with triazole fungicides, so the likelihood of co-occurring dietary and residential exposures is very low.

With the exception of the acute DWLOCs for infants and children 1 to

6 years old, all DWLOCs are greater than the largest EEC (surface water estimate from use on turf). The EEC's for these two population groups exceed the DWLOC's by 1.1 to 3.2-fold, a result typically interpreted to mean that aggregate exposure exceeds EPA's level of concern. Although comparing the EEC's and the acute DWLOCs for infants and children 1 to 6 years old indicate that aggregate exposure may exceed the aPAD of 0.015 mg/kg/day, EPA does not believe this to be the case due to the extremely conservative nature of the overall assessment (highest-tolerance level residues, 100% crop treated (CT), 77% *in vivo* conversion factor). Furthermore, the drinking water monitoring data from the Pesticide Data Program found no detectable residues of either free triazole or parent triazole - derivative fungicide in its preliminary 2004 dataset, indicating that neither parent compounds nor 1,2,4-triazole are likely to occur in drinking water. For all exposure durations and population subgroups, EPA does not expect aggregate exposures to 1,2,4-triazole to exceed its level of concern.

The Agency is planning to conduct a more sophisticated human health assessment in 2005 following submission and review of the ongoing toxicology and residue chemistry studies for 1,2,4-triazole.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. There is no evidence of increased susceptibility of rat or rabbit fetuses to *in utero* exposure to tetraconazole. In the developmental toxicity study in rats, developmental effects were seen at the same dose that induced maternal toxicity. In the developmental toxicity study in rabbits, no developmental toxicity was seen at the HDT. In the two-generation reproduction study, offspring toxicity occurred at doses higher than the dose that induced parental/systemic toxicity. There are no concerns or residual uncertainties for prenatal and/or postnatal toxicity. Additionally, there is no concern for neurotoxicity resulting from exposure to tetraconazole since there was no evidence of neurotoxicity in short-term studies in rats, mice and dogs; and a long-term toxicity study in dogs.

3. *Conclusion*. Based on the following, EPA concluded that the additional safety factor for the protections of infants and children could be removed:

- There is no quantitative or qualitative evidence of increased susceptibility of rat and rabbit fetuses to *in utero* exposure in developmental studies.
- There is no quantitative or qualitative evidence of increased susceptibility of rat offspring in the multi-generation reproduction study.
- There are no residual uncertainties for prenatal/postnatal toxicity.
- The toxicological database is complete for FQPA assessment.
- The chronic non-cancer dietary food exposure assessment utilizes anticipated residue data and assumed 100% CT.
- The chronic assessment will not underestimate exposure or risk since the refinement is based on reliable data derived from studies designed to produce worst-case residues.
- At this time, only agricultural uses have been proposed for tetraconazole. There are no uses that would result in residential or recreational exposures.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the U.S. EPA Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to tetraconazole will occupy 0.5% of the aPAD for females 13 to 49 years old, the only population subgroup for which an acute toxicity endpoint was determined. In addition, there is potential for acute dietary exposure to tetraconazole in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 2.

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO TETRACONAZOLE.

Population Subgroup	aPAD (mg/kg/day)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
Females (13–49 years old)	0.225	0.5	8.38	0.51	6,720

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to tetraconazole from food will utilize 3.9% of the cPAD for the U.S. population, 11.1% of the cPAD for non-nursing infants and 8.9% of the cPAD for all infants < 1 year old. There are no residential uses for tetraconazole that result in chronic residential exposure to tetraconazole. In addition, there is potential for chronic dietary exposure to tetraconazole in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in following Table 3.

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO TETRACONAZOLE.

Population Subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.0073	3.9	5.58	0.51	246
All infants (< 1 year old)	0.0073	8.9	5.58	0.51	67
Non-nursing infants	0.0073	11.1	5.58	0.51	65
Children (1–2 years old)	0.0073	8.4	5.58	0.51	67
Children (3–5 years old)	0.0073	8.5	5.58	0.51	67
Children (6–12 years old)	0.0073	6.1	5.58	0.51	69
Youth (13–19 years old)	0.0073	4.0	5.58	0.51	210
Adults (20–49)	0.0073	3.1	5.58	0.51	248
Adults (50+ years old)	0.0073	2.5	5.58	0.51	249
Females (13–49 years old)	0.0073	3.0	5.58	0.51	210

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Tetraconazole is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water. The risk does not exceed the Agency's level of concern.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Tetraconazole is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water. The risk does not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population*. The estimated cancer risk for the proposed use on sugarbeets and existing section 18 exemptions for soybeans is 2.5×10^{-6}, a value that falls within the Agency's risk standard for cancer in the range of 1×10^{-6}.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to tetraconazole residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (capillary gas chromotography with electron capture detector (GC/ECD)) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

There are no established Codex, Canadian, or Mexican Maximum Residue Limits (MRLs) established for tetraconazole.

C. Conditions

The following conditions will be applied to the registration of tetraconazole for use on sugarbeets:

1. Registration and tolerances will be time-limited to allow review of triazole data and completion of the triazole risk assessment.

2. Registrations will be limited to the following States: Colorado, Minnesota, Michigan, Montana, North Dakota, Nebraska, and Wyoming where use has previously occurred under section 18 of FIFRA.

3. The registrant will be required to provide one additional side-by-side sugarbeet field trial comparing two and six applications of Eminent 125SL at 0.10 lb ai/acre/application.

4. The registrant will be required to provide a 28 day inhalation study.

5. Well documented estimates of how many pounds of tetraconazole will be placed on the market to treat sugarbeets.

6. Tetraconazole use reporting on sugarbeets. This information should be reported as how many pounds of tetraconazole will be applied per acre on sugarbeets.

V. Conclusion

Therefore, the tolerances are established for residues of tetraconazole, 1-[2-(2,4-dichlorophenyl)-3-(1,1,2,2-tetrafluoroethoxy)propyl]-1*H*-1,2,4-triazole in or on sugarbeet root at 0.05 ppm, sugarbeet top at 3.0 ppm, sugarbeet dried pulp at 0.15 ppm, sugarbeet molasses at 0.15 ppm, meat of cattle, goat, horse, and sheep at 0.05 ppm, liver of cattle, goat, horse, and sheep at 4.0 ppm, fat of cattle, goat, horse, and sheep at 0.30 ppm, meat byproducts except liver of cattle, goat, horse and sheep at 0.10 ppm and milk at 0.05 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60–days, rather than 30–days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2004–0388 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before June 21, 2005.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2004–0388, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 14, 2005.

James Jones,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.557 is revised to read as follows:

§ 180.557 Tetraconazole; tolerances for residues.

(a) General. [Reserved]

(b) *Section 18 emergency exemptions*. [Reserved]

(c) *Tolerances with regional registrations*. Tolerances are established for residues of the fungicide, tetraconazole 1-[2-(2,4-dichlorophenyl)-3-(1,1,2,2-tetrafluoroethoxy)propyl]-1*H*-1,2,4-triazole in or on the following commodities:

Commodity	Parts per million	Expiration/revocation date
Beet, sugar, dried pulp	0.15	11/30/12
Beet, sugar, molasses	0.15	11/30/12
Beet, sugar, roots	0.05	11/30/12
Beet, sugar, tops	3.0	11/30/12
Cattle, fat	0.30	11/30/12
Cattle, liver	4.0	11/30/12
Cattle, meat	0.05	11/30/12
Cattle, meat byproducts, except liver	0.10	11/30/12
Goat, fat	0.30	11/30/12
Goat, liver	4.0	11/30/12
Goat, meat	0.05	11/30/12
Goat, meat byproducts, except liver	0.10	11/30/12
Horse, fat	0.30	11/30/12
Horse, liver	4.0	11/30/12
Horse, meat	0.05	11/30/12
Horse, meat byproducts, except liver	0.10	11/30/12
Milk	0.05	11/30/12
Sheep, fat	0.30	11/30/12
Sheep, liver	4.0	11/30/12
Sheep, meat	0.05	11/30/12
Sheep, meat byproducts, except liver	0.10	11/30/12

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 05–8123 Filed 4–21–05; 8:45 am]
BILLING CODE 6560–50–S

DEPARTMENT OF DEFENSE

48 CFR Parts 202, 204, 211, 212, 243, and 252

[DFARS Case 2003–D081]

Defense Federal Acquisition Regulation Supplement; Unique Item Identification and Valuation

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to establish policy for unique identification and valuation of items delivered under DoD contracts.

DATES: Effective April 22, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations Directorate, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0311; facsimile (703) 602–0350. Please cite DFARS Case 2003–D081.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 68 FR 75196 on December 30, 2003, containing policy that requires contractors to provide unique item identification (UID) and the Government's unit acquisition cost for items delivered under DoD contracts. Thirteen sources submitted comments on the interim rule. The following is a discussion of the comments and the changes made to the rule as a result of those comments:

1. *Comment:* A respondent stated that the implementation date of January 1, 2004, was too aggressive. The respondent recommended a later implementation date that would allow time in which to alert both Federal agencies and Federal contractors about the specifics of the new rule.

DoD Response: DoD agrees that the implementation schedule was aggressive. However, the rule is considered to be a strategic imperative. The implementation schedule could not be slipped.

2. *Comment:* We have been instructed to identify ''to be determined'' in the clause fill-in. We have also been instructed to contact our requirements (logistics) counterparts for their determination if this clause applies. According to our counterparts, they don't have the technical training or knowledge to make that determination. Also, there is currently no training or knowledge in the contracting world on a realistic cost for this information.

DoD Response: The clause must go into all contracts that require the delivery of ''items'' as defined in the clause, unless an exception applies. Items valued at or above $5,000 must be marked with UID. The fill-ins are for items that meet other specified conditions, as well as embedded items that meet specified conditions. The implementing guidance in section 211.274 has been reworded for clarity to specify that the requiring activity determines what embedded items, subassemblies, or components require UID. There is less technical training or knowledge required than the interim rule implied; however, additional information is available at *http://www.acq.osd.mil/dpap/uid.*

3. *Comment:* DoD should give special consideration to communicating, aiding, and making available, training to all suppliers that will need to comply with this requirement—whether as prime contractors, or as subcontractors at any tier.

DoD Response: Concur. DoD is engaged in a large communication effort through its UID Program Office. The UID Web site at *http://www.acq.osd.mil/dpap/uid* should be consulted for information and resources that are available.

4. *Comment:* Both government buying offices and prime contractors should be encouraged to make special efforts to assist small and small disadvantaged, minority- or women-owned firms and make accommodations as needed to help them achieve the goals of this new requirement.

DoD Response: Concur. Small businesses will find that there are a number of vendors, many of which are small businesses themselves, that can provide UID marking assistance. Additionally, the final rule permits exceptions to marking requirements for items acquired from small business concerns when it is more cost effective for the Government requiring activity to assign, mark, and register the UID after delivery.

5. *Comment:* Not all requirements are generated from DoD. How does this requirement apply when a foreign government is the customer? A related comment was whether UID is applicable to Foreign Military Sales (FMS) contracts and whether our FMS customers were consulted about UID applicability and advised of potential cost impacts.

DoD Response: Items valued at or above $5,000, or items delivered to DoD that meet other specified conditions, must be marked with UID. There is no exception for FMS contracts. This rule has been developed with assistance from our allies and in consideration of international standards.

6. *Comment:* Does UID apply to items that we lease but of which we never take ownership?

DoD Response: Yes. Items valued at or above $5,000, or items delivered to DoD that meet other specified conditions, must be marked with UID.

7. *Comment:* Two respondents asked whether UID and valuation apply to classified or COMSEC contracts. One respondent suggested that the final rule include instructions to require that all such issues be directed to the contracting officer for resolution.

DoD Response: Yes, the UID and valuation apply to classified contracts, unless there is an exemption cited in program directives.

8. *Comment:* Does UID apply to furniture that has an acquisition cost of $5,000 and above?

DoD Response: Yes, all items over $5,000 in value require unique identification.

9. *Comment:* The clause should include a statement that the contractor must comply with the most current version of MIL–STD–130.

DoD Response: Concur. After much consideration, it was considered best to refer to the version of MIL–STD–130 that is cited in the contract Schedule. This allows for updating, if necessary, at the time of award.

10. *Comment:* Is UID really appropriate when, in all likelihood, it probably will not survive the manufacturing process?

DoD Response: If an item is valued at or above $5,000, and it is delivered to DoD, it must be marked with UID. One of the purposes of UID is to be able to track items that may be warehoused for a period of time prior to being incorporated into a manufactured end item. The property record that was created when the item was delivered should be annotated with the item's disposition when it is incorporated into a manufactured item.

11. *Comment:* One respondent believes that, in an effort to save taxpayer dollars, items required for their own base operations, that are never used/received by the warfighter (*i.e.*, is not a spare part), should be excluded.

DoD Response: Do not concur. Items valued at or above $5,000, or items meeting other specified conditions that

are delivered to DoD, must be marked with UID. Although our primary mission is the warfighter, sound property management and accountability are integral to our responsibilities to the taxpayer.

12. *Comment:* Paragraph (c)(3) of clause at 252.211–7003 states, ''The contractor shall (i) mark the encoded data elements (except issuing agency code) on the item using any of the following three types of data qualifiers as specified elsewhere in the contract.'' Where in the contract did you intend this to be specified?

DoD Response: The phrase ''as specified elsewhere in the contract'' has been excluded from the final rule.

13. *Comment:* The DoD Guide to Uniquely Identifying Items, Version 1.3, Nov 25, 2003, p. 18, indicates that the enterprise assigning serialization to an item makes the decision regarding which construct to use to uniquely identify items, as well as use of the associated business rules. The guide also suggests that it should not matter which of the three constructs the contractor uses because DoD should be able to read any of them. If that is the case, is it necessary to specify which type must be used in the contract?

DoD Response: The final rule clarifies that the determination of which construct to use is made by the contractor.

14. *Comment:* In the solicitation phase, would it not be better to allow contractors to propose which data qualifier they prefer to use rather than specifying one in the solicitation?

DoD Response: The phrase ''as specified elsewhere in the contract'' has been excluded from the final rule.

15. *Comment:* What ''Data Item Description'' covers UID? Further, is a new Data Item Description for UID being developed, or which existing one should we use?

DoD Response: The Data Item Description can be found under ''References'' on the UID Web site at *http://www.acq.osd.mil/uid.*

16. *Comment:* With regard to DFARS 211.274–2, it is not clear from the interim rule when the contract line items/subline items (CLINs/SLINs) or contract data requirements list (CDRL) will be updated to reflect the delivered items that require UID.

DoD Response: The intent is that the CLIN/SLIN structure should reflect the UID requirements at contract award. This may be the result of the procurement request and solicitation CLIN/SLIN structure, or it may be the result of information provided in the contractor's proposal in response to the solicitation. However, if this is not the case, the contract should be modified to reflect the CLIN/SLIN structure as necessary prior to delivery of the items requiring UID.

17. *Comment:* A respondent requested that DoD policy on applying UID to existing contracts remain as currently stated to apply UID to existing contracts ''where it makes business sense.''

DoD Response: Concur. This policy has not changed.

18. *Comment:* Considering that the new UID labeling requirement allows for the use of commonly accepted commercial marks for items that are not required to have unique identification, will DoD reconsider the application of the UID labeling requirement to contracts for commercial items under FAR Part 12?

DoD Response: The requirement for commonly accepted commercial marks for items that are not required to have unique identification has been deleted from the rule. Additionally, the final rule permits exceptions from UID requirements for commercial items when it is more cost effective for the Government requiring activity to assign, mark, and register the UID after delivery.

19. *Comment:* Is it DoD's intention to apply the UID labeling requirement to product orders placed under another agency's contract vehicle, such as GSA's Federal Supply Schedule or another agency's multiple award indefinite-delivery indefinite-quantity contract?

DoD Response: Yes. The final rule makes the clause at DFARS 252.211–7003 mandatory for all solicitations, contracts, and delivery orders. DoD believes that inclusion of the clause in delivery orders under Federal Supply Schedule (FSS) contracts is consistent with the provision at 252.211–7003, Marking, that is currently in FSS contracts allowing ordering activities to specify marking requirements in delivery orders.

20. *Comment:* Does the UID labeling requirement apply to entities that resell a manufacturer's product to DoD?

DoD Response: Yes.

21. *Comment:* Does DoD recognize Telcordia as an issuing agency?

DoD Response: Yes, DoD recognizes IAC ''LB'' for Telcordia.

22. *Comment:* Will DoD accept the UID in a MicroPDF417 symbol? The majority of North American Telecommunications Service Providers require equipment manufacturers to CLEI Code their products. Telcordia GR–383-CORE identifies MicroPDF417 as the required symbology for CLEI Coded product. We currently use MicroPDF417 in our designs and would require significant changes to implement Data Matrix 200. There is not sufficient space for two symbols, particularly when both will have the same information. The MH10.8.3 and MH10.8.2 data syntax will be the same for both symbologies. Further, MicroPDF417 has the benefit of being either square or rectangular in shape depending on how it is specified. This provides increased flexibility when working with space-constrained product. Scanners capable of reading Data Matrix 200 are also capable of reading MicroPDF417, but scanners capable of reading MicroPDF417 are not always capable of reading Data Matrix 200.

DoD Response: No decision has been made as to DoD acceptance of the MicroPDF417 symbol.

23. *Comment:* Is the part number required in the 2D symbol if we use serialization within the enterprise identifier? The examples we see for serialization within the enterprise are not clear. We will be using data identifier 18V, ANSIT1.220 issuing agency ''LB'', an enterprise identifier of ''WECO''. The serial number will use the data identifier ''S'' to define our unique serial number to form the UID. Do the data strings shown below meet the UID requirement?

CLEI coded product:
[) >Rs06 Gs18VLBWECOGSS123456789012345678GS11PAABBCCD1E1 Rs EOT.
Non-CLEI coded product:
[) >Rs06 Gs18VLBWECO G SS123456789012345678 Rs EOT.

DoD Response: No. The only data identifier available for use in Construct #1 in this case is ''25S'', which is defined as ''18V'' + unique serial number (unique within the enterprise). The syntax would be:

Non-CLEI coded product (Serialization within the enterprise, Construct #1)
[) >Rs06 Gs25SLBWECO123456789012345678Rs EOT.
UID would be: LBWECO123456789012345678
CLEI coded product (Serialization within the part, or product, number, Construct #2):
[) >Rs06 Gs18VLBWECOGS11PAABBCCD1E1
GS S123456789012345678 Rs EOT.
Concatenated UID would be: LBWECOAABBCCD1E1123456789012345678

24. *Comment:* Does the order of the data fields matter? Telcordia has defined the CLEI Code as the first data field within the data symbol, and that is our current data format. Is the use of data identifiers sufficient to assemble the UID from the data string regardless of order?

DoD Response: The data fields should appear at the beginning of the syntax in order of concatenation: Construct #1: 25S, Construct #2: 18V+11P+S.

25. *Comment:* Must the UID label be scannable in service? If so, what exceptions would be considered?

DoD Response: Yes. The UID label must be scannable in service. There are no exceptions.

26. *Comment:* What is the labeling requirement for the first level product package label (P2 label)? Will this label require that the UID be encoded in a 2D symbol? If so, would this be a PDF417 symbol, Data Matrix 200, or other?

DoD Response: The labeling requirements are those specified in MIL–STD–129P.

27. *Comment:* What is the minimum data set for the UID on the shipping label, and is a 2D symbol required? We currently do not include product serial number information on our shipping labels. Adding UID information to the shipping label would require significant IT system changes.

DoD Response: The labeling requirements are those specified in MIL–STD–129P.

28. *Comment:* Several comments were received regarding the use of radio frequency identification (RFID) technology.

DoD Response: RFID technology is being addressed in separate DoD policy. The RFID policy, which addresses the labeling for shipping and packaging, is being developed in close coordination with the UID Program Office. RFID requirements will not replace or supersede UID requirements.

29. *Comment:* Is it DoD's understanding that the Christian Doctrine may apply, or will the requirement to mark items over $5,000 be applicable only to those contracts in which DFARS 252.211–7003 is cited?

DoD Response: DoD does not believe the Christian Doctrine would apply in the case of a contract that failed to include the clause at 252.211–7003.

30. *Comment:* Will drawings have to be changed prior to adding the physical UID marking to items? If not, will items be rejected for not conforming to the drawing? If so, are drawing changes to be bid the first time a solicitation is received for a particular item?

DoD Response: Defining the set of parts to mark, the method in which to mark them, the associated engineering analysis required, in addition to the process/program documentation, is a coordinated concert of activities that must occur simultaneously and with fluidity. The involvement of all entities is crucial as each lends a viewpoint to marking from different technological, logistical, and supply perspectives.

There must be close coordination with the DoD requiring activities, original equipment manufacturers, and vendors in order to minimize the manpower burden to accomplish the required changes on engineering documentation and to initiate the necessary changes to existing manufacturing and maintenance processes. This is true for a marking program on either a new end item or on a legacy end item.

Collaborative methods, or best practices that could be considered and are being prototyped today include the following: (1) Replacing existing data plates with UID labels; (2) Issuing a global engineering change notice; (3) Issuing part marking work orders into the existing manufacturing process; and (4) When the necessary marking information and criteria do not change the form, fit, or function of the part, the change does not require an immediate drawing update but rather can be accomplished by a coversheet with the marking instructions, thus permitting consolidation of drawing requirements.

31. *Comment:* Section 211.274–1(a)(3) is worded such that all lower-level assemblies of an item on a CDRL require UID marking. The respondent suggests rewording the section to ''Subassemblies, components, and embedded parts identified on a Contract Data Requirements List or other exhibit.''

DoD Response: Section 211.274–1(a)(3) of the interim rule contained guidance to the contracting officer. Paragraph (c)(1)(iii) of the clause at 252.211–7003 identifies the marking requirement for subassemblies, components, and embedded parts. It reads:

''(iii) Subassemblies, components, and parts embedded within delivered items as specified in Attachment Number ___.''

32. *Comment:* Even though the rule has been revised to clarify the responsibility of the vendor, it is our interpretation that DoD must assume the primary responsibility for communicating the unique identification at time of contract.

DoD Response: Concur. This should be accomplished through the clause at 252.211–7003.

33. *Comment:* Electronic invoicing, mandated by DFARS clause 252.232–7003, will be delayed to accommodate the UID requirements. Since many companies now are changing their accounting systems in order to be compliant with Wide Area WorkFlow, an additional requirement that UID's are included on invoices clearly will cause delays in the electronic billing system.

DoD Response: Do not concur. Currently contractors can separately invoice and report UID.

34. *Comment:* Small business suppliers may be required to create new systems for identification and marking of their products. This will result in increased costs to small businesses.

DoD Response: Small businesses will find there are a number of vendors, many of which are small businesses, that can provide UID marking assistance at low cost. In addition, the final rule permits exceptions to marking requirements for items acquired from small business concerns, when it is more cost effective for the Government requiring activity to assign, mark, and register the UID after delivery.

35. *Comment:* Extension of the UID requirement to the building trade industry, including electrical and mechanical products, will impose a severe business and economic hardship on large and small businesses alike to implement the marking and identification requirement on products, plus the supporting documentation to shipping documents and invoices.

DoD Response: As stated in the DoD response to Comment 34 above, there are a number of vendors that can provide UID assistance at low cost. The

final rule permits exceptions to UID requirements for commercial items and for items acquired from small business concerns, when it is more cost effective for the Government requiring activity to assign, mark, and register the UID after delivery. The required supporting shipping documentation represents only a minimal increase in current DoD requirements for completion of DD Form 250, Material Inspection and Receiving Report.

36. *Comment:* One respondent suggested that DoD include ''Consumer Electronics Alliance'' in the examples of commonly accepted commercial marks.

DoD Response: The requirement for commonly accepted commercial marks for items that are not required to have unique identification has been deleted from the rule.

37. *Comment:* Please clarify that the ''Issuing Agency Code'' is derived and not ''marked'' on the item.

DoD Response: A change is included in the final rule to clarify that Issuing Agency Code is not marked.

38. *Comment:* One respondent noted that ''AIT'' means automatic identification technology.

DoD Response: Concur. The change is included in the final rule.

39. *Comment:* Please add ''Department of Defense Address Activity Code (DoDAAC)'' to registration (or controlling) authority.

DoD Response: Do not concur. An Issuing Agency Code (IAC) is being requested for DoDAAC. DoDAAC should not be added until the IAC is approved.

40. *Comment:* One respondent suggests rewording Section 252.211–7003(c)(3)(1)(A) as follows: ''Data Identifiers (DIs) (Format 06), in accordance with ISO/IEC International Standard 15418, Information Technology—EAN/UCC Application Identifiers and ASC MH 10 Data Identifiers and ASC MH 10 Data Identifiers and Maintenance.''

DoD Response: Concur. The change is included in the final rule.

41. *Comment:* A respondent suggests rewording Section 252.211–7003(c)(3)(1)(C) as follows: ''Text Element Identifiers (TEIs), in accordance with the DoD collaborative solution ''DD'' format for use until the final solution is approved by ISO JTC1/SC 31. The DoD collaborative solution is described in Appendix D of the DoD Guide to Uniquely Identifying Items, available at *http://www.acq.osd.mil/uid,* and:''

DoD Response: Concur. DFARS 252.211–7003(c)(3)(i)(C) has been revised to essentially capture the comment.

42. *Comment:* The rule poses a substantial problem for commercial suppliers and service providers. The problem is that many commercial companies use item identification markings that differ significantly from the Department's prescribed unique identification markings.

For these companies to continue to do business with the Department, they will either need to establish separate assembly lines and procedures to process DoD orders using the Department's unique markings, or overhaul and convert their existing systems to meet the Department's requirements. For existing DoD suppliers and service providers, either of these approaches would pose a very expensive proposition. For potential new entrants to the Defense market, the requirements may pose a prohibitive barrier.

DoD Response: This rule is considered to be a strategic imperative. DoD acquires a large number of items from commercial suppliers and these items can not be excluded from the UID requirements. However, the final rule permits exceptions to marking requirements for commercial items when it is more cost effective for the Government requiring activity to assign, mark, and register the UID after delivery.

43. *Comment:* The interim rule may be read as burdensome and otherwise inconsistent with commercial practice to require vendors to change their delivery processes to accommodate Government-unique acquisition cost requirements. Some Department personnel have publicly stated that existing practices for completing DD 250 acceptance forms would suffice to support the acquisition unit cost requirement imposed by the interim rule. But that is not clear in the rule itself. We request that the rule be clarified to clearly read that vendors' existing DD 250 practices that currently meet DD 250 requirements will satisfy the interim rule's unit acquisition cost requirements.

DoD Response: Do not concur. There are no new or additional burdens imposed on vendors as a result of the ''Government's unit acquisition cost'' requirements. Currently, vendors are required to put a ''price'' on the DD 250. There is nothing in the rule to suggest that existing DD 250 practices would change.

44. *Comment:* Two respondents stated that imposing the interim rule's requirements in commercial acquisitions at this time is inconsistent with the Federal Acquisition Streamlining Act of 1994 (''FASA''), which mandates that Government agencies rely to the maximum extent practicable on commercial products and services to fill the Government's needs. In our view, imposition of the interim rule at this time in commercial acquisitions is neither required by statute nor consistent with customary commercial practice.

DoD Response: DoD does not concur that UID requirements are inconsistent with FASA. FASA does not restrict DoD's ability to define its needs and requirements for supporting the warfighter. However, the final rule permits exceptions to marking requirements for commercial items when it is more cost effective for the Government requiring activity to assign, mark, and register the UID after delivery of the item.

45. *Comment:* One respondent suggested that implementation of the rule for purposes of commercial item acquisitions be changed from January 1, 2004, to March 1, 2005. The respondent further recommended that, prior to the implementation date, the Department establish a working group that will include participants from commercial industry to determine what methods would be least intrusive to commercial practice, while operating to satisfy the Department's needs. The current interim rule seems to impose most of the burden, if not all, on the vendor, and may result in vendors having to adopt a ''Government only'' line of products at significant expense to both the vendor and the Government.

DoD Response: Do not concur. DoD acquires a large number of commercial items, and these items cannot be excluded from UID requirements. However, the final rule permits exceptions to marking requirements for commercial items when it is more cost effective for the Government requiring activity to assign, mark, and register the UID after delivery.

46. *Comment:* Does the rule apply to real property in DoD buildings and facilities?

DoD Response: Yes. Items valued at or above $5,000, or items that are delivered to DoD meeting other specified conditions, must be marked with UID.

47. *Comment:* Does the rule apply to electrical and mechanical equipment and building components making up a building and building systems?

DoD Response: Yes. Items valued at or above $5,000, or items that are delivered to DoD meeting other specified conditions, must be marked with UID.

48. *Comment:* In our February 27, 2004, letter to the Director of Defense Procurement, we expressed our concern that not all UID implementation costs

may be recovered under existing accounting procedures. We encourage the Department to give early consideration to addressing this issue. We stand ready to meet with your representatives at your convenience.

49. *DoD Response:* DoD is willing to further discuss and examine whether all UID implementation costs may be recovered under existing accounting procedures.

50. *Comment:* In section 211.274–2(b)(2), Government's unit acquisition cost for cost type line, subline, or exhibit line items is the contractor's estimated fully burdened unit cost. In informal discussions with the Department's staff, we understand that this is intended to include a representative element of profit or fee. We suggest that this be clarified in the List of Frequently Asked Questions or in the Guide to Uniquely Identifying Items.

DoD Response: Concur. DoD will add to the List of Frequently Asked Questions an item that indicates that ''fully burdened unit cost to the Government'' would include all direct, indirect, G&A costs, and an appropriate portion of fee.

51. *Comment:* With regard to section 211.274–3, Contract clause, one respondent noted that this section has been improved for both industry and the government. It addresses ''items'' requiring UID and clarifies application where a CDRL/Exhibit is required for subassemblies, components, or embedded items. The respondent recommends that, in order to strengthen this principle, several illustrative examples be included in the DoD Guide to Uniquely Identified Items.

DoD Response: Concur. Examples will be included in the next version of the DoD Guide to Uniquely Identified Items.

52. *Comment:* In the clause at 252.211–7003(c)(1)(iii), there are requirements regarding subassemblies, components, and parts embedded within items specified in Exhibits or CDRLs. It should be noted that not all embedded items fit the category of subassemblies, components, or parts. As a hypothetical example, a latch that is permanently attached to a watertight door may be purchased but is not carried as a spare part, subassembly, or component. Once attached, it is embedded as a permanent part of the door and not replaceable. There needs to be clarification that such hardware is not to be subject to the requirements for assignment of a UID, and the clause need not be flowed down to the supplier.

DoD Response: Concur. This paragraph of the final rule was rewritten to clarify that only subassemblies, components, or parts embedded within an item that are serially managed, mission essential, or controlled inventory item, as determined by the requiring activity, may require UID.

53. *Comment:* In the clause at 252.211–7003(c)(3), Data syntax and semantics, the enterprise responsible for assigning the UID should determine the type of data qualifiers to use instead of this information being specified on a contract-by-contract basis.

DoD Response: Concur. The language was changed to avoid requiring a subcontractor that produces a common subassembly for use in three unique weapon systems to use a different type data qualifier depending on the end item application or service agency buying the item.

54. *Comment:* We believe that DoD should issue instructions to all of its organizations that failure to comply with the DFARS UID requirement in the first contract upon which it is imposed shall not be reason for refusing delivery or assessing withholds, provided the company has a plan in place for compliance and is proceeding in accordance with this plan. For example, we understand June 2004 is the earliest that Wide Area WorkFlow will be modified to accept DD Form 250 transactions that include required UID data, and then only for fixed-price contracts. Current contracts should not be rigidly enforced when the system for accepting the data for all contracts is not yet available to all suppliers.

DoD Response: Do not concur. Problems with compliance with the DFARS UID requirement should be addressed prior to award of the contract. After award, the contractor should be expected to comply with contract requirements.

55. *Comment:* We believe that special tooling and special test equipment and other items of Government property, created and used during the course of contracts during 2004, should be exempt from any UID marking or evaluation requirements until such items are delivered to the Government, or one of its suppliers, on or after January 1, 2005. Policy and procedure for this class of assets should be published as soon as possible.

DoD Response: Do not concur. Marking is only required when items, including special tooling and special test equipment, are delivered to the Government. Generally, it is unlikely that special tooling and special test equipment used in production under a contract requiring UID would have been delivered before January 1, 2005, due to the applicability of the rule (contracts resulting from solicitations that were issued on or after January 1, 2004).

56. *Comment:* The DoD UID policy should be coordinated and consistent with all other aspects of DoD acquisition policy. DoD should ensure that, as this and the RFID policies evolve, care is taken to reconcile the RFID and UID policies, DFARS rule, military standards, solicitation instructions, training, and other aspects to ensure uniform interpretation and avoid mis-steps on the part of Government or industry.

DoD Response: Concur. RFID policies, military standards related to RFID and UID, solicitation instructions, training, and other aspects of the policies are being closely coordinated with the UID Program Office.

57. *Comment:* Individual program offices should have the flexibility to designate which parts should be marked; however, they should not dictate the process and procedure for actual marking of parts. Individual program offices should be encouraged to work with their contractors to identify what parts are to be marked, but a program office should not normally tell a contractor what marking construct to use, since the contractor's plant, and its supply chain, may already be keyed to use of a certain approach, and may incur considerable cost and disruption to alter that for a single contract.

DoD Response: The phrase ''as specified elsewhere in the contact'' which permitted specifying the process and procedure for actual marking of parts has not been included in the final rule.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD has prepared a final regulatory flexibility analysis consistent with 5 U.S.C. 604. The analysis is summarized as follows:

This rule establishes DoD policy for marking and valuation of items delivered under DoD contracts. The objective of the rule is to improve the management of DoD assets. DoD believes that the small businesses in the manufacturing categories subject to the rule normally use some form of product identification already, *i.e.*, bar coding, as part of their commercial business practices. DoD is unaware of any small business that cannot comply with the UID policy. In fact, there is an increase in the number of small businesses providing marking/UID data services to industry and DoD. DoD anticipates that most small vendors will be able to

comply using labels and data plates readily and inexpensively available in the commercial market. A small business can order labels and data plates from a wide array of vendors at a cost of $0.10 to $3.00 per item. No specific investment need be made by a small business.

A copy of the analysis may be obtained from the point of contact specified herein.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 202, 204, 211, 212, 243, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR parts 202, 204, 211, 212, 243, and 252, which was published at 68 FR 75196 on December 30, 2003, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 202, 204, 211, 212, 243, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 211—DESCRIBING AGENCY NEEDS

■ 2. Sections 211.274–1 through 211.274–3 are revised and section 211.274–4 is added to read as follows:

211.274–1 General.

Unique item identification and valuation is a system of marking and valuing items delivered to DoD that will enhance logistics, contracting, and financial business transactions supporting the United States and coalition troops. Through unique item identification policy, which capitalizes on leading practices and embraces open standards, DoD can—

(a) Achieve lower life-cycle cost of item management and improve life-cycle property management;

(b) Improve operational readiness;

(c) Provide reliable accountability of property and asset visibility throughout the life cycle; and

(d) Reduce the burden on the workforce through increased productivity and efficiency.

211.274–2 Policy for unique item identification.

(a) It is DoD policy that DoD unique item identification, or a DoD recognized unique identification equivalent, is required for-

(1) All delivered items for which the Government's unit acquisition cost is $5,000 or more;

(2) Items for which the Government's unit acquisition cost is less than $5,000, when identified by the requiring activity as serially managed, mission essential, or controlled inventory;

(3) Items for which the Government's unit acquisition cost is less than $5,000, when the requiring activity determines that permanent identification is required; and

(4) Regardless of value—

(i) Any DoD serially managed subassembly, component, or part embedded within a delivered item; and

(ii) The parent item (as defined in 252.211–7003(a)) that contains the embedded subassembly, component, or part.

(b) *Exceptions.* The Contractor will not be required to provide DoD unique item identification if—

(1) The items, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack; or

(2) A determination and findings has been executed concluding that it is more cost effective for the Government requiring activity to assign, mark, and register the unique item identification after delivery of an item acquired from a small business concern or a commercial item acquired under FAR Part 12 or Part 8.

(i) The determination and findings shall be executed by—

(A) The Component Acquisition Executive for an acquisition category (ACAT) I program; or

(B) The head of the contracting activity for all other programs.

(ii) The DoD Unique Item Identification Program Office must receive a copy of the determination and findings required by paragraph (b)(2)(i) of this subsection. Send the copy to DPAP, SPEC ASST, 3060 Defense Pentagon, 3E1044, Washington, DC 20301–3060; or by facsimile to (703) 695–7596.

211.274–3 Policy for valuation.

(a) It is DoD policy that contractors shall be required to identify the Government's unit acquisition cost (as defined in 252.211–7003(a)) for all items delivered, even if none of the criteria for placing a unique item identification mark applies.

(b) The Government's unit acquisition cost is—

(1) For fixed-price type line, subline, or exhibit line items, the unit price identified in the contract at the time of delivery;

(2) For cost-type or undefinitized line, subline, or exhibit line items, the contractor's estimated fully burdened unit cost to the Government at the time of delivery; and

(3) For items delivered under a time-and-materials contract, the contractor's estimated fully burdened unit cost to the Government at the time of delivery.

(c) The Government's unit acquisition cost of subassemblies, components, and parts embedded in delivered items need not be separately identified.

211.274–4 Contract clause.

Use the clause at 252.211–7003, Item Identification and Valuation, in solicitations and contracts that require item identification or valuation, or both, in accordance with 211.274–2 and 211.274–3.

(a) Complete paragraph (c)(1)(ii) of the clause with the contract line, subline, or exhibit line item number and description of any item(s) below $5,000 in unit acquisition cost for which DoD unique item identification or a DoD recognized unique identification equivalent is required in accordance with 211.274–2(a)(2) or (3).

(b) Complete paragraph (c)(1)(iii) of the clause with the applicable attachment number, when DoD unique item identification or a DoD recognized unique identification equivalent is required in accordance with 211.274–2(a)(4) for DoD serially managed subassemblies, components, or parts embedded within deliverable items.

(c) Use the clause with its Alternate I if—

(1) An exception in 211.274–2(b) applies; or

(2) Items are to be delivered to the Government and none of the criteria for placing a unique item identification mark applies.

PART 212—ACQUISITION OF COMMERCIAL ITEMS 212.301 [AMENDED]

■ 3. Section 212.301 is amended in paragraph (f)(vi) by removing ''211.274–3'' and adding in its place ''211.274–4''.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Section 252.211–7003 is revised to read as follows:

252.211–7003 Item Identification and Valuation.

As prescribed in 211.274–4, use the following clause:

Item Identification and Valuation (Apr 2005)

(a) *Definitions.* As used in this clause'

Automatic identification device means a device, such as a reader or interrogator, used to retrieve data encoded on machine-readable media.

Concatenated unique item identifier means—

(1) For items that are serialized within the enterprise identifier, the linking together of the unique identifier data elements in order of the issuing agency code, enterprise identifier, and unique serial number within the enterprise identifier; or

(2) For items that are serialized within the original part, lot, or batch number, the linking together of the unique identifier data elements in order of the issuing agency code; enterprise identifier; original part, lot, or batch number; and serial number within the original part, lot, or batch number.

Data qualifier means a specified character (or string of characters) that immediately precedes a data field that defines the general category or intended use of the data that follows.

DoD recognized unique identification equivalent means a unique identification method that is in commercial use and has been recognized by DoD. All DoD recognized unique identification equivalents are listed at *http://www.acq.osd.mil/dpap/UID/equivalents.html.*

DoD unique item identification means a system of marking items delivered to DoD with unique item identifiers that have machine-readable data elements to distinguish an item from all other like and unlike items. For items that are serialized within the enterprise identifier, the unique item identifier shall include the data elements of the enterprise identifier and a unique serial number. For items that are serialized within the part, lot, or batch number within the enterprise identifier, the unique item identifier shall include the data elements of the enterprise identifier; the original part, lot, or batch number; and the serial number.

Enterprise means the entity (*e.g.*, a manufacturer or vendor) responsible for assigning unique item identifiers to items.

Enterprise identifier means a code that is uniquely assigned to an enterprise by an issuing agency.

Government's unit acquisition cost means—

(1) For fixed-price type line, subline, or exhibit line items, the unit price identified in the contract at the time of delivery;

(2) For cost-type or undefinitized line, subline, or exhibit line items, the Contractor's estimated fully burdened unit cost to the Government at the time of delivery; and

(3) For items produced under a time-and-materials contract, the Contractor's estimated fully burdened unit cost to the Government at the time of delivery.

Issuing agency means an organization responsible for assigning a non-repeatable identifier to an enterprise (*i.e.*, Dun & Bradstreet's Data Universal Numbering System (DUNS) Number, Uniform Code Council (UCC)/EAN International (EAN) Company Prefix, or Defense Logistics Information System (DLIS) Commercial and Government Entity (CAGE) Code).

Issuing agency code means a code that designates the registration (or controlling) authority for the enterprise identifier.

Item means a single hardware article or a single unit formed by a grouping of subassemblies, components, or constituent parts.

Lot or batch number means an identifying number assigned by the enterprise to a designated group of items, usually referred to as either a lot or a batch, all of which were manufactured under identical conditions.

Machine-readable means an automatic identification technology media, such as bar codes, contact memory buttons, radio frequency identification, or optical memory cards.

Original part number means a combination of numbers or letters assigned by the enterprise at item creation to a class of items with the same form, fit, function, and interface.

Parent item means the item assembly, intermediate component, or subassembly that has an embedded item with a unique item identifier or DoD recognized unique identification equivalent.

Serial number within the enterprise identifier means a combination of numbers, letters, or symbols assigned by the enterprise to an item that provides for the differentiation of that item from any other like and unlike item and is never used again within the enterprise.

Serial number within the part, lot, or batch number means a combination of numbers or letters assigned by the enterprise to an item that provides for the differentiation of that item from any other like item within a part, lot, or batch number assignment.

Serialization within the enterprise identifier means each item produced is assigned a serial number that is unique among all the tangible items produced by the enterprise and is never used again. The enterprise is responsible for ensuring unique serialization within the enterprise identifier.

Serialization within the part, lot, or batch number means each item of a particular part, lot, or batch number is assigned a unique serial number within that part, lot, or batch number assignment. The enterprise is responsible for ensuring unique serialization within the part, lot, or batch number within the enterprise identifier.

Unique item identifier means a set of data elements marked on items that is globally unique and unambiguous.

Unique item identifier type means a designator to indicate which method of uniquely identifying a part has been used. The current list of accepted unique item identifier types is maintained at *http://www.acq.osd.mil/dpap/UID/uid_types.html.*

(b) The Contractor shall deliver all items under a contract line, subline, or exhibit line item.

(c) *DoD unique item identification or DoD recognized unique identification equivalents.*

(1) The Contractor shall provide DoD unique item identification, or a DoD recognized unique identification equivalent, for—

(i) All delivered items for which the Government's unit acquisition cost is $5,000 or more; and

(ii) The following items for which the Government's unit acquisition cost is less than $5,000:

Contract line, subline, or exhibit line item No.	Item description:
_____	_____
_____	_____
_____	_____

(iii) Subassemblies, components, and parts embedded within delivered items as specified in Attachment Number _____.

(2) The concatenated unique item identifier and the component data elements of the DoD unique item identification or DoD recognized unique identification equivalent shall not change over the life of the item.

(3) *Data syntax and semantics of DoD unique item identification and DoD recognized unique identification equivalents.* The Contractor shall ensure that—

(i) The encoded data elements (except issuing agency code) of the unique item identifier are marked on the item using one of the following three types of data qualifiers, as determined by the Contractor:

(A) Data Identifiers (DIs) (Format 06) in accordance with ISO/IEC International Standard 15418, Information Technology '' EAN/UCC Application Identifiers and ANSI MH 10 Data Identifiers and ANSI MH 10 Data Identifiers and Maintenance.

(B) Application Identifiers (AIs) (Format 05), in accordance with ISO/IEC International Standard 15418, Information Technology '' EAN/UCC Application Identifiers and ANSI MH 10 Data Identifiers and ANSI MH 10 Data Identifiers and Maintenance.

(C) Text Element Identifiers (TEIs), in accordance with the DoD collaborative solution ''DD'' format for use until the solution is approved by ISO/IEC JTC1 SC 31. The ''DD'' format is described in Appendix D of the DoD Guide to Uniquely Identifying Items, available at *http://www.acq.osd.mil/dpap/UID/guides.html;* and

(ii) The encoded data elements of the unique item identifier conform to ISO/IEC International Standard 15434, Information Technology—Syntax for High Capacity Automatic Data Capture Media.

(4) *DoD unique item identification and DoD recognized unique identification equivalents.*

(i) The Contractor shall—

(A) Determine whether to serialize within the enterprise identifier or serialize within the part, lot, or batch number; and

(B) Place the data elements of the unique item identifier (enterprise identifier; serial number; and for serialization within the part, lot, or batch number only; original part, lot, or batch number) on items requiring marking by paragraph (c)(1) of this clause, based on the criteria provided in the version of MIL–

STD–130, Identification Marking of U.S. Military Property, cited in the contract Schedule.

(ii) The issuing agency code—

(A) Shall not be placed on the item; and

(B) Shall be derived from the data qualifier for the enterprise identifier.

(d) For each item that requires unique item identification under paragraph (c) of this clause, in addition to the information provided as part of the Material Inspection and Receiving Report specified elsewhere in this contract, the Contractor shall report at the time of delivery, either as part of, or associated with, the Material Inspection and Receiving Report, the following information:

(1) Concatenated unique item identifier; or DoD recognized unique identification equivalent.

(2) Unique item identifier type.

(3) Issuing agency code (if concatenated unique item identifier is used).

(4) Enterprise identifier (if concatenated unique item identifier is used).

(5) Original part number.

(6) Lot or batch number.

(7) Current part number (if not the same as the original part number).

(8) Current part number effective date.

(9) Serial number.

(10) Government's unit acquisition cost.

(e) *Embedded DoD serially managed subassemblies, components, and parts.* The Contractor shall report at the time of delivery, either as part of, or associated with the Material Inspection and Receiving Report specified elsewhere in this contract, the following information:

(1) Concatenated unique item identifier or DoD recognized unique identification equivalent of the parent item delivered under a contract line, subline, or exhibit line item that contains the embedded subassembly, component, or part.

(2) Concatenated unique item identifier or DoD recognized unique identification equivalent of the embedded subassembly, component, or part.

(3) Unique item identifier type.**

(4) Issuing agency code (if concatenated unique item identifier is used).**

(5) Enterprise identifier (if concatenated unique item identifier is used).**

(6) Original part number.**

(7) Lot or batch number.**

(8) Current part number (if not the same as the original part number.**

(9) Current part number effective date.**

(10) Serial number.**

(11) Unit of measure.

(12) Description.

** Once per item.

(f) The Contractor shall submit the information required by paragraphs (d) and (e) of this clause in accordance with the data submission procedures at *http://www.acq.osd.mil/dpap/UID/DataSubmission.htm.*

(g) *Subcontracts.* If paragraph (c)(1) of this clause applies, the Contractor shall include this clause, including this paragraph (g), in all subcontracts issued under this contract.

(End of clause)

Alternate I (APR 2005)

As prescribed in 211.274–4(c) delete paragraphs (c), (d), (e), (f), and (g) of the basic clause, and add the following paragraphs (c) and (d) to the basic clause.

(c) For each item delivered under a contract line, subline, or exhibit line item under paragraph (b) of this clause, in addition to the information provided as part of the Material Inspection and Receiving Report specified elsewhere in this contract, the Contractor shall report the Government's unit acquisition cost.

(d) The Contractor shall submit the information required by paragraph (c) of this clause in accordance with the data submission procedures at *http://www.acq.osd.mil/dpap/UID/DataSubmission.htm.*

[FR Doc. 05–7981 Filed 4–21–05; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

[DFARS Case 2004–D001]

Defense Federal Acquisition Regulation Supplement; Reporting Contract Performance Outside the United States

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify requirements for reporting of contract performance outside the United States. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Effective Date: April 22, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2004–D001.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dp/dars/transf.htm.*

DFARS Subpart 225.72, Reporting Contract Performance Outside the United States, implements: (1) DoD policy for contractor reporting of performance outside the United States under contracts exceeding $500,000; and (2) requirements of 10 U.S.C. 2410g for offerors and contractors to notify DoD of any intention to perform a DoD contract outside the United States and Canada, when the contract exceeds $10 million and could be performed inside the United States or Canada.

This final rule revises DFARS Subpart 225.72, and the corresponding solicitation provision and contract clause, to clarify the two separate reporting requirements. In addition, the rule removes DFARS text (previously at 225.7202) related to contracting officer distribution of reports. This text has been relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at *http://www.acq.osd.mil/dpap/dars/pgi.*

DoD published a proposed rule at 69 FR 31939 on June 8, 2004. DoD received comments from one industry association. The comments are summarized as follows:

1. *Comment:* The quarterly reporting requirement, which is not based on a statutory requirement, should be eliminated.

DoD Response: Do not concur. The quarterly report provides information that DoD uses in the assessment of bilateral defense trade with allied countries. The information is also of significant interest to Congress.

2. *Comment:* The reporting requirements should apply only to subcontracts that are awarded directly as a result of the award of the prime contract.

DoD Response: Do not concur. The purpose of the reporting requirements is to determine the portion of total contract dollars spent on performance outside the United States, regardless of whether the dollars are spent as a result of a preexisting contractual arrangement or as a result of a subcontract awarded directly under the prime contract.

3. *Comment:* The clause titles and text should be revised to clarify the nature and timing of the reporting requirements.

DoD Response: The final rule incorporates most of the recommended clarifying changes. In particular, the final rule—

• Revises the titles of the clauses at (252) 225–7004 and (252) 225–7006 to make a distinction between requirements for reporting of intended and actual contract performance;

• Revises paragraph (b) of the clause at (252) 225–7004 to require reporting ''as soon as practical after the information is known,'' rather than ''as soon as the information is known.''

• Revises paragraph (b), and adds a new paragraph (e)(3), in the clause at (252) 225–7006 to further clarify reporting requirements for contractors and subcontractors.

4. *Comment:* Contracting officers should be authorized to substitute the new clauses for prior versions of the clauses that are in existing contracts, to simplify administration and improve compliance with clause requirements.

DoD Response: In accordance with FAR 1.108, the new clauses apply to solicitations issued on or after the effective date of this DFARS rule. Contracting officers may, at their discretion, include the clauses in any existing contract with appropriate consideration.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule clarifies existing requirements for reporting contract performance outside the United States, with no substantive change to those requirements.

C. Paperwork Reduction Act

The rule does not contain any new information collection requirements that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq*. The existing information collection requirements in DFARS Subpart 225.72 have been approved by OMB under Control Number 0704–0229 for use through March 31, 2007.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Parts 225 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

■ 2. Subpart 225.72 is revised to read as follows:

Subpart 225.72—Reporting Contract Performance Outside the United States

Sec.
225.7201 Policy.
225.7202 Exception.
225.7203 Contracting officer distribution of reports.
225.7204 Solicitation provision and contract clauses.

225.7201 Policy.

(a) 10 U.S.C. 2410g requires offerors and contractors to notify DoD of any intention to perform a DoD contract outside the United States and Canada when the contract could be performed inside the United States or Canada.

(b) DoD requires contractors to report the volume, type, and nature of contract performance outside the United States.

225.7202 Exception.

This subpart does not apply to contracts for commercial items, construction, ores, natural gas, utilities, petroleum products and crudes, timber (logs), or subsistence.

225.7203 Contracting officer distribution of reports.

Follow the procedures at PGI 225.7203 for distribution of reports submitted with offers in accordance with the provision at 252.225–7003, Report of Intended Performance Outside the United States and Canada—Submission with Offer.

225.7204 Solicitation provision and contract clauses.

Except for acquisitions described in 225.7202—

(a) Use the provision at 252.225–7003, Report of Intended Performance Outside the United States and Canada—Submission with Offer, in solicitations with a value exceeding $10 million;

(b) Use the clause at 252.225–7004, Report of Intended Performance Outside the United States and Canada—Submission after Award, in solicitations and contracts with a value exceeding $10 million; and

(c) Use the clause at 252.225–7006, Quarterly Reporting of Actual Contract Performance Outside the United States, in solicitations and contracts with a value exceeding $500,000.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Sections 252.225–7003 and 252.225–7004 are revised to read as follows:

252.225–7003 Report of Intended Performance Outside the United States and Canada—Submission with Offer.

As prescribed in 225.7204(a), use the following provision:

Report of Intended Performance Outside the United States and Canada—Submission With Offer (Apr 2005)

(a) The offeror shall submit, with its offer, a report of intended performance outside the United States and Canada if—

(1) The offer exceeds $10 million in value; and

(2) The offeror is aware that the offeror or a first-tier subcontractor intends to perform any part of the contract outside the United States and Canada that—

(i) Exceeds $500,000 in value; and

(ii) Could be performed inside the United States or Canada.

(b) Information to be reported includes that for—

(1) Subcontracts;

(2) Purchases; and

(3) Intracompany transfers when transfers originate in a foreign location.

(c) The offeror shall submit the report using—

(1) DD Form 2139, Report of Contract Performance Outside the United States; or

(2) A computer-generated report that contains all information required by DD Form 2139.

(d) The offeror may obtain a copy of DD Form 2139 from the Contracting Officer or via the Internet at *http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm*.

(End of provision)

252.225–7004 Report of Intended Performance Outside the United States and Canada—Submission after Award.

As prescribed in 225.7204(b), use the following clause:

Report of Intended Performance Outside the United States and Canada—Submission After Award (Apr 2005)

(a) *Reporting requirement.* The Contractor shall submit a report in accordance with this clause, if the Contractor or a first-tier subcontractor will perform any part of this contract outside the United States and Canada that—

(1) Exceeds $500,000 in value; and

(2) Could be performed inside the United States or Canada.

(b) *Submission of reports.* The Contractor—

(1) Shall submit a report as soon as practical after the information is known;

(2) To the maximum extent practicable, shall submit a report regarding a first-tier subcontractor at least 30 days before award of the subcontract;

(3) Need not resubmit information submitted with its offer, unless the information changes;

(4) Shall submit all reports to the Contracting Officer; and

(5) Shall submit a copy of each report to: Deputy Director of Defense Procurement and Acquisition Policy (Program Acquisition and International Contracting), OUSD(AT&L)DPAP(PAIC), Washington, DC 20301–3060.

(c) *Report format.* The Contractor—

(1) Shall submit reports using—

(i) DD Form 2139, Report of Contract Performance Outside the United States; or

(ii) A computer-generated report that contains all information required by DD Form 2139; and

(2) May obtain copies of DD Form 2139 from the Contracting Officer or via the Internet at *http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm.*

(End of clause)

■ 4. Section 252.225–7006 is added to read as follows:

252.225–7006 Quarterly Reporting of Actual Contract Performance Outside the United States.

As prescribed in 225.7204(c), use the following clause:

Quarterly Reporting of Actual Contract Performance Outside the United States (Apr 2005)

(a) *Reporting requirement.* Except as provided in paragraph (b) of this clause, within 10 days after the end of each quarter of the Government's fiscal year, the Contractor shall report any subcontract, purchase, or intracompany transfer that—

(1) Will be or has been performed outside the United States;

(2) Exceeds the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation; and

(3) Has not been identified in a report for a previous quarter.

(b) *Exception.* Reporting under this clause is not required if—

(1) A foreign place of performance is the principal place of performance of the contract; and

(2) The Contractor specified the foreign place of performance in its offer.

(c) *Submission of reports.* The Contractor shall submit the reports required by this clause to: Deputy Director of Defense Procurement and Acquisition Policy (Program Acquisition and International Contracting), OUSD(AT&L)DPAP(PAIC), Washington, DC 20301–3060.

(d) *Report format.* The Contractor—

(1) Shall submit reports using—

(i) DD Form 2139, Report of Contract Performance Outside the United States; or

(ii) A computer-generated report that contains all information required by DD Form 2139; and

(2) May obtain copies of DD Form 2139 from the Contracting Officer or via the Internet at *http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm.*

(e) *Subcontracts.* The Contractor—

(1) Shall include the substance of this clause in all first-tier subcontracts exceeding $500,000, except those for commercial items, construction, ores, natural gases, utilities, petroleum products and crudes, timber (logs), or subsistence;

(2) Shall provide the number of this contract to its subcontractors required to submit reports under this clause; and

(3) Shall require the subcontractor, with respect to performance of its subcontract, to comply with the requirements directed to the Contractor in paragraphs (a) through (d) of this clause.

(End of clause)

[FR Doc. 05–7979 Filed 4–21–05; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126332–5039–02; I.D. 041805D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Less Than 60 Feet (18.3 Meters) Length Overall Using Hook-and-Line or Pot Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 meters (m)) length overall (LOA) using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2005 Pacific cod total allowable catch (TAC) specified for catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 19, 2005, through 2400 hrs, A.l.t., December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2005 Pacific cod TAC specified for catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI is 2,504 metric tons (mt) as established by the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005) and the reallocation on April 13, 2005 (70 FR 19708, April 14, 2005). See §§ 679.20(a)(7)(i)(A), (a)(7)(i)(C), (c)(3)(iii), and (c)(5).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS, has determined that the 2005 Pacific cod TAC specified for catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,300 mt, and is setting aside the remaining 54 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI.

After the effective date of this closure the maximum retainable amounts at §§ 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: April 19, 2005.

Alan D. Risenhoover

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

[FR Doc. 05–8113 Filed 4–19–05; 2:49 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 77
Friday, April 22, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–359–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, MD–11, and MD–11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, MD–11, and MD–11F airplanes, that would have required repetitive operation of the exterior emergency door handle of the forward passenger door to determine if binding exists in the exterior emergency control handle mechanism, and corrective action, if necessary. This new action revises the proposed rule by requiring revised procedures for the operational test. The actions specified by this new proposed AD are intended to prevent failure of the forward passenger doors to operate properly in an emergency condition, which could delay an emergency evacuation and possibly result in injury to passengers and flightcrew. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 17, 2005.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–359–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–359–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ken Sujishi, Aerospace Engineer; Cabin Safety, Mechanical, and Environmental Branch; ANM–150L; FAA; Los Angeles Aircraft Certification Office; 3960 Paramount Boulevard; Lakewood, California 90712–4137; telephone (562) 627–5353; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–359–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–359–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, MD–11, and MD–11F airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on November 12, 2003 (68 FR 64006). That NPRM would have required repetitive operation of the exterior emergency door handle of the forward passenger door to determine if binding exists in the exterior emergency control handle mechanism, and corrective action if necessary. That NPRM was prompted by a report indicating that the exterior emergency function of one forward passenger door was inoperative. That condition, if not corrected, could result in failure of the forward passenger doors to operate properly in an emergency condition, which could delay an emergency

evacuation and possibly result in injury to passengers and flightcrew.

Actions Since Issuance of Previous Proposal

Since the issuance of that NPRM, the manufacturer has updated the service information to specify revised procedures for the operational test of the exterior emergency door handle mechanism of the forward passenger door.

We have reviewed and approved Boeing Service Bulletin MD11–52–046, Revision 03, dated October 27, 2004 (for Model MD–11 and MD–11F airplanes); and Boeing Service Bulletin DC10–52–221, Revision 02, dated October 27, 2004 (for Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes). Both service bulletins describe procedures for repetitive functional testing of the exterior emergency door handle of the forward passenger door to determine if binding exists in the exterior emergency control handle mechanism, and corrective actions if necessary. Corrective actions consist of replacing existing steel bearings with new, corrosion resistant bearings. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition, except as discussed under ''Differences Between Proposed Rule and Service Bulletins.''

Other Related Rulemaking

Operators should note that a notice of proposed rulemaking (NPRM), docket identifier 2004–NM–241–AD, applicable to certain McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, MD–11 and MD–11F airplanes, was published in the **Federal Register** on April 7, 2005 (70 FR 17618). That NPRM proposed to require repetitive operation of the exterior emergency door handle of the mid, overwing, and aft passenger doors to determine if binding exists in the exterior emergency control handle mechanism, and corrective actions if necessary. That NPRM is related to this proposed AD.

Differences Between Proposed Rule and Service Bulletins

Operators should note that, although the service bulletins include a procedure to replace the lower torque shaft bearings, this proposed AD does not mandate such replacement. Replacement of the lower torque shaft bearings does not address the identified unsafe condition of this AD.

We have changed the manufacturer name on the service bulletins cited in this proposed AD from McDonnell Douglas to Boeing to reflect current guidelines established by the Office of the Federal Register for material incorporated by reference.

Comments

We provided the public the opportunity to participate in the development of this AD. Several comments were submitted; however, the subjects of those comments have all been addressed by the revised service information. Therefore, those comments are not addressed in this proposed AD.

Conclusion

Since this change revises and clarifies the actions of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 604 airplanes of the affected design in the worldwide fleet. The FAA estimates that 396 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed repetitive operation of the exterior emergency door handle of the forward passenger door, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $25,740, or $65 per airplane, per operation.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein 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. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, 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. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2001–NM–359–AD.

Applicability: Model MD–11 and MD–11F airplanes; as identified in Boeing Service Bulletin MD11–52–046, Revision 03, dated October 27, 2004; and Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes; as identified in Boeing Service Bulletin DC10–52–221, Revision 02, dated October 27, 2004; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the forward passenger doors to operate properly in an emergency condition, which could delay an emergency evacuation and possibly result in injury to passengers and flightcrew, accomplish the following:

Functional Test

(a) Within 6,000 flight hours or 18 months after the effective date of this AD, whichever occurs later, perform a functional test of the exterior emergency control handle assemblies

of the forward passenger doors, by doing all actions specified in Accomplishment Instructions of the applicable service bulletin.

(1) If the functional test reveals no noisy operation or binding: At intervals not to exceed 6,000 flight hours or 18 months, whichever occurs later, repeat the functional test until the terminating action of paragraph (b) of this AD has been accomplished.

(2) If any functional test required by this AD reveals noisy operation or binding: Prior to further flight, replace the steel bearings with bearings made from corrosion-resistant material, in accordance with the applicable service bulletin.

Optional Terminating Action

(b) Accomplishment of the actions required by paragraph (a)(2) of this AD constitutes terminating action for the repetitive tests required by paragraph (a)(1) of this AD.

Actions Accomplished Per Previous Issue of Service Bulletin

(c) Actions accomplished before the effective date of this AD in accordance with the Boeing service bulletins listed in Table 2 of this AD are considered acceptable for compliance with the requirements of paragraph (a) of this AD.

TABLE 2.—BOEING SERVICE BULLETINS

Boeing service bulletin	Revision	Date of issue
DC10–52–221	Original ..	Nov. 5, 2001.
DC10–52–221	1	May 6, 2002.
MD11–52–046	Original ..	Nov. 5, 2001.
MD11–52–046	1	May 6, 2002.
MD11–52–046	2	Oct. 8, 2002.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

Issued in Renton, Washington, on April 13, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–8094 Filed 4–21–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–332–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Model 650 Airplanes

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

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Cessna Model 650 airplanes, that would have required repetitive replacement of the horizontal stabilizer primary trim actuator assembly (HSTA) with a repaired assembly. This new action revises the proposed rule by removing the requirement for repetitive replacement of the HSTA; adding a requirement to inspect to determine the part number of the actuator control unit (ACU) and replace the ACU with a new, improved ACU if necessary; and adding a requirement to revise the Limitations section of the airplane flight manual. This new action also revises the applicability to include all Model 650 airplanes. The actions specified by this new proposed AD are intended to prevent uncommanded movement of the horizontal stabilizer, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 17, 2005.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–332–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–332–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Robert P. Busto, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4157; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–332–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–332–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Cessna Model 650 airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on August 6, 2003 (68 FR 46514). That NPRM would have required repetitive replacement of the horizontal stabilizer primary trim actuator assembly (HSTA) with a repaired assembly. That NPRM was prompted by reports indicating that the ability of the no-back feature of the HSTA assembly, a design feature to prevent uncommanded movement of the horizontal stabilizer, could be degraded on Cessna Model 650 airplanes. We issued that NPRM to prevent uncommanded movement of the horizontal stabilizer, which could result in reduced controllability of the airplane.

In the preamble of that NPRM, we explained that we considered the requirements ''interim action'' and were considering further rulemaking. We now have determined that further rulemaking is indeed necessary, and this supplemental AD follows from that determination.

Actions Since Issuance of Original NPRM

Since issuance of the original NPRM, the airplane manufacturer in conjunction with the parts manufacturer has developed a new, improved actuator control unit (ACU) for Cessna Model 650 airplanes. We have determined that this new, improved ACU provides a mechanism for detecting a degraded no-back device before a failed device can contribute to reduced controllability of the airplane. Furthermore, some of these new, improved ACUs are already in service and have proven to be effective at identifying degraded no-back devices.

We also have determined that long-term continued operational safety is better ensured by modifications or design changes to remove the source of the problem, than by repetitive replacements. Long-term inspections may not provide the degree of safety necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive replacements, has led us to consider placing less emphasis on special procedures and more emphasis on design improvements. The proposed replacement is consistent with these considerations.

Explanation of New Relevant Service Information

We have reviewed Cessna Service Bulletin SB650–27–53, dated March 11, 2004. The service bulletin describes procedures for inspecting to determine the part number of the ACU and replacing the ACU with a new, improved ACU if necessary. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

Cessna has also issued the following temporary revisions (TRs) to the airplane flight manual (AFM):

AFM REVISIONS

Applicable Model 650 airplanes	Cessna TR(s)
Citation III, S/Ns 0001 through 0199 inclusive, and 0203 through 0206 inclusive.	65C3FM TC–R02–01, dated May 12, 2004.
Citation III, S/Ns 0001 through 0199 inclusive, and 0203 through 0206 inclusive; equipped with Honeywell SPZ–8000 integrated avionics system.	65C3FM TC–R02–06, dated August 11, 2004.
Citation III, S/Ns 0001 through 0199 inclusive, and 0203 through 0206 inclusive; not equipped with Honeywell SPZ–8000 integrated avionics system.	65C3FM TC–R02–07, dated August 11, 2004.
Citation VI, S/Ns 0200 through 0202 inclusive, and 0207 and subsequent.	65C6FM TC–R04–01, dated May 12, 2004. 65C6FM TC–R04–06, dated August 11, 2004.
Citation VII, S/Ns 7001 and subsequent	65C7FM TC–R10–01, dated May 12, 2004.
Citation VII, S/Ns 7001 and subsequent, equipped with Honeywell SPZ–8000 integrated avionics system.	65C7FM TC–R10–07, dated August 11, 2004.

TR 65C3FM TC–R02–01, 65C6FM TC–R04–01, and 65C7FM TC–R10–01 describe revisions to the Limitations section of the AFM to advise the flightcrew to accomplish the warning system check for the stabilizer trim systems.

TR 65C3FM TC–R02–06, 65C3FM TC–R02–07, 65C6FM TC–R04–06, and 65C7FM TC–R10–07 describe revisions to the Normal Procedures section of the AFM to advise the flightcrew that failure of the primary trim fail annunciator light to illuminate indicates a fault in the primary trim control system.

Comments

Due consideration has been given to the comments received in response to the original NPRM.

Request To Add Terminating Action

One commenter, the airplane manufacturer, requests that we replace the proposed requirement for repetitive replacements of the HSTA assembly with a terminating action. The commenter states that Cessna Service Bulletin 650–27–53, dated March 11, 2004, specifies replacing the ACU with a new, improved ACU, part number (P/N) 9914197–7. This new ACU is an upgrade with a new monitor within the ACU that continuously checks function of the no-back arrangement within the HSTA assembly. The monitor exposes degrading function of the no-back before it can contribute to reduced controllability of the airplane. When degrading function is detected, the new ACU immediately sets a fault that causes the airplane to fail an existing pre-flight check, limiting the airplane's exposure to degradation for the remainder of the flight.

Another commenter, an operator, states that Cessna Service Bulletin SB650–27–50, dated June 12, 2002 (which is cited in the original NPRM as as a source of service information for the repetitive replacement of the HSTA assembly), has not been distributed to operators of the affected Model 650

airplanes. The commenter also states that the manufacturer intends to supersede it with a new service bulletin that would recommend upgrading the ACU (Cessna Service Bulletin 650–27–53). The commenter states that requiring the original NPRM as proposed would compel operators to obtain an alternate method of compliance to use Cessna Service Bulletin 650–27–53. The commenter further states that documenting compliance of the proposed replacement of the HSTA assembly every 18 months involves considerable time and effort. We infer that this commenter also requests we revise the original NPRM to add the terminating action referenced in Cessna Service Bulletin 650–27–53.

We agree with the commenters' request for the reasons stated above. Also as stated earlier, we have determined that the new, improved ACU provides a mechanism for detecting a degraded no-back device before a failed device can contribute to reduced controllability of the airplane. Therefore, we have revised paragraph (a) of this supplemental NPRM accordingly.

Request To Revise Applicability

One commenter, the airplane manufacturer, requests that we add Model 650 airplanes, serial numbers 0172 and 7095, to the applicability of the original NPRM. The commenter states that these two airplanes were omitted from the effectivity of Cessna Service Bulletin 650–27–50, dated June 12, 2002, because the recommended actions of that service bulletin had been incorporated on those airplanes before the service bulletin was published. The commenter states, however, that the original NPRM should also be applicable to these two airplanes.

We agree with the commenter. We have determined that Cessna Model 650 airplanes, serial numbers 0172 and 7095, are also subject to the unsafe condition addressed by this supplemental NPRM. These two airplanes also are included in the effectivity of Cessna Service Bulletin 650–27–53, the new source of service information for this supplemental NPRM. Therefore, we have added these two additional airplanes to the applicability of this supplemental NPRM, which expands the applicability to include all Model 650 airplanes.

Request To Clarify "Discussion" Paragraph

The same commenter requests that we revise the "Discussion" paragraph of the original NPRM to clarify that actuators with degraded no-back capability have been found only in the laboratory environment. As justification, the commenter asserts that no airplanes have experienced uncommanded movement of the horizontal stabilizer during flight, and no actuators have been removed from an airplane because of this suspected failure mode. The commenter states that operators could be misled into believing that failure of the actuator occurred in service. Additionally, the commenter proposed new wording to clarify that, for uncommanded movement of the horizontal stabilizer to occur, a second failure must occur in combination with the degradation of the no-back feature of the HSTA assembly. That second failure is loss of electrical power to the actuator clutch.

Although we agree with the commenter's statements, we cannot revise the "Discussion" paragraph because it is not restated in this supplemental NPRM. In addition to the second failure identified by the commenter, we have determined that failure of the actuator gear train in combination with degradation of the no-back feature of the HSTA assembly also could cause uncommanded movement of the horizontal stabilizer to occur. Therefore, the third sentence of the "Discussion" paragraph should have stated: "Should the no-back feature of the HSTA assembly be degraded, and in addition to that, electrical power to the actuator clutch is lost or the gear train of the actuator fails, the horizontal stabilizer could move when air loads are applied to it during flight."

Request To Revise Cost Impact

The same commenter requests that we revise the cost impact to include the cost of the HSTA repair, since it is a significant amount. The commenter estimates that the cost of the replacement (including labor and repaired parts) as proposed in the original NPRM would be $7,500 per airplane, per replacement cycle, and that the U.S.-registered fleet cost would be $2,137,500, per replacement cycle. The commenter also states that "[t]he responsibility for the costs associated with the [original NPRM] should not be stated in the [original NPRM], as these business issues have not been settled, and are not relevant to the replacement."

We do not agree. Since we have revised the requirements of this supplemental NPRM, operators are no longer required to repetitively replace the HSTA assembly with a repaired assembly. Therefore, this supplemental NPRM does not include the cost impact of the proposed HSTA replacement, but includes the proposed one-time replacement of the ACU.

We do, however, acknowledge the commenter's objection to assigning cost responsibility in the cost impact of the original NPRM. We infer that the commenter specifically objects to the sentence that stated, "[t]he manufacturer has indicated that it would provide the required parts at no cost." The cost impact of the original NPRM was based on the best information we had at the time the original NPRM was published. We point out that, although we may have inadvertently misstated the true cost of a repaired assembly, the cost impact is only an estimate.

Request To Revise "Explanation of Requirements of Proposed Rule" Paragraph

The same commenter requests that we revise the "Explanation of Requirements of Proposed Rule" paragraph in the original NPRM. The commenter states that this paragraph should focus on the component of concern (HSTA assembly). The commenter also states that the phrases "is likely to exist" and "other products" are ambiguous and misleading. The commenter suggests changing the first sentence as follows: "Since an unsafe condition has been identified that may possibly exist or develop on aircraft of this same type design * * *." As justification the commenter asserts, "[o]perators may be led to believe the unsafe condition is likely to exist." Furthermore, the commenter states that "other products" could refer to either other aircraft, or other actuators of similar design.

We do not agree. Section 39.3 ("Definition of airworthiness directives") of the Federal Aviation Regulations (14 CFR 39.3) specifies that airworthiness directives apply to the following products: aircraft, aircraft engine, propellers, and appliances. Since this supplemental NPRM applies to all Model 650 airplanes, the affected product is the airplane model. In addition, Section 39.5 ("When does FAA issue airworthiness directives?") of the Federal Aviation Regulations (14 CFR 39.5) specifies that we issue an airworthiness directive when we find that an unsafe condition exists in the product and is likely to exist or develop in other products of the same type design. We also note that the "Explanation of Requirements of Proposed Rule" paragraph is not included in a supplemental NPRM, so there is no paragraph to revise if we had agreed with the request. Therefore, no change to this supplemental NPRM is necessary in this regard.

Request To Revise Part Number

The same commenter requests that we revise a certain referenced part number in paragraph (b) of the original NPRM. The commenter states we inadvertently referenced HSTA, P/N 9914056–3, as P/N 99140563.

We do not agree with the commenter. We have reviewed the original NPRM as published in the **Federal Register** on August 6, 2003 (68 FR 46514) and could not find the error the commenter refers to. Therefore, no change to this supplemental NPRM is necessary in this regard.

Conclusion

Since certain changes described above expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Differences Between Supplemental NPRM and Service Bulletin

The service bulletin recommends installing a new, improved ACU at the next phase 2 inspection or within 18 months, whichever occurs first. However, we have determined that an 18-month interval would not address the identified unsafe condition soon enough to ensure an adequate level of safety for the affected fleet. Furthermore, an imprecise compliance time, such as ''at the next phase 2 inspection,'' would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, we considered the degree of urgency associated with the subject unsafe condition as well as the availability of required parts, the average utilization of the affected fleet, and the time necessary to perform the installation (2 hours). In light of all of these factors, we find that a compliance time of 12 months represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. The compliance time has been coordinated with the manufacturer.

Operators should also note that, although the Accomplishment Instructions of the referenced service bulletin describe procedures for submitting a maintenance transaction report, this proposed AD would not require that action. The FAA does not need this information from operators.

Cost Impact

There are approximately 357 airplanes of the affected design in the worldwide fleet. The FAA estimates that 285 airplanes of U.S. registry would be affected by this proposed AD.

We estimate that it would take approximately 2 work hours per airplane to replace the ACU, and that the average labor rate is $65 per work hour. Required parts would cost approximately $3,000 per airplane if the ACU is exchanged. Based on these figures, the cost impact of the proposed replacement of the ACU on U.S. operators is estimated to be $892,050, or $3,130 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions. As a result, the costs attributable to the proposed AD may be less than stated above.

Authority for This Rulemaking

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

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

Regulatory Impact

The regulations proposed herein 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. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, 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. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Cessna Aircraft Company: Docket 2002–NM–332–AD.

Applicability: All Model 650 airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded movement of the horizontal stabilizer, which could result in reduced controllability of the airplane, accomplish the following:

Inspection and Replacement if Necessary

(a) Within 12 months after the effective date of this AD, inspect to determine the part number (P/N) of the actuator control unit (ACU), in accordance with the Accomplishment Instructions of Cessna Service Bulletin 650–27–53, dated March 11, 2004. If an ACU having P/N 9914197–7 is installed on the airplane, then no further action is required by this paragraph. If an ACU having P/N 9914197–3 or P/N 9914197–4 is installed on the airplane, replace the existing ACU with a new, improved ACU having P/N 9914197–7, in accordance with the service bulletin. Although the service bulletin referenced in this AD specifies to submit certain information to the

manufacturer, this AD does not include that requirement.

Airplane Flight Manual (AFM) Revision

(b) Within 1 month after the effective date of this AD or concurrently with the replacement required by paragraph (a) of this AD, whichever is first: Revise the Limitations and Normal Procedures sections of the AFM by inserting into the AFM a copy of all the applicable Cessna temporary revisions (TRs) listed in Table 1 of this AD.

Note 1: When a statement identical to that in the applicable TR(s) listed in Table 1 of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of the applicable TR may be removed from the AFM.

TABLE 1.—AFM REVISION

Applicable Model 650 airplanes	Cessna TR(s)
Citation III, S/Ns 0001 through 0199 inclusive, and 0203 through 0206 inclusive; equipped with Honeywell SPZ–8000 integrated avionics system.	65C3FM TC–R02–01, dated May 12, 2004; and 65C3FM TC–R02–06, dated August 11, 2004.
Citation III, S/Ns 0001 through 0199 inclusive, and 0203 through 0206 inclusive; not equipped with Honeywell SPZ–8000 integrated avionics system.	65C3FM TC–R02–01, dated May 12, 2004; and 65C3FM TC–R02–07, dated August 11, 2004.
Citation VI, S/Ns 0200 through 0202 inclusive, and 0207 and subsequent.	65C6FM TC–R04–01, dated May 12, 2004; and 65C6FM TC–R04–06, dated August 11, 2004.
Citation VII, S/Ns 7001 and subsequent	65C7FM TC–R10–01, dated May 12, 2004.
Citation VII, S/Ns 7001 and subsequent, equipped with Honeywell SPZ–8000 integrated avionics system.	65C7FM TC–R10–07, dated August 11, 2004.

Parts Installation

(c) As of the effective date of this AD, no person may install an ACU having P/N 9914197–3 or –4, on any airplane.

Alternative Methods of Compliance (AMOCs)

(d) In accordance with 14 CFR 39.19, the Manager, Wichita Aircraft Certification Office, FAA, is authorized to approve AMOCs for this AD.

Issued in Renton, Washington, on April 13, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–8095 Filed 4–21–05; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 310

RIN 3084–0098

Telemarketing Sales Rule Fees

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking; request for public comment.

SUMMARY: The Federal Trade Commission (the ''Commission'' or ''FTC'') is issuing a Notice of Proposed Rulemaking (''NPRM'') to amend the Telemarketing Sales Rule (''TSR'') to revise the fees charged to entities accessing the National Do Not Call Registry, and invites written comments on the issues raised by the proposed changes.

DATES: Comments must be received by June 1, 2005.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''TSR Fee Rule, Project No. P034305,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/ Office of the Secretary, Room H–159 (Annex K), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c), 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington, DC area and at the Commission is subject to delay due to heightened security precautions.

Comments filed in electronic form should be submitted by clicking on the following Web link: *https://secure.commentworks.com/ftc-dncfees2005* and following the instructions on the Web-based form. To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at *https://secure.commentworks.com/ftc-dncfees2005*. You may also visit *http://www.regulations.gov* to read this notice of proposed rulemaking, and may file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: David B Robbins, (202) 326–3747, Division of Planning & Information, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

On December 18, 2002, the Commission issued final amendments to the Telemarketing Sales Rule, which, *inter alia*, established the National Do Not Call Registry, permitting consumers to register, via either a toll-free telephone number or the Internet, their preference not to receive certain telemarketing calls (''Amended TSR'').[2] Under the Amended TSR, most

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

[2] *See* 68 FR 4580 (Jan. 29, 2003) (codified at 16 CFR pt. 310).

telemarketers are required to refrain from calling consumers who have placed their numbers on the registry.[3] Telemarketers must periodically access the registry to remove from their telemarketing lists the telephone numbers of those consumers who have registered.[4]

Shortly after issuance of the Amended TSR, Congress passed the Do-Not-Call Implementation Act (''the Implementation Act'').[5] The Implementation Act gave the Commission the specific authority to ''promulgate regulations establishing fees sufficient to implement and enforce the provisions relating to the 'do-not-call' registry of the [TSR]. * * * No amounts shall be collected as fees pursuant to this section for such fiscal years except to the extent provided in advance in appropriations Acts. Such amounts shall be available * * * to offset the costs of activities and services related to the implementation and enforcement of the [TSR], and other activities resulting from such implementation and enforcement.'' [6]

On July 29, 2003, pursuant to the Implementation Act and the Consolidated Appropriations Resolution, 2003,[7] the Commission issued a Final Rule further amending the TSR to impose fees on entities accessing the National Do Not Call Registry (''the Original Fee Rule'').[8] Those fees were based on the FTC's best estimate of the number of entities that would be required to pay for access to the national registry, and the need to raise $18.1 million in Fiscal Year 2003 to cover the costs associated with the implementation and enforcement of the ''do-not-call'' provisions of the Amended TSR. The Commission determined that the fee structure would be based on the number of different area codes of data that an entity wished to access annually. The Original Fee Rule established an annual fee of $25 for each area code of data requested from the national registry, with the first five area codes of data provided at no cost.[9] The maximum annual fee was capped at $7,375 for entities accessing 300 area codes of data or more.[10]

On July 30, 2004, pursuant to the Implementation Act and the Consolidated Appropriations Act, 2004 (''the 2004 Appropriations Act''),[11] the Commission issued a revised Final Rule further amending the TSR increasing fees on entities accessing the National Do Not Call Registry (''the Revised Fee Rule'').[12] Those fees were based on the FTC's experience through June 1, 2004, its best estimate of the number of entities that would be required to pay for access to the national registry, and the need to raise $18 million in Fiscal Year 2004 to cover the costs associated with the implementation and enforcement of the ''do-not-call'' provisions of the Amended TSR. The Commission determined that the fee structure would continue to be based on the number of different area codes of data that an entity wished to access annually. The Revised Fee Rule established an annual fee of $40 for each area code of data requested from the national registry, with the first five area codes of data provided at no cost.[13] The maximum annual fee was capped at $11,000 for entities accessing 280 area codes of data or more.[14]

In the Consolidated Appropriations Act, 2005 (''the 2005 Appropriations Act''),[15] Congress permitted the FTC to collect offsetting fees in the amount of $21.9 million in Fiscal Year 2005 to implement and enforce the TSR.[16] Pursuant to the 2005 Appropriations Act and the Implementation Act, as well as the Telemarketing Fraud and Abuse Prevention Act (''the Telemarketing Act''),[17] the FTC is issuing this NPRM to amend the fees charged to entities accessing the National Do Not Call Registry.

II. Calculation of Proposed Revised Fees

In the Original Fee Rule, the Commission estimated that 10,000 entities would be required to pay for access to the National Do Not Call Registry. The Commission based its estimate on the ''best information available to the agency'' at that time.[18] It noted that this estimate was based on ''a number of significant assumptions,'' about which the Commission had sought additional information during the comment period. The Commission noted, however, that it received virtually no comments providing information supporting or challenging these assumptions.[19] As a result, the Commission anticipated ''that these fees may need to be reexamined periodically and adjusted, in future rulemaking proceedings, to reflect actual experience with operating the registry.'' [20]

In the Revised Fee Rule, the Commission reported that ''[a]s of June 1, 2004, more than 65,000 entities had accessed the national registry. More than 57,000 of those entities had accessed five or fewer area codes of data at no charge, and 1,100 ''exempt'' entities also accessed the registry at no charge. Thus, more than 7,100 entities have paid for access to the registry, with over 1,200 entities paying for access to the entire registry.'' [21] The Commission based its calculation of revised fees on this experience, with the expectation that the number of entities accessing the registry in Fiscal Year 2004 would be substantially the same as in Fiscal Year 2003. As in the Original Fee Rule, the Commission based its estimate on the best information available at the time, with the continuing intent to periodically reexamine and adjust the fees to reflect actual experience with operating the registry.

From March 1, 2004 through February 28, 2005, more than 60,800 entities have accessed all or part of the information in the registry. Approximately 1,300 of these entities are ''exempt'' and therefore have accessed the registry at no charge.[22] An additional 52,700

[3] 16 CFR 310.4(b)(1)(iii)(B).

[4] 16 CFR 310.4(b)(3)(iv). The TSR requires telemarketers to access the national registry at least once every thirty-one days, effective January 1, 2005. *Id.*

[5] Do-Not-Call Implementation Act, Pub. L. 108–10, 117 Stat. 557 (2003).

[6] *Id.* at Section 2.

[7] Consolidated Appropriations Resolution, 2003, Pub. L. 108–7, 117 Stat. 11 (2003).

[8] 68 FR 45134 (July 31, 2003).

[9] Once an entity requested access to area codes of data in the national registry, it could access those area codes as often as it deemed appropriate for one year (defined as its ''annual period''). If, during the course of its annual period, an entity needed to access data from more area codes than those initially selected, it would be required to pay for access to those additional area codes. For purposes of these additional payments, the annual period was divided into two semi-annual periods of six months each. Obtaining additional data from the registry during the first semi-annual, six month period required a payment of $25 for each new area code. During the second semi-annual, six month period, the charge for obtaining data from each new area code requested during that six-month period was $15. These payments for additional data would provide the entity access to those additional area codes of data for the remainder of its annual term.

[10] 68 FR at 45141.

[11] Consolidated Appropriations Act, 2004, Pub. L. 108–199, 118 Stat. 3 (2004).

[12] 69 FR 45580 (July 30, 2004).

[13] *Id.* at 45,584. The Revised Fee Rule has the same fee structure as the Original Fee Rule; however, fees were increased from $25 to $40 per area code, from $15 to $20 per area code for the second semi-annual six month period, and from a maximum of $7,375 to $11,000.

[14] 69 FR at 45,584.

[15] Consolidated Appropriations Act, 2005, Pub. L. 108–447, 118 Stat. 2809 (2004).

[16] *Id.* at Division B, Title V.

[17] 15 U.S.C. 6101–08.

[18] 68 FR at 45140.

[19] *Id.*

[20] 68 FR at 45142.

[21] 69 FR at 45584.

[22] The Original Fee Rule and the Revised Fee Rule stated that ''there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing the National Do Not Call Registry without being required to under this Rule, 47 CFR 64.1200, or any

Continued

entities have accessed five or fewer area codes of data, also at no charge. As a result, approximately 6,700 entities have paid for access to the registry, with slightly less than 1,100 entities paying for access to the entire registry.

As previously stated, the Commission can collect offsetting fees in Fiscal Year 2005 to implement and enforce the Amended TSR.[23] The Commission is proposing a revised Fee Rule to raise $21.9 million of fees to offset costs it expects to incur in this Fiscal Year for the following purposes related to implementing and enforcing the ''do-not-call'' provisions of the Amended TSR. First, funds are required to operate the national registry. This includes items such as handling consumer registration and complaints, telemarketer access to the registry, state access to the registry, and the management and operation of law enforcement access to appropriate information. Second, funds are required for law enforcement efforts, including identifying targets, coordinating domestic and international initiatives, challenging alleged violators, and consumer and business education efforts, which are critical to securing compliance with the Amended TSR. Third, funds are required to cover ongoing agency infrastructure and administration costs, including information technology structural supports and distributed mission overhead support costs for staff and non-personnel expenses such as office space, utilities, and supplies.

The Commission proposes to revise the fees charged for access to the national registry based on the assumption that approximately the same number of entities will access similar amounts of data from the national registry during their next annual period.[24] Based on that assumption, and the continued allowance for free access to ''exempt'' organizations and for the first five area codes of data, the proposed revised fee would be $56 per area code. The fee charged to entities requesting access to additional area codes of data during the second six months of their annual period would be $28. The maximum amount that would be charged to any single entity would be $15,400, which would be charged to any entity accessing 280 area codes of data or more.

The Commission proposes to continue allowing, at least for the next annual period, all entities accessing the national registry to obtain the first five area codes of data for free.[25] The Commission allowed such free access in the Original Fee Rule and the Revised Fee Rule, ''to limit the burden placed on small businesses that only require access to a small portion of the national registry.'' [26] The Commission noted that such a fee structure was consistent with the mandate of the Regulatory Flexibility Act,[27] which requires that to the extent, if any, a rule is expected to have a significant economic impact on a substantial number of small entities, agencies should consider regulatory alternatives to minimize such impact. As stated in the Original Fee Rule and the Revised Fee Rule, ''the Commission continues to believe that providing access to five area codes of data for free is an appropriate compromise between the goals of equitably and adequately funding the national registry, on one hand, and providing appropriate relief for small businesses, on the other.'' [28] In addition, requiring some or all of the 52,700 entities that currently access five or fewer area codes from the national registry at no cost to pay a small fee for access would place an additional burden on the registry, requiring the expenditure of more resources to handle properly that additional traffic.

While the Proposed Rule provides free access to a small portion of the national registry, the Commission continues to seek comment on other alternatives that would balance the burdens faced by small businesses with the need to raise appropriate fees to fund the registry in a more equitable manner. Because the implementation and enforcement costs are borne by a small percentage of entities that access the registry, the Commission is particularly interested in comments addressing the propriety of changing or eliminating the number of area codes for which there is no charge, and the impact, if any, on entities that access the registry, including small businesses.[29] In addition, the Commission notes that the cost of accessing data in the registry is relatively modest. For example, if the fee was $37 per area code, and no area codes were offered for free, the total fee for a full year of access to five area codes of data would be $185. In this regard, given the modest nature of the fees, along with the increasing burden borne by those organizations that do pay for access, the Commission is especially interested in comments addressing the nature and type of entities that are accessing five or fewer area codes at no cost, whether these entities are primarily the types of businesses which the Regulatory Flexibility Act requires the agency to consider when adopting regulations, and whether such businesses need access to one, two, three, four, or five area codes.

Currently, approximately 19,000 entities access five free area codes. The Commission invites comment on whether any changes in the number of free area codes would affect an entity's business practices, including whether an entity would choose not to access an area code if it had to pay for that area code or whether the entity would pay to continue accessing that area code.

The Commission also proposes to continue allowing ''exempt'' organizations, as discussed in footnote 22, above, to obtain free access to the national registry. The Commission believes that any exempt entity, voluntarily accessing the national

other federal law.'' 16 CFR 310.8(c). Such ''exempt'' organizations include entities that engage in outbound telephone calls to consumers to induce charitable contributions, for political fund raising, or to conduct surveys. They also include entities engaged solely in calls to persons with whom they have an established business relationship or from whom they have obtained express written agreement to call, pursuant to 16 CFR 310.4(b)(1)(iii)(B)(i) or (ii), and who do not access the national registry for any other purpose.

[23] *See* Consolidated Appropriations Act, 2005, Pub. L. 108–447, 118 Stat. 2809, at Division B, Title V. The 2005 Appropriations Act permitted the Commission to collect offsetting fees of $21.9 million for those purposes.

[24] Telemarketers were first able to access the national registry on September 2, 2003. As a result, the first year of operation did not conclude until August 31, 2004. Similarly, the second year of operation will not end until August 31, 2005. The Commission realizes that a small number of additional entities may access the national registry for the first time prior to September 1, 2005, and should be considered in calculating the revised fees. In this regard, the Commission will adjust the assumptions to reflect the actual number of entities that have accessed the registry, and make the appropriate changes to the fees, at the time of issuance of the Final Rule.

[25] If all entities accessing the national registry were charged for the first five area codes of data, the cost per area code would be reduced to $37, while the maximum amount charged to access the entire national registry would be $10,360.

[26] *See* 68 FR at 45,140 and 69 FR at 45582.

[27] 5 U.S.C. 601.

[28] *See* 68 FR at 45141 and 69 FR at 45584. The Commission further stated that ''[m]ost of these entities—realtors, car dealers, community-based newspapers, and other small businesses—are precisely the type of businesses which the Regulatory Flexibility Act requires the agency to consider when adopting regulations.'' *See* 69 FR at 45583. Also see the discussion regarding the ''Regulatory Flexibility Act'' in Section VI of this Notice.

[29] As noted in footnote 25, if the Commission offered no area codes for free, the proposed fee would be $37 per area code, up to a maximum of $10,360. In addition, if the Commission offered (a) One area code for free, the fee would be $41 per area code, up to a maximum of $11,439; (b) two area codes for free, the fee would be $45 per area code, up to a maximum of $12,510; (c) three area codes for free, the fee would be $49 per area code, up to a maximum of $13,573; and (d) four area codes for free, the fee would be $53 per area code, up to a maximum of $14,628.

registry to avoid calling consumers who do not wish to receive telemarketing calls, should not be charged for such access. Charging such entities access fees, when they are under no legal obligation to comply with the ''do-not-call'' requirements of the TSR, may make them less likely to obtain access to the national registry in the future, resulting in an increase in unwanted calls to consumers. As with free access to five or fewer area codes, the Commission seeks comment on this issue as well.

III. Invitation To Comment

All persons are hereby given notice of the opportunity to submit written data, views, facts, and arguments addressing the issues raised by this Notice. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received by June 1, 2005.

IV. Communications by Outside Parties to Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record. *See* 16 CFR 1.26(b)(5).

V. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act,[30] the Office of Management and Budget (''OMB'') has approved the information collection requirements in the Revised Fee Rule and assigned OMB Control Number 3084–0097. The proposed rule amendment, as discussed above, provides for an increase in the fees that are charged for accessing the National Do Not Call Registry. Therefore, the proposed rule amendment does not create any new recordkeeping, reporting, or third-party disclosure requirements that would be subject to review and approval by OMB pursuant to the Paperwork Reduction Act.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''),[31] requires an agency either to provide an Initial Regulatory Flexibility Analysis (''IRFA'') with a proposed rule, or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The FTC does not expect that the rule concerning revised fees will have the threshold impact on small entities. As discussed in Section II, above, this NPRM specifically proposes charging no fee for access to data included in the registry from one to five area codes. As a result, the Commission anticipates that many small businesses will be able to access the national registry without having to pay any annual fee. Thus, it is unlikely that there will be a significant burden on small businesses resulting from the adoption of the proposed revised fees. Nonetheless, the Commission has determined that it is appropriate to publish an IRFA in order to inquire into the impact of this proposed rule on small entities. Therefore, the Commission has prepared the following analysis.

A. Reasons for the Proposed Rule

As outlined in Section II, above, the Commission is proposing to amend the fees charged to entities accessing the national registry in order to raise sufficient amounts to offset the current year costs to implement and enforce the Amended TSR.

B. Statement of Objectives and Legal Basis

The objective of the current proposed rule is to collect sufficient fees from entities that must access the National Do Not Call Registry. The legal authority for this NPRM is the 2005 Appropriations Act, the Implementation Act, and the Telemarketing Act.

C. Description of Small Entities to Which the Rule Will Apply

The Small Business Administration has determined that ''telemarketing bureaus'' with $6 million or less in annual receipts qualify as small businesses.[32] Similar standards, *i.e.*, $6 million or less in annual receipts, apply for many retail businesses which may be ''sellers'' and subject to the proposed revised fee provisions outlined in this NPRM. In addition, there may be other types of businesses, other than retail establishments, that would be ''sellers'' subject to the proposed rule.

As described in Section II, above, more than 52,700 entities have accessed five or fewer area codes of data from the national registry at no charge. While not all of these entities may qualify as small businesses, and some small businesses may be required to purchase access to more than five area codes of data, the Commission believes that this is the best estimate of the number of small entities that would be subject to the proposed revised fee rule. The Commission invites comment on this issue, including information about the number and type of small business entities that may be subject to the revised fees.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The information collection activities at issue in this NPRM consist principally of the requirement that firms, regardless of size, that access the national registry submit minimal identifying and payment information, which is necessary for the agency to collect the required fees. The cost impact of that requirement and the labor or professional expertise required for compliance with that requirement were discussed in section V of the Revised Fee NPRM.[33]

As for compliance requirements, small and large entities subject to the revised fee rule will pay the same rates to obtain access to the National Do Not Call Registry in order to reconcile their calling lists with the phone numbers maintained in the national registry. As noted earlier, however, compliance costs for small entities are not anticipated to have a significant impact on small entities, to the extent the Commission believes that compliance costs for those entities will be largely minimized by their ability to obtain data for up to five area codes at no charge.

E. Duplication With Other Federal Rules

None.

F. Discussion of Significant Alternatives

The Commission recognizes that alternatives to the proposed revised fee are possible.[34] For example, instead of a fee based on the number of area codes that a telemarketer accesses from the national registry, access could be provided on the basis of a flat fee regardless of the number of area codes accessed. The Commission believes, however, that these alternatives would likely impose greater costs on small businesses, to the extent they are more likely to access fewer area codes than larger entities.

Another alternative the Commission has considered entails providing small businesses with free access to the national registry.[35] The Commission continues to believe, however, ''an alternative approach that would provide small business with exemptive relief more directly tied to size status would not balance the private and public interests at stake any more equitably or reasonably than the approach currently

[30] 44 U.S.C. 3501–3520.

[31] 5 U.S.C. 604(a).

[32] *See* 13 CFR 121.201.

[33] *See* 69 FR at 23,704.

[34] *See* the discussion and request for comments in Section II of this Notice.

[35] *See* 69 FR at 45,583. *See also,* 68 FR at 16,243 n.53.

proposed by the Commission.'' [36] The Commission also continues to believe that ''such a system would present greater administrative, technical, and legal costs and complexities than the Commission's current proposal which does not require any proof or verification of that status.'' [37]

Another alternative would be reducing the current number of free area codes, but this approach might, among other things, require additional expenditures to process and service an increased number of paid subscriptions. In any event, reducing the number of free area codes may increase, rather than decrease, compliance costs for small businesses, if they had to pay for certain area codes that they can currently access for free.

Accordingly, the Commission believes its current proposal balances the interests of reducing the burden for small businesses to the greatest extent possible, while achieving the goal of covering the necessary costs to implement and enforce the Amended TSR.

Despite these conclusions, the Commission welcomes comment on any significant alternatives that would further minimize the impact on small entities, consistent with the objectives of the Telemarketing Act, the 2005 Appropriations Act, and the Implementation Act.

List of Subjects in 16 CFR Part 310

Telemarketing, Trade practices.

VII. Proposed Rule

Accordingly, for the reasons stated in the preamble, the Federal Trade Commission proposes to amend part 310 of title 16 of the Code of Federal Regulations as follows:

PART 310—TELEMARKETING SALES RULE

1. The authority citation for part 310 continues to read as follows:

Authority: 15 U.S.C. 6101–6108.

2. Revise § 310.8(c) and (d) to read as follows:

§ 310.8 Fee for access to the National Do Not Call Registry.

* * * * *

(c) The annual fee, which must be paid by any person prior to obtaining access to the National Do Not Call Registry, is $56 per area code of data accessed, up to a maximum of $15,400; *provided,* however, that there shall be no charge for the first five area codes of data accessed by any person, and *provided further,* that there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing the National Do Not Call Registry without being required under this Rule, 47 CFR 64.1200, or any other federal law. Any person accessing the National Do Not Call Registry may not participate in any arrangement to share the cost of accessing the registry, including any arrangement with any telemarketer or service provider to divide the costs to access the registry among various clients of that telemarketer or service provider.

(d) After a person, either directly or through another person, pays the fees set forth in § 310.8(c), the person will be provided a unique account number which will allow that person to access the registry data for the selected area codes at any time for twelve months following the first day of the month in which the person paid the fee (''the annual period''). To obtain access to additional area codes of data during the first six months of the annual period, the person must first pay $56 for each additional area code of data not initially selected. To obtain access to additional area codes of data during the second six months of the annual period, the person must first pay $28 for each additional area code of data not initially selected. The payment of the additional fee will permit the person to access the additional area codes of data for the remainder of the annual period.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05–8044 Filed 4–21–05; 8:45 am]

BILLING CODE 6750–01–P

[36] *See* 68 FR at 16,243 n.53.

[37] *Id.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter I

[Docket No. 2005N–0147]

Sprout Safety Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to elicit information on the current science related to foodborne illness associated with the consumption of sprouts. In October 2004, FDA released a produce safety action plan entitled ''Produce Safety from Production to Consumption: 2004 Action Plan to Minimize Foodborne Illness Associated with Fresh Produce Consumption'' (Produce Action Plan). One item in the Produce Action Plan is to initiate rulemaking to minimize foodborne illness associated with the consumption of sprouted seeds. However, because of the complexities of the issues and the uncertainty about what the current science could support, FDA believes that it would be of value to hold a public meeting to gather information relevant to a possible regulation. We request that those who speak at the meeting, or otherwise provide FDA with their comments, focus on the questions relating to the microbial safety of seeds destined for sprouting and sprouted seeds set out in section II of this document.

DATES: The public meeting will be held in College Park, MD, on Tuesday, May 17, 2005, from 8:30 a.m. to 5 p.m. We request that everyone planning to attend the meeting register prior to the meeting. For security reasons and due to space limitations, we recommend that you register at least 5 business days before the meeting. You may register via the Internet and also by fax until close of business 5 days before the meeting, provided that space is available (see **FOR FURTHER INFORMATION CONTACT**). In addition to participating in the public meeting, you may submit written or electronic comments until July 18, 2005.

ADDRESSES: The public meeting will be held at the Harvey W. Wiley Federal Bldg., Food and Drug Administration, Center for Food Safety and Applied Nutrition, 5100 Paint Branch Pkwy., College Park, MD 20740–3835.

Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Amy L. Green, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 301–436–2025, FAX: 301–436–2651, or e-mail: *amy.green@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Since 1996, FDA has responded to 27 outbreaks of foodborne illness in the United States for which raw or lightly cooked sprouts were the confirmed or suspected vehicle for the illness. During

this 9-year period, sprouts accounted for 40 percent of all foodborne illness outbreaks associated with fresh produce and approximately 20 percent of the reported illnesses. The 27 outbreaks accounted for an estimated 1,636 reported cases of illness. Although the sprouts associated with these outbreaks have been primarily alfalfa, clover, or mung bean sprouts, FDA is concerned about the foodborne illness risk associated with all types of raw and lightly cooked sprouts. Thus, the agency has issued several advisories that warn consumers of the risks associated with consumption of raw or lightly cooked sprouts. The sprouts involved with the outbreaks have been generally of U.S. origin while the seeds from which the sprouts have been produced have been primarily of non-U.S. origin. To date, the causative agents have been *Salmonella* and *Escherichia coli* O157.

Sprouts present a special food safety challenge because the conditions that promote sprouting of the seed (e.g., temperature, humidity, available nutrients) also promote the growth of pathogens if pathogens are present. Seed appears to be the source of contamination in most of the foodborne illness outbreaks associated with sprout consumption. However, insanitary conditions at the sprouting facility appear to have exacerbated any seed contamination problems.

In October 1999, FDA issued a guidance entitled ''Guidance for Industry: Reducing Microbial Food Safety Hazards for Sprouted Seeds.'' This guidance recommends preventive controls to assist all parties involved in the production of sprouts (seed producers, seed conditioners and distributors, and sprout producers) to reduce the risk of sprouts serving as a vehicle for foodborne illness. The guidance is available at *http://vm.cfsan.fda.gov/~dms/sprougd1.html*. Specific recommendations in this guidance include development and implementation of good agricultural practices and good manufacturing practices in the production and handling of seeds and sprouts, seed disinfection treatments, and microbial testing of spent irrigation water before the sprouts enter the food supply. At the same time, FDA issued a second guidance entitled ''Guidance for Industry: Sampling and Microbial Testing of Spent Irrigation Water during Sprout Production,'' which contains recommendations to assist sprout producers in testing spent irrigation water for pathogens before sprout products enter the food supply. This second guidance is available at *http://vm.cfsan.fda.gov/~dms/sprougd2.html*. FDA also served as a technical consultant to the California Department of Health Services, who, in cooperation with the sprout industry, developed a video to advise the sprout industry on how to produce safer product.

For several years following release of FDA's guidance documents, foodborne illness outbreaks associated with alfalfa and clover sprouts appeared to diminish. In 2000, there was only one sprout-associated outbreak, compared to 6 outbreaks in 1999. Between 2000 and 2002, salmonellosis emerged as a foodborne illness associated with consumption of raw or lightly cooked mung bean sprouts. Recently, alfalfa sprouts remerged as a significant vehicle for foodborne illness, with 5 outbreaks in 2003 and 2 outbreaks in 2004.

We have observed a downward trend in the average number of cases associated with an outbreak since issuance of FDA's sprout guidances. Between 1996 and 1999, there were 14 outbreaks with 1,364 reported illnesses, an average of 97 cases per outbreak. Since FDA issued its sprout guidances, there have been 13 outbreaks with 272 reported illnesses, an average of 21 cases per outbreak.

FDA believes that the 1999 sprout guidances have had a significant positive effect on reducing both the number of outbreaks associated with sprouts and on the number of cases per outbreak. However, based on continuing outbreaks associated with raw and lightly cooked sprouts, the agency is concerned that further action may be needed to ensure sustained adoption of effective preventive controls by the seed and sprout industry as a whole. In October 2004, FDA released the Produce Action Plan. Now, FDA is considering whether a proposed regulation is needed to codify and expand on the existing sprout guidance.

FDA believes that a good first step to improving the safety of sprouts is to engage and solicit the views of other Government agencies at the Federal (Environmental Protection Agency, U.S. Department of Agriculture, Centers for Disease Control), state, and local levels, from industry, from consumer groups, and from the public generally about the current science relating to preventing or minimizing foodborne illness associated with the consumption of sprouts. The public meeting and period for submission of written comments are intended to provide that opportunity. FDA requests that comments presented at the public meeting or otherwise communicated to the agency focus on the questions set out in section II of this document.

II. Questions

1. What concepts or underlying principles should guide efforts to improve the safety of sprouts?

2. Which practices primarily contribute to the contamination with harmful pathogens of seeds used for sprouting? Which intervention strategies can help prevent, reduce, or control this contamination of seeds used for sprouting? Where appropriate, identify barriers to adopting effective preventive controls for this contamination, and, if possible, suggest mechanisms to overcome these barriers.

3. Which practices primarily contribute to the contamination with harmful pathogens of sprouts? Which intervention strategies can help prevent, reduce, or control the contamination of sprouts? Where appropriate, identify barriers to adopting effective preventive controls for this contamination, and, if possible, suggest mechanisms to overcome these barriers.

4. Do the preventive controls recommended in FDA's sprout guidances (*http://vm.cfsan.fda.gov/~dms/sprougd1.html* and *http://vm.cfsan.fda.gov/~dms/sprougd2.html*) need to be expanded or otherwise revised? If yes, please describe generally the areas that need expansion or other revision.

4. Although FDA's current recommendations address practices by all parties, efforts to promote adoption of effective preventive controls have focused largely on sprouting facilities. What can or should be done to increase the involvement of producers of seeds for sprouting and seed distributors to ensure the safety of sprouts?

5. Is a regulation likely to be an effective means of achieving the goal of minimizing foodborne illness associated with the consumption of sprouts? If not, what is likely to be an effective approach?

6. How can progress toward the overarching goal (to minimize foodborne illness associated with sprout consumption) be effectively measured?

7. There is broad variation within the seed and sprout industry, including variations in size of establishments, the types of seeds and sprouts produced, the practices used in production, and, possibly, variations in the vulnerability of a particular type of seed or sprout to microbial hazards or in the effectiveness of particular interventions. How, if at all, should the actions to improve the safety of seeds for sprouting be structured to take into account such variation? For example, should there be different sets of interventions for identifiable segments of the seed

industry? Similarly, how, if at all, should the actions to improve the safety of sprouts be structured to take into account such variation? For example, should there be different sets of interventions for identifiable segments of the sprouts industry? If yes, please describe.

8. Are there existing food safety systems or standards (such as international standards) that FDA should consider as part of the agency's efforts to minimize foodborne illness associated with the consumption of sprouts? Please identify these systems or standards and explain how their consideration might contribute to this effort.

III. Registration and Requests for Oral Presentations

You may register through FDA's Web site *http://www.cfsan.fda.gov/* and choose ''Public Meetings,'' by fax, or e-mail (see **FOR FURTHER INFORMATION CONTACT**). For security reasons and due to space limitations, we recommend that you register at least 5 days before the meeting. Registration will be accepted on a first-come basis; if you need special accommodations due to a disability, please inform the contact person at least 7 days in advance (see **FOR FURTHER INFORMATION CONTACT**). There is no registration fee for this public meeting, but early registration is encouraged because space is limited. In addition, early registration will expedite entry into the building and its parking area. If you require parking, please include the vehicle make and tag number, if known, on your registration form. Because the meeting will be held in a Federal building, you should also bring a photo ID and plan for adequate time to pass through security screening systems.

If you would like to make oral comments at the meeting, please specify your interest in speaking when you register. The amount of time for each oral presentation may be limited based upon the number of requests to speak. FDA encourages individuals or firms with relevant data or information to present such information at the meeting or in written comments to the record.

IV. Transcripts

A transcript will be made of the proceedings of the meeting. Transcripts of the meeting may be requested in writing from FDA's Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 30 working days after the meeting at a cost of 10 cents a page. The transcript of the public meeting and all comments submitted will be available for public examination at the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

V. Comments

In addition to presenting oral comments at the public meeting, interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the subject of this meeting. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 18, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–8103 Filed 4–19–05; 2:04 pm]

BILLING CODE 4160–01–S

Notices

Federal Register

Vol. 70, No. 77

Friday, April 22, 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 Research Service

Notice of Intent To Seek Approval To Collect Information; Correction

AGENCY: USDA, Agricultural Research Service, National Agricultural Library.

ACTION: Notice and request for comments; correction.

SUMMARY: This document corrects the National Agricultural Library's Notice of Intent to Seek Approval to Collect Information. The notice was published in the **Federal Register** of March 28, 2005. This correction provides the correct e-mail address for submitting comments to the National Library.

Correction

In the **Federal Register** of March 28, 2005, in FR Doc. 05–6026, on page 15613, in the third column, correct the **ADDRESSES** section to read as follows:

ADDRESSES: Address all comments concerning this notice to Mary Ann Leonard, Special Projects Coordinator, Information Research Services Branch, National Agricultural Library, 10301 Baltimore Avenue, Beltsville, MD 20705–2351, telephone (301) 504–6500 or fax (301) 504–6409. Submit electronic comments to *mleonard@nal.usda.gov*.

Dated: April 11, 2005.

Antoinette A. Betschart,

Associate Administrator for Agricultural Research Service.

[FR Doc. 05–8031 Filed 4–21–05; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Mission Brush, Idado Panhandle National Forests, Boundary County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a Supplemental Environmental Impact Statement.

SUMMARY: The USDA Forest Service will prepare a Supplemental Environmental Impact Statement (SEIS) for the Mission Brush project. The Notice of Availability of the Draft EIS for the Mission Brush project was published in the **Federal Register** (68 FR 53730) on September 12, 2003 and the notice of the Final EIS (69 FR 31613) was published on June 4, 2004. The Record of Decision on this project was administratively appealed to the Regional Forester per 36 CFR part 215. The Regional Forester affirmed my decision on August 30, 2004. However, due to information that has been identified since the availability of the final EIS and ROD, I have determined the need for a supplement. The proposed action is unchanged from the final EIS. A Supplemental EIS is being prepared to address analysis issues raised through the recent opinion issued through the U.S. Court of Appeals for the Ninth Circuit in *Lands Council* v. *Powell,* 395 F.3d 1015–1046 (9th Cir. 2005).

DATES: Scoping is not required for supplements to environmental impact statements (40 CFR 1502.9(c)(4)). There was extensive public involvement in the development of the proposed action, the 2003 Draft EIS and the 2004 Final EIS and the Forest Service is not inviting comments at this time.

ADDRESSES: Bonners Ferry Ranger District, 6286 Main Street, Bonners Ferry, ID 83805.

FOR FURTHER INFORMATION CONTACT: Doug Nishek, Project Team Leader, USDA Forest Service, Bonners Ferry Ranger District at 208–267–5561.

SUPPLEMENTARY INFORMATION: The Mission Brush Record of Decision (ROD) was released at the same time as the Final EIS and the legal notice of decision was published in the newspaper of record on June 1, 2004. The ROD selected Alternative 2 and authorized vegetation treatments on a total of approximately 4036 acres through a combination of even-aged and uneven-aged regeneration cuts, partial cuts and tree girdling; fuels treatments on approximately 3900 acres, ecosystem prescribed burning on approximately 238 acres, five miles of temporary road construction to be decommissioned after use, 13 miles of existing roads to be decommissioned, 39 miles of existing roads to be improved, and five miles of existing roads to be placed in storage, and improvement of facilities at Brush Lake Campground.

The Record of Decision was appealed. Following administrative review, the decision was affirmed and the appellant's requested relief denied by the Appeal Deciding Officer for the Northern Region of the USDA Forest Service on August 30, 2004 with the following requirement:

> I fine the Forest Supervisor has made a reasoned decision and has complied with all laws, regulations, and policy. After careful consideration of the above factors, I affirm the Forest Supervisor's decision to implement the Mission Brush project. Your requested relief is denied. However, because of the recent 9th Circuit Opinion in Lands Council vs. Powell (*Lands Council* v. *Powell,* 395 F.3d 1015–1046 (9th Cir. 2005)), I am directing the Forest to delay implementation of this project until further notice.

The Supplemental EIS will contain information relating to prior and reasonably foreseeable timber harvests in the project's cumulative effects area, water quality and fisheries analysis, soil conditions, stands of old growth trees, and wildlife analysis methodologies. No modifications to the activities authorized by the June 2004 Record of Decision are proposed under this Supplemental EIS (SEIS). The SEIS is intended to provide additional evaluation of the natural resources listed above and provide that information to the public.

The purpose and need for the Mission Brush project includes considerations for vegetation, aquatic ecosystems, wildlife, and recreation. The vegetation goal is to trend the composition, structure, and diversity of landscape patterns toward desired future conditions by providing tree species and stocking levels similar to historic conditions that resist insects, diseases, and stand-replacing wildfire(s), and improve landscape patterns by creating openings that more closely resemble those that occurred historically. For the aquatic ecosystem the goal is to maintain and improve watershed and fisheries in the Mission Creek and Brush Creek drainages. Wildlife goals are to promote the long-term persistence and stability of wildlife habitat and biodiversity by trending toward vegetation that more closely resembles the historic range of variability and

improve the diversity of forest structures in to provide wildlife, fish, and plant habitat diversity. For recreation the goal is to provide recreation facilities that are safe, meet universal accessibility requirements, and meet future needs while retaining the rustic nature of the area and improving the quality of the recreation site around Brush Lake.

I am the Responsible Official for this environmental analysis. My address is Idaho Panhandle National Forests, 3815 Schreiber Way, Coeur d'Alene, ID 83814. The Record of Decision for the Mission Brush project will identify the land management activities to be implemented in the project area including acres and types of vegetative treatments, fuels treatments, construction of temporary roads, decomissioning of temporary roads and existing roads, access management, and improvements at Brush Lake Campground.

A Draft SEIS is expected to be available for public review and comment in April 2005; and a final environmental impact statement in June 2005. The mailing list for this project will include those individuals, agencies and organizations on the mailing list for the 2003 Draft EIS.

The comment period for the Draft SEIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**. In accordance with 36 CFR 215.5, as published in the **Federal Register**, Volume 68 no. 107, June 4, 2003, the Supplemental Draft EIS comment period will be the designated time in which ''substantive'' comments will be considered. In addition, the public is encouraged to contact or visit with Forest Service officials during the analysis and prior to the decision. The Forest Service will continue to seek information, comments, and assistance from Federal, Tribal, State, and local agencies and other individuals or organizations that may be interested in or affected by the proposed actions.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental statement stage but that are not raised until after completion of the final environmental statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues related to the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The United States Department of Agriculture (USDA) prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, and marital or familial status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means of communication of program information (braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). To file a complaint, write the Secretary of Agriculture, U.S. Department of Agriculture, Washington, DC 20250, or call 800–245–6340 (voice) or 202–720–1127 (TDD). USDA is an equal employment opportunity employer.

The Idaho Panhandle National Forests Supervisor will make a decision on this project after considering comments and responses, environmental consequences discussed in the Supplemental Final EIS, and applicable laws, regulations and policies. The decision and supporting reasons will be documented in a Record of Decision.

Dated: April 11, 2005.

Ranotta K. McNair,

Forest Supervisor, Idaho Panhandle National Forests.

[FR Doc. 05–7671 Filed 4–21–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Monongahela National Forest, West Virginia, Allegheny Wood Products Easement EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service, Monongahela National Forest intends to prepare an Environmental Impact Statement (EIS) to disclose the environmental consequences of authorizing an easement on National Forest System lands. In the EIS, the USDA Forest Service will address the potential environmental impacts of authorizing the use of an existing abandoned railroad grade to provide reasonable access to a landowner to private lands in the Blackwater Canyon area of Tucker County, West Virginia. *See* the **SUPPLEMENTARY INFORMATION** section for the Purpose and Need for this action.

DATES: Comments concerning the scope of the analysis must be received by May 31, 2005. The draft environmental impact statement is expected August, 2005, and the final environmental impact statement is expected November 2005.

ADDRESSES: Send written comments to Bill Shields, NEPA Coordinator, Monongahela National Forest, 200 Sycamore Street, Elkins, West Virginia 26241. Send electronic comments to *comments-eastern-monongahela@fs.fed.us. See* **SUPPLEMENTARY INFORMATION** section for information on how to send electronic comments.

FOR FURTHER INFORMATION CONTACT: Bill Shields, Forest NEPA Coordinator, Monongahela National Forest, USDA Forest Service; telephone: 304–636–1800 extension 287. *See* address above under **ADDRESSES**. Copies of the documents may be requested at the same address. Another means of obtaining information is to visit the Forest Web page at *http//www.fs.fed.us/r9/monongahela*—click on ''Forest Planning'' then scroll down to Proposed Actions, the AWP Easement EIS.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The Alaska National Interest Lands Conservation Act (ANILCA) states that the Secretary of Agriculture ''shall provide such access to non-federally owned land within the boundaries of the National Forest System as the Secretary deems adequate to secure to

the owner the reasonable use and enjoyment thereof * * *'' (§ 1323) The responsibility and authority to grant access has been delegated from the Secretary to the Forest Supervisor. Allegheny Wood Products (AWP) has requested access consistent with the ANILCA and the Federal Land Policy and Management Act of 1976 (FLPMA) to manage the timber resources on their land between the Blackwater River and the railroad grade through Blackwater Canyon. Management activities on the private land would include timber stand improvement, commercial thinnings, and forest protection from insects, disease, and wildfire. There is no deeded access to the AWP property. The land is steep, and is bounded on the south by the Blackwater River. The only reasonable access to the AWP property is via the railroad grade through the Canyon, a portion of which AWP is a half owner. The federal government owns the other half of the grade, which is administered by the Forest Service as part of the Monongahela National Forest.

Goal XIV of the Monongahela National Forest Land and Reserve Management Plan (Forest Plan) states ''Permit use of National Forest land by others, under special use or lease authorities, that is compatible with National forest goals and objectives and will contribute to the improved quality of life for local residents.''

This authorization is needed to move towards goal XIV of the Forest Plan.

Proposed Action

The Forest Service is proposing to authorize an easement for the railroad grade in Blackwater Canyon to Alleghany Wood Products for the management of their timbered property. This authorization would include the need for additional improvement of sections of the road to allow motorized vehicle use.

Responsible Official

Clyde Thompson, Forest Supervisor, Monongahela National Forest; 200 Sycamore Street; Elkins, West Virginia 26241.

Nature of Decision To Be Made

The decision to be made is how to provide access for Alleghany Wood Products to their property adjacent to National Forest System Lands. While the No Action alternative will be considered in the analysis, selection of this alternative is precluded by the requirements of the ANILCA.

Scoping Process

Scoping will be initiated by the posting of this notice in the **Federal Register**. Scoping letters will be mailed to interested parties requesting input from members of the public. Upon completion of the Draft Environmental Impact Statement (DEIS), comments will be solicited through a Notice of Availability in the **Federal Register** and a mailing of the DEIS to those members of the public who have responded to our scoping efforts and other interested parties.

Preliminary Issues

There are several historic properties along the railroad grade which are eligible for inclusion in the National Register of Historic Places. Repeated use of this road by motorized equipment has the potential to damage to these historic properties. In addition, the railroad grade may be eligible for inclusion in the National Historic Register.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. In November, 2002 a scoping letter was sent to members of the public regarding this project. At that point in time, it was believed that an Environmental Assessment may be appropriate. As a result of scoping and further analysis, it has been determined that an Environmental Impact Statement is more appropriate due to the presence and potential impacts to heratige resources.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir 1986) and *Wisonsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in address these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.)

Dated: April 14, 2005.

Clyde N. Thompson,

Forest Supervisor.

[FR Doc. 05–8083 Filed 4–21–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

South Mt. Baker-Snoqualmie Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The South Mt. Baker-Snoqualmie Resource Advisory Committee (RAC) will meet Friday, May 13, 2005 at the Snoqualmie Ranger District office, 42404 SE., North Bend Way, North Bend, WA 98045–9545.

The meeting will begin at 9 a.m. and continue until about 4:30 p.m. Agenda items to be covered include: (1) Election of a new RAC committee Chairperson,

(2) Review of by-laws, (3) Review of project evaluation processes, (4) Presentation of proposed projects and (5) Selection of proposed projects.

All South Mt. Baker-Snoqualmie Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

The South Mt. Baker-Snoqualmie Resource Advisory Committee advises King and Pierce Counties on projects, reviews project proposals, and makes recommendations to the Forest Supervisor for projects to be funded by Title II dollars. The South Mt. Baker-Snoqualmie Resource Advisory Committee was established to carry out the requirements of the Secure Rural Schools and Community Self-Determination Act of 2000.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Jim Franzel, Snoqualmie District Ranger, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, 42404 SE., North Bend Way, North Bend, WA 98045, (425–888–1421 Extension 230).

Dated: April 15, 2005.

Jim Franzel,

Designated Federal Official.

[FR Doc. 05–8091 Filed 4–21–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

North Mt. Baker-Snoqualmie Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The North Mt. Baker-Snoqualmie Resource Advisory Committee (RAC) will meet on Thursday, May 12, 2005 at the Mt. Baker Ranger District office, 810 State Route 20, Sedro Woolley, WA, and on Friday, May 20, 2005 at the Whatcom County Parks and Recreation Department Conference Room, 3373 Mt. Baker Highway, Bellingham, WA. Both meetings will begin at 9 a.m.

The purpose of the first meeting will be to (1) elect a new RAC Chairperson, (2) discuss a Charter, and (3) begin review of proposed projects for 2006. The second meeting will (1) finish the review of proposed projects for 2006 and (2) conduct committee member voting on proposed projects.

All North Mt. Baker-Snoqualmie Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

The North Mt. Baker-Snoqualmie Resource Advisory Committee advises Whatcom and Skagit Counties on projects, reviews project proposals, and makes recommendations to the appropriate USDA official for projects to be funded by Title II dollars. The North Mt. Baker-Snoqualmie Resource Advisory Committee was established to carry out the requirements of the Secure Rural Schools and Community Self-Determination Act.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Jon Vanderheyden, Designated Federal Official, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, 810 State Route 20, Sedro Woolley, Washington 98284 (360–856–5700, Extension 201).

Dated: April 18, 2005.

Jon Vanderheyden,

Designated Federal Official.

[FR Doc. 05–8092 Filed 4–21–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

Sunshine Act; Meetings

AGENCY: Rural Telephone Bank, USDA.

ACTION: Staff Briefing for the Board of Directors.

TIME AND DATE: 2 p.m., Wednesday, May 4, 2005.

PLACE: Conference Room 104–A, Jamie L. Whitten Federal Building, U.S. Department of Agriculture, 12th & Jefferson Drive, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED:

1. Program updates.
2. Administrative and other issues.

ACTION: Board of Directors Meeting.

TIME AND DATE: 9 a.m., Thursday, May 5, 2005.

PLACE: Conference Room 104–A, Jamie L. Whitten Federal Building, U.S. Department of Agriculture, 12th & Jefferson Drive, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to order.
2. Action on Minutes of the January 26, 2005, board meeting.
3. Action on the Minutes of the March 11, 2005, special meeting.
4. Secretary's Report.
5. Treasurer's Report.
6. Discussion of FY 2006 budget proposal for dissolution.
7. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Jonathan Claffey, Acting Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Dated: April 19, 2005.

Curtis Anderson,

Acting Governor, Rural Telephone Bank.

[FR Doc. 05–8245 Filed 4–20–05; 3:28 pm]

BILLING CODE 3410–15–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List a product to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List services previously furnished by such agencies.

DATES: Effective May 22, 2005.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov*.

SUPPLEMENTARY INFORMATION:

Addition

On February 4, 2005, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (70 FR 5964) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product and impact of the additions on the current or most recent contractors, the Committee has determined that the products listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product to the Government.

2. The action will result in authorizing small entities to furnish the product to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product is added to the Procurement List:

Product

Product/NSN: Can, Friction Top.
8110–00–178–8289 (Round, ½ pint cap),
8110–00–178–8290 (Round, 1 pint cap).
NPA: East Texas Lighthouse for the Blind, Tyler, Texas.
Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

Deletions

On February 25, 2005, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (70 FR 9269) of proposed deletions to the Procurement List. After consideration of the relevant matter presented, the Committee has determined that the services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services deleted from the Procurement List.

End of Certification

Accordingly, the following services are deleted from the Procurement List:

Services

Service Type/Location: Janitorial/Custodial, Internal Revenue Service, Pendleton Trade Center, Indianapolis, Indiana.
NPA: GW Commercial Services, Inc., Indianapolis, Indiana.
Contracting Activity: GSA, PBS.
Service Type/Location: Janitorial/Custodial, Iowa Air National Guard, 185th Air National Guard Base, Sioux City, Iowa.
NPA: Goodwill Community Rehabilitation Services, Inc., Sioux City, Iowa.
Contracting Activity: Department of the Air Force.
Service Type/Location: Janitorial/Custodial, Paul B. Dunbar Building, Cincinnati, Ohio.
NPA: Ohio Valley Goodwill Industries Rehabilitation Center, Inc., Cincinnati, Ohio.
Contracting Activity: General Services Administration.
Service Type/Location: Sorting of Aperture Cards, EDCARS System Management Office, Wright-Patterson AFB, Ohio.
NPA: Clark County Board of Mental Retardation & Developmental Disabilities, Springfield, OH.
Contracting Activity: Department of the Air Force.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E5–1916 Filed 4–21–05; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions And Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

DATES: Comments must be received on or before: May 22, 2005.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Custodial Services, Postwide, Fort Knox, Kentucky.
NPA: Lakeview Center, Inc., Pensacola, Florida.
Contracting Activity: Directorate of Contracting, Fort Knox, Kentucky.
Service Type/Location: Custodial Services, West Point Elementary School, West Point Academy, West Point, New York.
NPA: Occupations, Inc., Middletown, New York.
Contracting Activity: Directorate of Contracting, West Point, New York.
Service Type/Location: Food Service Attendant, U.S. Coast Guard Marine Safety Office/Group Portland, Portland, Oregon.
NPA: DePaul Industries, Portland, Oregon.
Contracting Activity: U.S. Coast Guard-Alameda, Alameda, California.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities.

The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

End of Certification

The following products are proposed for deletion from the Procurement List:

Products

Product/NSN: Cup, Disposable.
7350–00–761–7467 (6 oz),
7350–00–914–5088 (10 oz),
7350–00–914–5089 (8 oz).
NPA: The Oklahoma League for the Blind, Oklahoma City, Oklahoma.
Contracting Activity: GSA, Southwest Supply Center, Fort Worth, Texas.
Product/NSN: Cup, Disposable (Foam Plastic).
7350–00–082–5741 (8 oz),
7350–00–145–6126 (16 oz),
7350–00–721–9003 (6 oz),
7350–00–926–1661 (10 oz).
NPA: The Oklahoma League for the Blind, Oklahoma City, Oklahoma.
Contracting Activity: GSA, Southwest Supply Center, Fort Worth, Texas.
Product/NSN: Lid, Plastic (Foam Cup).
7350–01–485–7092 (6 oz),
7350–01–485–7093 (10 oz),
7350–01–485–7094 (8 oz),
7350–01–485–7889 (16 oz).
NPA: The Oklahoma League for the Blind, Oklahoma City, Oklahoma.
Contracting Activity: GSA, Southwest Supply Center, Fort Worth, Texas.

Sheryl D. Kennerly,
Director, Information Management.

[FR Doc. E5–1917 Filed 4–21–05; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Reversal of Suspension

In the document appearing on page 15287, FR Doc. 05–5961, in the issue of March 25, 2005, in the first column, the Committee published an effective date of April 24, 2005, for addition of the Base Supply Center & Individual Equipment Element, Hill Air Force Base, Utah to the Procurement List. In the document appearing on page 17970, FR Doc. E5–1623, in the issue of April 8, 2005, in the first column, the Committee published the suspension of the effective date of April 24, 2005, for addition of the Base Supply Center & Individual Equipment Element, Hill Air Force Base, Utah to the Procurement List. This effective date was suspended until further notice. The Committee has decided to reinstate the original effective date. Accordingly, this Procurement List addition will be effective on April 24, 2005.

Sheryl D. Kennerly,
Director, Information Management.

[FR Doc. E5–1923 Filed 4–21–05; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: U.S. Census Bureau.

Title: Government Finance Forms.

Form Number(s): F–5, F–11, F–12, F–13, F–25, F–28, F–29, F–32, F–42.

Agency Approval Number: 0607–0585.

Type of Request: Revision of a currently approved collection.

Burden: 31,787 hours.

Number of Respondents: 10,159.

Avg Hours per Response: 3 hours and 7 minutes.

Needs and Uses: The U.S. Census Bureau requests continued OMB authorization for the forms necessary to carry out the information collection associated with both the Annual Survey of State and Local Government Finance and the finance phase of the quinquennial census of governments. In both the census and annual surveys, equivalent data are collected, except for the F–11 and F–12 public employee-retirement system forms. For these forms, in the Census year, an additional organizational and system coverage section is included.

The Census Bureau incorporates the data collected on these forms into its governmental finance program. This program has facilitated the dissemination of comprehensive and comparable governmental finance statistics since 1902. This program is the only known comprehensive source of state and local government finance data collected on a nationwide scale using uniform definitions, concepts, and procedures. Governmental finance statistics are widely used by Federal, state, and local legislators, policy makers, administrators, analysts, economists, and researchers to follow the changing characteristics of the government sector of the economy. Journalists, teachers, and students rely on these data as well.

The Census Bureau provides its governmental finance data annually to the Bureau of Economic Analysis (BEA) for use in measuring and developing estimates of the government sector of the economy in its National Income and Product Accounts. The Census Bureau also provides these data to the Federal Reserve Board for constructing its Flow of Funds Accounts.

Affected Public: State, local or Tribal governments.

Frequency: Annually and quinquennially.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, section 161, of the United States Code requires the Secretary of Commerce to conduct a census of governments every fifth year. Section 182 allows the Secretary to conduct annual surveys in other years.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

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

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: April 19, 2005.

Madeleine Clayton,
Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–8116 Filed 4–21–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Annual Retail Trade Survey

ACTION: Proposed collection; comment request.

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

collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 21, 2005.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Nancy Piesto, U.S. Census Bureau, Room 2632–FOB 3, Washington, DC 20223–6500, at (301) 763–7872.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Annual Retail Trade Survey (ARTS) provides a sound statistical basis for the formation of policy by other government agencies. It provides continuing and timely national statistics on retail trade and accommodation and food services, augmenting the period between economic censuses, and is a continuation of similar retail trade surveys conducted each year since 1951. The data collected-annual sales and other operating receipts, e-commerce sales and other operating receipts, purchases, end-of-year inventories, and accounts receivables-are applicable to a variety of public and business needs. Data items collected for accommodation and food services are annual receipts and e-commerce receipts. The estimates of purchased merchandise will be used to estimate trade margins on commodities sold in calculating the personal consumption portion of the Gross Domestic Product (GDP) by the Bureau of Economic Analysis (BEA). Accounts receivable balances are used by the Federal Reserve Board in measuring consumer credit. Businesses use these estimates to determine market share and to perform other analysis.

The ARTS sample consists of all firms operating retail establishments within the U.S. whose probability of selection is determined by sales size. Estimates developed in the ARTS are used to benchmark the monthly sales and inventories series. The firms canvassed in this survey are not required to maintain additional records since carefully prepared estimates are acceptable if book figures are not available.

Since the last OMB submission the ARTS no longer uses preprinted pin-fed forms. Beginning with the 2002 survey year, forms are printed and labeled, as needed, using a print-on-demand system (Docuprint). There are several benefits in using this type of system. We no longer need to purchase or store the large quantity of forms required. Also, using Docuprint allows us to print the form and label at the same time and gives us the flexibility to print special instructions where needed.

Estimates produced from the Annual Retail Trade Survey are published on the North American Industry Classification System (NAICS) basis.

For the 2005 data year, we will introduce a new sample. As part of the process we will request two years of data resulting in a response burden time of 56 minutes. In 2006, response burden is expected to decrease to 37 minutes, as only one year of data will be requested.

II. Method of Collection

We collect this information by mail, fax, and telephone follow-up.

III. Data

OMB Number: 0607–0013.

Form Number: SA–44, SA–44A, SA–44C, SA–44E, SA–44N, SA–44S, SA–45, SA–45C, SA–721A, and SA–721E.

Type of Review: Regular submission.

Affected Public: Retail and accommodation and food services businesses in the United States.

Estimated Number of Respondents: 22,168.

Estimated Time Per Response: 56 minutes.

Estimated Total Annual Burden Hours: 20,690.

Estimated Total Annual Cost: The cost to the respondents for fiscal year 2005 is estimated to be $488,080 based on the annual response burden of 20,690 hours and an hourly salary rate of $23.59 to complete the form.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, section 182, 224 and 225.

IV. Request for Comments

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

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

Dated: April 19, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–8117 Filed 4–21–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Format for Petition Requesting Relief Under U.S. Antidumping Duty Law

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (C)(2)(A)).

DATES: Written comments must be submitted on or before June 21, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6612, 14th and Constitution Avenue, NW., Washington, DC 20230. E-mail: *dHynek@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Sarah Keyes, Import Administration, Office of Policy, Room 3713, 14th & Constitution Avenue, NW., Washington, DC 20230; Phone number: (202) 482–6477, and fax number: (202) 501–7952.

SUPPLEMENTARY INFORMATION:

I. Abstract

The International Trade Administration, Import Administration, AD/CVD Enforcement, implements the U.S. antidumping and countervailing duty law. Import Administration investigates allegations of unfair trade practices by foreign governments and producers and, in conjunction with the U.S. International Trade Commission, can impose duties on the product in

question to offset the unfair practices. Form ITA–357P—Format for Petition Requesting Relief Under the U.S. Antidumping Duty Law—is designed for U.S. companies or industries that are unfamiliar with the antidumping law and the petition process. The Form is designed for potential petitioners that believe that an industry in the United States is being injured because a foreign competitor is selling a product in the United States at less than fair value. Since a variety of detailed information is required under the law before initiation of an antidumping duty investigation, the Form is designed to extract such information in the least burdensome manner possible.

II. Method of Data Collection

Form ITA–357P is sent by request to potential U.S. petitioners.

III. Data

OMB Number: 0625–0105.
Form Number: ITA–357P.
Type of Review: Regular submission.
Affected Public: U.S. companies or industries that suspect that they have been or may be injured by unfair competition from foreign firms selling merchandise in the United States below fair value.
Estimated Number of Respondents: 55.
Estimated Time Per Response: 40 hours.
Estimated Total Annual Burden Hours: 2,200 hours.
Estimated Total Annual Costs: Assuming the number of petitioners remains the same, the estimated annual cost for this collection is $544,500 ($396,000 for respondents and $148,500 for Federal government).

IV. Request for Comments

Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) 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 forms of information technology.

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

Dated: April 19, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–8118 Filed 4–21–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

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

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with March anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

DATES: April 22, 2005.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2004), for administrative reviews of various antidumping and countervailing duty orders and findings with March anniversary dates.

Initiation of Reviews:

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than March 31, 2006.

Antidumping Duty Proceedings	Period to be Reviewed
BRAZIL: Certain Hot–Rolled Carbon Steel Flat Products.	
A–351–828	3/1/04 - 2/28/05
Companhia Siderurgica Nacional.	
Companhia Siderurgica de Tubarao.	
FRANCE: Stainless Steel Bar.	
A–427–820	3/1/04 - 2/28/05
UGITECH, S.A..	
GERMANY: Stainless Steel Bar.	
A–428–830	3/1/04 – 2/28/05
BGH Edelstahl Freital GmbH/BGH Edelstahl Lippendorf.	
GmbH/BGH Edelstahl Lugau GmbH/BGH Edelstahl Siegen GmbH.	
Stahlwerk Ergste Westig GmbH.	
ITALY: Stainless Steel Bar.	
A–475–829	3/1/04 – 2/28/05
UGITECH, S.A..	
THAILAND: Circular Welded Carbon Steel Pipes & Tubes.	
A–549–502	3/1/04 – 2/28/05
Saha Thai Steel Pipe Company, Ltd..	
UNITED KINGDOM: Stainless Steel Bar.	
A–412–822	3/1/04 - 2/28/05
Corus Engineering Steels Limited.	
Countervailing Duty Proceedings.	
IRAN: In–Shell Raw Pistachios.	
C–507–501	1/1/04 – 12/31/04

Antidumping Duty Proceedings	Period to be Reviewed
Tehran Nima Trading Company, Inc.,/Nima Trading Company. TURKEY: Certain Welded Carbon Steel Standard Pipe. C–489–502 ..... The Borusan Group. Suspension Agreements. None..	1/1/04 – 12/31/04

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with FAG Italia v.United States, 291 F.3d 806 (Fed. Cir. 202), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: April 15, 2005.

Holly A. Kuga,

Senior Office Director, Office 4 for Import Administration.

[FR Doc. E5–1922 Filed 4–21–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–822]

Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Corrosion–Resistant Carbon Steel Flat Products From Canada

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

EFFECTIVE DATE: April 22, 2005.

FOR FURTHER INFORMATION CONTACT: Candice Kenney Weck or Sean Carey, Office of AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at (202) 482–0938 or (202) 482–3964, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) received timely requests for administrative review of the antidumping duty order on corrosion–resistant carbon steel flat products from Canada, with respect to Dofasco Inc. (''Dofasco''), Impact Steel Canada, Ltd. (''Impact Steel''), and Stelco Inc. (''Stelco''). On September 22, 2004, the Department published a notice of initiation of this administrative review for the period of August 1, 2003, through July 31, 2004 (69 FR 56745). On April 7, 2005, the Department rescinded the administrative review of Impact Steel (70 FR 17648) because Impact Steel timely withdrew its request and no other party had requested an administrative review of Impact Steel. After this rescission, the companies still subject to review are Stelco and Dofasco.

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department shall issue preliminary results in 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 further provides, however, 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.

In light of the complexity of analyzing both companies' cost calculations and Dofasco's various U.S. channels of distribution and sales terms, it is not practicable to complete this review by the current deadline of May 3, 2005. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for the preliminary results until August 31, 2005, which is 365 days after the last day of the anniversary month of the date of publication of the order. The final results continue to be due 120 days after the publication of the preliminary results, in accordance with section 351.213 (h) of the Department's regulations.

This notice is issued and published in accordance to sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 15, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–1919 Filed 4–21–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–824]

Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Polyethylene Terephthalate Film, Sheet and Strip from India

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

SUMMARY: On September 21, 2004, the Department of Commerce (the Department) initiated a changed circumstances review of polyethylene terephthalate film, sheet and strip (PET film) from India in order to determine whether Jindal Poly Films Limited is the successor–in-interest for purposes of antidumping duties to Jindal Polyester Limited. *See Notice of Initiation of Antidumping Duty Changed Circumstances Review: Polyethylene Terephthalate Film, Sheet and Strip (PET Film) from India*, 69 FR 56406 (September 21, 2004). Jindal Polyester Limited changed its name to Jindal Poly Films Limited on April 19, 2004. We preliminarily determine that Jindal Poly Films Limited is the successor–in-interest to Jindal Polyester Limited for purposes of determining antidumping duty liability. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: April 22, 2005.

FOR FURTHER INFORMATION CONTACT: Jeffrey Pedersen or Kavita Mohan, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2769 and (202) 482–3542, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2002, the Department published the antidumping duty order on PET film from India in the **Federal Register** (67 FR 44175). On July 29, 2004, Jindal Polyester Limited/Jindal Poly Films Limited (Jindal) requested that the Department conduct an expedited changed circumstances review of the antidumping duty order on PET film from India. In its request, Jindal claimed that Jindal Poly Films Limited is the successor–in-interest to Jindal Polyester Limited, and, as such, is entitled to receive the same antidumping treatment accorded to Jindal Polyester Limited. On August 25, 2004, DuPont Teijin Films, Mitsubishi Polyester Film of America and Toray Plastics (America), Inc. (petitioners) notified the Department that they oppose Jindal's request for expedited action in this review and provided the Department with information indicating the Jindal underwent changes in addition to its name change. On September 21, 2004, the Department published in the **Federal Register** a notice of its initiation of the instant changed circumstances review in which it refused Jindal's request for expedited action, noting that additional information was needed in order for the Department to make its preliminary determination.

Scope of the Order

The products covered by this order are all gauges of raw, pretreated, or primed PET film, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance–enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this order is dispositive.

Preliminary Results of Changed Circumstances Review

In making a successor–in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review*, 57 FR 20460, 20462 (May 13, 1992) (Canadian Brass). While no one single factor, or combination of factors, will necessarily prove to be dispositive, the Department will generally consider a new company to be the successor–in-interest to its predecessor company if its resulting operations are essentially the same as those of its predecessor. *See, e.g., Canadian Brass* at 20460, and *Final Results of Changed Circumstances Antidumping Duty Administrative Review: Industrial Nitrocellulose From Korea*, 65 FR 2115, 2116 (January 13, 2000). Therefore, if there is evidence demonstrating that, with respect to the production and sale of subject merchandise, a new company essentially operates as the same business entity as the former company, the Department will assign the new company the cash deposit rate of its predecessor.

Although Jindal reported that it simply changed its name from Jindal Polyester Limited to Jindal Poly Films Limited, the petitioners placed documents on the record indicating that, in addition to Jindal's name change, the company experienced a change in management,[1] and undertook an expansion and restructuring of its operations in connection with its acquisition of Rexor, S.A., France (Rexor), a French processor (not producer) of PET film. See Petitioners' August 25, 2004, letter at 3–4.[2]

In response to the Department's questionnaires, Jindal reported that it changed its name to Jindal Poly Films Limited in April 2004 to reflect its increased presence in the film business (both PET film and non–subject polypropylene (BOPP) film). This increased presence has been manifested through the establishment of two new production lines in India (a BOPP film (non–subject merchandise) line, which began production on March 18, 2003, and a PET film line, which began production on February 28, 2004), as well as Jindal's November 26, 2003, acquisition of Rexor, a subsidiary company in France that coats and metalizes PET film.

According to Jindal, its name change has not been accompanied by any change to its legal or corporate structure, or ownership. Jindal stated that the name change was not part of an agreement made with Rexor. Moreover, Jindal reported that the expansion of its production lines has not caused it to change suppliers of the inputs used in the production of PET film nor has it resulted in changes to its relationships or contracts with suppliers. Further, Jindal claimed that its increased production capacity (which did not result in the production of new types of PET film) has had little impact on its customer base. Although there have been some changes in Jindal's U.S. customer base during the time period that it added the new PET film production line, Jindal noted that the total number of its U.S. customers has remained the same. Also, apart from acquiring a few new home market customers, Jindal reported that there have not been any significant changes to its Indian customer base. With respect to *The Economic Times* report that Jindal plans to market its value–added polyester products in the United States under the Rexor name (*see* Petitioners' August 25, 2004, letter at Exhibit 3), Jindal noted that these value–added products are not subject merchandise.

Further, Jindal contended that the name change did not result in any changes in the functions, authorities, duties, or responsibilities of any of its officers, executive board, or Board of Directors. The changes to the Board of Directors that occurred were, according to Jindal, in the ordinary course of business and unrelated to the name change. Thus, Jindal contends that, other than the new production line set up in Nashik India, there were no changes to its operations that produced or sold subject merchandise.[3]

The Department finds that, with respect to the production and sale of subject merchandise, the operations of Jindal Poly Films Limited are essentially the same as those of Jindal Polyester Limited.[4] Jindal's 2003–2004 Annual

[1] On June 29, 2004, Mr. S. Mittal, a non-executive Director, resigned from the Board of Directors and was replaced by Mr. J. Bansal (also a non-executive director). *See* Exhibit 1 of petitioners' August 25, 2004, letter.

[2] Although these changes occurred both before and after the name change, we have considered the changes in our analysis.

[3] Jindal did note, however, that, prior to the name change, it created two divisions in Nashik, for accounting purposes. *See* Jindal's December 7, 2004, questionnaire response at 2.

[4] Consistent with Departmental practice, in reaching this determination, we focused our analysis on Jindal's operations that produced or sold merchandise within the scope of the antidumping duty order on PET film from India. *See Industrial Phosphoric Acid From Israel; Final*

Report notes that the company's name change is meant to reflect its recent expansion in the film business, specifically mentioning its acquisition of Rexor in France. *See* Jindal's December 6, 2004, questionnaire response at Exhibit N–3 (page 20 of Jindal Poly Films Limited's 2003–2004 Annual Report). However, we found no evidence of any material change in Jindal's management structure that was associated with the name change. We compared lists of Jindal's upper and lower level managers before and after the acquisition of Rexor and found the management to be substantially the same. *See* Jindal's January 7, 2005, questionnaire response at Exhibits 10 and 11. Furthermore, Jindal reported that the new production line at Nashik was managed by the same upper and lower level managers that ran its existing production line at Nashik. *See* Jindal's February 8, 2005, questionnaire response at 3. Additionally, the record indicates that there have been no changes in Jindal's supplier relationships and no significant changes to Jindal's customer base in the United States or India. Thus, despite the expansion that was associated with the name change (the new PET film production line at Nashik increased Jindal's production capacity by more than 60 percent), the Department finds that Jindal continued to essentially operate as it had prior to the addition of the new production line.

Further, we did not find any evidence that Jindal's acquisition of Rexor affected its operations with respect to the sale of subject merchandise to the United States. *See* the Memorandum to the File from Jeff Pedersen regarding Rexor's Impact on Jindal Poly Films Limited's Sales Operations, dated concurrently with this notice. Also, Rexor's descriptions of its product lines at its Web site (http://www.rexor.com/) almost exclusively concern non–subject merchandise and the intended audience appears to be European customers. Thus, with respect to subject merchandise, the record does not indicate that Jindal's expansion of its film business has transformed its operations to such an extent that Jindal Poly Films Limited should not be viewed as a continuation of Jindal Polyester Limited for antidumping purposes.

Therefore, we preliminarily determine that Jindal Poly Films Limited is the successor–in-interest for purposes of antidumping duties to Jindal Polyester Limited and should receive the same antidumping duty rate as Jindal Polyester Limited. If these preliminary results are adopted in our final results of this changed circumstances review, we will instruct U.S. Customs and Border Protection to suspend shipments of subject merchandise made by Jindal Poly Films Limited, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this changed circumstances review at Jindal Polyester Limited's cash deposit rate. *See Granular Polytetrafluoroethylene Resin from Italy; Final Results of Antidumping Duty Changed Circumstances Review*, 68 FR 25327 (May 12, 2003). This deposit rate shall remain in effect until publication of the final results of the next administrative review in which Jindal Poly Films Limited participates.

Public Comment

Any interested party may request a hearing within 10 days of publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 21 days after the date of publication of this notice, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 14 days after the date of publication of this notice. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, which must be limited to issues raised in such briefs or comments, may be filed no later than 19 days after the date of publication of this notice. *See* 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.

Consistent with 19 CFR 351.216(e), we will issue the final results of this changed circumstances review no later than 270 days after the date on which this review was initiated.

We are issuing and publishing this determination and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216.

Dated: April 15, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–1921 Filed 4–21–05; 8:45 am]

BILLING CODE 3510–DS–S

Results of Antidumping Duty Changed Circumstances Review, 59 FR 6944, 6945 (February 14, 1994) wherein the Department stated ''that an inquiry into the validity of a claim of successorship to a respondent company should focus on that company's sales and production of the merchandise encompassed by the order.''

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–842]

Bottle-Grade Polyethylene Terephthalate (PET) Resin From India: Amended Final Affirmative Countervailing Duty Determination

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

SUMMARY: On March 21, 2005, the Department of Commerce (Department) published in the **Federal Register** the final affirmative countervailing duty determination on bottle-grade polyethylene terephthalate (PET) resin from India for the period from April 1, 2003, to March 31, 2004. *Final Affirmative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin from India*, 70 FR 13460 (March 21, 2005) (*Final Determination*). We are amending our *Final Determination* to correct certain ministerial errors alleged by Reliance Industries Ltd. (Reliance) pursuant to section 751(h) of the Tariff Act of 1930, as amended (the Act). *See* ''Amended Final Results of Review'' section, below.

EFFECTIVE DATE: April 22, 2005.

FOR FURTHER INFORMATION CONTACT: Douglas Kirby or Sean Carey at (202) 482–3782 and (202) 482–3964, respectively; AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Scope of the Investigation

The merchandise covered in this investigation is polyethylene terephthalate (PET) bottle-grade resin, defined as having an intrinsic viscosity of at least 0.68 deciliters per gram but not more than 0.86 deciliters per gram. The scope includes bottle-grade PET resin that contains various additives introduced in the manufacturing process. The scope does not include post-consumer recycle (PCR) or post-industrial recycle (PIR) PET resin; however, included in the scope is any bottle-grade PET resin blend of virgin PET bottle-grade resin and recycled PET (RPET). Waste and scrap PET are outside the scope of the investigation. Fiber-grade PET resin, which has an intrinsic viscosity of less than 0.68 decliliters per gram, is also outside the scope of the investigation.

The merchandise subject to this investigation is properly classified

under subheading 3907.60.0010 of the Harmonized Tariff Schedule of the United States (HTSUS); however, merchandise classified under HTSUS subheading 3907.60.0050 that otherwise meets the written description of the scope is also subject to these investigations. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Background

On March 21, 2005, the Department published the *Final Determination* for its countervailing duty investigation of bottle grade PET Resin from India. On March 25, 2005, in accordance with section 751(h) of the Act and 19 CFR 351.224(c)(2), Reliance filed timely allegations that the Department erred in calculating the countervailing duty rate for the *Final Determination*. First, according to Reliance, the Department erred by using an incorrect benchmark interest rate for calculating the countervailable benefits from the State of Maharashtra and State of Gujarat Programs. Second, Reliance alleged that the Department made several typographical errors by incorrectly transcribing the benchmark interest rate for certain imports made pursuant to the Export Promotion Capital Goods Scheme (EPCGS) program during the first quarter of 2003.

After reviewing Reliance's allegations, we have determined that the Department did make the errors alleged by Reliance and that those errors are ministerial errors as defined in section 751(h) of the Act and 19 CFR 351.224(f). Therefore, we are amending the *Final Determination* to correct the above-described ministerial errors. We agree with Reliance that the Department stated in the *Final Determination* that it would use the company-specific lending rate for the POI as the benchmark interest rate for the State of Maharashtra and State of Gujarat Programs but in the calculations, we used a different benchmark interest rate. We also agree with Reliance that we made a few typographical errors in transcribing the benchmark interest rate for the EPCGS program that was applied to certain imports under this program during the first quarter of 2003. Accordingly, in this amended final determination we have corrected these errors. *See Analysis Memorandum for Amended Final Countervailing Duty Determination; PET Resin from India,* dated April 18, 2005.

Amended Final Results of Review

In the *Final Determination,* the Department determined the countervailing duty rate for Reliance to be 20.26 percent *ad valorem,* and the ''All Others'' rate to be 14.63 percent *ad valorem.* As a result of correcting the ministerial errors, the Department has amended the countervailing duty rate for Reliance and the ''All Others'' rate. The rates for Elque Polyesters Ltd., Futura Polyesters Ltd., and South Asia Petrochem Ltd. have not changed since the *Final Determination.* The correct countervailing duty rates are shown below:

Producer/exporter	Subsidy rate
Reliance Industries Ltd.	19.97% *ad valorem.*
South Asia Petrochem Ltd..	19.08% *ad valorem.*
Futura Polyesters Ltd. ..	6.15% *ad valorem.*
Elque Polyesters Ltd. ...	12.41% *ad valorem.*
All Others	14.55% *ad valorem.*

Suspension of Liquidation

In accordance with our preliminary determination, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of PET Resin from India, which were entered or withdrawn from warehouse, for consumption on or after August 30, 2004, the date of the publication of our *Preliminary Determination* in the **Federal Register.** In accordance with section 703(d) of the Act, we instructed CBP to discontinue the suspension of liquidation for merchandise entered on or after December 28, 2004, but to continue the suspension of liquidation of entries made between August 30, 2004, through December 27, 2004.

If the International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a countervailing duty order, reinstate suspension of liquidation under section 706(a) of the Act for all entries, and require a cash deposit of estimated countervailing duties for such entries of merchandise at the rates indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our amended final countervailing duty determination. In addition, we are mailing available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided that the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: April 18, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 05–8132 Filed 4–21–05; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of jointly owned inventions available for licensing.

SUMMARY: The inventions listed below are jointly owned by the U.S. Government, as represented by the Department of Commerce. The Department of Commerce's interest in these inventions is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR Part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Attn: Teresa Bradshaw, Building 820, Room 213, Gaithersburg, MD 20899. Information is also available via telephone: 301–975–2624, fax 301–869–2751, or e-mail: *teresa.bradshaw@nist.gov.* Any request for information should include the NIST Docket number and title for the invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement (''CRADA'') with the licensee to perform further research on the invention for purposes of commercialization. The inventions available for licensing are:

[NIST Docket Number: 03–005]

Title: Dielectric Slit Die for In-line Monitoring of Liquids Processing.

Abstract: This invention is jointly owned by the U.S. Government, as represented by the Department of Commerce, and Chemical ElectroPhysics. The dielectric slit die is an instrument that is designed to measure electrical, rheological, ultrasonics, optical and other properties of a flowing liquid. In one application, it is connected to the exit of an extruder, pump or mixing machine that passes liquefied material such as molten plastic, solvents, slurries, colloidal suspensions and foodstuffs into the sensing region of the slit shaped die. Dielectric sensing is the primary element of the slit die, but in addition to the dielectric sensor, the die contains other sensing devices such as pressure, optical fiber and ultrasonic sensors that simultaneously yield an array of materials property data. The slit die has a flexible design that permits interchangeability among sensors and sensor positions. The design also allows for the placement of additional sensors and instrumentation ports that expand the potential data package obtained.

[NIST Docket Number: 03–014/02–012]

Title: Micromachined Alkali-atom Vapor Cells and Method of Fabrication.

Abstract: This invention is jointly owned by the U.S. Government, as represented by the Department of Commerce, and the University of Colorado. A method of fabricating compact alkali vapor filled cells that have volumes of 1 cm.sup.3 or less that are useful in atomic frequency reference devices such as atomic clocks. According to one embodiment the alkali vapor filled cells are formed by sealing the ends of small hollow glass fibers. According to another embodiment the alkali vapor filled cells are formed by anodic bonding of glass plates to silicon wafers to seal the openings of holes formed in the silicon wafers. The anodic bonding method of fabricating the alkali vapor filled cells enables the production of semi-monolithic integrated physics packages of various designs.

[NIST Docket Number: 04–001]

Title: A Microfluidic Flow-through Immunoassay for Simultaneous Detection of Multiple proteins in a Sub-microliter Biological Sample.

Abstract: This invention is jointly owned by the U.S. Government, as represented by the Department of Commerce, and the National Institutes of Health. A chip-based microfluidic device for high-throughput, multi-analyte immunoaffinity capture and detection of proteins can be used for the simultaneous isolation and quantitation of multiple proteins from microliter samples of biological fluids. The device architecture has advantages over existing array technology in that the proteins are detected by single-point capture and much smaller sample volumes can be used. The device also has the potential to greatly reduce the cost of analyzing a sample through reuse of the channels with the bound antibodies for multiple samples. The device can be integrated into the other analytic equipment or on-chip detectors.

Dated: April 13, 2005.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 05–8111 Filed 4–21–05; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No.: 000616180–5104–11]

NOAA Climate and Global Change Program for FY 2006

AGENCY: Office of Global Programs (OGP), Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Initial notice.

SUMMARY: The Climate and Global Change (C&GC) Program represents a NOAA contribution to evolving national and international programs designed to improve our ability to observe, understand, predict, and respond to changes in the global environment. This program builds on NOAA's mission requirements and long-standing capabilities in global change research and prediction. The NOAA Program is a key contributing element of the U.S. Climate Change Science Program (CCSP), which is coordinated by the interagency Committee on Environmental and Natural Resources. NOAA's program is designed to complement other agencies' contributions to that national effort.

DATES: Submission Dates and Times (for ALL Competitions): *Letter of Intent Due Date:* May 20, 2005 by 5 p.m. eastern time.

Application Due Date: July 15, 2005 by 5 p.m. eastern time.

Anticipated Award Date: March 14, 2006.

ADDRESSES: *Submission:* Letters of Intent should be e-mailed to *ogpgrants@noaa.gov* or may be mailed or faxed to the OGP Grants Manager (*see* the **FOR FURTHER INFORMATION CONTACT**).

Proposal applications shall be submitted through Grants.gov APPLY, a date time receipt indication is included and will be the basis of determining timeliness. If the applicant does not have access to electronic submission, please contact the OGP Grants Manager (*see* the **FOR FURTHER INFORMATION CONTACT** section below) for instructions on a paper format submission; in such case, it must be mailed to the OGP Grants Manager and received by the deadline. Facsimile transmissions of full proposals will not be accepted. To apply for this NOAA federal funding opportunity, please go to *http://www.grants.gov* and use the following funding opportunity #OAR–OGP–2006–2000116.

FOR FURTHER INFORMATION CONTACT: Please visit the OGP Web site for further information *http://www.ogp.noaa.gov* or contact the OGP Grants Manager, Diane Brown, NOAA/OGP, 1100 Wayne Avenue, Suite 1210, Silver Spring, MD 20910–5603, Phone: 301–427–2357, Fax: 301–427–2222, e-mail: *ogpgrants@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

Applicants should read the full text of the full funding opportunity announcement which can be accessed at the OGP Web site: *http://www.ogp.noaa.gov* or the central NOAA site: *http://www.ofa.noaa.gov/~amd/SOLINDEX.HTML.* This announcement will also be available through Grants.gov at *http://www.Grants.gov.*

Funding Availability

NOAA believes that the C&GC program will benefit significantly from a strong partnership with outside investigators. Please be advised that actual funding levels will depend upon the final FY 2006 budget appropriations. In FY 2004, $10M in first year funding was available for 62 new awards; similar funds and number of awards are anticipated in FY 2005. Total anticipated Federal Funding for FY 2006 is $8M in first year funding for 40–60 awards. Federal Funding for FY 2007 may be used in part to fund some awards submitted under this

competition. Current plans assume that 100% of the total resources provided through this announcement will support extramural efforts, particularly those involving the broad academic community. Past or current grantees funded under this announcement are eligible to apply for a new award which builds on previous activities or areas of research not covered in the previous award. Current grantees should not request supplementary funding for ongoing research through this announcement. We anticipate that the annual cost of most funded projects will fall between $50,000 and $200,000 per year. The exact amount of funds that may be awarded will be determined in pre-award negotiations between the applicant and NOAA representatives. Neither NOAA nor the Department of Commerce is responsible for proposal preparation costs if this program is not funded for whatever reason. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

Statutory Authority: 49 U.S.C. 44720, 33 U.S.C. 883d, 15 U.S.C. 2904, 15 U.S.C. 2931–2934.

CFDA: No. 11.431, Climate and Atmospheric Research.

Eligibility

Eligible applicants are institutions of higher education, other nonprofits, commercial organizations, international organizations, state, local and Indian tribal governments. Federal agencies or institutions are not eligible to receive Federal assistance under this notice.

Cost Sharing Requirements

Cost Sharing is only required in one program element competition which is the NOAA Climate Transition Program (NCTP) where the Cost Share Percentage must be at least 5% of the total costs. The other seven Competitions have no cost sharing requirement.

Letters of Intent (LOI)

The purpose of the LOI process is to provide information to potential applicants on the relevance of their proposed project to the Climate and Global Change Program and the likelihood of it being funded in advance of preparing a full proposal. While it is in the best interest of the applicants and their institutions to submit an LOI explaining the work they propose to carry out and how much it will cost, it is not a requirement; applicants who do not submit an LOI are allowed to submit a full proposal. A panel of program managers will review each LOI to determine its responsiveness to the program goals as advertised in this notice and will provide an e-mail or letter response.

Evaluation and Selection Procedures

NOAA published its first omnibus notice announcing the availability of grant funds for both projects and fellowships/scholarships/internships for Fiscal Year 2005 in the **Federal Register** on June 30, 2004 (69 FR 39417). The evaluation criteria and selection procedures contained in the June 30, 2004 omnibus notice are applicable to this solicitation. For a copy of the June 30, 2004 omnibus notice please go to: *http://fedgrants.gov/EPSData/DOC/Synopses/1250/11420GRF063004/june%26%23032%3B30%26%23032%3B2004.pdf* or contact the OGP Grants Manager (*see* the **FOR FURTHER INFORMATION CONTACT** section above).

Limitation of Liability

Funding for the programs listed in this notice are contingent upon the availability of FY 2006 appropriations. 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.

National Environmental 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 an applicant's 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 feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: The Department of Commerce 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.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424 and 424A, 424B, SF–LLL, and CD–346 have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a 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.

Executive Order 12866

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

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Intergovernmental Review

Applications under this program are not subject to Executive Order 12372,

''Intergovernmental Review of federal programs.''

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this rule concerning grants, benefits, and contracts (5 U.S.C. section 553(a). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. section 601 *et seq*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: April 19, 2005.

Louisa Koch,

Deputy Assistant Administrator, OAR, National Oceanic and Atmospheric Administration.

[FR Doc. 05–8112 Filed 4–21–05; 8:45 am]

BILLING CODE 3510–KB–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 050412101–5101–01; I.D. 041205B]

Ernest F. Hollings Undergraduate Scholarship Program

AGENCY: Office of Education and Sustainable Development (OESD), Office of the Undersecretary of Commerce for Oceans and Atmosphere (USEC), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of program guidelines.

SUMMARY: NOAA provides notice of the availability of Ernest F. Hollings scholarship awards for FY 2005. The Ernest F. Hollings scholarship program was established through the Consolidated Appropriations Act, 2005. The Ernest F. Hollings scholarship program will provide selected undergraduate applicants with opportunities to increase recognition of and disciplined study in oceanic and atmospheric studies. There is no guarantee that sufficient funds will be available to make awards for all qualified applicants.

DATES: Applications for the Ernest F. Hollings scholarship program will be available on April 22, 2005. Completed applications must be received by 5 p.m. e.d.t. May 23, 2005.

ADDRESSES: Applications for the Earnest F. Hollings scholarship program will be available through ORISE at *http://www.orau.gov/noaa/HollingsScholarship*. If an applicant does not have Internet access, hardcopy applications can be requested by contacting NOAA/Hollings Scholarship, Oak Ridge Institute for Science and Education, P.O. Box 117, MS 36, Oak Ridge, TN 37831–0117; telephone: 865–576–3424.

FOR FURTHER INFORMATION CONTACT: NOAA/Hollings Scholarship, Oak Ridge Institute for Science and Education, telephone: 865–576–3424 or NOAA/OESD at *noaa.education@noaa.gov* or 202–482–3384.

SUPPLEMENTARY INFORMATION:

Background

The Ernest F. Hollings scholarship program was established through the Consolidated Appropriations Act, 2005 (Pub. L. 108–447). The purposes of the program include: (1) To increase undergraduate training in oceanic and atmospheric science, research, technology, and education and foster multidisciplinary training opportunities; (2) to increase public understanding and support for stewardship of the ocean and atmosphere and improve environmental literacy; (3) to recruit and prepare students for public service careers with the National Oceanic and Atmospheric Administration and other natural resource and science agencies at the Federal, state and local levels of government; and (4) to recruit and prepare students for careers as teachers and educators in oceanic and atmospheric science and to improve scientific and environmental education in the United States.

Hollings scholarship program will provide selected undergraduate applicants with awards that include academic assistance (up to a maximum of $8,000) for full-time study during the 9-month academic year; a 10-week, full-time internship position ($650/week) during the summer at a NOAA or partner facility; and, if reappointed, academic assistance (up to a maximum of $8,000) for full-time study during a second 9-month academic year. The internship between first and second years of award provides ''hands-on'' multi-disciplinary educational training experience involving Scholars in NOAA-related scientific, research, technological, policy, management, and education activities. Awards will also include a housing subsidy for scholars who do not reside at home during the summer internship and travel expenses for attendance and participation at a Hollings scholarship program conference at the completion of the internship.

The Hollings Scholarship program will consider applications from all eligible students including those that have received scholarship awards from other NOAA undergraduate scholarship programs. If selected as Hollings scholars, the program awards to students that have received awards from other NOAA undergraduate scholarship program will be adjusted based on the benefits of that other award for all years in which the award periods of the scholarship programs overlap. The total benefits during the coinciding award periods from the combined NOAA undergraduate scholarship programs in each award category (*i.e.*, academic assistance, internship, housing subsidy, and travel expenses) shall not exceed the maximum benefits allowed under the Hollings program unless this level of support is provided in whole under the other NOAA scholarship award. The Hollings scholarship program internship requirement will also be waived if the scholar is obligated to a summer internship through a previous award from another NOAA undergraduate scholarship program.

Authority

The Ernest F. Hollings Undergraduate Scholarship Program is established by Administrator of the National Oceanic and Atmospheric Administration the under authority of the Consolidated Appropriations Act, 2005 (Pub. L. 108–447).

Congressionally Identified Awards and Projects (CFDA) CDFA, 11.469

Funding Availability

Approximately $3.9 million will be available for the award of approximately 110 two-year scholarships. There is no guarantee that sufficient funds will be available to provide scholarships for all qualified students.

Eligibility

Any undergraduate student may apply who is a U.S. citizen, is a rising sophomore enrolled or planning to matriculate as a junior-level, full-time student in Fall 2005 in an accredited college or university within the United States or U.S. Territories; demonstrates a cumulative 3.0 grade point average on a 4.0 scale (or equivalent on other identified scale) in all completed undergraduate courses and in the major field of study; and has declared a major in a discipline area that is related to oceanic and atmospheric science, research, technology, and education,

and supportive of the purposes of NOAA's program's and mission.

Related discipline areas of study can include: Biological, life, and agricultural sciences; physical sciences; mathematics; engineering; computer and information sciences; social and behavioral sciences; and teacher education.

The Hollings Scholarship program will consider applications from all students that meet the above eligibility requirements including those that have received scholarship awards from other NOAA undergraduate scholarship programs. If selected as Hollings scholars, the program awards to students that have received awards from other NOAA undergraduate scholarship program will be adjusted based on the benefits of that other award for all years in which the award periods of the scholarship programs overlap. The total benefits during the coinciding award periods from the combined NOAA undergraduate scholarship programs in each award category (i.e., academic assistance, internship, housing subsidy, and travel expenses) shall not exceed the maximum benefits allowed under the Hollings program unless this level of support is provided in whole under the other NOAA scholarship award. The Hollings scholarship program internship requirement will also be waived if the scholar is obligated to a summer internship through a previous award from another NOAA undergraduate scholarship program.

Evaluation Criteria

Application will be evaluated based on the following criteria:

1. Academic record (30%).
2. Education plan and statement of career interest of student (30%).
3. Recommendations and/or endorsements (reference forms) of student (20%).
4. Additional relevant experience related to diversity of education; extracurricular activities; honors and awards; non-academic and volunteer work; interpersonal, written, and oral communications skills (20%).

Selection Process

An initial administrative review of applications is conducted to determine compliance with requirements and completeness of applications. Only complete applications in compliance with the requirement will be considered for review. Applications identified as incomplete or not in compliance with the requirements will be destroyed. Applicants will be notified as to the disposition of their applications. A panel of at least three persons will individually review and rate applications based on the evaluation criteria. A numerical ranking will be assigned to each application based on the average of the panelist's ratings. The Selecting Official, the Director of the Office of Education and Sustainable Development, will award in rank order unless the application is justified to be selected out of rank order based on one or more of the selection factors.

Selection Factors

In determining final awards, the selecting official reserves the right to consider the following selection factors:

1. Distribution of funds:
   a. Across academic disciplines.
   b. By types of institutions.
   c. Geographically.
2. Availability of funds.
3. Program-specific objectives.

Repayment Requirement

An individual receiving a scholarship under this program shall be required to repay the full amount of the scholarship to the National Oceanic and Atmospheric Administration if it is determined that the individual, in obtaining or using the scholarship, engaged in fraudulent conduct or failed to comply with any term or condition of the scholarship.

Cost Sharing Requirements

There are no cost-sharing requirements.

Intergovernmental Review

Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of federal programs.''

Limitation of Liability

In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if this program is cancelled because of other agency priorities. Publication of this notice does not oblige NOAA to award any specific project or to obligate any available funds. Applicants are hereby given notice that funding for the Fiscal Year 2005 program is contingent upon the availability of Fiscal Year 2005 appropriations.

National Environmental Policy Act (NEPA)

As defined in sections 5.05 and Administrative or Programmatic Functions of NAO 216–6, 6.03.c.3, this is an undergraduate scholarship and internship program for which there are no cumulative effects. Thus, it has been categorically excluded from the need to prepare an Environmental Assessment.

DOC 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 notice.

Paperwork Reduction Act

This notice announces an undergraduate scholarship and internship program and does not contain collection-of-information requirements subject to the Paperwork Reduction Act (PRA). Notwithstanding any other provision of law, no person is required to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

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

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

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 comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements for the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: April 12, 2005.

George E. White,

Deputy Undersecretary for Oceans and Atmosphere, U.S. Department of Commerce.

[FR Doc. 05–8129 Filed 4–21–05; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 05–16]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

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

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

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 05–16 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: April 18, 2005.

Jeanette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

In reply refer to:
I-05/002082

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

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 05-16, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Australia for defense articles and services estimated to cost $430 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Richard J. Millies
Deputy Director

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

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

Transmittal No. 05-16

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

(i) **Prospective Purchaser:** Australia

(ii) **Total Estimated Value:**

Major Defense Equipment*	$410 million
Other	$ 20 million
TOTAL	$430 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** Standoff Land Attack Missile-Expanded Response Missile Systems (SLAM-ER) which includes up to 260 Operation, Telemetry, and Captive Air Training Missiles with containers; support equipment, integration and certification support, training missiles, containers, spares and repair parts, missile support and test equipment, provisioning, program management, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related elements of program support.

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

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

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

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

(viii) **Date Report Delivered to Congress:**

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

POLICY JUSTIFICATION

Australia – Standoff Land attack Missile-Expanded Response Missile Systems

The Government of Australia has requested a possible sale of Standoff Land Attack Missile-Expanded Response Missile Systems (SLAM-ER) which includes up to 260 Operation, Telemetry, and Captive Air Training Missiles with containers; support equipment, integration and certification support, training missiles, containers, spares and repair parts, missile support and test equipment, provisioning, program management, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related elements of program support. The estimated cost is $430 million.

Australia is an important ally in the Western Pacific. The strategic location of this political and economic power significantly contributes to ensuring peace and economic stability in the region. It is vital to the U.S. national interest to assist the Royal Australian Air Force (RAAF) to maintain a strong and ready self-defense capability and contribute to an acceptable military balance in the area. This proposed sale will improve interoperability between RAAF and U. S. Navy (USN) forces. This proposed sale is consistent with those objectives and facilitates burden sharing with our allies.

Australia intends to use the SLAM-ER missile on its F/A-18 and AP-3C aircraft. The RAAF can easily integrate SLAM-ER into its concept of operations. The proposed sale of SLAM-ER to Australia will contribute to U.S. security objectives by providing a coalition partner with enhanced strike capability for its tactical fighter or maritime patrol fleets. This will improve the RAAF ability to participate in coalition operations, provide common logistical support with the USN, and enhance the lethality of its forces. Australia will have no difficulty absorbing these weapons into its armed forces.

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

The prime contractor will be the Boeing Company of St. Louis, Missouri. Although generally the purchaser requires offsets, at this time, there are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale may require the assignment of U.S. Government and contractor representatives to Australia to support the integration of the selected weapon into the Australian fleet, but the estimated number of representatives has not been determined at this time.

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

Australia is also considering a competing bid for Joint Air-to-Surface Stand Off Munition.

Transmittal No. 05-16

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

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The Standoff Land Attack Missile-Expanded Response (SLAM-ER) is a tactical weapon system with, a day/night, adverse weather, standoff air-to-surface capability. SLAM-ER provides an effective, long range, precision strike option for both pre-planned and Target of Opportunity attack missions effective against a wide range of land-based targets and with a secondary anti-ship role. SLAM-ER is a follow on to the SLAM missile that is no longer in production. It is a variant of the HARPOON missile that utilizes the Maverick Imaging Infrared seeker, a highly accurate, Globe Positioning System-aided guidance system for improved navigation, improved missile aerodynamic performance characteristics that allow both greater range and more effective terminal attack profiles; and a redesigned ordnance section for increased penetrating power and lethality. The system uses the AWW-13 data link for more user-friendly Man-in the-Loop control and mission planning. SLAM-ER is the first weapon to feature Automatic Target Acquisition, a revolutionary technological breakthrough that will automate and improve target acquisition in cluttered scenes, and overcome most countermeasures and environmentally degraded conditions. These missiles are classified as Confidential. The support items are classified unclassified.

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

[FR Doc. 05–8055 Filed 4–21–05; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 05–15]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

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

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

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 05–15 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: April 18, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

In reply refer to:
I-05/002081

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

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 05-15, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Australia for defense articles and services estimated to cost $163 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Richard J. Millies
Deputy Director

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

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

Transmittal No. 05-15

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

(i) Prospective Purchaser: Australia

(ii) Total Estimated Value:

Major Defense Equipment*	$130 million
Other	$ 33 million
TOTAL	$163 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: Joint Air-to-Surface Stand Off Munition (JASSM) which includes up to 260 AGM-158 Operation, Telemetry, and Captive Air Training Missiles with containers, support equipment, integration and certification support, training missiles, containers, spares and repair parts, missile support and test equipment, provisioning, program management, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related elements of program support.

(iv) Military Department: Air Force (YLA)

(v) Prior Related Cases, if any: none

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

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

(viii) Date Report Delivered to Congress:

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

POLICY JUSTIFICATION (U)

Australia - Joint Air-to-Surface Stand Off Munition

The Government of Australia has requested a possible sale of Joint Air-to-Surface Stand Off Munition (JASSM) which includes up to 260 AGM-158 Operation, Telemetry, and Captive Air Training Missiles with containers, support equipment, integration and certification support, training missiles, containers, spares and repair parts, missile support and test equipment, provisioning, program management, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related elements of program support. The estimated cost is $163 million.

Australia is an important ally in the Western Pacific. The strategic location of this political and economic power significantly contributes to ensuring peace and economic stability in the region. It is vital to the U.S. national interest to assist the Royal Australian Air Force (RAAF) to maintain a strong and ready self-defense capability and contribute to an acceptable military balance in the area. This proposed sale will improve interoperability between RAAF and U.S. Air Force (USAF) forces. This proposed sale is consistent with those objectives and facilitates burden sharing with our allies.

Australia intends to use the JASSM missile on its F/A-18 and AP-3C aircraft. The RAAF can easily integrate JASSM into its concept of operations. The proposed sale of JASSM to Australia will contribute to U.S. security objectives by providing a coalition partner with enhanced strike capability for its tactical fighter or maritime patrol fleets. This will improve the RAAF ability to participate in coalition operations, provide common logistical support with the USAF, and enhance the lethality of its forces. Australia will have no difficulty absorbing these weapons into its armed forces.

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

The prime contractor will be Lockheed Martin Defense Systems of Orlando, Florida. Although generally the purchaser requires offsets, at this time, there are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale may require the assignment of U.S. Government and contractor representatives to Australia to support the integration of the selected weapon into the Australian fleet, but the estimated number of representatives has not been determined at this time.

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

Australia is also considering a competing bid for Stand-off Land Attack Missile-Expanded Response.

Transmittal No. 05-15

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

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The Joint Air-to-Surface Stand-off Munition (JASSM) is a subsonic, medium-altitude, low-observable (stealthy), 2000 lb class, powered, air-to-surface guided missile designed to attack high value targets in heavily defended areas. It employs Low-Observable technology that makes it difficult for enemy forces to detect on radar. The weapon is composed of a passive GPS-aided Inertial Navigation System, an electro-optical/infrared target correlating seeker, a miniature jet turbine for propulsion, and a 1000 lb. unitary, multi-mode (blast/fragmentation or penetration) warhead. The JASSM All-Up-Round is classified as Secret and the technical data/documentation is classified up to Secret.

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

[FR Doc. 05–8056 Filed 4–21–05; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 21, 2005.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 18, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: New.

Title: Impact Evaluation of the U.S. Department of Education's Student Mentoring Program.

Frequency: On Occasion.

Affected Public: State, local, or tribal gov't, SEAs or LEAs; Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 6,860.

Burden Hours: 2,512.

Abstract: Data collection for impact evaluation of the Department's school-based student mentoring program. A sample of students mentored through the Department's mentoring grants, as well as their adult mentors, will be the primary respondents.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2736. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to (202) 245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at her e-mail address *Katrina.Ingalls@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–8058 Filed 4–21–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Technology and Media Services for Individuals With Disabilities—Technology and Standards-Based Reform; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.327B.

Dates: Applications Available: April 25, 2005.

Deadline for Transmittal of Applications: June 6, 2005.

Deadline for Intergovernmental Review: August 5, 2005.

Eligible Applicants: State educational agencies (SEAs); local educational agencies (LEAs); public charter schools that are LEAs under State law; institutions of higher education (IHEs); other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

Estimated Available Funds: $1,200,000.

Estimated Range of Awards: $200,000—$300,000.

Maximum Award: The Secretary does not intend to fund an application that proposes a budget exceeding $300,000 for a single budget period of 12 months.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to: (1) Improve results for children with disabilities by promoting the development, demonstration, and use of technology, (2) support educational media services activities designed to be of educational value in the classroom setting to children with disabilities, and (3) provide support for captioning and video description of programs appropriate for use in the classroom setting.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute (see sections 674 and 681(d) of the Individuals with Disabilities Education Act (IDEA)).

Absolute Priority: For FY 2005 this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is: *Technology and Media Services for Individuals with Disabilities—Technology and Standards-Based Reform. Background of Priority:* Current Federal and State educational initiatives (including the No Child Left Behind Act of 2001 (NCLB)) apply principles of standards-based reform as a means for improving student achievement. Standards-based reform is premised on a ''theory of action'' in which standards, assessments, and accountability lead to improved curriculum and clear expectations for students and schools. These expectations in turn lead to professional development and improved teaching, which ultimately lead to higher levels of student learning (Elmore and Rothman, Eds., 1999, available at *http://www.nap.edu/catalog/9609.html*). Technology can play a significant role in supporting the component processes of standards-based reform and maximizing its benefits for students with disabilities.

Text of Priority: This priority supports projects to develop, implement, and evaluate models for using technology to enhance the benefits of standards-based reform for children with disabilities. Technologies may include, but are not limited to, technology-based assessments, computer-adaptive testing, computerized curriculum-based measurement aligned with State academic content standards, technology-based instruction aligned with State content standards, and technology-based systems for managing and analyzing information.

Consistent with the theory of standards-based reform discussed in the Background of Priority section, models must use technology for one or more of the following purposes: (1) To make large-scale standards-based assessments in reading/language arts, mathematics, and/or science more accessible and valid for the widest possible range of students with and without disabilities, for example by using technology that applies principles of universal design to support the participation of students with disabilities in assessments, (2) to ensure the alignment between classroom instruction, large-scale assessments, and State academic standards in reading/language arts, mathematics and/or science, for example by using computer-assisted instruction or computer-managed instruction to provide individualized standards-based instruction to students with disabilities, (3) to monitor and facilitate student progress toward proficiency on State academic standards in reading/language arts, mathematics and/or science, by, for example using computerized progress monitoring or curriculum-based measurement systems, and (4) to allow information management systems to facilitate administrative support for the attainment of academic standards in reading/language arts, mathematics and/or science for students with disabilities, by, for example using data warehousing, data mining, decision support, real-time data collection, or analysis. Applications that do not clearly address one or more of these four purposes will not be considered eligible for funding.

Given a sufficient number of approved high-quality applications within this priority, we intend to fund at least one project that addresses each of these purposes.

Note: Applicants must identify the purpose or purposes under which they are applying as part of the project title on the application cover sheet.

Applicants must:

(a) Describe and justify their model with regard to its effective use of technology to enhance the benefits of standards-based reform for students with disabilities. Both technology and standards-based reform must be central features in the model.

(b) Present a plan for developing and implementing the model and evaluating its utility and effectiveness, including its utility and effectiveness when implemented in actual school settings.

Evaluation of the effects of the model will involve causal inferences, and rigorous methodologies must be

employed to control for extraneous variables. To the maximum extent feasible and appropriate, the evaluation should employ randomized assignment to conditions. If randomized assignment is not feasible or appropriate, the applicant must employ alternatives that substantially minimize the effects of selection bias. These alternatives include appropriately structured regression-discontinuity designs and natural experiments in which naturally occurring circumstances or institutions (perhaps unintentionally) divide people into treatment and comparison groups in a manner akin to purposeful random assignment. Applicants proposing to use an alternative system must make a compelling case that randomization is not feasible or appropriate, and describe in detail how the alternatives will result in substantially minimizing the effects of selection bias on estimates of effect size. Observational, survey, or qualitative methodologies may complement experimental methodologies, provided sufficient rigor is maintained.

(c) Budget for a two-day Project Directors' meeting in Washington, DC during each year of the project.

(d) Budget for one additional two-day trip annually to Washington, DC to attend the Technology Project Directors' meeting.

(e) If the project maintains a Web site, include relevant information and documents in a format that meets a government or industry-recognized standard for accessibility.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities. However, section 681(d) of IDEA makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1474 and 1481(d).

Applicable Regulations: 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.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $1,200,000.

Estimated Range of Awards: $200,000–$300,000.

Maximum Award: The Secretary does not intend to fund an application that proposes a budget exceeding $300,000 for a single budget period of 12 months.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs; public charter schools that are LEAs under State law; IHEs; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (see section 682(a)(1)(A) of IDEA).

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 84.327B.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 50 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: April 25, 2005.

Deadline for Transmittal of Applications: June 6, 2005.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: August 5, 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 competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this

competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.* We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government wide Grants.gov Apply site in FY 2005. Technology and Standards-Based Reform-CFDA Number 84.327B is one of the competitions included in this project.

If you choose to submit your application electronically, you must use the Grants.gov Apply site (Grants.gov). Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us. We request your participation in Grants.gov.

You may access the electronic grant application for the Technology and Standards-Based Reform-CFDA Number 84.327B competition at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- Your participation in Grants.gov is voluntary.
- 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.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted with a date/time received by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. We will not consider your application if it was received by the Grants.gov system later than 4:30 p.m. on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was submitted after 4:30 p.m. on the application deadline date.
- If you experience technical difficulties on the application deadline date and are unable to meet the 4:30 p.m., Washington, DC time, deadline, print out your application and follow the instructions in this notice for the submission of paper applications by mail or hand delivery.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that your application is submitted timely to the Grants.gov system.
- To use Grants.gov, you, as the applicant, must have a D-U-N-S Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five business days to complete the CCR registration.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Any narrative sections of your application should be attached as files in a .DOC (document), .RTF (rich text) or .PDF (Portable Document) format.
- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327B), 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 84.327B), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327B), 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

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we 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:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department is currently developing measures that will yield information on various aspects of the Technology and Media Services to Improve Services and Results for Children with Disabilities program (*e.g.*, the extent to which projects are of high quality and are relevant to the needs of children with disabilities). Data on these measures will be collected from the projects funded under this competition.

Grantees will also be required to report information on their projects' performance in annual reports to the Department (34 CFR 75.590).

We will notify grantees of the performance measures once they are developed.

VII. Agency Contact

For Further Information Contact: Dave Malouf, U.S. Department of Education, 400 Maryland Avenue, SW., room 4078, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7427.

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.

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: April 18, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 05–8099 Filed 4–21–05; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: United States Election Assistance Commission.

ACTION: Revised Notice of Public Meeting for U.S. Election Assistance Commission Board of Advisors.

DATE AND TIME: Tuesday, April 26, 2005, 6:30 p.m.–8:30 p.m., Wednesday, April 27, 2005, 8:30 a.m.–4:30 p.m. and Thursday, April 28, 2005, 8:30 a.m.–Noon.

PLACE: Boston Marriott Cambridge, 2 Cambridge Center, (Broadway & 3rd Street), Cambridge, MA 02142, (Massachusetts Bay Transit Station Shop: Kendall Square).

PURPOSE: The U.S. Election Assistance Commission (EAC) Board of Advisors, as required by the Help America Vote Act of 2002, will meet to present its views on issues regarding the administration of federal elections, and formulate recommendations to the EAC.

The Board will receive an update on recent EAC activities. It will also discuss Voting System Guidelines, EAC proposed Voluntary Guidance on the Implementation of Statewide Voter Registration Lists, overseas voting issues, EAC's research agenda and other relevant matters pertaining to the administration of federal elections. Further, the Board of Advisors will hear reports from its various subcommittees, to include a report from the Executive Director Search Committee. Additionally, the Board will take administrative actions necessary for its efficient operation, including the election of its officers and adoption of bylaws.

Any member of the public may file a written statement with the Board before, during, or after the meeting. To the extent that time permits, the Board may allow public presentation or oral statements at the meeting.

STATEMENT OF PARTIAL CLOSURE: A portion of this public meeting will be closed to the public. The report of the Executive Director Search Committee to the Board of Advisors will not be open to the public, as this subcommittee will discuss information of a personal nature involving applicants for a federal position where disclosure would constitute a clearly unwarranted invasion of personal privacy. Closure of this portion of the meeting is consistent with 5 U.S.C. 552b(c)(6).

STATEMENT OF EXCEPTIONAL CIRCUMSTANCES: This revised notice of a meeting will not be published in the **Federal Register** 15 days prior to the meeting dates. Late notice was unavoidable due to a recent addition to the meeting's agenda, the report of the Executive Director Search Committee. This report must not be delayed, as it is a necessary step in the eventual appointment of an EAC Executive Director. This position must be filed at the earliest possible date.

* * * * *

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone: (202) 566–3100.

Gracia M. Hillman,

Chair, U.S. Election Assistance Commission.

[FR Doc. 05–8164 Filed 4–20–05; 9:40 am]

BILLING CODE 6820–YN–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC05–561–001; FERC–561]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

April 15, 2005.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and an extension of the expiration date for this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of January 31, 2005 (70 FR 4831–32) and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by May 20, 2005.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include the OMB Control No. as a point of reference. The Desk Officer may be reached by telephone at (202) 395–4650. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–33, Attention: Michael Miller, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC05–561–001.

Documents filed electronically via the Internet must be prepared in MS Word, Portable Document Format, Word Perfect or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-mail address upon receipt of comments. User assistance for electronic filings is available at (202) 502–8258 or by e-mail to *efiling@ferc.gov.* Comments should not be submitted to the e-mail address.

All comments are available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information:* FERC–561 ''Annual Report of Interlocking Positions''.

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* 1902–0099.

The Commission is now requesting that OMB approve this information collection with a three-year extension of the expiration date, with no changes to the existing collection. The information filed with the Commission is mandatory.

4. *Necessity of the Collection of Information:* Submission of the information is necessary to enable the Commission to implement the statutory provisions of Title II, section 211 of the Public Utility Regulatory Policies Act of 1978 (PURPA) (16 U.S.C. 825d) which amended part III section 305(c) of the Federal Power Act (FPA). Submission of the list is necessary to fulfill the requirements of section 211—Interlocking Directorates, which defines monitoring and regulatory operations concerning interlocking directorate positions held by utility personnel and possible conflicts of interest. The information is collected by the Commission to identify persons holding interlocking position between public utilities and possible conflicts of interest. Through this process, the Commission is able to review and exercise oversight of interlocking directorates of public utilities and their related activities. Specifically, the Commission must determine that individuals in utility operations holding two positions at the same time would not adversely affect the public interest. The Commission can employ enforcement proceedings when violations and omissions of the Act's provisions occur. The reporting requirements are found at 18 CFR 46.6 and 131.31.

5. *Respondent Description:* The respondent universe is comprised of public utilities and from those entities the Commission received reports from 1,649 persons serving as officers or directors of those concerns.

6. *Estimated Burden:* 412 total hours, 1649 respondents, 1 response per respondent, and .25 hours per response (average).

7. *Estimated Cost Burden to Respondents:* $21,503. (412 hours divided by 2,080 hours per year per employee times $108,558 per year average per employee). The cost per respondent is $13.

Statutory Authority: Section 305(c) of the Federal Power Act, 16 U.S.C. 825d.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1899 Filed 4–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC05–566–001; FERC–566]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

April 18, 2005.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice.

SUMMARY: In compliance with the requirements of Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C., the Federal Energy Regulatory

Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and extension of this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of January 31, 2005 (70 FR 3006–3007) and has made this notification in its submission to OMB.

DATES: Comments on the collection of information are due by May 20, 2005.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include the OMB Control No. as a point of reference. The Desk Officer may be reached by telephone at 202–395–4650. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–33, Attention: Michael Miller, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC05–566–001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to the e-mail address.

All comments are available for review at the Commission or may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the ''*eLibrary*'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information:* FERC–566 ''Annual Report of a Utility's Twenty Largest Purchasers.''

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No:* 1902–0114.

The Commission is now requesting that OMB approve and extend the expiration date for an additional three years with no changes to the existing collection. The information filed with the Commission is mandatory.

4. *Necessity of the Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of section 305 of the Federal Power Act, as amended by section 211 of the Public Utility Regulatory Policies Act of 1978. Submission of the list is necessary to fulfill the requirements of section 211–Interlocking Directorates, which defines monitoring and regulatory operations concerning interlocking directorate positions held by utility personnel and possible conflicts of interest. The information on facilities, who seek qualifying status for their facilities, to file the information is collected by the Commission to identify large purchasers of electric energy and possible conflicts of interest. Through this process, the Commission is able to review and exercise oversight of interlocking directorates of public utilities and their related activities. The Commission implements these requirements in the Code of Federal Regulations (CFR) under 18 CFR part 46, Section 46.3.

5. *Respondent Description:* The respondent universe currently comprises 183 respondents (average) subject to the Commission's jurisdiction.

6. *Estimated Burden:* 1,098 total hours, 183 respondents (average per year), 1 response per respondent, and 6 hours per respondent (average).

7. *Estimated Cost Burden to Respondents:* 1,098 total hours/2080 hours per year × $108,558 per year = $57,306. The cost per respondent is $313.

Statutory Authority: Section 305(c)(2)(D), 16 U.S.C. 825d.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1910 Filed 4–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER01–1403–002, ER01–2968–002, ER01–2968–003, ER01–845–001, ER01–845–002, ER04–366–002, ER04–372–002, ER99–2330–001, ER99–2330–002 and ER99–2330–004]

Before Commissioners: Pat Wood, III, Chairman; Nora Mead Brownell, Joseph T. Kelliher, and Suedeen G. Kelly: FirstEnergy Operating Companies, FirstEnergy Solutions Corporation, FirstEnergy Generation Corporation, Jersey Central Power & Light Company, Metropolitan Edison Company, et al., FirstEnergy Corporation; Order Conditionally Accepting Updated Market Power Analysis and Providing Guidance on the Scope of Compliance Filings

Issued April 14, 2005.

1. In this order, we accept an updated market power analysis filed by FirstEnergy Corporation and its subsidiaries, FirstEnergy Operating Companies (FirstEnergy Operating Companies),[1] FirstEnergy Solutions Corporation (FESolutions), FirstEnergy Generation Corporation (FEGeneration), Jersey Central Power & Light Company (JCP&L), and Metropolitan Edison Company *et al.* (MetEd)[2] (collectively, FirstEnergy Companies). As discussed below, we conclude that, subject to the Commission's acceptance of the compliance filing directed herein, FirstEnergy Companies satisfy the Commission's standards for market-based rate authority. This order benefits customers by reviewing the conditions under which market-based rate authority is granted, thus ensuring that the prices charged for jurisdictional sales are just and reasonable. FirstEnergy Companies' next updated market power analysis is due three years from the date of this order.

2. In this order, we reject as outside the scope of FirstEnergy Companies'

[1] FirstEnergy Operating Companies consist of The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, and The Toledo Edison Company.

[2] MetED consist of MetED and Pennsylvania Electric Company (Penelec).

compliance filing certain proposed tariff revisions that FirstEnergy Companies included with their December 31, 2003 updated market power analysis.

Background

3. FirstEnergy Operating Companies are public utilities that provide retail and wholesale electric service in areas of Ohio and Pennslyvania and are participants in the Midwest Independent Transmission System Operator (Midwest ISO) markets. JCP&L, MetEd and Penelec are public utilities that provide retail and wholesale electric service in areas of New Jersey and Pennsylvania and are located in the PJM Interconnection, LLC (PJM) control area. FEGeneration is a stand-alone generation company that owns and/or operates electric generating facilities previously owned by FirstEnergy Operating Companies. FEGeneration also owns and operates approximately 1155 MW of new generation capacity that it has installed or acquired since 2000 and all of the power from those facilities is committed by contract for sale to FESolutions. All of the generating facilities owned and/or operated by FEGeneration are connected to either the Midwest ISO or the PJM transmission grid. FESolutions is a power marketer engaged in the sale of electricity at market-based rates to wholesale and retail customers throughout the eastern and midwestern United States in which retail access programs have been initiated.

4. On December 31, 2003 FirstEnergy Companies filed their triennial updated market power analysis pursuant to the Commission's order granting authority to sell electric energy and capacity at market-based rates.[3] This filing used the then applicable Supply Margin Assessment to assess generation market power. FirstEnergy Companies' December 31, 2003 Filing also included modifications to the market-based rate power sales tariffs of FirstEnergy Companies incorporating the Commission's market behavior rules.[4]

5. As part of its December 31, 2003 Filing, FirstEnergy also included several changes to their market-based rate tariffs (*e.g.*, revisions to the code of conduct and affiliate sales provisions). As discussed below, we reject these as beyond the scope of a previously-directed compliance filing. Furthermore, we put the industry on notice that, consistent with Commission precedent, any such market-based rate tariff revisions that are beyond the scope of Commission-directed compliance filings will be deemed automatically rejected at the time of filing.

6. In its December 31, 2003 Filing, FirstEnergy Companies also filed notices of cancellation for The Cleveland Electric Illuminating Company, (CEI) and The Toledo Edison Company (TE) stating that there are no sales of electricity currently being made pursuant to their tariffs as well as a notice of cancellation for JCP&L. FirstEnergy Companies stated that, as a result of commitments made by JCP&L at the time JCP&L, MetEd and Penelec were acquired by FirstEnergy Companies, JCP&L determined that it was desirable to sell power under a market-based power sales tariff separate from under which MetEd and Penelec sell power at market-based rates.[5] The notices of cancellation of JCP&L, CEI and TE were accepted for filing on February 26, 2004 in Docket No. ER04–363–000.

7. On February 7, 2005, FirstEnergy Companies submitted an updated generation market power analysis pursuant to the Commission's order issued on May 13, 2004.[6] The May 13 Order addressed the procedures for implementing the generation market power analysis announced on April 14, 2004 and clarified on July 8, 2004.[7]

Notice of Filing

8. Notice of FirstEnergy Companies' updated generation market power analysis was published in the **Federal Register**[8] with interventions, comments, and protests due on or before February 28, 2005. None was filed.

Discussion

Market-Based Rate Authorization

9. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and transmission and cannot erect other barriers to entry. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.[9]

10. As discussed below, the Commission concludes that, subject to the Commission's acceptance of the compliance filing directed herein, FirstEnergy Companies satisfy the Commission's standards for market-based rate authority.[10]

Generation Market Power

11. In the April 14 Order, the Commission adopted two indicative screens for assessing generation market power, the pivotal supplier screen and the wholesale market share screen. FirstEnergy Companies have prepared both the pivotal supplier and the wholesale market share screens for the Midwest ISO and PJM markets.

12. As the Commission noted in the April 14 Order, once Midwest ISO becomes a single market and performs functions such as a central commitment and dispatch with Commission-approved market monitoring and mitigation, Midwest ISO presumptively would be considered a single geographic market for purposes of our generation dominance screens.[11] The Commission has reviewed FirstEnergy companies' generation market power screen analyses for the Midwest ISO market and has determined that FirstEnergy Companies have passed the screens in that market. Accordingly, the Commission finds that FirstEnergy

[3] FirstEnergy Operating Companies, Docket No. ER01–1403–000, Letter Order issued November 30, 2001; Cleveland Electric Illuminating Company, 76 FERC ¶ 61,346 (1996); Toledo Edison Company, 78 FERC ¶ 61,013 (1997); GPU Advanced Resources, Inc., 80 FERC ¶ 61,255 (1997); Jersey Central Power & Light Company, *et al.*, 82 FERC ¶ 61,023 (1998); FirstEnergy Services Corp., 94 FERC ¶ 61,052 (2001); FirstEnergy Solutions Corp., Docket No. ER01–2968–000, Letter Order issued October 24, 2001; FirstEnergy Generation Corporation, 94 FERC ¶ 61,177 (2001).

[4] Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 105 FERC ¶ 61,218 (2003).

[5] On December 31, 2003, as amended on February 12, 2004, JCP&L filed in, a separate proceeding, a market-based rate tariff. The Commission accepted this market-based rate tariff for filing on March 16, 2004. *Jersey Central Power & Light Co.*, Docket Nos. ER04–366–001 (unpublished letter order). Similarly, on March 16, 2004 the Commission accepted a market-based rate tariff of MetEd and Penelec for filing. *Metropolitan Edison Company, Pennsylvania Electric Company*, Docket Nos. ER04–372–000 and ER04–372–001 (unpublished letter order).

[6] *Acadia Power Partners, LLC*, 107 FERC ¶ 61,168 (2004) (May 13 Order). On June 14, 2004, FirstEnergy Companies filed for clarification and/or rehearing of the May 13 Order. Specifically, FirstEnergy Companies argued that certain of its subsidiaries (JCP&L, MetEd, and Penelec) should not have been required to file a revised market power analysis pursuant to the May 13 Order. As described above, FirstEnergy Companies included all of its public utility subsidiaries, including JCP&L, MetEd, and Penelec, in its February 7, 2005 Market Power Update.

[7] *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

[8] 70 FR 8357 (2005).

[9] See, *e.g.*, Progress Power Marketing, Inc., 76 FERC ¶ 61,155 at 61,919 (1996); Northwest Power Marketing Co., L.L.C., 75 FERC ¶ 61,281 at 61,899 (1996); accord Heartland Energy Services, Inc., 68 FERC ¶ 61,223 at 62,062–63 (1994).

[10] Accordingly, the June 14, 2004 request for rehearing will be dismissed as moot.

[11] Because the Midwest ISO became a single market and began performing the central commitment and dispatch functions with Commission-approved market monitoring and mitigation on April 1, 2005, we have used the Midwest ISO market as the geographic market for purposes of analyzing FirstEnergy Companies' generation market power screens.

Companies satisfy the Commission's generation market power standard for the grant of market-based rate authority based on the Midwest ISO becoming a single market and performing these functions with Commission-approved market monitoring and mitigation. The Commission also finds that FirstEnergy Companies pass the Commission's screens for generation market power in the PJM market. Accordingly, the Commission finds that FirstEnergy Companies satisfy the Commission's generation market power standard for the grant of market-based rate authority.

Transmission Market Power

13. When a transmission-owning public utility seeks market-based rate authority, the Commission has required the public utility to have an Open Access Transmission Tariff (OATT) on file before granting such authorization. FirstEnergy Companies state that both the Midwest ISO and PJM are Commission-approved RTOs with OATTs on file with the Commission and are independent of all market participants, including FirstEnergy Companies. The Midwest ISO and PJM's control of transmission facilities owned by FirstEnergy Companies assures that the amount of transmission capacity over those facilities will be determined objectively and that transmission service is available to all potential transmission customers on a non-discriminatory basis. Based on FirstEnergy Companies' representations, we find that FirstEnergy Companies satisfy the Commission's transmission market power standard for the grant of market-based rate authority.

Other Barriers to Entry

14. FirstEnergy Companies state that, at the time FirstEnergy Companies were originally authorized to sell power at market-based rates, the Commission concluded that they each lacked the ability to erect such barriers to entry. FirstEnergy Companies state that there has been no change in circumstances since those determinations were made that might warrant a different conclusion. Based on FirstEnergy Companies' representations, the Commission is satisfied that FirstEnergy Companies cannot erect barriers to entry.

Affiliate Abuse

15. In its February 7, 2005 Filing, FirstEnergy Companies referred to their December 31, 2003 Updated Market Power Analysis Filing which they submit showed that FirstEnergy Companies had adopted codes of conduct designed to preclude affiliate abuse and reciprocal dealing. However, FirstEnergy Companies' December 31, 2003 Filing does not address the affiliate abuse prong of the Commission's market-based rate authorization. In that filing, FirstEnergy Companies state that they ''(a)[do] not have market power in any relevant wholesale power market, (b) [have] adequately mitigated potential transmission market power by transferring control over its transmission facilities to Commission-approved RTOs, and (c) [lack] the ability to erect barriers to entry by potential competitors,'' but make no reference to the affiliate abuse prong.[12] Accordingly, FirstEnergy Companies are directed, within 30 days of the date of issuance of this order, to submit a compliance filing to address the Commission's concerns with regard to affiliate abuse.

Reporting Requirements

16. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) A summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or greater) market-based power sales during the most recent calendar quarter.[13] Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.[14]

17. FirstEnergy Companies must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.[15] Order No. 652 requires that the change in status reporting requirement be incorporated into the market-based rate tariff of each entity authorized to make sales at market-based rates. Accordingly, FirstEnergy Companies are required, within 30 days of the date of issuance of this order, to revise their market-based rate tariffs to incorporate the following provision:

[Insert Market-based rate seller name] must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority. A change in status includes, but is not limited to, each of the following: (i) ownership or control of generation or transmission facilities or inputs to electric power production other than fuel supplies, or (ii) affiliation with any entity not disclosed in the application for market-based rate authority that owns or controls generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area. Any change in status must be filed no later than 30 days after the change in status occurs.

18. FirstEnergy Companies are directed to file an updated market power analysis within three years of the date of this order, and every three years thereafter. The Commission also reserves the right to require such an analysis at any intervening time.

Policy on Issues Outside the Scope of Market-Based Rate Tariff Compliance Filings

19. The filing of updated market power analyses pursuant to Commission orders, as well as the filing of revisions to the utility's market-based rate tariff to incorporate the Commission's market behavior rules, the change in status reporting requirement, and compliance with Order No. 614, constitute compliance filings. As stated above, in the December 31, 2003 Compliance Filing, FirstEnergy Companies provided an updated market power analysis pursuant to the Commission's orders granting them market-based rate authority as well as tariff revisions to incorporate the Commission's market behavior rules. However, FirstEnergy Companies also included in its compliance filing several other changes to their market-based rate tariffs that go beyond the scope of that compliance filing (*e.g.*, revisions to the code of conduct and affiliate sales provisions). In this regard, we note that FirstEnergy Companies' transmittal fails to inform the Commission of those proposed changes.

[12] December 31, 2003 Updated Market Power Analysis, pp. 5–6.

[13] Revised Public Utility Filing Requirements, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. 31,127 (2002). Required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001. The Electric Quarterly Report must be submitted to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's Web site at *http://www.ferc.gov/docs-filing/eqr.asp.*

[14] The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004). Failure to file an Electric Quarterly Report (without appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

[15] Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005); FERC Stats. & Regs. ¶ 31,175 (2005).

20. The Commission has long established that compliance filings must be limited to the specific directives ordered by the Commission. The purpose of a compliance filing is to make the directed changes and the Commission's focus in reviewing them is whether they comply with the Commission's previously-stated directives.[16] In this instance, FirstEnergy Companies identified their December 31, 2003 Filing as a triennial updated market power analysis and stated that they had submitted this analysis pursuant to the various orders granting FirstEnergy Companies market-based rate authorization; however, they included with the updated market power analysis changes to their market-based rate tariffs not directed by the underlying orders. Therefore, the Commission will reject these proposed changes to the FirstEnergy Companies' market-based rate tariffs submitted with the December 31, 2003 Updated Market Power Analysis Filing as outside the scope of that compliance filing. We reaffirm that compliance filings must only provide the changes directed by the Commission. Accordingly, market-based rate tariff revisions that are beyond the scope of a Commission-directed compliance filing will be deemed automatically rejected at the time of filing.

The Commission orders:

(A) FirstEnergy Companies' updated generation market power analysis is hereby accepted for filing, subject to Commission acceptance of the compliance filing directed in Ordering Paragraph (B), as discussed in the body of this order.

(B) FirstEnergy Companies are directed, within 30 days of the date of issuance of this order, to submit a compliance filing to address whether FirstEnergy Companies satisfy the Commission's concerns with regard to affiliate abuse, as discussed in the body of this order.

(C) FirstEnergy Companies' next updated market power analysis is due within three years of the date of this order.

(D) FirstEnergy Companies' revised tariff sheets (*e.g.* revising the code of conduct and affiliate sales provision), with the exception of those discussed in Ordering Paragraph (F) below, are rejected, as discussed in the body of this order.

(E) FirstEnergy Companies are directed, within 30 days of the date of issuance of this order, to revise their market-based rate tariffs to include the change in status reporting requirement adopted in Order No. 652.

(F) FirstEnergy Companies' revised tariff sheet(s) incorporating the Commission's market behavior rules are accepted for filing, effective December 17, 2003.

(G) FirstEnergy Companies' June, 2004, request for rehearing is dismissed as moot.

(H) The Secretary is hereby directed to publish a copy of this order in the **Federal Register**.

By the Commission.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–1918 Filed 4–21–05; 8:45 am]

BILLING CODE 6717–01–P

[16] Pacific Gas and Electric Company, 109 FERC ¶ 61,336 at P5 (2004); Midwest Independent Transmission System Operator, Inc., 99 FERC ¶ 61,302 at 62,264 (2002); ISO New England, Inc., 91 FERC ¶ 61,016 at 61,060 (2000); Sierra Pacific Power Company, 80 FERC ¶ 61,376 at 62,271 (1997); Delmarva Power & Light Company, 63 FERC ¶ 61,321 at 63,160 (1993).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–93–000]

PJM Industrial Customer Coalition, Complainant v. PJM Interconnection, L.L.C. and American Electric Power Service Corporation, Respondents; Notice of Complaint

April 15, 2005.

Take notice that on April 15, 2005, the PJM Industrial Customer Coalition filed a formal complaint against PJM Interconnection, L.L.C. and American Electric Power Service Corporation pursuant to sections 206 and 306 of the Federal Power Act and Rule 206 of the Commission's Rules of Practice and Procedure, alleging that Respondents' refusal to allow members of the PJM Industrial Customer Coalition, located in American Electric Power Service Corporation's service territory, to participate in PJM Interconnection, L.L.C.'s emergency and economic load response programs contravenes Respondents' obligations under the PJM open access transmission tariff.

The PJM Industrial Customer Coalition certifies that copies of the complaint were served on the contacts for PJM Interconnection, L.L.C. and American Electric Power Service Corporation as listed on the Commission's list of corporate officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protest must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on May 5, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1898 Filed 4–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–62–001, et al.]

PJM Interconnection, L.L.C., et al.; Electric Rate and Corporate Filings

April 13, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. PJM Interconnection, L.L.C.

[Docket No. EL05–62–001]

Take notice that on March 28, 2005, PJM Interconnection, L.L.C. submitted a compliance filing pursuant to the Commission's order issued February 25,

2005 in Docket No. ER04–1003–002, *et al.,* 110 FERC ¶ 61,187 (2005).

Comment Date: 5 p.m. Eastern Time on April 22, 2005.

2. California Independent System Operator Corporation

[Docket Nos. ER03–218–006, ER03–219–006, EC03–81–003]

Take notice that on April 6, 2005, the California Independent System Operator Corporation (ISO) submitted a compliance filing pursuant to the Commission's order issued March 22, 2005 in Docket No. ER03–218–005, *et al.,* 110 FERC ¶ 61,297 (2005).

The ISO states that the filing has been served on all parties on the official service list in these proceedings. In addition, the ISO states that the filing has been posted on the ISO home page.

Comment Date: 5 p.m. Eastern Time on April 27, 2005.

3. Midwest Independent Transmission System Operator, Inc.; Public Utilities with Grandfathered Agreements in the Midwest ISO Region

[Docket Nos. ER04–691–034, EL04–104–032]

Take notice that on April 6, 2005, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted revisions to the Midwest ISO's Open Access Transmission and Energy Markets Tariff in compliance with certain requirements in the Commission's March 16, 2005 Order in *Midwest Independent Transmission System Operator, Inc., et al.,* 110 FERC ¶ 61,289 (2005). The Midwest ISO has requested March 24, 2005 and April 1, 2005 effective dates for the tariff sheets submitted as part of this filing.

The Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all state commissions within the region. In addition, Midwest ISO states that the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. Further, the Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: 5 p.m. Eastern Time on April 27, 2005.

4. JPMorgan Chase Bank, N.A.

[Docket No. ER05–283–003]

Take notice that on April 6, 2005, JPMorgan Chase Bank, N.A. (JPMCB) submitted a compliance filing pursuant to the Commission's letter order issued March 18, 2005 in JPMorgan Chase Bank, N.A., 110 FERC ¶ 61,292 (2005).

Comment Date: 5 p.m. Eastern Time on April 27, 2005.

5. American Transmission Company LLC

[Docket Nos. ER05–645–001, ER05–646–001]

Take notice that on April 7, 2005, American Transmission Company, LLC (ATCLLC) filed requests to amend its February 24, 2005 filings submitting distribution-transmission interconnection agreements between ATCLLC and Black Earth Electric Utilities and Hartford Electric originally submitted in Docket Nos. ER05–645–000 and ER05–646–000, respectively. ATCLLC requests that the distribution-transmission interconnection agreements be accepted, subject to the outcome of the Commission's decision on the rehearing request filed by ATCLLC in Docket No. ER05–237–001, *et al.*

Comment Date: 5 p.m. Eastern Time on April 22, 2005.

6. Wisconsin Electric Power Company

[Docket No. ER05–760–001]

Take notice that on April 6, 2005, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing an errata to its March 31, 2005 filing submitting Amendment No. 2 to the Joint Operating Agreement between Wisconsin Electric and Edison Sault Electric Company. Wisconsin Electric requests an effective date of April 1, 2005.

Comment Date: 5 p.m. Eastern Time on April 27, 2005.

7. California Independent System Operator Corporation

[Docket No. ER05–784–000]

Take notice that on April 6, 2005, the California Independent System Operator Corporation (ISO) tendered for filing a Dynamic Scheduling Host Control Area Operating Agreement (DSHCAOA) between the ISO and British Columbia Transmission Corporation (BCTC). ISO states that the purpose of the DSHCAOA is to establish the framework of operating requirements for the dynamic scheduling functionality and to require the host control area responsible for the functionality to comply with the applicable provisions of the ISO tariff, including the ISO dynamic scheduling protocol. The ISO requests an effective date of April 8, 2005.

The ISO states that the non-privileged elements of the filing have been served on BCTC, Powerex Corp., Bonneville Power Administration Transmission Business Line, the California Public Utilities Commission, and the California Electricity Oversight Board.

Comment Date: 5 p.m. Eastern Time on April 27, 2005.

8. California Independent System Operator Corporation

[Docket No. ER05–785–000]

Take notice that on April 6, 2005, the California Independent System Operator Corporation (ISO) tendered for filing a letter agreement between the ISO and Bonneville Power Administration Transmission Business Line (BPAT). ISO states that the purpose of the letter agreement is to establish the framework of operating requirements for BPAT's role as an intermediary control area for dynamic scheduling functionality to the ISO control area and to require the ISO and BPAT to comply with the applicable provisions of their respective protocols, standards, and practices regarding dynamic scheduling. The ISO requests an effective date of April 8, 2005.

The ISO states that the filing has been served on BPTA, Powerex Corp., British Columbia Transmission Corporation, the California Public Utilities Commission, and the California Electricity Oversight Board.

Comment Date: 5 p.m. Eastern Time on April 27, 2005.

9. California Independent System Operator Corporation

[Docket No. ER05–786–000]

Take notice that on April 6, 2005, the California Independent System Operator Corporation (ISO) tendered for filing a Dynamic Scheduling Agreement for Scheduling Coordinators (DSA) between the ISO and Powerex Corp. (Powerex). ISO states that the purpose of the DSA is to establish the framework of operating and scheduling requirements for the dynamic scheduling functionality and to require the Scheduling Coordinator responsible for operation of the functionality to comply with the applicable provisions of the ISO tariff, including the ISO dynamic scheduling protocol. The ISO requests an effective date of April 8, 2005.

The ISO states that the filing has been served on Powerex, Bonneville Power Administration Transmission Business Line, British Columbia Transmission Corporation, the California Public Utilities Commission, and the California Electricity Oversight Board.

Comment Date: 5 p.m. Eastern Time on April 27, 2005.

10. Gulf States Wholesale Equity Partners II, LP

[Docket No. ER05–787–000]

Take notice that on April 6, 2005, Gulf States Wholesale Equity Partners II, LP filed a petition for approval of its Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations. Gulf States Wholesale Equity Partners II, LP states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer and is not in the business of generating or transmitting electric power.

Comment Date: 5 p.m. Eastern Time on April 27, 2005.

11. American Electric Power Service Corporation

[Docket No. ER05–788–000]

Take notice that on April 6, 2005, the American Electric Power Service Corporation (AEP) tendered for filing a Notice of Termination of an executed Interconnection and Operation Agreement between Indiana Michigan Power Company and Berrien Energy Center, LLC, designated as Service Agreement No. 522 under American Electric Power Operating Companies' Open Access Transmission Tariff. AEP requests an effective date of April 4, 2005.

AEP states that a copy of the filing was served on Berrien Energy Center, LLC, Indiana Utility Regulatory Commission, and the Michigan Public Service Commission.

Comment Date: 5 p.m. Eastern Time on April 27, 2005.

12. Indeck Pepperell Power Associates, Inc.

[Docket No. ER05–789–000]

Take notice that on April 6, 2005, Black Hills Corporation, on behalf of its subsidiary Black Hills Pepperell Power Associates, LLC, formerly known as Indeck Pepperell Power Associates, Inc. (Pepperell) filed a notice of cancellation of Pepperell's market-based rate wholesale power sales tariff and all service agreements under the tariff.

Comment Date: 5 p.m. Eastern Time on April 27, 2005.

13. El Segundo Power, LLC

[Docket No. ER05–791–000]

Take notice that on April 6, 2005, El Segundo Power, LLC (El Segundo) tendered for filing an amendment to Sheet Nos. 127 and 129 of its Rate Schedule FERC No. 2, Reliability Must-Run Service Agreement between El Segundo and the California Independent System Operator Corporation (CAISO). El Segundo requests an effective date of January 1, 2005 for Sheet No. 127 and May 1, 2005 for Sheet No. 129.

El Segundo states that copies of the filing were served on the CAISO, Southern Edison Company, the California Electricity Oversight Board and the California Public Utilities Commission.

Comment Date: 5 p.m. Eastern Time on April 27, 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. E5–1902 Filed 4–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–60–000, et al.]

PJM Interconnection, L.L.C., et al.; Electric Rate and Corporate Filings

April 15, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. PJM Interconnection, L.L.C.

[Docket No. EL05–60–000]

Take notice that on March 28, 2005, PJM Interconnection, L.L.C., submitted its response regarding the existing re-study provisions of the PJM Open Access Transmission Tariff pursuant to the Commission's February 10, 2005 Order in *PJM Interconnection, L.L.C.,* 110 FERC ¶ 61,099 (2005).

Comment Date: 5 p.m. Eastern Time on May 6, 2005.

2. LG&E Energy Marketing Inc., Louisville Gas & Electric Company & Kentucky Utilities Company, WKE Station Two Inc., Western Kentucky Energy Corporation

[Docket No. ER94–1188–035, ER98–4540–004, ER99–1623–004, ER98–1278–010, ER98–1279–006]

Take notice that, on April 8, 2005 and April 13, 2005, LG&E Energy Marketing Inc., Louisville Gas & Electric Company, Kentucky Utilities Company, WKE Station Two Inc., and Western Kentucky Energy Corporation (collectively, the LG&E Parties) submitted responses to the Commission's March 8, 2005 deficiency letter seeking additional information regarding LG&E Parties' November 19, 2004 filing in these dockets.

Comment Date: 5 p.m. Eastern Time on April 25, 2005.

3. Infinite Energy, Inc.

[Docket No. ER97–3923–002]

Take notice that on April 7, 2005, Infinite Energy, Inc. (Infinite) submitted for filing its triennial updated market analysis and revisions to its FERC Rate Schedule No. 1 to incorporate the Market Behavior Rules set forth in the Commission's orders in *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (92003, *order on reh'g*, 107 FERC ¶ 61,175 (2004). Infinite states that the tariff has also been revised to reflect the requirements of Commission Order Nos. 614 and 652. Infinite requests an effective date of May 1, 2005.

Comment Date: 5 p.m. Eastern Time on April 28, 2005.

4. Spokane Energy, LLC

[Docket No. ER98–4336–013]

Take notice that on April 7, 2005, Spokane Energy, LLC submitted substitute tariff sheets to its April 4, 2005 filing in Docket No. ER98–4336–012 of proposed revisions to its First Revised Rate Schedule FERC No. 1.

Comment Date: 5 p.m. Eastern Time on April 28, 2005.

5. Madison Gas and Electric Company

[Docket No. ER00–586–006]

Take notice that on April 7, 2005, Madison Gas and Electric Company (MGE) submitted a compliance filing pursuant to the Commission's order issued March 25, 2005 in *Madison Gas and Electric Company*, 110 FERC ¶ 61,347 (2005).

Comment Date: 5 p.m. Eastern Time on April 28, 2005.

6. Cedar Brakes I, L.L.C.

[Docket No. ER00–2885–005]

Take notice that on April 7, 2005, Cedar Brakes I, L.L.C. filed Original Sheet No. 4 of its First Revised Rate Schedule FERC No. 1 to implement the requirements of Order No. 652, *Reporting Requirement for Changes in Status for Public Utilities With Market-Based Rate Authority*, 110 FERC ¶ 61,097 (2005).

Comment Date: 5 p.m. Eastern Time on April 28, 2005.

7. Cedar Brakes II, L.L.C.

[Docket No. ER01–2765–004]

Take notice that on April 7, 2005, Cedar Brakes II, L.L.C., filed Original Sheet No. 4 of its First Revised Rate Schedule FERC No. 1 to implement the requirements of Order No. 652, *Reporting Requirement for Changes in Status for Public Utilities With Market-Based Rate Authority*, 110 FERC ¶ 61,097 (2005).

Comment Date: 5 p.m. Eastern Time on April 28, 2005.

8. Mohawk River Funding IV, L.L.C.

[Docket No. ER02–1582–003]

Take notice that on April 7, 2005, Mohawk River Funding IV, L.L.C., filed Original Sheet No. 4 of its Second Revised Rate Schedule FERC No. 1 to implement the requirements of Order No. 652, *Reporting Requirement for Changes in Status for Public Utilities With Market-Based Rate Authority*, 110 FERC ¶ 61,097 (2005).

Comment Date: 5 p.m. Eastern Time on April 28, 2005.

9. Cabazon Wind Partners, LLC; Rock River I, LLC; Whitewater Hill Wind Partners, LLC

[Docket Nos. ER02–1695–001, ER01–2742–004, ER02–2309–001]

Take notice that on April 5, 2005, Cabazon Wind Partners, LLC (Cabazon), Rock River I, LLC (Rock River), and Whitewater Hill Wind Partners, LLC (Whitewater) (collectively, Project Companies) submitted a notice of change in status describing a change in the upstream ownership of the Project Companies and a petition for acceptance of revised market-based rate tariffs. Each of the Project Companies revised its FERC Electric Tariff, Original Volume No. 1 to reflect a new issuing officer and to incorporate the Commission's reporting requirement for changes in status for public utilities with market-based rate authority. In addition, Cabazon and Whitewater revised their tariffs to include the Commission's Market Behavior Rules as Original Sheet Nos. 3 and 4.

The Project Companies state that copies of the filing were served upon the Project Companies' jurisdictional customers, their respective state public service commissions, and persons listed on the official service lists compiled by the Secretary in the above-captioned dockets.

Comment Date: 5 p.m. Eastern Time on April 28, 2005.

10. Utility Contract Funding, L.L.C.

[Docket No. ER02–2102–004]

Take notice that on April 7, 2005, Utility Contract Funding, L.L.C. filed Original Sheet No. 4 of its Second Revised Rate Schedule FERC No. 1 to implement the requirements of Order No. 652, *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, 110 FERC ¶ 61,097 (2005).

Comment Date: 5 p.m. Eastern Time on April 28, 2005.

11. Backbone Mountain Windpower, LLC; Badger Windpower, LLC; Bayswater Peaking Facility, LLC; Blythe Energy, LLC; Calhoun Power Company I, LLC; Doswell Limited Partnership; ESI Vansycle Partners, L.P.; Florida Power & Light Co.; FPL Energy Cape, LLC; FPL Energy Hancock County Wind, LLC; FPL Energy Maine Hydro, Inc.; FPL Energy Marcus Hook, L.P.; FPL Energy Mason, LLC; FPL Energy MH 50, LP; FPL Energy New Mexico Wind, LLC; FPL Energy Pennsylvania Wind, LLC; FPL Energy Power Marketing, Inc.; FPL Energy Seabrook, LLC; FPL Energy Vansycle, LLC; FPL Energy Wyman, LLC; FPL Energy Wyman IV, LLC; Gray County Wind Energy, LLC; Hawkeye Power Partners, LLC; High Winds, LLC; Jamaica Bay Peaking Facility, LLC; Lake Benton Power Partners II, LLC; Mill Run Windpower, LLC; Somerset Windpower, LLC; West Texas Wind Energy Partners, LP

[Docket Nos. ER02–2559–004, ER01–1071–005, ER02–669–004, ER02–2018–004, ER01–2074–005, ER90–80–003, ER98–2494–006, ER97–3359–008, ER00–3068–005, ER03–34–004, ER98–3511–009, ER02–1903–003, ER98–3562–008, ER99–2917–007, ER03–179–004, ER02–2166–004, ER98–3566–012, ER02–1838–003, ER01–838–005, ER98–3563–009, ER98–3564–009, ER01–1972–005, ER98–2076–008, ER03–155–003, ER03–623–005, ER98–4222–004, ER01–1710–005, ER01–2139–006, ER98–1965–005]

Take notice that on April 7, 2005, Backbone Mountain Windpower, LLC, Badger Windpower, LLC, Bayswater Peaking Facility, LLC, Blythe Energy, LLC, Calhoun Power Company I, LLC, Doswell Limited Partnership, ESI Vansycle Partners, L.P., Florida Power & Light Company, FPL Energy Cape, LLC, FPL Energy Hancock County Wind, LLC, FPL Energy Maine Hydro, Inc., FPL Energy Marcus Hook, L.P., FPL Energy Mason, LLC, FPL Energy MH 50, LP, FPL Energy New Mexico Wind, LLC, FPL Energy Pennsylvania Wind, LLC, FPL Energy Power Marketing, Inc., FPL Energy Rhode Island Energy, L.P., FPL Energy Seabrook, LLC, FPL Energy Vansycle, LLC, FPL Energy Wyman, LLC, FPL Energy Wyman IV, LLC, Gray County Wind Energy, LLC, Hawkeye Power Partners, LLC, High Winds, LLC, Jamaica Bay Peaking Facility, LLC, Lake Benton Power Partners II, LLC, Mill Run Windpower, LLC, Somerset Windpower, LLC, and West Texas Wind Energy Partners, LP (collectively, Applicants) submitted a revised market-based rate three-year update filing pursuant to the Commission Order Implementing New Generation Market Power Analysis and Mitigation Procedures, issued May 13, 2004 in Docket Nos. ER04–1406–001, *et*

al., 107 FERC ¶ 61,168 (2004). Applicants state that the purpose of this filing is to correct certain data errors that have been identified since the compliance filing was submitted on December 22, 2004.

Applicants state that copies of the filing were served on parties on the official service list in the above-captioned proceedings, the Florida Public Service Commission and the New Hampshire Public Utilities Commission.

Comment Date: 5 p.m. Eastern Time on April 28, 2005.

12. New York Independent System Operator, Inc.

[Docket No. ER03–647–001]

Take notice that on April 1, 2005, the New York Independent System Operator, Inc. submitted a compliance report on the status of resource adequacy markets group pursuant to the Commission's order issued October 7, 2004 in Docket No. ER03–647–005, 109 FERC ¶ 61,023 (2004).

Comment Date: 5 p.m. Eastern Time on April 25, 2005.

13. NorthWestern Energy

[Docket No. ER04–1106–003]

Take notice that on April 7, 2005, NorthWestern submitted a compliance filing pursuant to the Commission's order issued March 8, 2005 in Docket No. ER04–1106–000, *et al.,* 110 FERC ¶ 61,264 (2005).

Comment Date: 5 p.m. Eastern Time on April 28, 2005.

14. New Dominion Energy Cooperative

[Docket No. ER05–20–002]

Take notice that on April 7, 2005, New Dominion Energy Cooperative submitted a compliance filing pursuant to the Commission's order issued March 8, 2005 in Docket No. ER05–20–000, *et al.,* 110 FERC ¶ 61,275 (2005).

Comment Date: 5 p.m. Eastern Time on April 28, 2005.

15. Georgia Energy Cooperative

[Docket No. ER05–349–002]

Take notice that on April 7, 2005, Georgia Energy Cooperative (An Electric Membership Corporation) submitted a compliance filing pursuant to the Commission's order issued March 24, 2005 in *Georgia Energy Cooperative*, 110 FERC ¶ 61,328 (2005).

Comment Date: 5 p.m. Eastern Time on April 28, 2005.

16. Arroyo Energy LP

[Docket No. ER05–375–002]

Take notice that on April 7, 2005, Arroyo Energy LP filed Original Sheet No. 5 of its Rate Schedule FERC No. 1 to implement the requirements of Order No. 652, *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, 110 FERC ¶ 61,097 (2005).

Comment Date: 5 p.m. Eastern Time on April 28, 2005.

17. Victoria International LTD

[Docket No. ER05–757–001]

Take notice that on April 7, 2005, Victoria International LTD. (VIL) submitted Exhibit A and VIL's Electric Rate Schedule No. 1, which were inadvertently omitted from VIL's March 31, 2005 filing in Docket No. ER05–575–000.

Comment Date: 5 p.m. Eastern Time on April 28, 2005.

18. Pacific Gas and Electric Company

[Docket No. ER05–790–000]

Take notice that on April 7, 2005, Pacific Gas and Electric Company (PG&E) tendered for filing a Wholesale Distribution Tariff Service Agreement between PG&E and GPU Solar.

PG&E states that copies of the filing have been e-served on GPU Solar, the California Independent System Operator Corporation and the California Public Utilities Commission.

Comment Date: 5 p.m. Eastern Time on April 28, 2005.

19. Southern California Edison Company

[Docket No. ER05–792–000]

Take notice that on April 7, 2005, Southern California Edison Company (SCE) tendered for filing a Letter Agreement, Service Agreement No. 38 under SCE's Transmission Owner Tariff, FERC Electric Tariff, Second Revised Volume No. 6, between SCE and PPM Energy, Inc. (PPM).

SCE states that copies of the filing were served on the Public Utilities Commission of the State of California and PPM.

Comment Date: 5 p.m. Eastern Time on April 28, 2005.

20. California Independent System Operator Corporation

[Docket No. ER05–793–000]

Take notice that on April 7, 2005, the California Independent System Operator Corporation (CAISO) submitted an informational filing in accordance with Article IX, section B of the Stipulation and Agreement approved by the Commission on May 28, 1999, California Independent System Operator Corp., 87 FERC ¶ 61,250 (1999) (Stipulation and Agreement). CAISO states that this provision requires the CAISO to provide on a confidential basis to the Commission (1) information regarding any notice from an RMR Unit requesting a change of Condition; (2) the date the chosen Condition will begin; and (3) if the change is from Condition 2, the applicable level of Fixed Option Payment. CAISO further states as required by the provision, it has provided notice of the changes of condition described in the informational filing (subject to the applicable Non-Disclosure and Confidentiality Agreement in the RMR Contract) to the designated RMR contact persons at the California Public Utilities Commission, the California Electricity Oversight Board, the applicable Responsible Utilities, and the relevant RMR Owners.

Comment Date: 5 p.m. Eastern Time on April 28, 2005.

21. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER05–794–000]

Take notice that on April 7, 2005, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted revisions to the Midwest ISO's Open Access Transmission and Energy Markets Tariff, Attachment L Credit Policy. The Midwest ISO has requested April 8, 2005, effective date.

The Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Tariff Customers under the EMT, Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all state commissions within the region. Midwest further states that the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: 5 p.m. Eastern Time on April 28, 2005.

22. ISO New England Inc.

[Docket No. ER05–795–000]

Take notice that on April 7, 2005, ISO New England Inc. (ISO) and the New England Power Pool (NEPOOL) jointly submitted a a package of proposed market changes to effectuate Phase I of the Ancillary Services Market project. The ISO and NEPOOL request an effective date on or before October 1, 2005.

The ISO and NEPOOL state that copies of the filing were sent to the NEPOOL Participants and the New England state governors and regulatory commissions.

Comment Date: 5 p.m. Eastern Time on April 28, 2005.

23. Midwest Independent Transmission System, Inc.

[Docket No. ER05–813–000]

Take notice that on April 5, 2005, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted a filing to confirm that the current version of the North American Electric Reliability Council's Transmission Loading Relief procedures are incorporated in Attachment Q of the Midwest ISO's Open Access Transmission Energy Markets Tariff, pursuant to the Commission's order issued March 30, 2005 in *North American Electric Reliability Council,* 110 FERC ¶ 61,288 (2005).

Comment Date: 5 p.m. Eastern Time on April 26, 2005.

24. PJM Interconnection, L.L.C.

[Docket No. ES05–28–000]

Take notice that on April 8, 2005, PJM Interconnection, L.L.C. (PJM) submitted an application pursuant to section 204 of the Federal Power Act. PJM is requesting that the Commission authorize the continued borrowing of funds from a long-term unsecured promissory note for a revolving line of credit to National Cooperative Services Corporation (NCSC) in an amount not to exceed $50 million.

PJM also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: 5 p.m. Eastern Time on April 20, 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. E5–1903 Filed 4–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–34–000]

Columbia Gas Transmission Corporation; Notice Of Availability of the Environmental Assessment for the Proposed Line 1278 Replacement Project

April 15, 2005.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) in cooperation with the National Park Service has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Columbia Gas Transmission Corporation (Columbia) in the above referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential effects of the proposed 43.4 miles of abandonment of Columbia's existing 14-inch-diameter pipeline, Line 1278, and its replacement with 20-inch-diameter pipeline in Northampton, Monroe, and Pike Counties, Pennsylvania mostly within Columbia's existing right-of-way. Columbia is under mandate from the United States Department of Transportation to replace deteriorated sections of its existing 14-inch-diameter Line 1278. The replacement would take place in two phases in 2005 and 2006. No volume increases are proposed.

Columbia would also abandon and replace one 12-inch-diameter and eight 14-inch-diameter valve settings with 20-inch-diameter valve settings along the replaced pipeline. The existing 14-inch-diameter pig launcher presently located at the Easton Compressor Station would be removed and relocated to the northern terminus of the project at Columbia's Weber Road Lot for use on Line 1278 at the north end of the replacement in Pike County. A new 20-inch-diameter receiver and a 12-inch-diameter regulator setting would also be installed at the Weber Road Lot.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371; Delaware Water Gap National Recreation Area, River Road, Bushkill, PA 18324, (570) 588–2452.

Copies of the EA have been mailed to Federal, State, and local agencies, public interest groups, interested individuals, libraries, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of Gas 1, PJ–11.1;
- Reference Docket No. CP04–34–000
- Mail your comments so that they will be received in Washington, DC on or before May 16, 2005.

Please note that the Commission encourages electronic filing of comments. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your hard drive. Before you can file comments you will need to create an account by clicking on ''Login to File'' and then ''New User Account.'' You will be asked to select the type of filing you are making. This filing is considered a ''Comment on Filing.''

Comments will be considered by the Commission but will not serve to make

the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*) using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' (*i.e.*, CP04–34) and follow the instructions. Searches may also be done using the phase ''Line 1278 Replacement'' in the ''Text Search'' field. For assistance with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659 or at *ferconlinesupport@ferc.gov*. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. E5–1901 Filed 4–21–05; 8:45 am]

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[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2403–048, 2534–068, 2666–023, 2712–055, and 2600–056]

PPL Maine, LLC; Bangor-Pacific Hydro Associates; Notice of Availability of Final Environmental Assessment

April 18, 2005.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations contained in the Code of Federal Regulations (CFR) (18 CFR part 380 [FERC Order No. 486, 52 FR 47897]), the Office of Energy Projects staff (staff) reviewed the applications for amendment of licenses for the Veazie Project, which is located on the Penobscot River in Penobscot County, Maine; the Milford Project, which is located on the Penobscot River and Stillwater Branch in Penobscot County, Maine; the West Enfield Project which is located on the Penobscot River in Penobscot County, Maine; the Stillwater Project, which is located on the Stillwater Branch in Penobscot County, Maine; and the Medway Project, which is located on the West Branch Penobscot River in Penobscot County, Maine, and prepared a final environmental assessment (FEA) for the projects. In this FEA, staff analyzes the potential environmental effects of the proposed license amendments and concludes that the amendments would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the FEA is available for review at the Commission in the Public Reference Room, or it may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-Library'' link. Enter the docket number (p–2403) in the docket number field to access the document. For assistance, call (202) 502–8222 or (202) 502–8659 (for TTY).

Magalie R. Salas,

Secretary.

[FR Doc. E5–1907 Filed 4–21–05; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–395–000 and CP04–405–000]

Vista del Sol LNG Terminal LP, Vista del Sol Pipeline LP; Notice of Availability of the Final Environmental Impact Statement for the Proposed Vista del Sol LNG Terminal Project

April 15, 2005.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final Environmental Impact Statement (EIS) for the construction and operation of a liquefied natural gas (LNG) import terminal and natural gas pipeline facilities proposed by Vista del Sol LNG Terminal LP and Vista del Sol Pipeline LP (collectively referred to as Vista del Sol) in the above-referenced dockets.

The final EIS was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA). The staff concludes that approval of the proposed project with appropriate mitigating measures as recommended, would have limited adverse environmental impact. The final EIS also evaluates alternatives to the proposal, including system alternatives, alternative sites for the LNG import terminal, and pipeline alternatives.

Vista del Sol's proposed facilities would transport up to 1.4 billion cubic feet per day (Bcfd) of imported natural gas to the United States market. In order to provide LNG import, storage, and pipeline transportation services, Vista del Sol requests Commission authorization to construct, install, and operate an LNG terminal and natural gas pipeline facilities.

The final EIS addresses the potential environmental effects of the construction and operation of the following LNG terminal and natural gas pipeline facilities:

- A ship unloading facility with berthing capabilities for one LNG ship with cargo capacities of up to 250,000 cubic meters (m^3);
- Three 155,000 m^3 full containment LNG storage tanks;
- Vaporization equipment capable of an average sendout capacity of 1.1 Bcfd and a maximum sendout capacity of 1.4 Bcfd;
- Ancillary utilities, buildings, and service facilities;
- One 25.3 mile-long, 36-inch-diameter natural gas sendout pipeline; and
- Associated pipeline support facilities, including six meter stations at

interconnects with nine existing pipeline systems, one pig launcher, and one pig receiver.

The final EIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426. (202) 502–8371.

A limited number of copies are available from the Public Reference Room identified above. In addition, copies of the final EIS have been mailed to Federal, State, and local agencies; public interest groups; individuals and affected landowners who requested a copy of the final EIS; libraries; newspapers; and parties to this proceeding.

In accordance with the Council on Environmental Quality's (CEQ) regulations implementing NEPA, no agency decision on a proposed action may be made until 30 days after the U.S. Environmental Protection Agency (EPA) publishes a notice of availability of a final EIS. However, the CEQ regulations provide an exception to this rule when an agency decision is subject to a formal internal process that allows other agencies or the public to make their views known. In such cases, the agency decision may be made at the same time the notice of the final EIS is published, allowing both periods to run concurrently. Should the FERC issue Vista del Sol authorizations for the proposed project, it would be subject to a 30-day rehearing period. Therefore, the Commission could issue its decision concurrently with the EPA's notice of availability.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

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Magalie R. Salas,

Secretary.

[FR Doc. E5–1896 Filed 4–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–73–000]

Northern Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Waconia Pig Launcher Project and Request for Comments on Environmental Issues

April 15, 2005.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) on Northern Natural Gas Company's (Northern Natural) proposed Waconia Pig Launcher Project. Northern Natural's proposal involves construction and operation of two pig launchers at a site in Carver County, Minnesota. This notice announces the opening of the scoping process that will be used to gather environmental input from the public and interested agencies on the project. Please note that the scoping period will close on May 16, 2005.

This notice is being sent to potentially affected landowners; Federal, State, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; parties on the Commission's official service list for this proceeding; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a Northern Natural representative about the acquisition of an easement to construct, operate, and maintain the proposed facility. Northern Natural would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, Northern Natural could initiate condemnation proceedings in accordance with State law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility on My Land? What Do I Need To Know?'' is available for viewing on the FERC Web site (*http://www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including how to participate in the Commission's proceedings.

Summary of the Proposed Project

A pipeline ''pig'' is a device used to clean or inspect the inside of a pipeline. A pig launcher is an aboveground facility where pipeline pigs are inserted or retrieved from the pipeline. Northern Natural [1] seeks the authority to construct and operate two pig launchers and appurtenant equipment at a location where the Waconia Branchlines diverge from the Willmar Branchline, about 4 miles south-southwest of Waconia in Carver County, Minnesota. The proposed pig launchers would enable Northern Natural to insert internal inspection pigs into each of the branchlines in order to perform risk and integrity assessments. Northern Natural is required to conduct these studies to comply with the Pipeline Safety Improvement Act of 2002 and the Department of Transportation's Final Integrity Management Rule for High Consequence Areas.

The Waconia Branchlines are two parallel pipelines, 6 and 8 inches in diameter, which carry natural gas between the Willmar Branchline and Waconia, Minnesota. An aboveground mainline valve is presently located at the site where the pig launchers would be installed. The general location of the project is shown in Appendix 1.[2]

Land Requirements

About 1.43 acres of agricultural land (*i.e.*, a parcel measuring 250 feet by 250 feet) would be disturbed during construction. Northern Natural's current easement for the valve site would need to be increased by about 0.08 acre (100 feet by 35 feet) to accommodate the proposed pig launcher.

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[1] Northern Natural's application was filed with the Commission under Section 7(c) of the Natural Gas Act and part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (map), are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the Additional Information section below. Copies of the appendices were sent to all those receiving this notice in the mail.

The EA Process

We [3] are preparing the EA to comply with the National Environmental Policy Act (NEPA) which requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals and to ensure those issues and concerns are analyzed in the EA. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues and reasonable alternatives. By this notice, we are requesting public comment on the scope of the issues to be addressed in the EA. All comments received will be considered during the preparation of the EA. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section on the following page.

By this notice, we are also asking Federal, State, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. Agencies that would like to request cooperating status should follow the instructions for filing comments provided on the next page.

The EA will present our independent analysis of the issues. Depending on the comments received during the scoping process, the EA may be published and mailed to those entities receiving this notice and any other interested parties identified during our review of Northern Natural's project. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, reasonable and practicable alternatives to the proposal (including alternative locations), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of Gas Branch 1;
- Reference Docket No. CP05–73–000; and
- Mail your comments so that they will be received in Washington, DC on or before May 16, 2005.

The Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's eFiling system) or 14 paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's official service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see Appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. E5–1897 Filed 4–21–05; 8:45 am]

BILLING CODE 6717–01–P

[3] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Office of Energy Projects.

[4] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9185–009]

Flambeau Hydro, LLC; Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

April 15, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent License.

b. *Project No.:* 9185–009.

c. *Date Filed:* April 1, 2005.

d. *Applicant:* Flambeau Hydro, LLC.

e. *Name of Project:* Clam River Hydroelectric Project.

f. *Location:* On the Clam River in Burnett County, near Danbury, Wisconsin. The project does not occupy Federal lands.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Scott Klabunde, North American Hydro, Inc., P.O. Box

167, Neshkoro, WI 54960; (920) 293–4628, ext. 14.

i. *FERC Contact:* Patrick Murphy, (202) 502–8755 or *patrick.murphy@ferc.gov.*

j. *Cooperating agencies:* We are asking Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below.

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* May 31, 2005.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''eFiling'' link.

m. This application is not ready for environmental analysis at this time.

n. *The existing Clam River Project consists of:* (1) A 46-foot-high buttress type concrete dam concrete with a 54-foot-wide spillway with four sections, three sections equipped with 8-inch-high stoplogs, and one section equipped with a 4-foot-high slide gate; (2) a 898-foot-long and a 223-foot-long earthen dike connecting the left side and the right side of the concrete dam, respectively; (3) a 360-acre reservoir with a net storage capacity of 3,575 acre-feet with a water surface elevation of 898.9 feet msl; (4) two powerhouses integral to the dam containing three turbine generating units with a total installed capacity of 1,200 kW; (5) a 100-foot-long, 2.4-kilovolt transmission line; and (6) appurtenant facilities. The applicant estimates that the total average annual generation would be 4,903 megawatthours.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact *FERC Online Support at FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Wisconsin State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. Procedural schedule and final amendments: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

- Issue Acceptance or Deficiency Letter: May 2005.
- Issue Scoping Document: June 2005.
- Notice of application is ready for environmental analysis: September 2005.
- Notice of the availability of the EA: March 2006.
- Ready for Commission's decision on the application: May 2006.
- Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1895 Filed 4–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2586–024]

Alabama Electric Cooperative, Inc.; Notice of Settlement Agreement and Soliciting Comments

April 15, 2005.

Take notice that the following settlement agreement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Settlement agreement.

b. *Project No.:* 2586–024.

c. *Date Filed:* April 13, 2005.

d. *Applicant:* Alabama Electric Cooperative, Inc.

e. *Name of Project:* Conecuh River Project.

f. *Location:* The Conecuh River Project is located on the Conecuh River in Covington County, Alabama. The project does not affect Federal lands.

g. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. Alabama Electric Cooperative, Inc. (AEC) filed a settlement agreement on behalf of itself and 5 other stakeholders. The purpose of the settlement agreement is to resolve, among the signatories, all issues related to AEC's pending Application for a New License for the Conecuh River Project. The settlement agreement provides measures for flows, lake levels, biological monitoring and adaptive management, water quality monitoring, and recreational access and development. Signatories to the settlement include AEC, Alabama Department of Conservation and Natural Resources, Alabama Rivers Alliance, Conecuh/Sepulga Watershed Alliance, Conecuh-Sepulga Clean Water Partnership, and the United States Fish and Wildlife Service.

i. The settlement agreement is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''e-Library'' link. Enter the docket number, excluding the last three digits in the docket number field to access the documents. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (j).

j. *Applicant Contact:* Mike Noel (Environmental contact) or Scott Wright (Engineering contact); Alabama Electric

Cooperative, Inc.; 2027 East Three Notch Street, P.O. Box 550, Andalusia, AL 36420–0550

k. *FERC Contact:* Carolyn Holsopple at (202) 502–6407 or *carolyn.holsopple@ferc.gov.*

l. *Deadline for Filing Comments:* The deadline for filing comments on the settlement agreement is 20 days from the date of this notice. The deadline for filing reply comments is 30 days from the date of this notice. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions of the Commission's Web site (*http://www.ferc.gov*) under the ''e-filing'' link.

Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1900 Filed 4–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11945–001]

Symbiotics, LLC; Notice of Scoping Meetings, Site Visit, and Soliciting Scoping Comments

April 18, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and are available for public inspection:

a. *Type of Application:* Major License.

b. *Project No.:* 11945–001.

c. *Date filed:* June 30, 2004.

d. *Applicant:* Symbiotics, LLC.

e. *Name of Project:* Dorena Lake Dam Hydroelectric Project.

f. *Location:* On the Row River, near the Town of Cottage Grove, Lane County, Oregon. The project would occupy less than 1 acre of federal lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Brent L. Smith, Symbiotics, LLC, PO Box 535, Rigby, Idaho 83442; telephone (208) 745–0834 or by e-mail at *bsmith@nwpwrservices.com.*

i. *FERC Contact:* Dianne Rodman, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426; telephone (202) 502–6077 or by e-mail at *dianne.rodman@ferc.gov.*

j. *Deadline for filing scoping comments:* May 16, 2005.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov* under the ''e-Filing'' link.

k. This application is not ready for environmental analysis at this time.

l. The proposed project would utilize the U.S. Army Corps of Engineers' existing Dorena Lake dam and reservoir, and would consist of the following facilities: (1) A 9-foot-diameter steel pipe, about 350 feet long, extending from the reservoir through the north dam abutment; (2) a new powerhouse, near the existing spillway stilling basin 250 feet downstream from the concrete section of the dam, having a total installed capacity of 8,300 kilowatts; (3) a new concrete-lined channel discharging flows into the river channel immediately below the existing stilling basin; (4) a new valve house near the existing stilling basin; (5) a new 15-kilovolt underground transmission line, about 500 feet long; and (6) appurtenant facilities. The average annual generation is estimated to be 17.5 gigawatthours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Scoping Process:* The Commission staff intends to prepare an Environmental Assessment (EA) on the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Scoping Meetings

Commission staff will conduct one daytime scoping meeting and one evening meeting. The daytime scoping meeting will focus on resource agency and non-governmental organization (NGO) concerns, while the evening scoping meeting is primarily for public input. All interested individuals, NGOs, agencies, and tribes are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Daytime Scoping Meeting

Date: Thursday, May 5, 2005.
Time: 2 PM (PDT).
Place: Lane Community College.
Address: Building 17, Room 308, 4000 East 30th Avenue, Eugene, Oregon.

Evening Scoping Meeting

Date: Thursday, May 5, 2005.
Time: 7 PM (PDT).
Place: Lane Community College.
Address: Building 17, Room 308, 4000 East 30th Avenue, Eugene, Oregon.

Copies of the Scoping Document (SD1) outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list. Copies of the SD1 will be available at the scoping meetings or may be viewed on the Web at *http://*

www.ferc.gov using the ''eLibrary'' link (see item m above).

Site Visit

The Applicant and Commission staff will conduct a project site visit beginning at 9 a.m. on May 5, 2005. All interested individuals, NGOs, agencies, and tribes are invited to attend. All participants should meet at Schwarz Park, below the Dorena Lake dam. All participants are responsible for their own transportation to the site. Anyone with questions about the site visit should contact Dianne Rodman, Commission staff, at (202) 502–6077 or Brent Smith of Symbiotics at (208) 742–0834.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff(s preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings will be recorded by a stenographer and become part of the formal record of the Commission proceeding on the project.

Individuals, NGOs, agencies, and tribes with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the EA.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1909 Filed 4–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Commissioner and FERC Staff Attendance at Meeting of Southwest Power Pool Board of Directors and Members Committee, and Meeting of Southwest Power Pool Regional State Committee

April 18, 2005.

The Federal Energy Regulatory Commission hereby gives notice that Commissioners and members of its staff may attend the meeting of the Southwest Power Pool (SPP) Board of Directors and Members Committee noted below, and the meeting of the SPP Regional State Committee noted below. Their attendance is part of the Commission's ongoing outreach efforts.

SPP Regional State Committee Meeting—April 25, 2005, 1 p.m.–5 p.m.

Crowne Plaza Austin Hotel, 500 North IH 35, Austin, TX 78701, 512–480–8181.

SPP Board of Directors and Members Committee Meeting—April 26, 2005, 8 a.m.–2 p.m.

Crowne Plaza Austin Hotel, 500 North IH 35, Austin, TX 78701, 512–480–8181.

The discussions may address matters at issue in the following proceedings:

Docket Nos. RT04–1–000 and ER04–48–000, *Southwest Power Pool, Inc.*

Docket No. ER05–109–000, *Southwest Power Pool, Inc.*

Docket No. ER05–652–000, *Southwest Power Pool, Inc.*

Docket No. ER05–562, *Southwest Power Pool, Inc.*

Docket No. ER05–666, *Southwest Power Pool, Inc.*

Docket No. ER05–688, *Southwest Power Pool, Inc.*

Docket No. EL05–52–000, *Entergy Services, Inc.*

Docket No. ER05–576–000, *Southwest Power Pool, Inc.*

These meetings are open to the public.

For more information, contact Tony Ingram, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission at (501) 614–4789 or *tony.ingram@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1908 Filed 4–21–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[R06–OAR–2005–TX–0018; FRL–7902–7]

Adequacy Status of Submitted State Implementation Plans (SIP) for Transportation Conformity Purposes: MOBILE6 Motor Vehicle Emissions Budgets for the Houston-Galveston-Brazoria 1-Hour Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy determination.

SUMMARY: In this notice, EPA is notifying the public that we have found the on-road motor vehicle emissions budgets contained in the revision to the Houston-Galveston-Brazoria severe 1-hour ozone nonattainment area attainment demonstration SIP adequate for transportation conformity purposes. As a result of our finding, the budgets from the submitted attainment demonstration SIP revision must be used for future conformity determinations in the Houston-Galveston-Brazoria area.

DATES: These budgets are effective May 9, 2005.

FOR FURTHER INFORMATION CONTACT: The essential information in this notice will be available at EPA's conformity Web site: *http://www.epa.gov/oms/transp/conform/adequacy.htm.* You may also contact Ms. Peggy Wade, Air Planning Section (6PD–L), U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7247, E-mail address: *Wade.Peggy@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refers to EPA. The word ''budget(s)'' refers to the mobile source emissions budget for volatile organic compounds (VOCs) and the mobile source emissions budget for nitrogen oxides (NO_X). The word ''SIP'' in this document refers to the State Implementation Plan revision submitted to satisfy the commitment of the State of Texas to revise its mobile source budgets for the Houston-Galveston-Brazoria 1-hour ozone nonattainment area with MOBILE6. (MOBILE6 is the most recent emissions factor model, released by EPA on January 29, 2001.)

In December 2004, we received the MOBILE6 SIP revision for the Houston-Galveston-Brazoria 8-county 1-hour ozone nonattainment area. There are two motor vehicle emissions budgets found in this plan for 2007. The emissions budget for VOCs is 89.99 tons/day; the NO_X emissions budget is

186.13 tons/day. On January 12, 2005, the availability of these budgets was posted on EPA's Web site for the purpose of soliciting public comments. The comment period closed on February 11, 2005, and we received no comments.

Today's notice is simply an announcement of a finding that we have already made. EPA Region 6 sent a letter to the Texas Commission on Environmental Quality on March 23, 2005, finding that the motor vehicle emissions budgets in the Houston-Galveston-Brazoria 8-county ozone nonattainment area are adequate and must be used for transportation conformity determinations.

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule, 40 CFR part 93, requires that transportation plans, programs and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do so. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the National Ambient Air Quality Standards. The criteria by which EPA determines whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that such an adequacy review is separate from EPA's completeness review, and it should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

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

Dated: April 14, 2005.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 05–8122 Filed 4–21–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6662–6]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements filed April 14, 2005, through April 15, 2005, pursuant to 40 CFR 1506.9.

EIS No. 20050152, Final EIS, AFS, MT, Snow Talon Fire Salvage Project, Proposes to Salvage Harvest Trees Burned in the Fire, Helena National Forest, Lincoln Ranger District, Lewis and Clark County, MT, Wait Period Ends: 05/23/2005, Contact: Dan Seifert 406–362–4265.

EIS No. 20050153, Final EIS, FHW, UT, Southern Corridor Construction, I–15 at Reference Post 2 in St. George to UT–9 near Hurricane, Funding, Right-of-Way Grant and U.S. Army COE Section 404 Permit Issuance, St. George, Washington and Hurricane, Washington County, UT, Wait Period Ends: 05/23/2005, Contact: Gregory Punske 801–963–0182.

EIS No. 20050154, Draft EIS, COE, DC, Washington Aqueduct's Project, Proposed Waster Treatment Residuals Management Process, NPDES Permit, Dalecarlia and McMillan Water Treatment Plants, Potomac River, Washington, DC, Comment Period Ends: 06/06/2005, Contact: Michael Peterson 202–764–0025.

EIS No. 20050155, Final EIS, AFS, OR, Plentybob Ecosystem Restoration Project, Restoration Activities Include: Prescribed Fire, Timber Harvest, Road Obliteration, Hardwood Planting and Noxious Weed Treatment, Implementation, Walla Walla Ranger District, Umatilla National Forest, Umatilla County, OR, Wait Period Ends: 05/23/2005, Contact: Glen Westlund 509–522–6009.

EIS No. 20050156, Final EIS, IBR, CA, Folsom Dam Road Access Restriction Project, Control Access to Folsom Dam, City of Folsom, CA, Wait Period Ends: 05/23/2005, Contact: Robert Schroeder 916–989–7274.

EIS No. 20050157, Draft EIS, AFS, MT, Middle East Fork Hazardous Fuel Reduction Project, Implementation of Three Alternatives, Bitterroot National Forest, Sula Ranger District, Ravalli County, MT, Comment Period Ends: 06/06/2005, Contact: Tracy Hollingshead 406–821–3201.

EIS No. 20050158, Draft EIS, AFS, ID, Aspen Range Timber Sale and Vegetation Treatment Project, Proposal to Treat Forested and Nonforested Vegetation, Caribou-Targhee National Forest, Soda Springs Ranger District, Caribou County, ID, Comment Period Ends: 06/06/2005, Contact: Doug Heyrend 208–547–4356.

EIS No. 20050159, Final EIS, NIH, MD, National Institutes of Health (NIH) Master Plan 2003 Update, National Institutes of Health Main Campus—Bethesda, MD, Montgomery County, MD, Wait Period Ends: 05/23/2005, Contact: Ron Wilson 301–496–5037.

EIS No. 20050160, Draft EIS, AFS, ID, Three Basins Timber Sale Project, Proposal to Treat 760 Acres of Mature Forest, Implementation, Caribou-Targhee National Forest, Montpellier Ranger District, Bearlake and Caribou Counties, ID, Comment Period Ends: 06/06/2005, Contact: Ken Klingenberg 208–847–0375.

EIS No. 20050161, Final EIS, AFS, OR, Rogue River-Siskiyou National Forest, Special Use Permits for Outfitter and Guide Operations on the Lower Rogue and Lower Rogue and Lower Illinois Rivers, Gold Beach Ranger District, Rogue River-Siskiyou National Forest, Curry County, OR, Wait Period Ends: 05/23/2005, John Borton 541–247–3640.

EIS No. 20050162, Draft EIS, CGD, 00, Pearl Crossing Liquefied Natural Gas (LNG) Deepwater Port Terminal and Pipeline Project, Proposes to Construct a Liquefied Natural Gas (LNG) Receiving, Storage, and Regasification Facility, Gulf of Mexico, Cameron and Calcasieu Parishes, LA and San Patricio County, TX, Comment Period Ends: 06/07/2005, Contact: Lt. Ken Kusano 202–267–1184.

EIS No. 20050163, Draft Supplement, STB, SD, Powder River Basin Expansion Project, New Information on SEA's Independent Analyses Four Issues Remanded by the ''8'' Circuit Court of Appeals, Finance Docket No. 33407—Dakota, Minnesota, Eastern Railroad, SD, WY and MN, Due: 06/06/2005, Contact: Victoria Rutson 202–565–1545.

EIS No. 20050164, Final EIS, FRC, TX, Vista del Sol Liquefied Natural Gas (LNG) Terminal Project, Construct, Install and Operate and LNG Terminal and Natural Gas Pipeline Facilities, Vista del Sol LNG Terminal LP and Vista del Sol Pipeline LP, TX, Wait Period Ends: 05/23/2005, Contact: Joyce Turner 202–502–8584.

Dated: April 20, 2005.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 05–8114 Filed 4–21–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6662–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental

Policy Act, as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 1, 2005 (70 FR 16815).

Draft EISs

EIS No. 20050011, ERP No. D–FAA–D40328–VA, Washington Dulles International Airport Project, Acquisition of Land, Construction and Operation, IAD 2004 Airport Layout Plan (ALP), Dulles, VA

Summary: EPA expressed concern due to wetland and stream impacts associated with the proposed action, and requested that wetland impacts associated with the clear zones be included in the mitigation plan. EPA also requested that the wetland avoidance alternative (Alternative 5) should be carried forward for detail study to more closely track the alternatives analysis requirements under Section 404 of the Clean Water Act.

Rating EC2

EIS No. 20050033, ERP No. D–IBR–K60035–NV, Humboldt Project Conveyance, Transferring 83, 530 Acres from Federal Ownership to the Pershing County Water Conservation District (PCWCD), Pershing and Lander Counties, NV.

Summary: EPA expressed environmental concerns about potential impacts to water quality, and requested that the Final EIS provide additional information to support the cumulative impacts analysis, and further discussion of tribal consultation efforts and impacts to Indian sacred sites.

Rating EC2

EIS No. 20050036, ERP No. D–AFS–K65278–CA, Burlington Ridge Trails Project, To Eliminate, Reconstruct/or Reroute Unsound Trail Sections, Tahoe National Forest, Yuba River Ranger District, Camptonville, Nevada County, NV.

Summary: EPA has no objections to the proposed action, but requested additional monitoring after the project is implemented to confirm wildlife is not being impacted.

Rating LO

EIS No. 20050056, ERP No. D–FHW–G40184–TX, Trinity Parkway Project, Construction of Limited Access Toll Facility from IH–35 E/TX–183 to US–175/TX–310, U.S. Army COE Section 10 and 404 Permits, Dallas County, TX.

Summary: EPA has no objections to the proposed project.

Rating LO

EIS No. 20050080, ERP No. D–FRC–G03025–TX, Ingleside Energy Center Liquefied Natural Gas (LNG) Import Terminal and San Patricio Pipeline Natural Gas Pipeline, Authorization to Construct, Install and Operate, San Patricio and Nueces Counties, TX.

Summary: EPA had no objections to the selection of the proposed alternative.

Rating LO

Final EISs

EIS No. 20040581, ERP No. F–DOE–K08029–00, Imperial-Mexicali 230-kV Transmission Lines, Construct a Double-Circuit 230-kV Transmission Line, Presidential Permit and Right-of-Way Grants, Imperial Valley Substation to Calexico at the U.S.-Mexico Border, Imperial County, CA and US.-Mexico Border.

Summary: EPA has no objection to the proposed action, but recommends that DOE continue working with all stakeholders to support and encourage use of off-site mitigation measures as a valuable means to address the limitations in modeling ozone impacts, and to ensure that there would be no net increase of air pollution in the Imperial County region.

EIS No. 20050079, ERP No. F–AFS–K65273–CA, Cottonwood Fire Vegetation Management Project, Control Vegetation that is Competing with Conifer Seedlings, Sierraville Ranger District, Tahoe National Forest, Sierra County, CA.

Summary: The final EIS addressed EPA's comments providing additional information on the final decisions; no formal comment letter was sent to the preparing agency.

EIS No. 20050097, ERP No. F–FRC–G03023–TX, Cheniere Corpus Christi Liquefied Natural Gas (LNG) Project, To Provide Facilities for the Importation, Storage and Vaporization of Liquefied Natural Gas, Nueces and San Patricio Counties, TX.

Summary: EPA expressed concerns about the potential introduction of invasive species from increased foreign vessel traffic.

EIS No. 20050106, ERP No. F–AFS–J65018–MT, Sheep Creek Salvage Project, Moving Current Resource Conditions and Trends Toward Desired Future Conditions, Beaverhead-Deerlodge National Forest, Beaverhead County, MT.

Summary: The final EIS addressed EPA's request for additional sediment modeling and additional measures to mitigate sediment delivery to streams. EPA reiterates the need to monitor actual water quality effects from the salvage harvests, and if necessary, develop additional mitigation measures to promote consistency with TMDL development and to further improve Trail Creek.

EIS No. 20050112, ERP No. F–AFS–J65397–WY, Woodrock Project, Proposal for Timber Sale, Travel Management and Watershed Restoration, Implementation, Bighorn National Forest, Tongue Ranger District, Sheridan County, WY.

Summary: EPA does not expect substantial impacts form the proposed action. However, EPA recommends focusing harvest activities on Forest-private lands interface areas both to protect property and to minimize impacts in important wildlife habitat areas.

EIS No. 20050129, ERP No. F–AFS–J65431–UT, Duck Creek Fuels Treatment Analysis, To Reduce Fuels, Enhance Fire-Tolerant Vegetation and Provide Fuel Breaks, Dixie National Forest, Cedard City Ranger District, Kane County, UT.

Summary: EPA continues to express concerns about impacts to water quality, fish and wildlife habitats, soils and old growth forest resources.

Dated: April 19, 2005.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 05–8115 Filed 4–21–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7902–6]

Opportunity for Organizations That Have Expertise in Sustainable Development and Sustainable Facilities To Cooperate With a New Initiative in EPA's Office of Site Remediation Enforcement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; announcement of initiative and request for statements of interest.

SUMMARY: The Environmental Protection Agency, Office of Site Remediation Enforcement (OSRE) within the Office of Enforcement and Compliance Assurance (OECA) is interested in cooperating with organizations with

expertise in sustainable development and sustainable facilities (*e.g.*, non-profit organizations, universities, trade associations, organizations that practice sustainable development, etc.) in connection with its Environmentally Responsible Redevelopment and Reuse (ER3) initiative. Please note that EPA will not compensate cooperating organizations for their efforts in connection with this initiative.

DATES: Statements of interest are due by 5 p.m. e.s.t. on June 21, 2005.

ADDRESSES: Please mail applications to Phil Page, Environmental Protection Agency, Office of Site Remediation Enforcement, Ariel Rios Building, 1200 Pennsylvania Ave. NW., M/C 2273A, Washington, DC 20460. In the alternative, you may e-mail applications to *page.phil@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Phil Page, (202) 564–4211, or Erin Smith, (202) 564–2038, or go to *http://www.epa.gov/compliance/cleanup/redevelop/er3.*

SUPPLEMENTARY INFORMATION: ER3, a new initiative sponsored by OECA, has several components, one of which is developing working relationships with one or more interested organizations that have expertise in sustainable development.

The purpose of ER3 is to encourage the reuse and redevelopment of contaminated and previously-contaminated property in an environmentally responsible manner, incorporating concepts such as green building design, construction and operation; ecological and greenspace enhancement; energy efficiency; the use of renewable energy sources; environmental management systems; storm water and wastewater management; pollution prevention; waste minimization and recycling; and healthy buildings. As part of the ER3 initiative, OSRE is willing to provide incentives, where necessary, to entities that plan to redevelop contaminated or formerly-contaminated property (*e.g.*, communities, developers, or other organizations) to encourage these entities to incorporate sustainability concepts into their projects.

To assist redevelopers with the logistics of integrating environmentally-superior redevelopment and reuse concepts into particular projects, OSRE is forming, in part through this notice, a network of governmental and non-governmental partners. The ER3 network partners will serve as a source of general information to redevelopers (for example, through information on a Web site). Further, an ER3 network partner may provide services on a particular project for compensation if the redeveloper and ER3 network partner enter into a separate working agreement. EPA will not be a party to these agreements.

Through this initiative, OSRE hopes to identify organizations with expertise consistent with the sustainable development concepts noted above, and collaborate with the selected organizations to establish one part of the ER3 network. Once OSRE has identified a variety of organizations, it will enter into a non-financial cooperation agreement with each organization that acknowledges both the organization's expertise in sustainability concepts and the working relationship between the organization and OSRE. The agreements will recognize expertise that may be valuable to reuse and redevelopment efforts in connection with the ER3 initiative. The agreements will not provide an endorsement of any particular ER3 partner's products and services, nor are they a vehicle for these entities to receive compensation of any type from the Agency. However, nothing in this process prohibits selected EPA partners from entering into private agreements for compensation with those entities engaged in the reuse or redevelopment process. Further, EPA may enter into separate financial transactions with cooperative partners to the extent consistent with applicable procurement and financial assistance regulations and policies governing competition. OSRE may, with the permission of the selected organizations, post links to the organizations' Web sites on EPA's ER3 Web page to provide additional information and resources to entities that visit the ER3 site.

Organizations that wish to participate in this initiative must send a statement of interest to the address listed below. The statement of interest must include: (1) A statement that identifies (a) the areas of expertise of the organization with respect to the concepts discussed above (green building design, construction and operation; ecological and greenspace enhancement; energy efficiency; the use of renewable energy sources; environmental management systems; storm water and wastewater management; pollution prevention; waste minimization and recycling; and healthy buildings); (b) the manner in which the organization can assist entities with incorporating sustainability concepts into the redevelopment and reuse of contaminated or formerly-contaminated property; and (c) examples of relevant projects in which the organization has participated, along with the organization's role in the projects; (2) applicable brochures or similar information for the organization; and (3) contact information. OSRE will make its selections based upon the extent to which an organization can effectively cooperate with OSRE and private entities in many areas of sustainable development and sustainable facilities, geographic location, and experience with respect to contaminated properties and brownfield sites.

Dated: April 18, 2005.

Susan E. Bromm,

Director, Office of Site Remediation Enforcement.

[FR Doc. 05–8126 Filed 4–21–05; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATIONS OF PREVIOUS ANNOUNCEMENT: 70 FR 20217, April 18, 2005 & 70 FR 19452, April 13, 2005.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m. (eastern time) Thursday, April 21, 2005.

CHANGE IN THE MEETING: The closed session of the Meeting has been cancelled.

FURTHER INFORMATION CONTACT: Stephen Llewellyn, Acting Executive Officer on (202) 663–4070.

Dated: April 20, 2005.

Stephen Llewellyn,

Acting Executive Officer.

[FR Doc. 05–8240 Filed 4–20–05; 2:48 pm]

BILLING CODE 6750–06–M

FEDERAL HOUSING FINANCE BOARD

[No. 2005–N–01]

Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Board (Finance Board) is announcing the Federal Home Loan Bank (Bank) members it has selected for the 2004–05 fifth quarter review cycle under the Finance Board's community support requirements regulation. This notice also prescribes the deadline by which Bank members selected for review must submit Community Support Statements to the Finance Board.

DATES: Bank members selected for the fifth quarter review cycle under the Finance Board's community support requirements regulation must submit completed Community Support Statements to the Finance Board on or before May 26, 2005.

ADDRESSES: Bank members selected for the 2004–05 fifth quarter review cycle under the Finance Board's community support requirements regulation must submit completed Community Support Statements to the Finance Board either by regular mail at the Federal Housing Finance Board, Office of Supervision, Community Investment and Affordable Housing, 1777 F Street NW., Washington, DC 20006, or by electronic mail at *FITZGERALDE@FHFB.GOV.*

FOR FURTHER INFORMATION CONTACT: Emma J. Fitzgerald, Program Analyst, Office of Supervision, Community Investment and Affordable Housing, by telephone at 202–408–2874, by electronic mail at *FITZGERALDE@FHFB.GOV*, or by regular mail at the Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Selection for Community Support Review

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires the Finance Board to promulgate regulations establishing standards of community investment or service Bank members must meet in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(1). The regulations promulgated by the Finance Board must take into account factors such as the Bank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901 *et seq.*, and record of lending to first-time homebuyers. *See* 12 U.S.C. 1430(g)(2). Pursuant to section 10(g) of the Bank Act, the Finance Board has promulgated a community support requirements regulation that establishes standards a Bank member must meet in order to maintain access to long-term advances, and review criteria the Finance Board must apply in evaluating a member's community support performance. *See* 12 CFR part 944. The regulation includes standards and criteria for the two statutory factors—CRA performance and record of lending to first-time homebuyers. 12 CFR 944.3. Only members subject to the CRA must meet the CRA standard. 12 CFR 944.3(b). All members, including those not subject to CRA, must meet the first-time homebuyer standard. 12 CFR 944.3(c).

Under the rule, the Finance Board selects approximately one-eighth of the members in each Bank district for community support review each calendar quarter. 12 CFR 944.2(a). The Finance Board will not review an institution's community support performance until it has been a Bank member for at least one year. Selection for review is not, nor should it be construed as, any indication of either the financial condition or the community support performance of the member.

Each Bank member selected for review must complete a Community Support Statement and submit it to the Finance Board by the May 26, 2005 deadline prescribed in this notice. 12 CFR 944.2(b)(1)(ii) and (c). On or before April 28, 2005, each Bank will notify the members in its district that have been selected for the 2004–05 fifth quarter community support review cycle that they must complete and submit to the Finance Board by the deadline a Community Support Statement. 12 CFR 944.2(b)(2)(i). The member's Bank will provide a blank Community Support Statement Form, which also is available on the Finance Board's Web site: *http://www.fhfb.gov.* Upon request, the member's Bank also will provide assistance in completing the Community Support Statement.

The Finance Board has selected the following members for the 2004–05 fifth quarter community support review cycle:

Federal Home Loan Bank of Boston—District 1

People's Bank	Bridgeport	Connecticut.
Farmington Savings Bank	Farmington	Connecticut.
Liberty Bank	Middletown	Connecticut.
Naugatuck Savings Bank	Naugatuck	Connecticut.
The Citizens National Bank	Putnam	Connecticut.
The Simsbury Bank and Trust Company	Simsbury	Connecticut.
Windsor Federal Savings and Loan Association	Windsor	Connecticut.
St. Croix Federal Credit Union	Baileyville	Maine.
UnitedKingfield Bank	Bangor	Maine.
Ocean Communities Federal Credit Union	Biddeford	Maine.
St. Joseph's Credit Union	Biddeford	Maine.
Gardiner Savings Institution, FSB	Gardiner	Maine.
Machias Savings Bank	Machias	Maine.
Katahdin Federal Credit Union	Millinocket	Maine.
Hanscom Federal Credit Union	Bedford	Massachusetts.
University Credit Union	Boston	Massachusetts.
Tremont Credit Union	Boston	Massachusetts.
HarborOne Credit Union	Brockton	Massachusetts.
Dedham Co-operative Bank	Dedham	Massachusetts.
Everett Credit Union	Everett	Massachusetts.
Workers' Credit Union	Fitchburg	Massachusetts.
Framingham Co-operative Bank	Framingham	Massachusetts.
Dean Cooperative Bank	Franklin	Massachusetts.
Benjamin Franklin Bank	Franklin	Massachusetts.
Greenfield Savings Bank	Greenfield	Massachusetts.
UMassFive College Federal Credit Union	Hadley	Massachusetts.
Economy Co-operative Bank	Merrimac	Massachusetts.
Mayflower Co-operative Bank	Middleboro	Massachusetts.
Millbury Federal Credit Union	Millbury	Massachusetts.
First Citizens' Federal Credit Union	New Bedford	Massachusetts.
North Shore Bank, A Co-Operative Bank	Peabody	Massachusetts.
Berkshire Bank	Pittsfield	Massachusetts.
The Pittsfield Cooperative Bank	Pittsfield	Massachusetts.
The Sharon Co-operative Bank	Sharon	Massachusetts.

Slade's Ferry Trust Company	Somerset	Massachusetts.
Central Cooperative Bank	Somerville	Massachusetts.
Savers Co-operative Bank	Southbridge	Massachusetts.
StonehamBank—A Co-operative Bank	Stoneham	Massachusetts.
The Martha's Vineyard Co-operative Bank	Vineyard Haven	Massachusetts.
Ware Co-operative Bank	Ware	Massachusetts.
Westfield Bank	Westfield	Massachusetts.
Winthrop Federal Credit Union	Winthrop	Massachusetts.
Connecticut River Bank N.A.	Charlestown	New Hampshire.
Claremont Savings Bank	Claremont	New Hampshire.
Triangle Credit Union	Nashua	New Hampshire.
Sugar River Savings Bank	Newport	New Hampshire.
Lake Sunapee Bank, FSB	Newport	New Hampshire.
Piscataqua Savings Bank	Portsmouth	New Hampshire.
Service Credit Union	Portsmouth	New Hampshire.
The Washington Trust Company	Westerly	Rhode Island.
The Bank of Bennington	Bennington	Vermont.
Factory Point National Bank	Manchester Center	Vermont.
Heritage Family Credit Union	Rutland	Vermont.
Passumpsic Savings Bank	St. Johnsbury	Vermont.

Federal Home Loan Bank of New York—District 2

American Savings Bank of NJ	Bloomfield	New Jersey.
Clifton Savings Bank, SLA	Clifton	New Jersey.
Sussex Bank	Franklin	New Jersey.
Ocwen Federal Bank FSB	Ft. Lee	New Jersey.
First Hope Bank, NA	Hope	New Jersey.
Magyar Savings Bank	New Brunswick	New Jersey.
Lusitania Savings Bank, FSB	Newark	New Jersey.
Roebling Bank	Roebling	New Jersey.
Monroe Savings Bank, SLA	Williamstown	New Jersey.
Franklin Savings Bank	Woodstown	New Jersey.
Ponce De Leon Federal Bank	Bronx	New York.
Community Capital Bank	Brooklyn	New York.
Atlantic Liberty Savings, FA	Brooklyn	New York.
Bank of Castile	Castile	New York.
Fulton Savings Bank	Fulton	New York.
Astoria Federal Savings & Loan Association	Lake Success	New York.
Pittsford Federal Credit Union	Mendon	New York.
First Federal Savings of Middletown	Middletown	New York.
United Orient Bank	New York	New York.
Amalgamated Bank	New York	New York.
Northfield Savings Bank	Staten Island	New York.
Empire Federal Credit Union	Syracuse	New York.

Federal Home Loan Bank of Pittsburg—District 3

Wilmington Savings Fund Society, FSB	Wilmington	Delaware.
Citicorp Trust Bank, FSB	Baltimore	Maryland.
C & G Savings Bank	Altoona	Pennsylvania.
Ambler Savings Bank	Ambler	Pennsylvania.
First Star Savings Bank	Bethlehem	Pennsylvania.
First FS&LA of Bucks County	Bristol	Pennsylvania.
Alliance Bank	Broomall	Pennsylvania.
Sharon Savings Bank	Darby	Pennsylvania.
ESB Bank	Ellwood City	Pennsylvania.
County Savings Bank	Essington	Pennsylvania.
Bank of Hanover and Trust Company	Hanover	Pennsylvania.
Hatboro Federal Savings	Hatboro	Pennsylvania.
Fox Chase Bank	Hatboro	Pennsylvania.
First Federal Bank	Hazleton	Pennsylvania.
William Penn Savings and Loan Association	Levittown	Pennsylvania.
Willow Grove Bank	Maple Glen	Pennsylvania.
First Keystone Federal Savings Bank	Media	Pennsylvania.
Morton Savings Bank	Morton	Pennsylvania.
Nesquehoning Savings Bank	Nesquehoning	Pennsylvania.
Third Federal Savings Bank	Newtown	Pennsylvania.
Malvern Federal Savings Bank	Paoli	Pennsylvania.
First Savings Bank of Perkasie	Perkasie	Pennsylvania.
Washington Savings Association	Philadelphia	Pennsylvania.
Second FS&LA of Philadelphia	Philadelphia	Pennsylvania.
Asian Bank	Philadelphia	Pennsylvania.
Pennsylvania Business Bank	Philadelphia	Pennsylvania.
Progressive Home FS&LA	Pittsburgh	Pennsylvania.
National City Bank of Pennsylvania	Pittsburgh	Pennsylvania.

The Quakertown National Bank	Quakertown	Pennsylvania.
Mercer County State Bank	Sandy Lake	Pennsylvania.
Penn Security Bank and Trust Company	Scranton	Pennsylvania.
North Penn Savings & Loan Association	Scranton	Pennsylvania.
Slovenian S&LA of Canonsburg, Pa	Strabane	Pennsylvania.
First National Bank of Chester County	West Chester	Pennsylvania.
Stonebridge Bank	West Chester	Pennsylvania.
First Century Bank, N.A	Bluefield	West Virginia.
Pioneer Community Bank	Iaeger	West Virginia.
Bank of Mount Hope, Inc	Mount Hope	West Virginia.
Community Bank of Parkersburg	Parkersburg	West Virginia.
First National Bank	Spencer	West Virginia.
Pleasants County Bank	St. Marys	West Virginia.
The Poca Valley Bank, Inc	Walton	West Virginia.

Federal Home Loan Bank of Atlanta—District 4

Covington County Bank	Andalusia	Alabama.
United Bank	Atmore	Alabama.
AmSouth Bank	Birmingham	Alabama.
Community Bank	Blountsville	Alabama.
Peoples Community Bank	Columbia	Alabama.
Cullman Savings Bank	Cullman	Alabama.
Peoples Bank of North Alabama	Cullman	Alabama.
First American Bank	Decatur	Alabama.
The Citizens Bank	Enterprise	Alabama.
Bank Trust of Alabama	Eufala	Alabama.
EvaBank	Eva	Alabama.
First Gulf Bank	Gulf Shores	Alabama.
New South Federal Savings Bank	Irondale	Alabama.
Merchants Bank	Jackson	Alabama.
Farmers and Merchants Bank	Lafayette	Alabama.
Southwest Bank of Alabama	McIntosh	Alabama.
Bank Trust	Mobile	Alabama.
Community Spirit Bank	Red Bay	Alabama.
Valley State Bank	Russellville	Alabama.
The Peoples Bank and Trust Company	Selma	Alabama.
Sweet Water State Bank	Sweet Water	Alabama.
First Federal of the South	Sylacauga	Alabama.
The First National Bank of Talladega	Talladega	Alabama.
First Citizens Bank	Talladega	Alabama.
First United Security Bank	Thomasville	Alabama.
Merchants & Farmers Bank	Tuscaloosa	Alabama.
City First Bank of D.C., N.A	Washington	D.C.
Citrus and Chemical Bank	Bartow	Florida.
Mackinac Savings Bank, FSB	Boynton Beach	Florida.
Olde Cypress Community Bank	Clewiston	Florida.
First Bank of Clewiston	Clewiston	Florida.
First National Bank of Crestview	Crestview	Florida.
Regent Bank	Davie	Florida.
Dunnellon State Bank	Dunnellon	Florida.
Landmark Bank, N.A	Fort Lauderdale	Florida.
Old Florida Bank	Fort Myers	Florida.
First City Bank of Florida	Fort Walton Beach	Florida.
Desjardins Bank, N.A	Hallandale	Florida.
Florida Community Bank	Immokalee	Florida.
The Bank of Inverness	Inverness	Florida.
First Guaranty Bank and Trust Company	Jacksonville	Florida.
Educational Community Credit Union	Jacksonville	Florida.
Monticello Bank	Jacksonville	Florida.
First Federal Savings Bank	Lake City	Florida.
Publix Employees Federal Credit Union	Lakeland	Florida.
Helm Bank	Miami	Florida.
Commercial Bank of Florida	Miami	Florida.
Eastern National Bank	Miami	Florida.
Pelican National Bank	Naples	Florida.
American National Bank	Oakland Park	Florida.
CNL Bank	Orlando	Florida.
First Community Bank of Palm Beach County	Pahokee	Florida.
Peoples First Community Bank	Panama City	Florida.
Tropical Financial Credit Union	Pembroke Pines	Florida.
Century Bank, a Federal Savings Bank	Sarasota	Florida.
Highlands Independent Bank	Sebring	Florida.
Eastern Financial Florida Credit Union	South Florida	Florida.
Raymond James Bank, FSB	St. Petersburg	Florida.
United Southern Bank	Umatilla	Florida.

Marine Bank and Trust	Vero Beach	Florida.
Sterling Bank, F.S.B	West Palm Beach	Florida.
Montgomery Bank & Trust	Ailey	Georgia.
Citizens Trust Bank	Atlanta	Georgia.
First Bank of Georgia	Augusta	Georgia.
United Community Bank	Blairsville	Georgia.
First National Bank of Georgia	Buchanan	Georgia.
Bank of Chickamauga	Chickamauga	Georgia.
Southeastern Bank	Darien	Georgia.
First National Bank of Coffee County	Douglas	Georgia.
The Peoples Bank	Eatonton	Georgia.
Pinnacle Bank	Elberton	Georgia.
Gainesville Bank and Trust	Gainesville	Georgia.
First Citizens Bank	Glennville	Georgia.
South Georgia Bank	Glennville	Georgia.
SunMark Community Bank	Hawkinsville	Georgia.
Community Trust Bank	Hiram	Georgia.
Northeast Georgia Bank	Lavonia	Georgia.
Peoples Bank	Lithonia	Georgia.
The Community Bank	Loganville	Georgia.
Rivoli Bank & Trust	Macon	Georgia.
Family Bank	Pelham	Georgia.
The Citizens National Bank of Quitman	Quitman	Georgia.
Wilcox County State Bank	Rochelle	Georgia.
Citizens First Bank	Rome	Georgia.
Farmers and Merchants Community Bank	Senoia	Georgia.
Quantum National Bank	Suwanee	Georgia.
Citizens Bank & Trust	Trenton	Georgia.
Farmers and Merchants Bank	Washington	Georgia.
First Piedmont Bank	Winder	Georgia.
Susquehanna Bank	Baltimore	Maryland.
State Employees Credit Union	Baltimore	Maryland.
Vigilant Federal Savings Bank	Baltimore	Maryland.
Ideal Federal Savings Bank	Baltimore	Maryland.
Bay-Vanguard Federal Savings Bank	Baltimore	Maryland.
Hull Federal Savings Bank	Baltimore	Maryland.
TMB Federal Credit Union	Cabin John	Maryland.
Cecil Federal Bank	Elkton	Maryland.
The Back and Middle River Federal	Essex	Maryland.
County National Bank	Glen Burnie	Maryland.
North Arundel Savings Bank	Pasadena	Maryland.
Provident State Bank of Preston	Preston	Maryland.
IR Federal Credit Union	Riverdale	Maryland.
Randolph Bank & Trust Company	Asheboro	North Carolina.
Mechanics and Farmers Bank	Durham	North Carolina.
Gateway Bank & Trust Company	Elizabeth City	North Carolina.
Macon Bank	Franklin	North Carolina.
First Gaston Bank of North Carolina	Gastonia	North Carolina.
Carolina Bank	Greensboro	North Carolina.
Hertford Savings Bank, SSB	Hertford	North Carolina.
The Little Bank	Kinston	North Carolina.
Lexington State Bank	Lexington	North Carolina.
Industrial Federal Savings Bank	Lexington	North Carolina.
First Savings and Loan Association	Mebane	North Carolina.
American Community Bank	Monroe	North Carolina.
Mount Gilead Savings and Loan Association	Mount Gilead	North Carolina.
State Employees' Credit Union	Raleigh	North Carolina.
Taylorsville Savings Bank, SSB	Taylorsville	North Carolina.
Anson Bank & Trust Company	Wadesboro	North Carolina.
Waccamaw Bank	Whiteville	North Carolina.
Cooperative Bank	Wilmington	North Carolina.
People's Community Bank of S.C	Aiken	South Carolina.
Home Federal Savings and Loan Association	Bamberg	South Carolina.
Florence National Bank	Florence	South Carolina.
Bank of Greeleyville	Greeleyville	South Carolina.
GrandSouth Bank	Greenville	South Carolina.
Countybank	Greenwood	South Carolina.
Greer State Bank	Greer	South Carolina.
First National Bank of South Carolina	Holly Hill	South Carolina.
Kingstree Federal Savings & Loan Association	Kingstree	South Carolina.
The Bank of Clarendon	Manning	South Carolina.
Southcoast Community Bank	Mt. Pleasant	South Carolina.
Anderson Brothers Bank	Mullins	South Carolina.
Pickens Savings & Loan Association, F.A	Pickens	South Carolina.
Bank of Travelers Rest	Travelers Rest	South Carolina.
Napus Federal Credit Union	Alexandria	Virginia.

The Blue Grass Valley Bank	Blue Grass	Virginia.
The Bank of Southside Virginia	Carson	Virginia.
Second Bank & Trust	Culpeper	Virginia.
Apple Federal Credit Union	Fairfax	Virginia.
Imperial Savings and Loan Association	Martinsville	Virginia.
Navy Federal Credit Union	Merrifield	Virginia.
Bank of the Commonwealth	Norfolk	Virginia.
Lee Bank and Trust Company	Pennington Gap	Virginia.
The Marathon Bank	Winchester	Virginia.

Federal Home Loan Bank of Cincinnati—District 5

Wilson & Muir Bank and Trust Company	Bardstown	Kentucky.
Farmers Bank & Trust Company	Bardstown	Kentucky.
Bank of Cadiz and Trust Company	Cadiz	Kentucky.
Bank of Columbia	Columbia	Kentucky.
The Harrison Deposit Bank and Trust Company	Cynthiana	Kentucky.
Kentucky National Bank	Elizabethtown	Kentucky.
The Peoples Bank of Fleming County	Flemingsburg	Kentucky.
Farmers Bank	Hardinsburg	Kentucky.
Hancock Bank and Trust Company	Hawesville	Kentucky.
Peoples Bank & Trust Company of Hazard	Hazard	Kentucky.
Heritage Bank	Hopkinsville	Kentucky.
Planters Bank, Inc	Hopkinsville	Kentucky.
Bank of Jamestown	Jamestown	Kentucky.
THE BANK—Oldham County, Inc	LaGrange	Kentucky.
Leitchfield Deposit Bank and Trust Company	Leitchfield	Kentucky.
Central Bank & Trust Company, Inc	Lexington	Kentucky.
L&N Federal Credit Union	Louisville	Kentucky.
Farmers B&T Company of Marion, Kentucky	Marion	Kentucky.
Monticello Banking Company	Monticello	Kentucky.
Pioneer Bank	Munfordville	Kentucky.
South Central Bank of Daviess County, Inc	Owensboro	Kentucky.
The Salt Lick Deposit Bank	Owingsville	Kentucky.
Blue Grass Federal Savings and Loan Association	Paris	Kentucky.
First Commonwealth Bank of Prestonsburg, Inc	Prestonsburg	Kentucky.
Fort Knox National Bank	Radcliff	Kentucky.
Belpre Savings Bank	Belpre	Ohio.
The Farmers Citizens Bank	Bucyrus	Ohio.
First FS&LA of Centerburg	Centerburg	Ohio.
Union Savings Bank	Cincinnati	Ohio.
The Mercantile Savings Bank	Cincinnati	Ohio.
Eagle Savings Bank	Cincinnati	Ohio.
The Winton Savings and Loan Company	Cincinnati	Ohio.
Conneaut Savings Bank	Conneaut	Ohio.
The Commercial Bank	Delphos	Ohio.
The Fort Jennings State Bank	Fort Jennings	Ohio.
The Hamler State Bank	Hamler	Ohio.
Morgan Bank	Hudson	Ohio.
The Fahey Banking Company of Marion	Marion	Ohio.
Citizens National Bank of McConnelsville	McConnelsville	Ohio.
The American Savings & Loan Association	Middletown	Ohio.
First National Bank of New Holland	New Holland	Ohio.
The Farmers State Bank	New Washington	Ohio.
First National Bank	Orrville	Ohio.
The Republic Banking Company	Republic	Ohio.
Chippewa Valley Bank	Rittman	Ohio.
Mutual Federal Savings Bank	Sidney	Ohio.
Central FS&LA of Wellsville	Wellsville	Ohio.
The Peoples Savings and Loan Company	West Liberty	Ohio.
The Union Banking Company	West Mansfield	Ohio.
Farmers State Bank	West Salem	Ohio.
First Community Bank	Whitehall	Ohio.
The Wilmington Savings Bank	Wilmington	Ohio.
The Wayne County National Bank of Wooster	Wooster	Ohio.
Brighton Bank	Brighton	Tennessee.
Cumberland Bank	Carthage	Tennessee.
Highland Federal Savings and Loan Association	Crossville	Tennessee.
Security Federal Bank	Elizabethton	Tennessee.
The Lauderdale County Bank	Halls	Tennessee.
Carroll Bank & Trust	Huntingdon	Tennessee.
The Coffee County Bank	Manchester	Tennessee.
First National Bank	Manchester	Tennessee.
The Home Bank of Tennessee	Maryville	Tennessee.
Memphis Area Teachers' Credit Union	Memphis	Tennessee.
Johnson County Bank	Mountain City	Tennessee.

Home Banking Company	Selmer	Tennessee.

Federal Home Loan Bank of Indianapolis—District 6

Bedford Federal Savings Bank	Bedford	Indiana.
FCN Bank	Rookville	Indiana.
Union Federal Savings & Loan Association	Crawfordsville	Indiana.
Decatur Bank and Trust Company	Decatur	Indiana.
United Fidelity Bank	Evansville	Indiana.
Fowler State Bank	Fowler	Indiana.
First Federal Savings Bank	Huntington	Indiana.
Campbell & Fetter Bank	Kendallville	Indiana.
United Community Bank	Lawrenceburg	Indiana.
River Valley Financial Bank	Madison	Indiana.
Fidelity FSB	Marion	Indiana.
MarkleBank	Markle	Indiana.
First State Bank of Middlebury	Middlebury	Indiana.
Citizens Financial Services, FSB	Munster	Indiana.
Community Bank of Southern Indiana	New Albany	Indiana.
Ameriana Bank and Trust, SB	New Castle	Indiana.
AmericanTrust FSB	Peru	Indiana.
Spencer County Bank	Santa Claus	Indiana.
Jackson County Bank	Seymour	Indiana.
Shelby County Bank	Shelbyville	Indiana.
Terre Haute Savings Bank	Terre Haute	Indiana.
Frances Slocum Bank & Trust Company	Wabash	Indiana.
Homestead Savings Bank	Albion	Michigan.
Ann Arbor Commerce Bank	Ann Arbor	Michigan.
Charlevoix State Bank	Charlevoix	Michigan.
Dearborn Federal Savings Bank	Dearborn	Michigan.
Financial Health Credit Union	East Lansing	Michigan.
Firstbank-Lakeview	Lakeview	Michigan.
Capitol National Bank	Lansing	Michigan.
State Employees Credit Union	Lansing	Michigan.
Independent Bank-South Michigan	Leslie	Michigan.
State Savings Bank	Manistique	Michigan.
Mason State Bank	Mason	Michigan.
Community Financial Credit Union	Plymouth	Michigan.
Team One Credit Union	Saginaw	Michigan.
Sidney State Bank	Sidney	Michigan.
Flagstar Bank	Troy	Michigan.
Standard Federal Bank National Association	Troy	Michigan.
Research Federal Credit Union	Warren	Michigan.
Firstbank-West Branch	West Branch	Michigan.

Federal Home Loan Bank of Chicago—District 7

Oxford Bank and Trust	Addison	Illinois.
Greater Chicago Bank	Bellwood	Illinois.
Heartland Bank & Trust Company	Bloomington	Illinois.
Peoples Bank of Kankakee County	Bourbonnais	Illinois.
Bridgeview Bank and Trust	Bridgeview	Illinois.
Southe Pointe Bank	Carbondale	Illinois.
United Community Bank	Chatham	Illinois.
First Savings Bank of Hegewisch	Chicago	Illinois.
Flower Bank, FSB	Chicago	Illinois.
Illinois Service FS&LA	Chicago	Illinois.
Foster Bank	Chicago	Illinois.
Burling Bank	Chicago	Illinois.
Austin Bank of Chicago	Chicago	Illinois.
Community Bank of Lawndale	Chicago	Illinois.
Amalgamated Bank of Chicago	Chicago	Illinois.
State Bank of Countryside	Countryside	Illinois.
First Savings Bank	Danville	Illinois.
Clover Leaf Bank	Edwardsville	Illinois.
Effingham State Bank	Effingham	Illinois.
Illinois Community Bank	Effingham	Illinois.
Washington Savings Bank	Effingham	Illinois.
EFS Bank	Elgin	Illinois.
First American Bank	Elk Grove Village	Illinois.
Forest Park National Bank & Trust Company	Forest Park	Illinois.
Harris Bank Frankfort	Frankfort	Illinois.
Union Savings Bank	Freeport	Illinois.
Central Bank Illinois	Geneseo	Illinois.
Bank of Gibson City	Gibson City	Illinois.
Northside Community Bank	Gurnee	Illinois.

Parkway Bank & Trust Company	Harwood Heights	Illinois.
North Central Bank	Hennepin	Illinois.
State Bank of Herscher	Herscher	Illinois.
The Farmers State Bank and Trust Company	Jacksonville	Illinois.
First FS&LA of Kewanee	Kewanee	Illinois.
Logan County Bank	Lincoln	Illinois.
Twin Oaks Savings Bank	Marseilles	Illinois.
Citizens Community Bank	Mascoutah	Illinois.
Middletown State Bank	Middleton	Illinois.
Blackhawk State Bank	Milan	Illinois.
First State Bank of Monticello	Monticello	Illinois.
BankPlus, FSB	Morton	Illinois.
George Washington Savings Bank	Oak Lawn	Illinois.
The First National Bank of Ogden	Ogden	Illinois.
The First National Bank of Okawville	Okawville	Illinois.
First National Bank in Olney	Olney	Illinois.
The Edgar County Bank & Trust Company	Paris	Illinois.
First FS&LA of Pekin	Pekin	Illinois.
Peru Federal Savings Bank	Peru	Illinois.
First National Bank in Pinckneyville	Pinckneyville	Illinois.
Mercantile Trust and Savings Bank	Quincy	Illinois.
State Street Bank & Trust Company	Quincy	Illinois.
North County Savings Bank	Red Bud	Illinois.
First Crawford State Bank	Robinson	Illinois.
American Bank and Trust Company	Rock Island	Illinois.
Stillman BancCorp, N.A	Rockford	Illinois.
First Savanna Savings Bank	Savanna	Illinois.
First State Bank of Shannon-Polo	Shannon	Illinois.
Security Bank	Springfield	Illinois.
UnionBank	Streator	Illinois.
The National Bank & Trust Company of Sycamore	Sycamore	Illinois.
Alpha Community Bank	Toluca	Illinois.
Villa Park Trust & Savings Bank	Villa Park	Illinois.
Citizens First State Bank of Walnut	Walnut	Illinois.
Hill Dodge Banking Company	Warsaw	Illinois.
State Bank of Waterloo	Waterloo	Illinois.
Cardunal Savings Bank, FSB	West Dundee	Illinois.
Citicorp Trust Bank, FSB	Baltimore	Maryland.
First American Credit Union	Beloit	Wisconsin.
Jackson County Bank	Black River Falls	Wisconsin.
State Bank of Cross Plains	Cross Plains	Wisconsin.
State Financial Bank, National Association	Hales Corners	Wisconsin.
AM Community Credit Union	Kenosha	Wisconsin.
Time Federal Savings Bank	Medford	Wisconsin.
M&I Marshall & Ilsley Bank	Milwaukee	Wisconsin.
Marine Bank	Pewaukee	Wisconsin.
Community Bank Spring Green and Plain	Spring Green	Wisconsin.
Tomahawk Community Bank SSB	Tomahawk	Wisconsin.

Federal Home Loan Bank of Des Moines—District 8

Peoples Trust & Savings Bank	Adel	Iowa.
Security State Bank	Anamosa	Iowa.
Farmers Trust and Savings Bank	Buffalo Center	Iowa.
Linn Area Credit Union	Cedar Rapids	Iowa.
United Security Savings Bank, F.S.B	Cedar Rapids	Iowa.
Bank Iowa	Larinda	Iowa.
Clear Lake Bank and Trust Company	Clear Lake	Iowa.
Gateway State Bank	Clinton	Iowa.
Cresco Union Savings Bank	Cresco	Iowa.
De Witt Bank & Trust Company	De Witt	Iowa.
Denver Savings Bank	Denver	Iowa.
Premier Bank	Dubuque	Iowa.
Liberty Trust & Savings Bank	Durant	Iowa.
Farmers Trust & Savings Bank	Earling	Iowa.
Hardin County Savings Bank	Eldora	Iowa.
Peoples State Bank	Elkader	Iowa.
NorthStar Bank	Estherville	Iowa.
Bank Plus	Estherville	Iowa.
Fort Madison Bank & Trust Company	Fort Madison	Iowa.
Security Savings Bank	Gowrie	Iowa.
Midstates Bank, NA	Harlan	Iowa.
Hills Bank and Trust Company	Hills	Iowa.
First State Bank	Ida Grove	Iowa.
Peoples Savings Bank	Indianola	Iowa.
Iowa Falls State Bank	Iowa Falls	Iowa.

Kerndt Brothers Savings Bank	Lansing	Iowa.
Libertyville Savings Bank	Libertyville	Iowa.
First State Bank	Lynnville	Iowa.
First National Bank	Manning	Iowa.
Valley Bank & Trust	Mapleton	Iowa.
Maquoketa State Bank	Maquoketa	Iowa.
Maynard Savings Bank	Maynard	Iowa.
Union State Bank	Monona	Iowa.
Citizens State Bank	Monticello	Iowa.
Mount Vernon Bank and Trust Company	Mount Vernon	Iowa.
Wayland State Bank	Mt. Pleasant	Iowa.
Community Bank	Muscatine	Iowa.
First National Bank Midwest	Oskaloosa	Iowa.
Horizon Federal Savings Bank	Oskaloosa	Iowa.
Pella State Bank	Pella	Iowa.
First State Bank	Riceville	Iowa.
Peoples Bank	Rock Valley	Iowa.
Union State Bank	Rockwell City	Iowa.
Rolfe State Bank	Rolfe	Iowa.
Security State Bank	Sheldon	Iowa.
First Community Bank	Sidney	Iowa.
St. Ansgar State Bank	St. Ansgar	Iowa.
Victor State Bank	Victor	Iowa.
Washington State Bank	Washington	Iowa.
Citizens State Bank	Waukon	Iowa.
West Iowa Bank	West Bend	Iowa.
Fidelity Bank	West Des Moines	Iowa.
State Savings Bank	West Des Moines	Iowa.
GuideOne Mutual Insurance Company	West Des Moines	Iowa.
Wilton Savings Bank	Wilton	Iowa.
White Rock Bank	Cannon Falls	Minnesota.
Currie State Bank	Currie	Minnesota.
State Bank of Danvers	Danvers	Minnesota.
State Bank of Delano	Delano	Minnesota.
Voyager Bank	Eden Prairie	Minnesota.
Inter Savings Bank, FSB	Edina	Minnesota.
Stearns Bank Evansville National Association	Evansville	Minnesota
1st United Bank	Faribault	Minnesota.
Border State Bank of Greenbush	Greenbush	Minnesota.
Citizens State Bank of Hayfield	Hayfield	Minnesota.
Farmers State Bank of Hoffman	Hoffman	Minnesota.
Fortress Bank Minnesota	Houston	Minnesota.
Security State Bank of Howard Lake	Howard Lake	Minnesota.
Key Community Bank	Inver Grove Heights	Minnesota.
First Security Bank—Lake Benton	Lake Benton	Minnesota.
Lake City Federal Bank	Lake City	Minnesota.
Lake Area Bank	Lindstrom	Minnesota.
First National Bank of Moose Lake	Moose Lake	Minnesota.
United Prairie Bank	Mountain Lake	Minnesota.
American Bank of the North	Nashwauk	Minnesota.
State Bank of New Prague	New Prague	Minnesota.
ProGrowth Bank	Nicollet	Minnesota.
Midwest Bank NA	Parkers Prairie	Minnesota.
The First National Bank of Pine City	Pine City	Minnesota.
Premier Bank Rochester	Rochester	Minnesota.
Sterling State Bank	Rochester	Minnesota.
Citizens State Bank of Roseau	Roseau	Minnesota.
Bremer Bank, National Association	St. Cloud	Minnesota.
St. James Federal Savings and Loan Association	St. James	Minnesota.
The Nicollet County Bank of St. Peter	St. Peter	Minnesota.
Farmers State Bank of Trimont	Trimont	Minnesota.
First National Bank of Walker	Walker	Minnesota.
Roundbank	Waseca	Minnesota.
Community Bank Winsted	Winsted	Minnesota.
First Independent Bank of Wood Lake	Wood Lake	Minnesota.
Citizens Bank of Amsterdam	Amsterdam	Missouri.
Community State Bank of Missouri	Bowling Green	Missouri.
Pony Express Bank	Braymer	Missouri.
CSB Bank	Claycomo	Missouri.
Citizens Union State Bank & Trust	Clinton	Missouri.
First National Bank & Trust Company	Columbia	Missouri.
Meramec Valley Bank	Ellisville	Missouri.
New Era Bank	Fredericktown	Missouri.
Bank Star One	Fulton	Missouri.
The Central Trust Bank	Jefferson City	Missouri.
Macon-Atlanta State Bank	Macon	Missouri.

Regional Missouri Bank	Marceline	Missouri.
Nodaway Valley Bank	Maryville	Missouri.
Independent Farmers Bank	Maysville	Missouri.
Heritage State Bank	Nevada	Missouri.
Southwest Community Bank	Ozark	Missouri.
Palmyra State Bank	Palmyra	Missouri.
Farley State Bank	Parkville	Missouri.
Perry State Bank	Perry	Missouri.
Citizens Community Bank	Pilot Grove	Missouri.
Pulaski Bank	Saint Louis	Missouri.
Bank of Salem	Salem	Missouri.
The Merchants & Farmers Bank of Salisbury	Salisbury	Missouri.
Community Bank of Pettis County	Sedalia	Missouri.
Empire Bank	Springfield	Missouri.
The Signature Bank	Springfield	Missouri.
Liberty Bank	Springfield	Missouri.
Bank Star of the Bootheel	Steele	Missouri.
The Tipton Latham Bank, N.A	Tipton	Missouri.
Bank of Washington	Washington	Missouri.
West Plains Savings & Loan Association	West Plains	Missouri.
The First and Farmers Bank	Portland	North Dakota.
First International Bank & Trust	Watford City	North Dakota.

Federal Home Loan Bank of Dallas—District 9

SOUTHBank, A Federal Savings Bank	Huntsville	Alabama.
Community Bank	Cabot	Arkansas.
First Security Bank	Clarksville	Arkansas.
Bank of Eureka Springs	Eureka Springs	Arkansas.
First National Bank of Fort Smith	Fort Smith	Arkansas.
Bank of Lake Village	Lake Village	Arkansas.
Bank of the Ozarks	Little Rock	Arkansas.
First State Bank	Lonoke	Arkansas.
Arvest Bank	Lowell	Arkansas.
Union Bank of Mena	Mena	Arkansas.
First National Bank	Mount Ida	Arkansas.
First State Bank	Parkin	Arkansas.
First Arkansas Valley Bank	Russellville	Arkansas.
Bank of Salem	Salem	Arkansas.
First Security Bank	Searcy	Arkansas.
Simmons First Bank of Searcy	Searcy	Arkansas.
Fidelity Bank	Baton Rouge	Louisiana.
State Investors Bank	Metairie	Louisiana.
Globe Homestead FSA	Metairie	Louisiana.
Home Federal Savings and Loan Association	Shreveport	Louisiana.
Citizens B&T Company of Vivian, LA, Inc	Vivian	Louisiana.
First Federal Bank for Savings	Columbia	Mississippi.
First Delta Federal Credit Union	Marks	Mississippi.
Pioneer Bank	Roswell	Mew Mexico.
First National Bank of Santa Fe	Santa Fe	Mew Mexico.
International Bank of Commerce	Brownsville	Texas.
First American Bank, SSB	Bryan	Texas.
American Bank, N.A	Corpus Christi	Texas.
State Bank and Trust Company, Dallas	Dallas	Texas.
Guaranty Bank	Dallas	Texas.
The Bank & Trust, S.S.B	Del Rio	Texas.
Bank of the West	El Paso	Texas.
Government Employees Credit Union	El Paso	Texas.
New Era Life Insurance Company	Houston	Texas.
OmniBank, N.A	Houston	Texas.
Southwest Bank of Texas, N.A	Houston	Texas.
The First National Bank of Hughes Springs	Hughes Springs	Texas.
International Bank of Commerce	Laredo	Texas.
Liberty Bank	North Richland Hills	Texas.
Interstate Bank, ssb	Perryton	Texas.
Cypress Bank FSB	Pittsburg	Texas.
Benchmark Bank	Plano	Texas.
Community Credit Union	Plano	Texas.
First National Bank in Quanah	Quanah	Texas.
Peoples State Bank	Rocksprings	Texas.
Crockett National Bank	San Angelo	Texas.
Frost National Bank	San Antonio	Texas.
State Bank & Trust of Seguin, TX	Seguin	Texas.
Citizens Bank	Slaton	Texas.
Texas National Bank	Tomball	Texas.
Southside Bank	Tyler	Texas.

First Victoria National Bank	Victoria	Texas.
TexasBank	Weatherford	Texas.
International Bank of Commerce	Zapata	Texas.

Federal Home Loan Bank of Topeka—District 10

Gateway Credit Union	Aurora	Colorado.
FirstBank of Avon	Avon	Colorado.
Canon National Bank	Canon City	Colorado.
Peoples National Bank Colorado	Colorado Springs	Colorado.
Ent Federal Credit Union	Colorado Springs	Colorado.
Citizens State Bank of Cortez	Cortez	Colorado.
Guaranty Bank and Trust Company	Denver	Colorado.
The State Bank	Rocky Ford	Colorado.
FirstBank of Vail	Vail	Colorado.
Community State Bank	Coffeyville	Kansas.
Conway Bank, N.A	Conway Springs	Kansas.
The City State Bank	Fort Scott	Kansas.
The Liberty Savings Association, FSA	Fort Scott	Kansas.
First National Bank	Independence	Kansas.
First Federal S&L Independence	Independence	Kansas.
MidAmerican Bank & Trust Company, NA	Leavenworth	Kansas.
Kansas State Bank of Manhattan	Manhattan	Kansas.
Stockgrowers State Bank	Maple Hill	Kansas.
Citizens State Bank of Marysville	Marysville	Kansas.
First Bank of Medicine Lodge	Medicine Lodge	Kansas.
Montezuma State Bank	Montezuma	Kansas.
Kansas State Bank	Overbrook	Kansas.
1st Financial Bank	Overland Park	Kansas.
First National Bank in Pratt, Kansas	Pratt	Kansas.
Rose Hill Bank	Rose Hill	Kansas.
The Bennington State Bank	Salina	Kansas.
Security State Bank	Scott City	Kansas.
First National Bank of Scott City	Scott City	Kansas.
Centera Bank	Sublette	Kansas.
First FS&LA of WaKeeney	WaKeeney	Kansas.
Kaw Valley State Bank	Wamego	Kansas.
First National Bank of Wamego	Wamego	Kansas.
Fidelity Bank	Wichita	Kansas.
First National Bank and Trust of Fullerton	Fullerton	Nebraska.
Geneva State Bank	Geneva	Nebraska.
Equitable Federal Savings Bank of Grand Island	Grand Island	Nebraska.
Home FS&LA of Grand Island, Nebraska	Grand Island	Nebraska.
Harvard State Bank	Harvard	Nebraska.
Hershey State Bank	Hershey	Nebraska.
Nebraska National Bank	Kearney	Nebraska.
Platte Valley State Bank and Trust Company	Kearney	Nebraska.
Bank of Keystone	Keystone	Nebraska.
Home FS&LA of Nebraska	Lexington	Nebraska.
Lincoln Federal Savings Bank of Nebraska	Lincoln	Nebraska.
Security Federal Savings	Lincoln	Nebraska.
Sherman County Bank	Loup City	Nebraska.
First National Bank Northeast	Lyons	Nebraska.
The Bank of Madison	Madison	Nebraska.
Madison County Bank	Madison	Nebraska.
Bank of Norfolk	Norfolk	Nebraska.
Nebraskaland National Bank	North Platte	Nebraska.
First National Bank North Platte	North Platte	Nebraska.
Pender State Bank	Pender	Nebraska.
Midwest Bank, N.A	Pierce	Nebraska.
Town & Country Bank	Ravenna	Nebraska.
Sidney Federal Savings & Loan Association	Sidney	Nebraska.
Dakota County State Bank	South Sioux City	Nebraska.
Springfield State Bank	Springfield	Nebraska.
Bank of St. Edward	St. Edward	Nebraska.
Tecumseh Building and Loan Association	Tecumseh	Nebraska.
First National Bank	Utica	Nebraska.
Farmers State Bank	Wallace	Nebraska.
Saline State Bank	Wilber	Nebraska.
Citizens National Bank of Wisner	Wisner	Nebraska.
66 Federal Credit Union	Bartlesville	Oklahoma.
Bank of Cordell	Cordell	Oklahoma.
Bank of Hydro	Hydro	Oklahoma.
Armstrong Bank	Muskogee	Oklahoma.
Citizens State Bank	Okemah	Oklahoma.
First Enterprise Bank	Oklahoma City	Oklahoma.

Union Bank, N.A	Oklahoma City	Oklahoma.
The First National Bank of Texhoma	Texhoma	Oklahoma.
Grand Bank	Tulsa	Oklahoma.
Community Bank & Trust Company	Tulsa	Oklahoma.
Energy One Federal Credit Union	Tulsa	Oklahoma.
First Bank & Trust	Wagoner	Oklahoma.
Canadian State Bank	Yukon	Oklahoma.
Federal Home Loan Bank of San Francisco—District 11		
BankUSA, FSB	Phoenix	Arizona.
Fremont Investment & Loan	Anaheim	California.
Vista Federal Credit Union	Burbank	California.
La Jolla Bank, FSB	Rancho Santa Fe	California.
Eastern International Bank	Los Angeles	California.
Chevron Texaco Federal Credit Union	Oakland	California.
United Labor Bank, FSB	Oakland	California.
Wescom Credit Union	Pasadena	California.
California Bank and Trust	San Diego	California.
San Diego County Credit Union	San Diego	California.
United Commercial Bank	San Francisco	California.
Citibank (West), FSB	San Francisco	California.
Luther Burbank Savings	Santa Rosa	California.
Community Banks of Tracy	Tracy	California.
Yolo Community Bank	Woodland	California.
Redding Bank of Commerce	Yuba City	California.
Federal Home Loan Bank of Seattle—District 12		
First Bank	Ketchikan	Alaska.
Territorial Savings Bank	Honolulu	Hawaii.
Central Pacific Bank	Honolulu	Hawaii.
Farmers and Merchants State Bank	Boise	Idaho.
Home Federal Bank	Nampa	Idaho.
American Bank of Montana	Bozeman	Montana.
Valley Bank of Helena	Helena	Montana.
Chetco Federal Credit Union	Brookings	Oregon.
Northwest Community Credit Union	Eugene	Oregon.
LibertyBank	Eugene	Oregon.
West Coast Bank	Lake Oswego	Oregon.
PremierWest Bank	Medford	Oregon.
McKay Dee Credit Union	Ogden	Utah.
Centennial Bank	Ogden	Utah.
Mountain America Credit Union	Salt Lake City	Utah.
American Investment Bank, N.A	Salt Lake City	Utah.
Zions First National Bank	Salt Lake City	Utah.
Cowlitz Bank	Bellevue	Washington.
Kitsap Community Federal Credit Union	Bremerton	Washington.
State Bank of Concrete	Concrete	Washington.
Washington State Bank, N.A	Federal Way	Washington.
Venture Bank	Lacey	Washington.
Sound Banking Company	Lakewood	Washington.
Spokane Teachers Credit Union	Liberty Lake	Washington.
Heritage Savings Bank	Olympia	Washington.
First Savings Bank of Renton	Renton	Washington.
Viking Community Bank	Seattle	Washington.
The Wheatland Bank	Spokane	Washington.
TAPCO Credit Union	Tacoma	Washington.
Banner Bank	Walla Walla	Washington.
Security First Bank	Cheyenne	Wyoming.
First National Bank & Trust	Powell	Wyoming.
Cowboy State Bank	Ranchester	Wyoming.
First State Bank of Thermopolis	Thermopolis	Wyoming.

II. Public Comments

To encourage the submission of public comments on the community support performance of Bank members, on or before April 28, 2005, each Bank will notify its Advisory Council and nonprofit housing developers, community groups, and other interested parties in its district of the members selected for community support review in the 2004–05 fifth quarter review cycle. 12 CFR 944.2(b)(2)(ii). In reviewing a member for community support compliance, the Finance Board will consider any public comments it has received concerning the member. 12 CFR 944.2(d). To ensure consideration by the Finance Board, comments concerning the community support performance of members selected for the 2004–05 fifth quarter review cycle must be delivered to the Finance Board on or before the May 26, 2005 deadline for submission of Community Support Statements.

Dated: April 18, 2005.

Mark J. Tenhundfeld,

General Counsel.

[FR Doc. 05–8037 Filed 4–21–05; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 16, 2005.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. *Univest Corporation of Pennsylvania,* Souderton, Pennsylvania; to retain 8.53 percent of the voting shares of New Century Bank, Phoenixville, Pennsylvania.

Board of Governors of the Federal Reserve System, April 18, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–8100 Filed 4–21–05; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Reinstatement of Existing Collection; Comment Request

AGENCY: Federal Trade Commission (Commission or FTC).

ACTION: Notice.

SUMMARY: The FTC intends to conduct a survey of consumers to advance its understanding of the incidence of consumer fraud and to allow the FTC to better serve people who experience fraud. The survey is a follow-up to the FTC's Consumer Fraud Survey conducted in 2003 and released in August 2004. Before gathering this information, the FTC is seeking public comments on its proposed consumer research. Comments will be considered before the FTC submits a request for Office of Management and Budget (OMB) review under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3520.

DATES: Comments must be submitted on or before June 21, 2005.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Consumer Fraud Survey: FTC File No. P014412'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159 (Annex E), 600 Pennsylvania Avenue, NW., Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Alternatively, comments may be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *consumersurvey@ftc.gov.* If the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled ''Confidential.'' [1]

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments will be considered by the Commission and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Nathaniel C. Wood, Assistant Director, Officer of Consumer and Business Education, Bureau of Consumer Protection, Federal Trade Commission, 601 Pennsylvania Avenue, NW., NJ–2267, Washington, DC 20580, (202) 326–3407, *consumersurvey@ftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c). In 2003, OMB approved the FTC's request to conduct a survey on consumer fraud and assigned OMB Control Number 3084–0125. The FTC completed the consumer research in June 2003 and issued its report, Consumer Fraud in the United States: An FTC Survey, in August 2004.[2] As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB reinstate the clearance for the survey, which expired in December 2003.

The FTC invites comments on: (1) Whether the proposed collections of information are necessary for the proper performance of the functions of the FTC, including whether the information will have practical utility; (2) the accuracy of the FTC's estimate of the burden of the proposed collections of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of collecting information on those who are to respond, including

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

[2] The Report is available at *http://www.ftc.gov/reports/consumerfraud/040805confraudrpt.pdf.*

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.

1. Description of the Collection of Information and Proposed Use

The FTC proposes to survey up to 10,000 consumers in order to gather specific information on the incidence of consumer fraud in the general population. This information will be collected on a voluntary basis, and the identities of the consumers will remain confidential. Subject to OMB approval for the survey, the FTC has contracted with a consumer research firm to identify consumers and conduct the survey. The results will assist the FTC in determining the incidence of consumer fraud in the general population and whether the type and frequency of consumer frauds is changing, and will inform the FTC about how best to combat consumer fraud.

The FTC intends to use a larger sample size than the 2003 survey to allow for a more in-depth analysis of the resulting data. The additional data points will allow for statistically significant samples for particular types of fraud and particular demographic characteristics. The questions will be very similar to the 2003 survey so that the results from the 2003 survey can be used as a baseline for a time-series analysis.[3] The FTC may choose to conduct another follow-up survey in approximately two years.

2. Estimated Hours Burden

The FTC will pretest the survey on approximately 100 respondents to ensure that all questions are easily understood. This pretest will take approximately 15 minutes per person and 25 hours as a whole (100 respondents × 15 minutes each). Answering the consumer survey will require approximately 15 minutes per respondent and 2,500 hours as a whole (10,000 respondents × 15 minutes each). Thus, cumulative total burden hours for the first year of the clearance will approximate 2,525 hours.

3. Estimated Cost Burden

The cost per respondent should be negligible. Participation is voluntary and will not require start-up, capital, or labor expenditures by respondents.

John D. Graubert,

Acting General Counsel.

[FR Doc. 05–8045 Filed 4–21–05; 8:45 am]

BILLING CODE 6750–01–P

[3] The survey instrument for the 2003 Consumer Fraud Survey is attached as Appendix A to the Report.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

A Public Health Action Plan To Combat Antimicrobial Resistance (Part I: Domestic Issues); Meeting for Public Comment on the Antimicrobial Resistance Interagency Task Force Annual Report

The Centers for Disease Control and Prevention (CDC), Food and Drug Administration (FDA), and National Institutes of Health (NIH) announce an open meeting concerning antimicrobial resistance.

Name: ''A Public Health Action Plan to Combat Antimicrobial Resistance (Part I: Domestic Issues)'': Meeting for Public Comment on the Antimicrobial Resistance Interagency Task Force Annual Report.

Time and Date: 1:30 p.m.–5 p.m., June 29, 2005.

Place: Hyatt Regency Bethesda, Haverford/Baccarat Suite, One Bethesda Metro Center, 7400 Wisconsin Avenue at Old Georgetown Road, Bethesda, Maryland, 20814; Telephone: 1–301–657–1234; Fax: 1–301–657–6453.

Status: Open to the public, limited by the space available.

Purpose: To present the third annual report of progress by Federal agencies in accomplishing activities outlined in ''A Public Health Action Plan to Combat Antimicrobial Resistance (Part I: Domestic Issues),'' and solicit comments from the public regarding the annual report. The Action Plan serves as a blueprint for activities of Federal agencies to address antimicrobial resistance. The focus of the plan is on domestic issues.

Matters to be Discussed: The agenda will consist of welcome, introductory comments, followed by discussion of four focus areas in sequential plenary sessions lasting up to 45 minutes each. The four focus areas are: Surveillance, Prevention and Control, Research, and Product Development. Session leaders will give a 10 to 15 minute overview at the beginning of each session, then open the meeting for general discussion.

Comments and suggestions from the public for Federal agencies related to each of the focus areas will be taken under advisement by the Antimicrobial Resistance Interagency Task Force. The agenda does not include development of consensus positions, guidelines, or discussions or endorsements of specific commercial products.

The Action Plan, Annual Report, and meeting agenda will be available at *http://www.cdc.gov/drugresistance.* The public meeting is sponsored by the CDC, FDA, and NIH, in collaboration with seven other Federal agencies and departments involved in developing and writing ''A Public Health Action Plan to Combat Antimicrobial Resistance (Part I: Domestic Issues).''

Agenda items are subject to change as priorities dictate.

Limited time will be available for oral questions, comments, and suggestions from the public. Depending on the number wishing to comment, a time limit of three minutes may be imposed. In the interest of time, visual aids will not be permitted, although written material may be submitted to the Task Force. Written comments and suggestions from the public are encouraged and can be submitted at the meeting or should be received by the contact person (below) by regular mail or e-mail listed below no later than July 31, 2005.

Persons who anticipate attending the meeting are requested to send written notification to the contact person (below) by June 17, 2005, including name, organization (if applicable), address, phone, fax, and e-mail address.

FOR FURTHER INFORMATION CONTACT: Ms. Vickie Garrett, Antimicrobial Resistance, Office of the Director, NCID, CDC, mail stop C–12, 1600 Clifton Road, NE., Atlanta, Georgia 30333; telephone 404–639–2603; fax 404–639–4197; or e-mail *aractionplan@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 18, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–8090 Filed 4–21–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10150]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Center for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS), 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.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. This is necessary to ensure compliance with an initiative of the Administration. The use of the normal clearance procedures is reasonably likely to cause a statutory deadline to be missed.

The purpose of the data is to enable prospective and current Medicare beneficiaries to compare, learn, select and enroll in a plan that best meets their needs. Both stand alone prescription drug plans (PDPs) and Medicare Advantage Prescription Drug (MA–PDs) plans will be required to submit drug pricing and pharmacy network data to CMS. These data will be made publicly available to people with Medicare through the new Medicare Prescription Drug Plan Finder web tool that will be launched in the fall of 2005 on *http://www.medicare.gov.* The database structure will provide the flexibility to design and communicate plan design, formulary, and pharmacy network information to people with Medicare by displaying program contact and pricing information at the network pharmacy level.

CMS is requesting OMB review and approval of this collection by June 22, 2005, with a 30-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by May 22, 2005.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.cms.hhs.gov/regulations/pra* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below by May 22, 2005:

Centers for Medicare and Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Room C5–13–27, 7500 Security Boulevard, Baltimore, MD 21244–1850, Fax Number: (410) 786–0262, Attn: William N. Parham, III, CMS–10150; and,

OMB Human Resources and Housing Branch, Attention: Christopher Martin, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: April 14, 2005.

Michelle Shortt,

Acting Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 05–8084 Filed 4–21–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4107–N]

Medicare Program; Request for Nominations for the Advisory Panel on Medicare Education

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice requests nominations for individuals to serve on the Advisory Panel on Medicare Education (the Panel). The Panel advises and makes recommendations to the Secretary of the Department of Health and Human Services (HHS) (the Secretary) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) (the Administrator) on opportunities for CMS to optimize the effectiveness of the National Medicare Education Program and other CMS programs that help Medicare beneficiaries understand the Medicare program and the range of health plan options available. Nominees must be knowledgeable in the field of managing a drug benefit.

EFFECTIVE DATE: Nominations will be considered if received at the appropriate address, provided in the **ADDRESSES** section of this notice, no later than 5 p.m., e.d.t., on Monday, May 16, 2005.

ADDRESSES: Mail or deliver nominations to the following address: Lynne G. Johnson, Center for Beneficiary Choices, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail stop S2–23–05, Baltimore MD, 21244–1850.

FOR FURTHER INFORMATION CONTACT: Lynne G. Johnson, Health Insurance Specialist, Division of Partnership Development, Center for Beneficiary Choices, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail stop S2–23–05, Baltimore, MD 21244–1850, (410) 786–0090. Please refer to the CMS Advisory Committees Information Line (1 877–449–5659 toll free)/(410–786–9379 local) or the Internet (*http://www.cms.hhs.gov/faca/apme/default.asp*) for additional information and updates on committee activities, or contact Ms. Johnson via e-mail at *ljohnson3@cms.hhs.gov*. Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

Section 222 of the Public Health Service Act, as amended, grants to the

Secretary of the Department of Health and Human Services (HHS) (the Secretary) the authority to establish an advisory panel if the Secretary finds the panel necessary and in the public interest. The Secretary signed the charter establishing the Advisory Panel on Medicare Education (the Panel) on January 21, 1999 and the renewed the charter on January 14, 2005. The Panel advises HHS and the Centers for Medicare & Medicaid Services (CMS) on opportunities to enhance the effectiveness of consumer education materials serving the Medicare program.

The goals of the Panel are to provide advice on the following:

- Developing and implementing a national Medicare education program that describes the options for selecting health plans and prescription drug benefits under Medicare.
- Enhancing the Federal government's effectiveness in informing the Medicare consumer, including the appropriate use of public-private partnerships.
- Expanding outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of a national Medicare education program.
- Assembling an information base of best practices for helping consumers evaluate health plan options and building a community infrastructure for information, counseling, and assistance.

The Panel shall consist of a maximum of 20 members. The charter requires that meetings be held approximately four times per year. Members are expected to attend all meetings.

This notice is an invitation to interested organizations or individuals to submit their nominations for membership on the Panel. The Secretary, or his designee, will appoint the new members to the Panel from among those candidates determined to have the expertise required to meet specific agency needs, and in a manner to ensure an appropriate balance of membership.

Each nomination must state that the nominee has expressed a willingness to serve as a Panel member and must be accompanied by a resume and a brief summary of the nominee's experience. In order to permit an evaluation of possible sources of conflict of interest, potential candidates will be asked to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts. Self-nominations will also be accepted.

Authority: (Section 222 of the Public Health Service Act (42 U.S.C. 217(a)) and section 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, section 10(a) and 41 CFR 102–3)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance Program; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 6, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 05–7954 Filed 4–21–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Supporting Healthy Marriage Project Focus Group.

OMB No.: New Collection.

Description: The Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is conducting a demonstration and evaluation called the Supporting Health Marriage (SHM) Project. The project is a large-scale, multi-site, multi-year, rigorous test of marriage education programs for interested low-income married couples and is based on a substantial body of research that has shown a relationship between healthy marriages and a variety of positive child and family outcomes. The SHM Project is designed to inform program operators and policymakers of the most effective ways to help couples who voluntarily choose to participate in demonstrations designed to strengthen and maintain healthy marriages. The focus groups will provide key information about the perspectives of low-to-moderate-income couples regarding marriage, relationships, and marriage education programs; assist ACF and program managers in designing responsive healthy marriage programs; and will help to ensure that the project is testing the strongest possible program models for its target populations.

Respondents: The respondents will be selected to represent low-to-moderate income couples in each of the following categories, whose views can help us to design effective SHM programs: Married couples and those planning to marry, couples with and without children, and couples who have had experience with marriage education programs as well as those who have not. There will also be an effort to include African American and Hispanic couples. Focus groups may be divided into separate discussions for those who are married and for those who are planning to marry. They may also be further separated into discussions for couples, for men only, and for women only.

Each focus group will have approximately 10 respondents for a total of 180 respondents over 2 years.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Mixed Gender Focus Group Protocol	30	1	3	90
Men's Focus Group Protocol	30	1	3	90
Women's Focus Group Protocol	30	1	3	90
Estimated Total Annual Burden Hours	90	1	3	270

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *grjohnson@acf.hhs.gov*.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of

having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer in ACF, E-mail address: *Katherine_T._Astrich@omb.eop.gov*.

Dated: April 15, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–8051 Filed 4–21–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Required Elements for Voluntary Establishment of Paternity Affidavits.

OMB No.: 0970–0171.

Description: Section 466(a)(5)(C) of the Social Security Act requires States to pass laws ensuring a simple civil process for voluntarily acknowledging paternity under which the State must provide that the mother and putative father must be given notice, orally and in writing, of the benefits and legal responsibilities and consequences of acknowledging paternity. The information is to be used by hospitals, birth record agencies, and other entities participating in the voluntary paternity establishment program.

Respondents: State and Tribal IV–D birth record agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
None	862,043	Variable	.166	143,099

Estimated Total Annual Burden Hours: 143,099

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *grjohnson@acf.hhs.gov*.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: *Katherine_T._Astrich@omb.eop.gov.*

Dated: April 15, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–8052 Filed 4–21–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0058]

Hospira, Inc. et al.; Withdrawal of Approval of 76 New Drug Applications and 60 Abbreviated New Drug Applications; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of March 4, 2005 (70 FR 10651). The document announced the withdrawal of approval of 76 new drug applications (NDAs) and 60 abbreviated new drug applications (ANDAs). The document inadvertently withdrew approval of ANDA 76–214 for Sotalol Hydrochloride Tablets, 80 milligrams (mg), 120 mg, and 160 mg, held by TorPharm, c/o Apotex Corp., 616 Heathrow Dr., Lincolnshire, IL 60069. FDA confirms that approval of ANDA 76–214 is still in effect.

EFFECTIVE DATE: April 4, 2005.

FOR FURTHER INFORMATION CONTACT: Florine P. Purdie, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In FR Doc. 05–4158, appearing on page 10651 in the **Federal Register** of Friday, March 4, 2005, the following correction is made:

1. On page 10656, in the table, the entry for ANDA 76–214 is removed.

Dated: April 14, 2005.

Steven Galson, Acting Director.

Center for Drug Evaluation and Research.

[FR Doc. 05–8049 Filed 4–21–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

The Eighth Annual FDA–Orange County Regulatory Affairs Educational Conference; ''Reality of Regulatory Affairs''

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

The Food and Drug Administration (FDA) is announcing its eighth annual educational conference cosponsored with the Orange County Regulatory Affairs Discussion Group (OCRA). The conference is intended to provide the drug, device, and biologics industries with an opportunity to interact with FDA reviewers and compliance officers from the centers and district offices, as well as other industry experts. The main focus of this interactive conference will be product approval, compliance, and risk management in the three medical product areas. Industry speakers, interactive question and answer and workshop sessions will also be included to assure open exchange and dialogue on the relevant regulatory issues.

Date and Time: The conference will be held on June 15 and 16, 2005, from 7:30 a.m. to 5 p.m.

Location: The conference will be held at the Irvine Marriot Hotel, 18000 Von Karman Ave., Irvine, CA 92612.

Contact: Linda Hartley, Food and Drug Administration, 19701 Fairchild, Irvine, CA 92612, 949–608–4413, FAX: 949–608–4417, or OCRA, Attention to detail (ATD), 5319 University Dr., suite 641, Irvine, CA 92612, 949–387–9046, FAX: 949–387–9047, Web site: *www.ocra-dg.org*.

Registration and Meeting Information: See OCRA Web site at *www.ocra-dg.org*. Contact ATD at 949–387–9046.

Before May 6, 2005, registrations fees are as follows: $495.00 for members, $550.00 for nonmembers, and $325.00 for FDA/government/full time students with proper identification.

After May 6, 2005: $545.00 for members, $595.00 for nonmembers, and $325.00 for FDA/government/full time students with the proper identification.

The registration fee will cover actual expenses including refreshments, lunch, materials and speaker expenses.

If you need special accommodations due to a disability, please contact Linda Hartley (see *Contact*) at least 10 days in advance.

Dated: April 15, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–8050 Filed 4–21–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Disadvantaged Assistance Tracking and Outcome Report (OMB No. 0915–0233)—Extension

The Health Careers Opportunity Program (HCOP) and the Centers of Excellence (COE) Program (authorized under sections 740 and 739 respectively of the Public Health Service (PHS) Act, 42 U.S.C. 293d and 293c) provide opportunities for under-represented minorities and disadvantaged individuals to enter and graduate from health professions schools. The Disadvantaged Assistance Tracking and Outcome Report (DATOR) is used to track program participants throughout the health professions pipeline into the health care workforce.

The DATOR, to be completed annually by HCOP AND COE grantees, includes basic data on student participants (name, social security number, gender, race/ethnicity; targeted health professions, their status in the educational pipeline from pre-professional through professional training; financial assistance received through the grants funded under sections 739 and 740 of the PHS Act in the form of stipends, fellowships or per diem; and their employment or practice setting following their entry into the health care work force).

The proposed reporting instrument does not add significantly to the grantees reporting burden. This reporting instrument complements the grantees internal automated reporting mechanisms of using name and social security number in tracking students. The reporting burden includes the total time, effort, and financial resources expended to maintain, retain and provide the information including: (1) Reviewing instructions; (2) downloading and utilizing technology for the purposes of collecting, validating, and processing the data; and (3) transmitting electronically, or otherwise disclosing the information. Estimates of annualized burden are as follows:

Type of report	Number of respondents	Responses per respondent	Hours per response	Total burden hours
DATOR	150	1	5.5	825

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Kraemer, Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: April 18, 2005.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 05–8105 Filed 4–21–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The National Health Service Corps (NHSC) Loan Repayment Program (LRP) (OMB No. 0915–0127)—Revision

The NHSC LRP was established to assure an adequate supply of trained primary care health professionals to provide services in the neediest Health Professional Shortage Areas (HPSAs) of the United States. Under this program, the Department of Health and Human Services agrees to repay the educational loans of the primary care health professionals. In return, the health professionals agree to serve for a specified period of time in a federally-

designated HPSA approved by the Secretary for LRP participants.

This request for extension of OMB approval will include the NHSC LRP Application, Loan Verification Form, Site Information Form, Request for Method of Advanced Loan Repayment Form and Authorization to Release Information Form.

The estimate of burden is as follows:

Type of respondents	Number of respondents	Responses per respondent	Total responses	Hours per responses	Total burden hours
Applicants	1430	*1	1430	1.5	2145
Lenders	70	**1	70	.25	18
Total	1500		1500		2163

*An applicant response includes completion of one of each of the above-listed forms, and may include the completion of additional Loan Verification Forms (one for each educational loan for which he or she is seeking repayment).

**A lender response includes completion of one Loan Verification Form for each educational loan of an applicant it holds.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Kraemer, Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: April 18, 2005.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 05–8106 Filed 4–21–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Migrant Health; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on Migrant Health.

Dates and Times: May 11, 2005, 9 a.m. to 5 p.m., May 12, 2005, 9 a.m. to 5 p.m.

Place: Caribe Hilton Hotel, San Geronimo Grounds, Los Rosales Street, San Juan, Puerto Rico 00901, Phone: (787) 721–0303; Fax: (787) 722–2910.

Status: The meeting will be open to the public.

Agenda: The agenda includes an overview of the Council's general business activities. The Council will also develop recommendations to the Secretary of Health and Human Services. Finally, the Council will hear presentations from experts on farmworker issues, including the status of farmworker health at the local and national level.

The Council meeting is being held in conjunction with the National Farmworker Health Conference sponsored by the National Association of Community Health Centers, Inc., the Migrant Clinicians Network, and the National Center for Farmworker Health, which is being held in San Juan, Puerto Rico, during the same period of time.

Agenda items are subject to change as priorities indicate.

For Further Information Contact: Anyone requiring information regarding the Council should contact Gladys Cate, Office of Minority and Special Populations, staff support to the National Advisory Council on Migrant Health, Bureau of Primary Health Care, Health Resources and Services Administration, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 594–0367.

Dated: April 18, 2005.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 05–8104 Filed 4–21–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are 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.

Proposed Project: Cross-Site Evaluation of the National Child Traumatic Stress Initiative (NCTSI)—NEW

The Substance Abuse and Mental Health Services Administration's (SAMHSA), Center for Mental Health Services (CMHS) will conduct the Cross-Site Evaluation of the National Child Traumatic Stress Initiative (NCTSI). The data collected will describe the children and families served by the National Child Traumatic Stress Network (NCTSN) and their outcomes, assess the development and dissemination of effective treatments and services, evaluate intra-network collaboration, and assess the Network's impact beyond the NCTSN.

Data will be collected from caregivers, NCTSN staff (*e.g.*, project directors, researchers, and providers), mental health providers outside of the NCTSN, and non-mental health service providers who provide services to children outside of the NCTSN. Data collection will take place in 31 Community Treatment and Services Programs (CTS), 13 Treatment and Service Adaptation Centers (TSA), and 2 National Centers for Child Traumatic Stress (NCCTS). Data collection for this evaluation will be conducted over a four-year period.

In order to describe the children served, their outcomes, and satisfaction with services, data will be collected from youth ages 7–18 who are receiving services in the NCTSN, and from caregivers for all children who are receiving NCTSN services. Data will be collected when the child/youth enters services and during subsequent follow-up sessions at three-month intervals over the course of one year.

Approximately 2,121 youth and 3,000 caregivers will participate in the evaluation.

Data will be collected for use in the development of evaluation measures that will assess the development, dissemination and adoption of trauma-informed services. These data will be collected from a total of approximately 110 NCTSN service providers, project directors and NCCTS staff. Data will be collected one time from these respondents.

Measures that collect data on development, dissemination, and adoption of trauma-informed services and other NCTSN products will be administered to approximately 1,100 service providers, 44 project directors, and 44 researchers/evaluators. These measures will be administered once per year in each of the four years of the evaluation.

To assess collaboration across the network, data will be collected from approximately 450 NCTSI staff and 44 project directors/principal investigators. The surveys associated with this data collection will be administered at varying intervals, with either one or two data collection points per respondent over the four years of the evaluation.

Product development and dissemination will be evaluated with data that will be collected from 44 project directors/principal investigators. These data will be collected annually.

To assess the national impact of the NCTSN, data will be collected from 1,600 mental health and 1,600 non-mental health service providers from outside the NCTSN. These data will be collected every second year over the four years of the evaluation (*i.e.*, two data collection points per respondent).

The average annual respondent burden is estimated below.

Instrument	Number of respondents	Annual number of responses/ respondent	Hours per response	Total annual hours
Caregivers:				
Child Behavior Checklist 1.5–5/6–18	3,000	2	0.33	1980
Service Summary Form	3,000	2	0.22	1320
Baseline/Renewal Assessment	3,000	2	0.22	1320
Core Clinical Characteristics Form	3,000	2	0.22	1320
Youth Services Survey for Families	2,185	1	0.08	175
Case Study Interviews	10	1	1.50	15
Youth:				
Trauma Symptoms Checklist for Children-Abbreviated	2,121	2	0.33	1400
UCLA-PTSD short form	2,121	2	0.17	721
Network Service Provider:				
Key Informant Interviews	18	1	0.50	9
Focus Groups	54	1	1.00	54
Trauma-informed Service Provider Survey	1,100	1	0.50	550
General Adoption Assessment Survey	1,100	1	0.50	550
Adoption and Implementation Factors Interview	50	1	0.50	25
Project Director/Principal Investigator:				
Key Informant Interviews	18	1	0.50	9
Focus Groups	18	1	1.00	18
Trauma-informed Service Provider Survey	44	1	0.50	22
Product/Innovations Development and Dissemination Survey	44	1	1.50	66
General Adoption Assessment Survey	44	1	0.50	22
Adoption and Implementation Factors Interview	10	1	0.50	5
Network Survey	44	1	1.00	44
Other Network Staff:				
Key Informant Interviews	4	1	0.50	2
Trauma-informed Service Provider Survey	44	1	0.50	22
Telephone Interviews	35	1	1.50	53
Case study interviews	20	1	2.00	40
General Adoption Assessment Survey	44	1	0.50	22
Adoption and Implementation Factors Interview	30	1	0.50	15
Network Survey	44	1	1.00	44
Partner Participatory Assessment Tool	400	1	0.75	300
Non-Network Mental Health Professionals:				
National Impact Survey	1,600	1	0.50	800
Non-Network Non-Mental Health Professionals:				
National Impact Survey	1,600	1	0.50	800
Non-Network product developers:				
Case Study Interviews	20	1	1.50	30
Total	8,564			11,753

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, 1 Choke Cherry Road, Rockville, MD 20850. Written comments should be received by June 21, 2005.

Dated: April 14, 2005.

Anna Marsh,

Executive Officer, SAMHSA.

[FR Doc. 05–7988 Filed 4–21–05; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are 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.

Proposed Project: Drug and Alcohol Services Information System (DASIS)—(OMB No. 0930–0106)—Revision

The DASIS consists of three related data systems: the Inventory of Substance Abuse Treatment Services (I–SATS); the National Survey of Substance Abuse Treatment Services (N–SSATS), and the Treatment Episode Data Set (TEDS). The I–SATS includes all substance abuse treatment facilities known to SAMHSA. The N–SSATS is an annual survey of all substance abuse treatment facilities listed in the I–SATS. The TEDS is a compilation of client-level admission data and discharge data submitted by States on clients treated in facilities that receive State funds. Together, the three DASIS components provide information on the location, scope and characteristics of all known drug and alcohol treatment facilities in the United States, the number of persons in treatment, and the characteristics of clients receiving services at publicly-funded facilities. This information is needed to assess the nature and extent of these resources, to identify gaps in services, to provide a database for treatment referrals, and to assess demographic and substance-related trends in treatment.

The request for OMB approval will include several changes to the 2006 N–SSATS questionnaire, including: modification of the treatment categories to better reflect the practices and terminology currently used in the treatment field; modification of the detoxification question, including the addition of a follow-up question on whether the facility uses drugs in detoxification and for which substances; the addition of nicotine replacement therapy and psychiatric medications to the pharmacotherapies list; the addition of questions on treatment approaches and behavioral interventions; the addition of new services to the list of services provided; the addition of a question on quality control procedures used by the facility; and, the addition of a question on whether the facility accepts Access to Recovery (ATR) vouchers and how many annual admissions were funded by ATR vouchers. The remaining sections of the N–SSATS questionnaire will remain unchanged except for minor modifications to wording. The OMB request will also include the addition of several new data elements to the TEDS client-level record. To the extent that states already collect the elements from their treatment providers, the following elements will be included in the TEDS data collection: number of arrests, substances used at discharge, employment at discharge, and living arrangement at discharge. The additional data elements are being requested by the Center for Substance Abuse Treatment, SAMHSA, for use in estimating national treatment outcomes. No significant changes are expected in the other DASIS activities.

Estimated annual burden for the DASIS activities is shown below:

Type of respondent and activity	Number of respondents	Hours per respondent	Hours per response	Total burden hours
STATES:				
TEDS Admission Data	52	4	6	1,248
TEDS Discharge Data	40	4	8	1,280
TEDS Discharge Crosswalks	5	1	10	50
I–SATS Update[1]	56	67	.08	300
State Subtotal	56			2,878
FACILITIES:				
I–SATS Update[2]	100	1	.08	8
Pretest of N–SSATS revisions	200	1	.37	74
Augmentation Screener	500	1	.08	40
N–SSATS Questionnaire	19,000	1	.67	12,730
Mini N–SSATS	700	1	.4	280
Facility Subtotal	20,500			13,132
TOTAL	20,556			16,010

[1] States forward to SAMHSA information on newly licensed/approved facilities and on changes in facility name, address, status, etc. This is done electronically by nearly all States.

[2] Facilities forward to SAMHSA information on new facilities and on changes to existing facilities. This can be done by fax or e-mail.

Send comments to Summer King, SAMHSA Reports Clearance Officer, OAS, Room 7–1044, 1 Choke Cherry Road, Rockville, MD 20857. Written comments should be received by June 21, 2005.

Dated: April 15, 2005.

Anna Marsh,

Executive Officer, SAMHSA.

[FR Doc. 05–8093 Filed 4–21–05; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–21002]

Towing Safety Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the Towing Safety Advisory Committee (TSAC). TSAC advises the Coast Guard on matters relating to shallow-draft inland and coastal waterway navigation and towing safety.

DATES: Application forms should reach us on or before May 27, 2005

ADDRESSES: You may request an application form by writing to Commandant (G–MSO–1), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001; by calling (202) 267–0214; or by faxing (202) 267–4570. Send your original completed and signed application in written form to the above street address. This notice is available on the Internet at *http://dms.dot.gov* in docket USCG–2005–21002 and the application form is also available at *http://www.uscg.mil/hq/g-m/advisory/index.htm* (click on ''ACM Application'').

FOR FURTHER INFORMATION CONTACT: Mr. Gerald Miante; Assistant Executive Director of TSAC, telephone (202) 267–0214, fax (202) 267–4570, or e-mail *gmiante@comdt.uscg.mil.*

SUPPLEMENTARY INFORMATION: The Towing Safety Advisory Committee (TSAC) is a Federal advisory committee mandated by Congress and operates under 5 U.S.C. App. 2, (Pub. L. 92–463, 86 Stat. 770, as amended). It advises the Secretary of Homeland Security on matters relating to shallow-draft inland and coastal waterway navigation and towing safety. This advice also assists the Coast Guard in formulating the position of the United States in advance of meetings of the International Maritime Organization.

TSAC meets at least once a year at Coast Guard Headquarters, Washington, DC, or another location selected by the Coast Guard. It may also meet for extraordinary purposes. Its working groups may meet to consider specific issues as required. The 16-person membership includes 7 representatives of the Barge and Towing Industry (reflecting a regional geographical balance); 1 member from the Offshore Mineral and Oil Supply Vessel Industry; and 2 members from each of the following areas: Maritime Labor; Shippers (of whom at least one shall be engaged in the shipment of oil or hazardous materials by barge); Port Districts, Authorities, or Terminal Operators; and the General Public.

We are currently considering applications for two positions from the Barge and Towing Industry, one position from Port Districts, Authorities, or Terminal Operators, one position from Labor, and one position from the General Public. To be eligible, applicants should have particular expertise, knowledge, and experience relative to the position in towing operations, marine transportation, or business operations associated with shallow-draft inland and coastal waterway navigation and towing safety. Each member serves for a term of up to 4 years. A few members may serve consecutive terms. All members serve at their own expense and receive no salary, reimbursement of travel expenses, or other compensation from the Federal Government.

In support of the policy of the Department of Homeland Security on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

Dated: April 18, 2005.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 05–8077 Filed 4–21–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–21001]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Towing Vessel Inspection Working Group of the Towing Safety Advisory Committee (TSAC) will meet to discuss matters relating to specific issues of towing safety. The meetings will be open to the public.

DATES: The Towing Vessel Inspection Working Group will meet on Wednesday, May 4, 2005 from 1:30 p.m. to 4:30 p.m. and on Thursday, May 5, 2005 from 8:30 a.m. to 2 p.m. The meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before April 27, 2005. Requests to have a copy of your material distributed to each member of the Working Group should reach the Coast Guard on or before April 27, 2005.

ADDRESSES: The Working Group will meet at the Arlington Hilton, 950 North Stafford Street, Arlington, VA 22203. Send written material and requests to make oral presentations to Mr. Gerald Miante, Commandant (G–MSO–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice and related documents are available on the Internet at *http://dms.dot.gov* under the docket number USCG–2005–21001.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald Miante, Assistant Executive Director of TSAC, telephone 202–267–0214, fax 202–267–4570, or e-mail *gmiante@comdt.uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2 (Pub. L. 92–463, 86 Stat. 770, as amended).

Agenda of Working Group Meetings

The agenda for the Towing Vessel Inspection Working Group tentatively includes the following items:

(1) Which items should be included in every towing vessel safety management system and should be part of the regulatory requirement defining an acceptable SMS?

(2) Which items should be required as part of the towing vessel inspection regime, but fall into the category of ?standards? or regulation rather than elements of a safety management system?

(3) What, if anything, is missing (either in terms of a safety management system element or standards) that should be required as part of the new towing vessel inspection regime?

Procedural

The meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to

make an oral presentation at the meeting, please notify the Assistant Executive Director (as provided above in for further information contact) no later than April 27, 2005.

Written material for distribution at the meeting should reach the Coast Guard no later than April 27, 2005.

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Miante at the number listed in **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Dated: April 18, 2005.

Howard L. Hime,

Acting Director of Standards Marine Safety, Security and Environmental Protection.

[FR Doc. 05–8069 Filed 4–21–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–16682]

Interpretations of Vessel Tonnage Measurement Regulations

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: This notice advises the public of a recent change to Marine Safety Center Technical Note (MTN) 01–99, Tonnage Technical Policy, which is used for interpreting the Coast Guard?s vessel tonnage measurement regulations. This notice advises the public on how to obtain the recent change to the MTN, and summarizes the interpretations included in this change.

DATES: This notice is effective on April 22, 2005.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call Peter Eareckson, Chief, Tonnage Division, United States Coast Guard Marine Safety Center, (202) 366–6502. If you have questions on viewing or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone (202) 366–0271.

SUPPLEMENTARY INFORMATION:

Comments

If you have comments on how the Marine Safety Center Technical Note (MTN) on tonnage measurement may be obtained and the process by which the MTN is periodically updated, please submit your comments, identified by Coast Guard docket number USCG–2003–16682, to the Docket Management Facility located at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Web site: *http://dms.dot.gov.*

(2) Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) Fax: (202) 493–2251.

(4) 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. The telephone number is (202) 366–9329.

(5) Federal eRulemaking Portal: *http://www.regulations.gov.*

Viewing Comments and Documents

To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Background

The Coast Guard is responsible for maintaining regulations for assigning gross and net tonnages and registered dimensions to vessels. These regulations are found in title 46, Code of Federal Regulations (CFR), part 69, Measurement of Vessels. A **Federal Register** notice published on December 22, 2003 (68 FR 71118), describes the process by which the Coast Guard establishes interpretations of these regulations to respond to novel situations, on a case-by-case basis, through policy decisions, and summarizes the interpretations in the MTN. Periodically, these interpretations are evaluated as to their appropriateness for incorporation into the tonnage measurement regulations.

The MTN is maintained by the Coast Guard Marine Safety Center (MSC) and is posted on the MSC's Web site at *http://www.uscg.mil/hq/msc.* A copy of the current version of the MTN is available in the docket (see ''Viewing Comments and Documents,'' above). While the MTN is intended for use by organizations authorized to perform tonnage measurement on behalf of the Coast Guard, the Coast Guard recognizes that it contains information that may affect decisions on vessel designs and that the public may benefit by our making it widely available to parties other than authorized measurement organizations.

Change 7 to the MTN

The MSC periodically issues changes to the MTN to keep it up-to-date with relevant policy decisions. The most recent change (Change 7) was issued on March 29, 2005. Change 7 includes the following:

1. Clarifications on the treatment of overhanging roofs when evaluating excludable space associated with end openings.

2. Correction of an inconsistency introduced in a previous change to the MTN regarding treatment of partial decks.

3. Criteria for assessing when deck recesses and other discontinuities in the uppermost complete deck and the tonnage deck invalidate the ''stem to stern'' and ''side to side'' requirement for such decks, or can otherwise affect the location of the line of the respective deck.

4. Clarification of the method by which volumes of outside shaft tunnels and other hull recesses and deck recesses are not included in under-deck tonnage.

5. Clarification of the method of establishing offset adjustments when calculating the under-deck tonnage of vessels with unconventional hull forms.

6. Clarifications on the treatment of water closet spaces contained within passenger spaces occupied by more than one person.

7. Interpretations prohibiting the exemption as passenger space of space that rests on a break deck that is part of the uppermost complete deck.

8. Clarifications on the treatment as open space of semi-enclosed spaces that are outside the boundary bulkhead of a structure.

9. Interpretations relative to the treatment of exemptible water ballast tanks that consist of contiguous but distinct spaces of varying shapes and sizes.

10. Clarification that certain deductible spaces may be included in tonnage upon request of the vessel owner.

11. Clarification that dry cargo and stores spaces are any spaces not occupied by liquids or used for the accommodation or berthing of passengers or crew.

12. Criteria for assessing when watertight bulwarks and similar structures are included in the overall length.

To provide a mechanism for notification when a change to the MTN has been issued, the MSC's web site allows members of the public to add their e-mail addresses to an electronic mailing list for such notification. Also, the Coast Guard will continue to notify the public via a notice in the **Federal Register** of changes to the MTN that are believed to be of significant interest to the maritime industry.

Howard L. Hime,

Acting Director of Standards Marine Safety, Security and Environmental Protection.

[FR Doc. 05–8070 Filed 4–21–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Notice of Detention

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Notice of Detention. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (69 FR 76952) on December 23, 2004, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before May 23, 2005.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–6974.

SUPPLEMENTARY INFORMATION:

The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104–13). Your comments should address one of the following four points:

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

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Notice of Detention.

OMB Number: 1651–0073.

Form Number: N/A.

Abstract: This collection requires a response to the Notice of Detention of merchandise and to provide evidence of admissibility to allow entry.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals.

Estimated Number of Respondents: 1,350.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 2,700.

Estimated Total Annualized Cost on the Public: $148,500.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202–344–1429.

Dated: April 14, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 05–8054 Filed 4–21–05; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4975–N–10]

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 pubic comments on the subject proposal.

DATES: Comments Due Date: June 21, 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: Single Family Mortgage Insurance on Hawaiian Homelands.

OMB Control Number, if applicable: 2502–0358.

Description of the need for the information and proposed use: FHA insures mortgages on single family dwellings under various provisions of the National Housing Act (12 U.S.C. 1701, *et seq.*) The Housing and Urban Rural Recovery Act (HURRA), Pub. L. 98–181, amended the National Housing Act to add Section 247 to permit FHA to insure mortgages for properties located on Hawaiian Homelands. Under this program, the mortgagor must be a Native Hawaiian. The Statute preconditions that the Department of Hawaiian Homelands (DHHL) of the State of Hawaii (a) agrees to be a co-mortgagor, and (b) guarantees to reimburse the Secretary for any mortgage insurance claims paid in connection with a property on Hawaiian Homelands or offers other security acceptable to the Secretary. The collection of information and the regulatory origins for them are in accordance with Section 203.43i which states that the lender will: (a) Verify that the loan applicant is a Native Hawaiian and that the applicant holds a lease on land in a Hawaiian Homelands area; (b) report on delinquent borrowers in accordance with Section 203.439(c); and (c) provide documentation to HUD to support that the requirements of Section 203.665 have been met.

Agency form numbers, if applicable: None.

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 total number of hours needed to prepare the information collection is 1,744; the number of respondents is 504 generating approximately 1,456 annual responses; the frequency of response is on occasion; and the number of hours per response varies from 2 minutes to 30 minutes.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: April 13, 2005.

John C. Weicher,

Assistant Secretary of Housing—Federal Housing Commissioner.

[FR Doc. 05–8074 Filed 4–21–05; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4977–N–02]

Notice of Submission of Proposed Information Collection to OMB: Emergency Comment Request; Partnership for Advancing Technology in Housing (PATH) Cooperative Research Program

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for emergency review and approval, 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 must be received within (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number (2528–XXXX) and should be sent to, Mr. Mark Menchik, HUD Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, e-mail *Wayne_Eddins@HUD.gov:* telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, and information collection package to solicit proposals for cooperative research with the Partnership for Advancing Technology in Housing (PATH) program. 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 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 on those who are to respond; including through 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: Partnership for Advancing Technology in Housing (PATH) Cooperative Research Program.

OMB Control Number: Pending OMB approval.

Description of the Need for the Information and its Proposed Use: This information collection is required to solicit proposals for cooperative research with the Partnership for Advancing Technology in Housing (PATH) program. This program seeks proposals for cooperative research efforts from members of America's homebuilding industry in areas of mutual interest. Following collection of the proposals, the data (the proposals) will be evaluated in a process that will lead to the award of cooperative agreements for research and other activities which will advance the goals of the PATH program. Without this collection, potential research partners would not be able to apply for cooperative agreements to conduct such activities.

Agency Form Numbers: SF–424, HUD–424–CB, HUD–424–CBW, SF LLL, HUD–2880, HUD–2993, and HUD–2994.

Members of the Affected Public: Housing researchers, trade organizations, and other professionals in the homebuilding industry.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Information will be submitted annually to apply for awards of cooperative agreements. The following chart details the respondent burden on an annual basis:

Task	Number of respondents	Frequency of responses	Hours per response	Burden hours
Summary Proposal	20	Annual	12.9	258
Full Proposal Development	10	Annual	39	390
Grant Start Up	7	Annual	26	182
Total Estimated Annual Burden Hours:				830

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 15, 2005.

Harold L. Bunce,

Deputy Assistant Secretary for Economic Affairs, Office of Policy Development and Research.

[FR Doc. 05–8076 Filed 4–21–05; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket Nos. FR–4900–FA–05, FR–4900–FA–06, FR–4900–FA–10, FR–4900–FA–08, FR–4900–FA–11, FR–4900–FA–04, and FR–4900–FA–14]

Announcement of Funding Award—FY 2004 Healthy Homes and Lead Based Paint Hazard Control Grant Programs

AGENCY: Office of the Secretary—Office of Healthy Homes and Lead Hazard Control, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of additional funding decisions made by the Department in a competition for funding under the Healthy Homes Demonstration Grant Program, Healthy Homes Technical Studies Grant Program, Lead Technical Studies Grant Program, Lead-Based Paint Hazard Control Grant Program, Operation Lead Elimination Action Program, Lead Based Paint Hazard Reduction Demonstration Grant Program, and Lead Outreach Grant Program Notice of Funding Availability (NOFA). This announcement contains the names and addresses of the award recipient and the amount of award.

FOR FURTHER INFORMATION CONTACT: For the Healthy Homes Demonstration Grant Program, Emily Williams, Department of Housing and Urban Development, Office of Healthy Homes and Lead Hazard Control, Room P3206, 451 Seventh Street, SW., Washington, DC 20410, telephone (336) 547–4002, extension 2067. For the Healthy Homes Technical Studies Grant Program and Lead Technical Studies Grant Program, Peter Ashley, at the same address, telephone number (202) 755–1785, extension 115. For the Lead-Based Paint Hazard Control Grant Program, Operation Lead Elimination Action Program, Lead Based Paint Hazard Reduction Demonstration Grant Program, and Lead Outreach Grant Program, Jonnette Hawkins, at the same address, telephone (202) 755–1785, extension 126. Hearing- and speech-impaired persons may access the number above via TTY by calling the toll free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The 2004 awards were announced in the HUD News on September 27, 2004. These awards were the result of competitions announced in **Federal Register** notices published on May 14, 2004, for the Healthy Homes Demonstration Grant Program at 69 FR 27297, for the Healthy Homes Technical Studies Program at 69 FR 27227, for the Lead Technical Studies Grant Program at 69 FR 27243, for the Lead-Based Paint Hazard Control Grant Program at 69 FR 27195, for the Operation Lead Elimination Action Program at 69 FR 27319, for the Lead Based Paint Hazard Reduction Demonstration Grant Program at 69 FR 27271, and for the Lead Outreach Grant Program at 69 FR 27257. The purpose of the competition was to award grant funding of approximately $5,000,000 for Healthy Homes Demonstration grants, approximately $2,000,000 for Healthy Homes Technical Studies grants, approximately $3,000,000 for Lead Technical Studies grants, approximately $95,000,000 in fiscal year 2004 funds and $710,000 in previous recapture funds for Lead Based Paint Hazard Control grants, approximately $9,000,000 for Operation Lead Elimination Action Program grants, approximately $50,000,000 for Lead Based Paint Hazard Reduction Demonstration grants, and approximately $2,000,000 for Lead Outreach grants. Applications were scored and selected on the basis of selection criteria contained in those notices.

Healthy Homes Demonstration: City of Long City of Long Beach, Health and Human Services, 2525 Grand Avenue, Room 220, Long Beach, CA 90815–1765, $1,071,184; County of Riverside, Department of Public Health, Community Health Agency, 4065 County Circle Dr. #304, Riverside, CA 92503, $1,000,000; Philadelphia Housing Authority, Program Compliance, 12 South 23rd Street, Philadelphia, PA 19103, $1,000,000; St Louis County, Office of Community Development, 121 S. Meramec Avenue, Suite 444, Clayton, MO 63105, $876,731; Columbus Health Department, Environmental Health, 240 Parsons Avenue, Columbus, OH 43215, $999,968; Eastern Virginia Medical School, Pediatrics, 358 Nowbray Arch, Norfolk, VA 23507, $999,663; Healthy Homes Resources, 64 South 14th Street, Pittsburgh, PA 15203, $910,875.00.

Healthy Homes Technical Studies: University of Colorado Health Sciences Center, Preventive Medicine and Biometrics, 4200 E. 9th Avenue, C–245, Denver, CO 80262, $679,649; Georgia Tech Applied Research Corporation, Georgia Tech Research Institute, 505 Tenth St., NW., Atlanta, GA 30332–0420, $468,890; Board of Trustees-University of Illinois at Urbana-Champaign, Building Research Council-Dept of Architecture, 109 Coble Hall, 801 S. Wright Street, Champaign, IL 61820, $576,896; The University of Texas Health Science Center at San Antonio, Pediatrics, 7703 Floyd Curl Drive, San Antonio, TX 78229–3900, $957,906.

Lead Technical Studies: Edenspace Systems Corporation, 15100 Enterprise Court, Suite 100, Chantilly, VA 20151–1217, $404,714; The University of Texas at San Antonio Institute for Research in Water and Environmental Resources, 6900 North Loop 1604 West, San Antonio, TX 78249, $372,767; Howard University, Center for Urban Progress, 2400 6th Street, NW., Washington, DC 20059, $750,000; University of Cincinnati College of Medicine, P.O. Box 670553, Cincinnati, OH 45267–0553, $380,498.

Lead-Based Paint Hazard Control: City of Minneapolis, Public Service Center, Room 414, 250 South Fourth Street, Minnesota, MN 55415, $3,000,000; City of Bridgeport, 99 Broad Street, 2nd Floor, Bridgeport, CT 06604, $3,000,000; City of San Antonio, 1400 South Flores, San Antonio, TX 78204, $2,000,000; City and County San

Francisco, Mayor's Office of Housing, 25 Van Ness Avenue, Suite 600, San Francisco, CA 94102, $3,000,000; Illinois Dept. of Public Health, 525 West Jefferson Street, Springfield, IL 62761, $4,000,000; City of Pittston, 35 Broad Street, Pittston, PA 18640, $2,951,644; City of Birmingham, 710 North 20th Street, Birmingham, AL 35203, $2,998,957; City of St Louis, Community Development Administration, 1015 Locust Street, Suite 1200, St. Louis, MO 63101, $3,000,000; City of New London, Department of Health and Social Services, 181 State Street, New London, CT 06320, $2,452,762; Onondaga County, 1100 Civic Center, Onondaga, NY 13202, $3,000,000; City of Columbus, Department of Development, 50 West Gay Street, Columbus, OH 43215, $2,999,817; City of Long Beach, Health and Human Services, 2525 Grand Avenue, Room 220, Long Beach, CA 90815–1765, $3,000,000; City of Pomona, Community Development Department, 505 South Garey Avenue, Pomona, CA 91769, $2,992,695; State of California, Community Services and Development, 700 North 10th Street, Room 258, Sacramento, CA 95814, $3,000,000; Delaware Health and Social Services, Health Systems Protection, 417 Federal Street, Kent, DE 19903, $2,961,903; City of Miami, 444 S.W. 2nd Avenue, 2 Floor, Miami, FL 33130, $3,000,000; City of Cambridge, Community Development Department, 795 Massachusetts Avenue, Cambridge, MA 02139, $3,000,000; City of Lawrence, Office of Planning and Development, 147 Haverhill Street, Lawrence, MA 01840, $3,000,000; City of Portland, 389 Congress Street 04101, Portland, ME, $1,500,000; Saginaw County, Department of Public Health, 1600 N. Michigan, Saginaw, MI 48602, $3,000,000; City of Albany, City of Albany Community Development Agency, 200 Henry Johnson Blvd, Albany, NY 12210, $3,000,000; City of Syracuse, Community Development, 201 E. Washington Street, Syracuse, NY 13202, $3,000,000; City of Springfield, Human Resources, 76 E. High Street, Springfield, OH, $3,000,000; Mahoning County, Board of Mahoning County Commissioners, Youngstown, OH 44515, $3,000,000; City of Portland, Bureau of Housing and Community Development, 421 SW Sixth Avenue, Suite 1100, Portland, OR 97204, $3,000,000; State of Rhode Island, 44 Washington Street, Providence, RI 02903, $3,152,446; City of Spokane, Community Development Department, 906 Columbia Street SW., Olympia, WA 53202, $2,290,954; Wisconsin State Department of Administration, Administration, 101 S Webster St, 6th Floor, Madison, WI 53702, $3,000,000; City of Milwaukee, Department of Health, 841 N. Broadway—Room 118, Milwaukee, WI 53202, $3,000,000; Cuyahoga County Board of Health, 5550 Venture Drive, Parma, OH 44130, $3,000,000; City of Greensboro, Department of Housing and Community Development, 300 West Washington Street, Room 315, P.O. Box 3136, Greensboro, NC 27402–3136, $3,000,000; City of Charlotte, Neighborhood Development, 600 East Trade Street, Charlotte, NC 28202, $3,000,000; City of Portland, Bureau of Housing and Community Development, 421 SW Sixth Avenue, Suite 1100, Portland, OR 97204, $3,000,000.

Operation Lead Elimination Action Program: The ACCESS Agency, Inc., Housing Department, 1315 Main Street, Willimantic, CT 06226, $1,720,000; Acorn Associates, Inc., 1024 Elysian Fields Ave., New Orleans, LA, $2,000,000; Environmental Education Associates, 2929 Main Street, Buffalo, NY 14214, $1,245,642; United Parents Against Lead National, Inc., 4115 Old Hopkins Road, Richmond, VA 23234, $2,000,000.

Lead-Based Paint Hazard Reduction Demonstration: Madison County, Community Development, 130 Hillsboro Ave., Ste. 100, Edwardsville, IL 62025, $782,654; City of New York, Department of Housing Preservation and Development, 100 Gold Street, New York, NY 10038, $4,000,000; City of Boston, Public Facilities Department, 26 Court Street, Boston, MA 02108, $4,000,000; City of Detroit, Planning and Development Department, 65 Cadillac Square, Detroit, MI 48226, $4,000,000; City of St. Louis, Community Development Administration, 1015 Locust Street, Suite 1200, St. Louis, MO 63101, $4,000,000; City of Baltimore, Baltimore City Health Department, 210 Guilford Avenue 3rd Floor, Baltimore, MD 21202, $4,000,000; City of Albany, New York, City of Albany Community Development Agency, 200 Henry Johnson Blvd., Albany, NY 12210, $4,000,000; City of Buffalo, Office of Strategic Planning, 920 City Hall, Buffalo, NY 14202, $1,495,884; City of Rochester, Community Development, 30 Church St. Room 028B, Rochester, NY 14614, $2,499,310; City of Philadelphia, Department of Public Health, 2100 West Girard Ave, Philadelphia Nursing Home, Building # 3, Philadelphia, PA 19130, $4,000,000; City of Providence, Department of Planning and Development, 44 Washington Street, Providence, RI 02903, $3,927,152; City of Houston, Houston Department of Health & Human Services, 8000 N Stadium Drive, Houston, TX 77054, $3,000,000; City of Milwaukee, Childhood Lead Poisoning Prevention Program, 841 N. Broadway—Room 118, Milwaukee, WI 53202, $4,000,000.

Lead Outreach: The City of New York Department of Housing Preservation and Development, 100 Gold Street, New York, NY 10038, $500,000; Southwest Fair Housing Council, 801 W. Roosevelt, Phoenix, AZ 85007–2135, $496,171; Rhode Island Housing Resources Commission, 41 Eddy Street, Providence, RI 02903, $511,146.11; City of Milwaukee Health Department, 841 N. Broadway—Room 118, Milwaukee, WI 53202, $419,309.

Dated: April 15, 2005.

Joseph Smith,

Deputy Director, Office of Healthy Homes and Lead Hazard Control.

[FR Doc. E5–1886 Filed 4–21–05; 8:45 am]

BILLING CODE 4210–70–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4980–N–16]

Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: April 22, 2005.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: April 14, 2005.

Mark R. Johnston,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 05–7834 Filed 4–21–05; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4513-N–20]

Credit Watch Termination Initiative

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice advises of the cause and effect of termination of Origination Approval Agreements taken by HUD's Federal Housing Administration (FHA) against HUD-approved mortgagees through the FHA Credit Watch Termination Initiative. This notice includes a list of mortgagees which have had their Origination Approval Agreements terminated.

FOR FURTHER INFORMATION CONTACT: The Quality Assurance Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–8000; telephone (202) 708–2830 (this is not a toll free number). Persons with hearing or speech impairments may access that number through TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: HUD has the authority to address deficiencies in the performance of lenders' loans as provided in HUD's mortgagee approval regulations at 24 CFR 202.3. On May 17, 1999 (64 FR 26769), HUD published a notice on its procedures for terminating Origination Approval Agreements with FHA lenders and placement of FHA lenders on Credit Watch status (an evaluation period). In the May 17, 1999, notice, HUD advised that it would publish in the **Federal Register** a list of mortgagees, which have had their Origination Approval Agreements terminated.

Termination of Origination Approval Agreement: Approval of a mortgagee by HUD/FHA to participate in FHA mortgage insurance programs includes an Origination Approval Agreement (Agreement) between HUD and the mortgagee. Under the Agreement, the mortgagee is authorized to originate single family mortgage loans and submit them to FHA for insurance endorsement. The Agreement may be terminated on the basis of poor performance of FHA-insured mortgage loans originated by the mortgagee. The termination of a mortgagee's Agreement is separate and apart from any action taken by HUD's Mortgagee Review Board under HUD's regulations at 24 CFR part 25.

Cause: HUD's regulations permit HUD to terminate the Agreement with any mortgagee having a default and claim rate for loans endorsed within the preceding 24 months that exceeds 200 percent of the default and claim rate within the geographic area served by a HUD field office, and also exceeds the national default and claim rate. For the 22nd review period, HUD is terminating the Agreement of mortgagees whose default and claim rate exceeds both the national rate and 200 percent of the field office rate.

Effect: Termination of the Agreement precludes that branch(s) of the mortgagee from originating FHA-insured single family mortgages within the area of the HUD field office(s) listed in this notice. Mortgagees authorized to purchase, hold, or service FHA insured mortgages may continue to do so.

Loans that closed or were approved before the termination became effective may be submitted for insurance endorsement. Approved loans are (1) those already underwritten and approved by a Direct Endorsement (DE) underwriter employed by an unconditionally approved DE lender and (2) cases covered by a firm commitment issued by HUD. Cases at earlier stages of processing cannot be submitted for insurance by the terminated branch; however, they may be transferred for completion of processing and underwriting to another mortgagee or branch authorized to originate FHA insured mortgages in that area. Mortgagees are obligated to continue to pay existing insurance premiums and meet all other obligations associated with insured mortgages.

A terminated mortgagee may apply for a new Origination Approval Agreement if the mortgagee continues to be an approved mortgagee meeting the requirements of 24 CFR 202.5, 202.6, 202.7, 202.8 or 202.10 and 202.12, if there has been no Origination Approval Agreement for at least six months, and if the Secretary determines that the underlying causes for termination have been remedied. To enable the Secretary to ascertain whether the underlying causes for termination have been remedied, a mortgagee applying for a new Origination Approval Agreement must obtain an independent review of the terminated office's operations as well as its mortgage production, specifically including the FHA-insured mortgages cited in its termination notice. This independent analysis shall identify the underlying cause for the mortgagee's high default and claim rate. The review must be conducted and issued by an independent Certified Public Accountant (CPA) qualified to perform audits under Government Auditing Standards as provided by the General Accounting Office. The mortgagee must also submit a written corrective action plan to address each of the issues identified in the CPA's report, along with evidence that the plan has been implemented. The application for a new Agreement should be in the form of a letter, accompanied by the CPA's report and corrective action plan. The request should be sent to the Director, Office of Lender Activities and Program Compliance, 451 Seventh Street, SW., Room B133-P3214, Washington, DC 20410–8000 or by courier to 490 L'Enfant Plaza, East, SW., Suite 3214, Washington, DC 20024.

The following mortgagees have had their Agreements terminated by HUD:

Mortgagee name	Mortgagee branch address	HUD office jurisdictions	Termination effective date	Home ownership centers
Alliance Mortgage Capital, Inc	6500 S Quebec Street, Ste 210, Englewood, CO 80111.	Denver, CO	3/24/2005	Denver.
Benchmark Lending, Inc	105 S Wheeler Street, Ste 200, Plant City, FL 33563.	Jacksonville, FL	3/24/2005	Atlanta.
Benchmark Lending, Inc	105 S Wheeler Street, Ste 200, Plant City, FL 33563.	Tampa, FL	3/24/2005	Atlanta
Compass Mortgage, Inc	6116 Shallowford Rd, Ste 119, Chattanooga, TN 37421.	Knoxville, TN	3/24/2005	Atlanta.
Georgia State Mortgage, Inc	1395 Iris Drive, Ste 201, Conyers, GA 30013	Atlanta, GA	3/24/2005	Atlanta.

Mortgagee name	Mortgagee branch address	HUD office jurisdictions	Termination effective date	Home ownership centers
Mortgage Matters, Inc	695 N Jeff Davis Dr, Fayetteville, GA 30214	Atlanta, GA	3/24/2005	Atlanta.
RBC Mortgage Company	4960 E State St, Rockford, IL 61108	Chicago, IL	2/12/2005	Atlanta.
Southern Home Lending Corp	8833 Perimeter Pk Blvd, Ste 904, Jacksonville, FL 32256.	Jacksonville, FL	3/24/2005	Atlanta.
Stockon Turner, LLC	2250 Lucien Way, Ste 140, Maitland, FL 32751.	Jacksonville, FL	3/24/2005	Atlanta.
Synergy Mortgage Corp	191 NC Hwy 42 North, Ste J, Asheboro, NC 27203.	Greensboro, NC	2/12/2005	Atlanta.

Dated: April 14, 2005.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. E5–1885 Filed 4–21–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the USGS Clearance Officer at the phone number listed below. Comments and suggestion on the requirement should be made within 60 days directly to the USGS Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192.

As required by OMB regulations at CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments regarding the proposed information collection as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the USGS, including whether the information will have practical utility;
2. The accuracy of the USGS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. The utility, quality, and clarity of the information to be collected; and
4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Nonferrous Metals Surveys.

Current OMB approval number: 1028–0053.

Abstract: Respondents supply the U.S. Geological Survey with domestic production and consumption data on nonferrous and related metals, some of which are considered strategic and critical. This information will be published as chapters in Minerals Yearbooks, monthly/quarterly Mineral Industry Surveys, annual Mineral Commodity Summaries, and special publications, for use by Government agencies, industry, education programs, and the general public.

Bureau Form number: Various (32 forms).

Frequency: Monthly, Quarterly, and Annually.

Description of respondents: Producers and Consumers of nonferrous and related metals.

Annual Responses: 5,466.

Annual burden hours: 3,968.

Bureau clearance officer: John E. Cordyack, Jr., 703–648–7313.

John H. DeYoung, Jr.,

Chief Scientist, Minerals Information Team.

[FR Doc. 05–8082 Filed 4–21–05; 8:45 am]

BILLING CODE 4310–47–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–5101–ER–F347; N–78567, N–78568, N–78989]

Notice of Intent To Prepare an Environmental Impact Statement and To Initiate the Public Scoping Process for a Proposed Coal-Fired Power Plant

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, and the Federal Land Policy and Management Act of 1976, notice is hereby given that the Winnemucca Field Office (WFO) of the Bureau of Land Management (BLM) is initiating the preparation of an Environmental Impact Statement (EIS) for a proposed coal-fired power plant.

DATES: The public scoping comment period will commence with the publication of this Notice, and will end on June 21, 2005. Public meetings will be announced through the local news media, and a BLM Web site at least 15 days prior to the event. Comments should be received on or before the end of the scoping period at the address listed below.

ADDRESSES: Written comments should be sent to the Winnemucca Field Office, Bureau of Land Management, 5100 East Winnemucca Boulevard, Winnemucca, Nevada 89445, via fax at (775) 623–1503 or online at: *http://www.nv.blm.gov/winnemucca.* Comments, including names and addresses of respondents will be available for public review at the BLM WFO, during regular hours 7:30 a.m.–4:30 p.m., Monday–Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent of the law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Fred Holzel, Planning and Environmental Coordinator, Telephone (775) 623–1500.

SUPPLEMENTARY INFORMATION: The EIS will analyze a 1,450 megawatt coal-fired power plant, which is proposed by Granite-Fox Power LLC (GFP), to be located in rural northwest Nevada near the town of Gerlach, in Washoe County. Features in the area include the Smoke Creek Desert, the Black Rock-Desert High Rock Canyon Emigrant Trails National Conservation Area and associated wilderness areas, and five (5)

wilderness study areas. U.S. Gypsum, a gypsum mine and wallboard facility, and the adjacent town of Empire, are located southeast of the proposed project. GFP's proposed project consists of the power plant to be located on private lands, with their ancillary facilities to be constructed on both private and public lands. Proposed power plant ancillary facilities include: Water supply, transport, and discharge facilities; waste disposal facilities; electric transmission lines; rail lines; and a temporary construction worker residence area. Three proposed rights-of-way would involve approximately 260 acres of public land. The Federal action comprises potential issuance of these public rights-of-way, which are necessary for the construction and operation of the power plant.

Although the proposed power plant would be located on private land, it could not operate without Federal actions for rights-of-way on public lands. The EIS will address potential impacts of the proposal on private and public lands. The proposed rights-of-way on public lands include approximately 7 miles of railroad spur, approximately 2 miles of 500 kilovolt transmission line, and approximately 26 miles of water supply pipelines. It also includes approximately 1 mile of ground electrode lines. A range of alternatives would be developed with input from the scoping process.

Dated: January 31, 2005.

Vicki L. Wood,

Acting Field Manager.

[FR Doc. 05–5454 Filed 4–21–05; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–060–01–1020–PG]

Notice of Public Meeting; Central Montana Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Central Montana Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meeting will be held May 4 & 5, 2005, at the Great Northern Inn, 2 South 1 East, in Malta, Montana.

The May 4 meeting will begin at 1 p.m. with a 30-minute public comment period.

The meeting is scheduled to adjourn at approximately 6 p.m.

The May 5 meeting will begin at 8 a.m. with a 60-minute public comment period.

This meeting will adjourn at approximately 3 p.m.

SUPPLEMENTARY INFORMATION: This 15-member council advises the Secretary of the Interior on a variety of management issues associated with public land management in Montana. At these meetings the council will discuss/act upon:

The minutes of their proceeding meeting;
The sage grouse management plan;
Tour sage grouse habitat;
Cultural resource management;
The Bowdoin Oil and Gas Environmental Assessment;
The Montana Challenge (the economic contribution of public lands); and community collaborative planning.

All meetings are open to the public. The public may present written comments to the RAC. Each formal RAC meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

FOR FURTHER INFORMATION CONTACT: June Bailey, Lewistown Field Manager, Lewistown Field Office, P.O. Box 1160, Lewistown, Montana 59457 or at (406) 538–1900.

Dated: April 19, 2005.

June Bailey,

Lewistown Field Manager.

[FR Doc. 05–8177 Filed 4–21–05; 8:45 am]

BILLING CODE 4310–88–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–090–05–1430–EU; GP–05–0016]

Modified Competitive Sale of Public Land; Oregon (OR 48830)

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action.

SUMMARY: A 1.21 acre parcel of public land located in Lane County, Oregon is being considered for sale at not less than appraised market value. This parcel is proposed to be sold through modified competitive procedures.

DATES: Submit comments on or before June 6, 2005. Only written comments will be accepted.

ADDRESSES: Address all written comments concerning this Notice to Emily Rice, Upper Willamette Field Manager, BLM Eugene District Office, P.O. Box 10226, Eugene, Oregon 97440. Electronic format submittal will not be accepted.

FOR FURTHER INFORMATION CONTACT: David Schroeder, Realty Specialist, at (541) 683–6482.

SUPPLEMENTARY INFORMATION: The following described public land in Lane County, Oregon has been determined to be suitable for sale at not less than fair market value under Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713 and 1719). This land is difficult and uneconomic to manage as a part of the public lands and is not suitable for management by another Federal agency. No significant resource values will be affected by this disposal. The parcel proposed for sale is identified as suitable for disposal in the Eugene District Record of Decision and Resource Management Plan, dated June, 1995. The parcel proposed for sale is identified as follows:

Willamette Meridian, Oregon,

T. 18 S., R. 1 W.,
Sec. 26, Lots 8–10.

The area described contains 1.21 acres more or less. The market value for this land, including merchantable timber, has been determined by the BLM authorized officer to be $4,868.00, after taking into account a current appraisal of the land conducted in accordance with applicable appraisal standards.

There is no public access to the parcel, which is irregularly shaped and is part of a survey hiatus identified by the BLM in 1992. The parcel will be offered for sale at public auction using modified competitive bidding procedures authorized under 43 CFR 2711.3–2, because bidding for this parcel is open only to the following adjacent landowners (designated bidders): Gregg A. Vollstedt, Becky S. Vollstedt, William F. Cooper, Linda M. Cooper, Nadine Wilkes, Chris Meurer, Weyerhaeuser Co., John R. Klobas, Nancy L. Klobas, and Angelina Gomes.

The land will be offered for sale at public auction beginning at 10 a.m. (local time) on June 23, 2005, at the BLM Eugene District Office, 2890 Chad Drive, Eugene, Oregon, 97401–9336. Sale will be by sealed bid only. All sealed bids must be received by the BLM's Eugene District Office at 2890 Chad Drive, Eugene, Oregon, 97401–

9336, (mailing address: P.O. Box 10226, Eugene, Oregon 97440) prior to 10 a.m. on June 23, 2005. Bid envelopes must be marked on the lower left front corner, ''Sale OR 48830''. Bids must be for not less than the market value specified above in this Notice. Each sealed bid shall be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the ''Department of the Interior, BLM'' for not less than 10 percent of the amount bid.

Under modified competitive sale procedures, the written sealed bids will be opened and an apparent high bid will be declared at the sale. The apparent high bidder and the other designated bidders will be notified by mail. In case of a tie of bids submitted by interested designated bidders, the interested designated bidders would be given an opportunity to submit a written agreement as to the division of the land, or an additional sealed bid, meeting the above-stated requirements, within 30 days of written notification of eligibility. At that time, the high bidder would become the purchaser and be awarded the property.

The purchaser will pay the balance of the purchase price to the Department of the Interior, BLM, at a closing to be held in the BLM, Eugene District Office not later than 180 days after the date of sale. The date and time of the closing will be determined by the BLM authorized officer after consultation with the purchaser.

Additional Terms and Conditions of Sale

If the parcel is not sold on June 23, 2005, the parcel will be re-offered on a continuing basis in accordance with the competitive sale procedures described in 43 CFR 2711.3–1. Sealed bids, prepared and submitted in the manner described above, will be accepted from any qualified bidder. Bids will be opened at 10 a.m. (local time), on the 13th day of each month thereafter, through July 13, 2005, unless an apparent high bid is declared prior to that date.

Federal law requires that public land may be sold only to either (1) Citizens of the United States, 18 years of age or over; (2) corporations subject to the laws of any State or of the United States; (3) a State, State instrumentality or political subdivision authorized to hold property; (4) an entity legally capable of conveying and holding lands or interests therein under the laws of the State within which the lands to be conveyed are located. Certifications and evidence to this effect will be required of the purchaser prior to issuance of a patent.

The following rights, reservations, and conditions will be included in the patent conveying the land:

1. A right-of-way for ditches and canals will be reserved to the United States under the authority of the Act of August 30, 1890 (26 Stat. 291; 43 U.S.C. 945).

2. The patent will include a notice and indemnification statement under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). All parcels are subject to the requirements of section 120(h) (42 U.S.C. section 9620) holding the United States harmless from any release of hazardous materials that may have occurred as a result of the unauthorized use of the property by other parties. No warranty of any kind, express or implied, is given by the United States as to the title, physical condition or potential uses of the parcel of land proposed for sale, except as may be required by section 120(h) of CERCLA.

3. The patent will be issued subject to all valid existing rights and reservations of record.

A successful bid for the parcel will constitute an application for conveyance of the mineral interests in accordance with Section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719). Those mineral interests, which will be conveyed simultaneously with the sale of the land, have been determined by BLM to have no known mineral value. At the closing, the purchaser will pay to the BLM a non-refundable fee of $50.00 in accordance with 43 CFR 2720.1–2(c).

In accordance with the goals in BLM Manual 2801.62A.1. and 2801.62B., the purchaser, at the closing and as a condition of the sale, the purchaser will grant an easement to Weyerhaeuser Company, for an existing road, which crosses Lot 8.

The land described herein is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of the action or for 270 days from the date of publication of this notice, whichever occurs first.

Public Comments

Written comments will be accepted up until the date specified above. Detailed information concerning this land sale, including the reservations, sale procedures and conditions, appraisal, planning and environmental documents, and mineral report, is available for review at the BLM Eugene District Office, 2890 Chad Drive, Eugene, Oregon, 97401–9336.

Objections will be reviewed by the Eugene District Manager, who may sustain, vacate, or modify this realty action. In the absence of any objections, this proposal will become the final determination of the Department of the Interior.

Comments, including names, street addresses, and other contact information of respondents, will be available for public review. Individual respondents may request confidentiality. If you wish to request that BLM consider withholding your name, street address, and other contact information (such as: Internet address, FAX or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. The BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. The BLM will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

Authority: 43 CFR 2711.1–2(c).

Dated: February 14, 2005.

Emily Rice,

Field Manager, Upper Willamette Resource Area.

[FR Doc. 05–8198 Filed 4–21–05; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Correction of the Notice of Availability of the Proposed Notice of Sale for Outer Continental Shelf (OCS) Oil and Gas Lease Sale 196 in the Western Gulf of Mexico (GOM)

AGENCY: Minerals Management Service, Interior.

ACTION: Correction of the Notice of Availability of the Proposed Notice of Sale for Proposed Sale 196.

SUMMARY: On March 28, 2005, pursuant to 30 CFR 256.29(c) as a matter of information to the public, the MMS published in the **Federal Register** the Notice of Availability of the proposed Notice of Sale for OCS Sale 196 in the Western GOM. The title of that Notice correctly identified the proposed sale as an oil and gas lease sale in the Western GOM. However, in the summary of the action, the sale was incorrectly identified as a Central GOM sale. We are issuing this Notice to correct that error.

DATES: Comments on the size, timing, or location of proposed Sale 196 are due from the affected States within 60 days following their receipt of the proposed Notice. The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is currently scheduled for August 17, 2005.

SUPPLEMENTARY INFORMATION: The proposed Notice of Sale for Sale 196 and a ''Proposed Sale Notice Package'' containing information essential to potential bidders may be obtained from the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Telephone: (504) 736–2519.

Dated: March 29, 2005.

Thomas A. Readinger,

Associate Director for Offshore Minerals Management.

[FR Doc. 05–8110 Filed 4–21–05; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before April 2, 2005. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, (202) 371–6447. Written or faxed comments should be submitted by May 9, 2005.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ARIZONA

Gila County

Strawberry School, 9318 Fossil Creek Rd., approx. 1.5 mi. W of AZ 87/260, Strawberry, 05000422

Maricopa County

Buckhorn Baths Motel, 5900 E. Main St., Mesa, 05000421

GEORGIA

Fulton County

Virginia—Highland Historic District, Roughly bounded by Amsterdam Ave., Rosedale Rd., Ponce de Leon Ave., and the Norfolk Southern Railroad, Atlanta, 05000402

Winship, George, Jr., and Emily, House, 2626 Brookwood Dr., NE, Atlanta, 05000404

Muscogee County

Wynn's Hill—Overlook—Oak Circle Historic District, Roughly bounded by Bradley Rd., Buena Vista Rd., Overlook Ave., Crest Dr., and Oakview Ave., Columbus, 05000403

Whitfield County

Strickland, A.D., Store, 1385 Dawnville Rd., Dalton, 05000405

LOUISIANA

Iberville Parish

Supple's, J., Sons Mercantile Company, Lts., 29830 LA 405, Bayou Goula, 05000406

St. James Parish

Lambert House, (Louisiana's French Creole Architecture MPS), 5669 LA 44, Convent, 05000407

MONTANA

Lewis and Clark County

Armitage, Joshua and Martha, House, 1117 East Broadway, Helena, 05000408

NEW MEXICO

Sierra County

Hot Springs Bathhouse and Commerical Historic District in Truth or Consequences, Roughly bounded by Post, Ban Patten, Pershing and Main Sts., Truth or Consequences, 05000409

PENNSYLVANIA

Allegheny County

Armstrong Cork Company, 23rd and Railroad Sts., Pittsburgh, 05000413

Elmridge, Beaver Rd. at Camp Meeting Rd., Leetsdale, 05000412

Longue Vue Club and Golf Course, 400 Longue Vue Dr., Verona, Penn Hills Township, 05000414

Sperling Building, 1007–1013 Penn Ave., Wilkinsburh, 05000410

Bucks County

Yardley Historic District, Roughly bounded by Main St., Afton Ave., Letchworth Ave., Canal St., S. Edgewater Ave., and Delaware Canal, Yardley, 05000417

Montgomery County

Stanley, 8500 Pine Rd., Rockledge, Abington Township, 05000415

Philadelphia County

Walnut Park Plaza Hotel, 6232–6250 Walnut St., Philadelphia, 05000416

Somerset County

New Colonial Hotel, 319 Main St., Meyersdale, 05000411

TEXAS

Dallas County

Dallas National Bank, 1530 Main and 1511 Commerce St., Dallas, 05000419

Gillespie County

Pecan Creek School, 3410 Pecan Creek Rd., Fredericksburg, 05000418

VERMONT

Windham County

Wyatt, Arthur D. and Emma J., House, 125 Putney Rd., Brattleboro, 05000420

WISCONSIN

Green Lake County

Nathan Strong Park Historic District, Roughly bounded by N. Wisconsin, E. Moore, N. Swetting and E. Huron Sts., Berlin, 05000423

[FR Doc. 05–8048 Filed 4–21–05; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–515]

In the Matter of Certain Injectable Implant Compositions; Notice of Commission Decision Not To Review an Initial Determination Terminating the Investigation in Its Entirety on the Basis of Withdrawal of the Complaint

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') terminating the above-captioned investigation as to all the respondents on the basis of withdrawal of the complaint.

FOR FURTHER INFORMATION CONTACT: Rodney Maze, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://*

edis.usitc.gov. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation was instituted by the Commission based on a complaint filed by Inamed Corporation (''Inamed'') of Santa Barbara, California. 69 FR 35676 (June 25, 2004). The complainant alleged violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain injectable implant compositions by reason of infringement of claims 1, 2, 7, 12, 18, 20, 25, 26 and 30–34 of U.S. Patent No. 4,803,075. The complaint, as amended, named Q-Med Aktiebolag of Uppsala Sweden, Medicis Aesthetics, Inc., of Scottsdale, Arizona, and McKesson Corporation, McKesson Health Solutions of Arizona, Inc., and McKesson Supply Solutions, all of San Francisco, California, as respondents.

On March 23, 2005, Inamed and the respondents filed a joint motion to terminate the investigation as to all parties based on withdrawal of the complaint. On April 4, 2005, the Commission investigative attorney filed a response in support of the motion. On April 5, 2005, the ALJ issued an ID (Order No. 33) granting the parties' joint motion for termination of the investigation. No petitions to review the ID were filed. The Commission has determined not to review this ID.

Issued: April 18, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–8087 Filed 4–21–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the CJIS Advisory Policy Board

AGENCY: Federal Bureau of Investigation (FBI), Justice.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce the meeting of the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB). the CJIS APB is responsible for reviewing policy issues, uniform crime reports, and appropriate technical and operational issues related to the programs administered by the FBI's CJIS Division, and thereafter, make appropriate recommendations to the FBI Director. The programs administered by the CJIS Division are: the Integrated Automated Fingerprint Identification System, the Interstate Identification Index, Law Enforcement Online, National Crime Information Center, the National Instant Criminal Background Check System, the National Incident-Based Reporting System, Law Enforcement National Data Exchange, and Uniform Crime Reporting.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement concerning the CJIS Division programs or wishing to address this session should notify the Senior CJIS Advisor, Mr. Roy G. Weise at (304) 625–2730, at least 24 hours prior to the start of the session.

The notification should contain the requestor's name, corporate designation, and consumer affiliation or government designation along with a short statement describing the topic to be addressed and the time needed for the presentation. A requestor will ordinarily be allowed no more than 15 minutes to present a topic.

DATES: The APB will meet in open session from 8:30 a.m. until 5 p.m., on June 15–16, 2005.

ADDRESSES: The meeting will take place at The Fairmont Dallas, 1717 North Akard Street, Dallas, Texas, (214) 720–2020.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Mrs. Diane M. Shaffer, Management Analyst, Advisory Groups Management Unit, Programs Development Section, FBI CJIS Division, Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0149, telephone (304) 625–2615, facsimile (304) 625–5090.

Dated: April 11, 2005.

Roy G. Weise,

Senior CJIS Advisory, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. 05–8081 Filed 4–21–05; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the Compact Council for the National Crime Prevention and Privacy Compact

AGENCY: Federal Bureau of Investigation, DOJ.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce a meeting of the Compact Council created by the National Crime Prevention and Privacy Compact Act of 1998 (Compact). Thus far, the federal government and 22 states are parties to the Compact which governs the exchange of criminal history records for licensing, employment, and similar purposes. The Compact also provides a legal framework for the establishment of a cooperative federal-state system to exchange such records.

The United States Attorney General appointed 15 persons from federal and state agencies to serve on the Compact Council. The Council will prescribe system rules and procedures for the effective and proper operation of the Interstate Identification Index system.

Matters for discussion are expected to include:

(1) Minimum Standards for Identification Verification

(2) Revised Standardized Reasons Fingerprinted for Civil/Applicant Fingerprint Submissions

(3) Interim Final Rule on the Outsourcing of Noncriminal Justice Administrative Functions

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement with the Compact Council or wishing to address this session of the Compact Council should notify Mr. Todd C. Commodore, FBI Compact Officer, at (304) 625–3803, at least 24 hours prior to the start of the session. The notification should contain the requestor's name and corporate designation, consumer affiliation, or government designation, along with a short statement describing the topic to be addressed, and the time needed for the presentation. Requestors will ordinarily be allowed up to 15 minutes to present a topic.

Dates and Times: The Compact Council will meet in open session from 9 a.m. until 5 p.m., on May 11–12, 2005.

ADDRESSES: The meting will take place at The Westin Great Southern Hotel, 310 High Street, Columbus, Ohio, telephone (614) 228–3800.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Mr. Todd C. Commodore, FBI Compact Officer, Compact Council Office, Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0148, telephone (304) 625–2803, facsimile (304) 625–5388.

Dated: April 19, 2005.

Jamie Sigler McDevitt,

Acting Section Chief, Programs Development Section, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. 05–8171 Filed 4–05–05; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Employment and Training Administration

Solicitation for Grant Applications (SGA) Prisoner Re-Entry Initiative

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice; additional information and correction.

SUMMARY: The Employment and Training Administration published a document in the **Federal Register** on April 1, 2005, concerning the availability of grant funds for eligible faith-based and community organizations under the Prisoner Re-Entry Initiative: SGA/DFA PY–04–08. This notice is to provide additional information on the informational conferences mentioned in Section IV.3 and the agency contact information mentioned in Section VII.

The three informational conferences will be held on:

May 12, 2005–Los Angeles, California—The Westin Los Angeles Airport, 5400 West Century Boulevard, Los Angeles, California 90045; Tel: 310–216–5858

May 19, 2005—Dallas, Texas—Sheraton Grand Hotel at Dallas/Fort Worth, 4440 W. John Carpenter Freeway, Irving, Texas 75063; Tel: (972) 929–8400

May 26, 2005—Washington, DC Metropolitan area—Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, Washington, DC 20024; Tel: (202) 484–1000.

For registration and logistical information on the informational conferences, please visit *http://www.pri-conference.com* or call (301) 589–2547. We encourage you to register online for the informational conferences. You can also register for one of the conferences by fax at (301) 589–2546. To register, please include the following information: Full Name, Title, Organization, Address, Phone, Fax, E-mail, and which conference you will be attending. Please identify any special needs. You will need to make hotel reservations on your own. The room blocks for the three hotels are under ''DOL PRI Conference''. Please call the above number or visit the website for information on the hotels in which the informational conferences will be held. Each conference will start promptly at 8:30 a.m. and will last till 5 p.m., with registration from 7:30 a.m. to 8:30 a.m. Travel and accommodation expenses to attend the informational conferences is not a reimbursable activity, the Federal government will not assume costs associated with travel and accommodations to these conferences.

In addition, as mentioned in Section IV.3 of the SGA, an edited version of the first informational conferences will be available at DOL's Web site at *http://www.doleta.gov* and DOJ's Web site at *http://www.ojp.usdoj.gov/reentry.* Please note this corrected spelling of DOJ's Web site.

On page 16861, in the third column under Section VII Agency Contacts, is corrected to read: ''Any questions regarding this SGA should be faxed to Marsha Daniels, Grants Management Specialist, Division of Federal Assistance, FAX number (202) 693–2705. (This is not a toll-free number). You must specifically address your FAX to the attention of Marsha Daniels and should include SGA/DFA PY 04–08, a contact name, fax, e-mail (optional), and phone number.''

On page 16861, in the third column under Section VII Agency Contacts, is corrected to read: ''Please contact Marsha Daniels, Grants Management Specialist, Division of Federal Assistance, on (202) 693–3504.''

Signed at Washington, DC, this 18th day of April, 2005.

Eric D. Luetkenhaus,

Grant Officer.

[FR Doc. E5–1911 Filed 4–21–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determination in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supercedes decisions thereto, contain no expiration dates and are effective from the date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration be the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution

Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decision being modified.

Volume I

Connecticut
CT20030003 (Jun. 13, 2003)

Volume II

Delaware
DE20030002 (Jun. 13, 2003)
DE20030009 (Jun. 13, 2003)
Pennsylvania
PA20030059 (Jun. 13, 2003)
Virginia
VA20030049 (Jun. 13, 2003)

Volume III

None

Volume IV

Illinois
IL20030002 (Jun. 13, 2003)
IL20030003 (Jun. 13, 2003)
IL20030006 (Jun. 13, 2003)
IL20030007 (Jun. 13, 2003)
IL20030008 (Jun. 13, 2003)
IL20030009 (Jun. 13, 2003)
IL20030010 (Jun. 13, 2003)
IL20030013 (Jun. 13, 2003)
IL20030015 (Jun. 13, 2003)
IL20030016 (Jun. 13, 2003)
IL20030017 (Jun. 13, 2003)
IL20030018 (Jun. 13, 2003)
IL20030022 (Jun. 13, 2003)
IL20030024 (Jun. 13, 2003)
IL20030025 (Jun. 13, 2003)
IL20030026 (Jun. 13, 2003)
IL20030027 (Jun. 13, 2003)
IL20030029 (Jun. 13, 2003)
IL20030030 (Jun. 13, 2003)
IL20030031 (Jun. 13, 2003)
IL20030032 (Jun. 13, 2003)
IL20030033 (Jun. 13, 2003)
IL20030034 (Jun. 13, 2003)
IL20030035 (Jun. 13, 2003)
IL20030036 (Jun. 13, 2003)
IL20030037 (Jun. 13, 2003)
IL20030042 (Jun. 13, 2003)
IL20030043 (Jun. 13, 2003)
Indiana
IN20030001 (Jun. 13, 2003)
IN20030002 (Jun. 13, 2003)
IN20030003 (Jun. 13, 2003)
IN20030004 (Jun. 13, 2003)
IN20030005 (Jun. 13, 2003)
IN20030006 (Jun. 13, 2003)
IN20030007 (Jun. 13, 2003)
IN20030008 (Jun. 13, 2003)
IN20030010 (Jun. 13, 2003)
IN20030011 (Jun. 13, 2003)
IN20030012 (Jun. 13, 2003)
IN20030014 (Jun. 13, 2003)
IN20030015 (Jun. 13, 2003)
IN20030019 (Jun. 13, 2003)
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Minnesota
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MO20030041 (Jun. 13, 2003)
MO20030043 (Jun. 13, 2003)
MO20030047 (Jun. 13, 2003)
MO20030048 (Jun. 13, 2003)
MO20030049 (Jun. 13, 2003)
MO20030051 (Jun. 13, 2003)
MO20030052 (Jun. 13, 2003)
MO20030053 (Jun. 13, 2003)
MO20030055 (Jun. 13, 2003)
MO20030056 (Jun. 13, 2003)
MO20030059 (Jun. 13, 2003)
MO20030060 (Jun. 13, 2003)
Texas
TX20030125 (Jun. 13, 2003)

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Alaska
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Montana
MT20030001 (Jun. 13, 2003)
North Dakota
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Oregon
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OR20030002 (Jun. 13, 2003)
OR20030004 (Jun. 13, 2003)
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WA20030005 (Jun. 13, 2003)

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CA20030032 (Jun. 13, 2003)
CA20030033 (Jun. 13, 2003)
CA20030035 (Jun. 13, 2003)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Dated: Signed in Washington, DC this 14th day of April 2005.

John Frank,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 05–7818 Filed 4–21–05: 8:45 am]

BILLING CODE 4510–27–M

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for extension of a currently approved collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA is submitting the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until May 23, 2005.

ADDRESSES: Interested parties are invited to submit written comments to the NCUA Clearance Officer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428. Fax No. 703–518–6669. E-mail: *mcnamara@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request, should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

Title: 12 CFR 712, Credit Union Service Organizations.

OMB Number: 3133–0149.

Form Number: None.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Description: This rule helps ensure that relationships that credit unions have with credit union service organizations are adequately and properly documented.

Respondents: Credit unions.

Estimated No. of Respondents/ Recordkeepers: 271.

Estimated Burden Hours Per Response: 2 hours.

Frequency of Response: Recordkeeping, reporting and on occasion.

Estimated Total Annual Burden Hours: 560 hours.

Estimated Total Annual Cost: 0.

Dated: By the National Credit Union Administration Board on April 13, 2005.

Mary Rupp,

Secretary of the Board.

[FR Doc. 05–8079 Filed 4–21–05; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, as follows:

Local Arts Agencies (Access to Artistic Excellence): June 2, 2005. Room 730. This meeting, from 8:45 a.m. to 5:45 p.m., will be closed.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of April 8, 2005, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: April 12, 2005.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 05–8130 Filed 4–21–05; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; President's Committee on the Arts and the Humanities: Meeting #57

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the President's Committee on the Arts and the Humanities (PCAH) will be held on Thursday, May 19, 2005 from 9 a.m. to approximately 12:30 p.m. The meeting will be held at the Oregon Historical Society, The Madison Room, 1200 SW., Park Avenue, Portland, Oregon 97205.

The Committee meeting will begin at 9 a.m. with a welcome, introductions and reports on recent Committee programs and activities. This will be followed by presentations with a dual national and local focus on (1) aspects of private support for cultural programs and (2) cultural and heritage tourism. The meeting will also include short reports, presented by agency representatives, from the National Endowment for the Humanities, the Institute of Museum and Library Services, and the National Endowment for the Arts as well as comments from the Oregon Arts Commission, the Oregon Council for the Humanities, and the Regional Arts and Culture Council in Portland. Slated presenters/guests include Judith Jedlica, President, Business Committee on the Arts, and Barbara Steinfeld, Director of Cultural Tourism, Portland Visitors Association. The meeting will adjourn after discussion of other business, as necessary, and closing remarks.

The President's Committee on the Arts and the Humanities was created by Executive Order in 1982, which currently states that the ''Committee shall advise, provide recommendations to, and assist the President, the National Endowment for the Arts, the National Endowment for the Humanities, and the Institute of Museum and Library Services on matters relating to the arts and the humanities.''

Any interested persons may attend as observers, on a space available basis, but seating is limited. Therefore, for this meeting, individuals wishing to attend must contact Haley Gordon of the President's Committee seven days in advance of the meeting at (202) 682–5409 or write to the Committee at 1100 Pennsylvania Avenue, NW., Suite 526, Washington, DC 20506. Further information with reference to this meeting can also be obtained from Ms. Gordon.

If you need special accommodations due to a disability, please contact Ms. Gordon through the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 682–5532, TDY–TDD (202) 682–5496, at least seven (7) days prior to the meeting.

Dated: April 11, 2005.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 05–8131 Filed 4–21–05; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Science Foundation

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request reinstatement and clearance of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of

the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms off information technology.

DATES: Written comments should be received by June 21, 2005, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Request for Clearance for a Cross-Project Evaluation of the National Science Foundation's Directorate for Education and Human Resources' Local Systemic Change through Teacher Enhancement Program (LSC).

Title of Collection

OMB Control No.: 3145–0161.

Expiration Date of Approval: Not applicable.

Abstract: The National Science Foundation (NSF) requests a three-year extension for evaluation and data collection (*e.g.,* surveys and interviews) from participants in projects funded by the Local Systemic Change (LSC) through Teacher Enhancement (TE) program. This recurring study or ''cross-Project Evaluation'' was most recently approved through July 2005 (OMB 345–0161). The LSC program is a large-scale effort to modify the nature of teacher in-service training (also called professional development) provided to science and mathematics teachers in a large number of school districts across the United States. NSF provided each individual project with a grant(s) of up to $6 million.

Data collection from the NSF-funded LSC projects has been going on for a long number of years. The surveys and interview protocols are part of a longitudinal data collection used for program-wide monitoring and evaluation of the remaining LSC projects. The universe of LSC projects the last time this collection was renewed was 72. The current universe for this study of LSC projects is 15. NSF does not anticipating making new project awards under the LSC program. As in the past each of the projects will administer teacher and principal questionnaires (surveys) at appropriate times during the school year based on each the evaluation's design.

Horizon Research, Inc. maintains survey responses in a database designed to provide information and reports on LSC projects for individual project accountability and for overall assessment to help NSF judge program effectiveness. Horizon's data analysis and reports are useful both to the projects themselves for self-assessments and to the NSF in order to help to measure the LSC program's performance. In particular, NSF uses these data to respond to requests from Committees of Visitors, Congress and the Office of Management and Budget, particularly as related to the Government Performance and Results Act (GPRA) and the Program Effectiveness Rating Tool (PART).

Horizon's reports to NSF deal with the characteristics and performance of the LSC program and include tables and charts generated from the database. The LSC study's broad questions addressed by data analysis include (but are not limited to):

What is the impact of the LSC projects on science and mathematics curriculum, instruction, and assessment? How do participant reports of instructional practice change over the course of the LSC projects? How do participant reports of assessment practice change over the course of the projects? How do teacher and principal beliefs about effective science and mathematics instruction change over the course of the NSF-funding for the projects? What is the overall quality of the professional development activities? How do participants rate various aspects of professional development experiences provided by the projects? What is the extent of teacher involvement in these projects?

Respondents: Individuals or households, and not-for-profit institutions.

Number of Respondents: 5,650.

Burden on the Public: 1,870 hours.

Dated: April 18, 2005.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 05–8060 Filed 4–21–05; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–369 and 50–370]

McGuire Nuclear Station, Units 1 and 2; Notice of Issuance of Amendments to Facility Operating Licenses; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance; correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on April 12, 2005 (70 FR 19110), that corrects Amendment Nos. 227 and 207 for Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2.

FOR FURTHER INFORMATION CONTACT: James J. Shea, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–1388, e-mail: *jjs@nrc.gov.*

SUPPLEMENTARY INFORMATION: On page 19118, in the third column, Amendment Nos.: 227 and 207, should have read Amendment Nos.: 225 and 207.

Dated in Rockville, Maryland, this 15th day of April 2005.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–1904 Filed 4–21–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–305]

Nuclear Management Company, LLC, Notice of Correction to Biweekly Notice of Issuance of Amendment to Facility Operating License

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance; correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on April 12, 2005 (70 FR 19122). The correct date of issuance should be ''March 24, 2005'' instead of ''March 17, 2005.'' Also, the safety evaluation

should be dated ''March 24, 2005.'' This action is necessary to correct an erroneous date.

FOR FURTHER INFORMATION CONTACT: Fred Lyon, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–2296, e-mail: *CFL@nrc.gov.*

SUPPLEMENTARY INFORMATION: On page 19122, in the second column, in the second paragraph, seventh line, it is corrected to read from ''March 17, 2005'' to ''[March 24, 2005].'' Also, on the same page and column, the fifth paragraph down, the third line should read ''Safety Evaluation dated March 24, 2005.''

Dated in Rockville, Maryland, this 18th day of April, 2005.

For the Nuclear Regulatory Commission.

Carl F. Lyon,

Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–1905 Filed 4–21–05; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting; April 21, 2005 Public Hearing

OPIC's Sunshine Act notice of its Public Hearing in Conjunction with each board meeting was published in the **Federal Register** (Volume 70, Number 65, Page 17482) on April 6, 2005. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing in conjunction with OPIC's April 28, 2005 Board of Directors meeting scheduled for 10 a.m. on April 28, 2005 has been cancelled.

CONTACT PERSON FOR INFORMATION: Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *cdown@opic.gov.*

Dated: April 20, 2005.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 05–8182 Filed 4–20–05; 10:47 am]

BILLING CODE 3210–01–M

OFFICE OF PERSONNEL MANAGEMENT

Sumission for OMB Review; Comment Request for Review of a Revised Information Collection: RI 38–45

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for review of a revised information collection. RI 38–45, We Need the Social Security Number of the Person Named Below, is used by the Civil Service Retirement System and the Federal Employees Retirement System to identify the records of individuals with similar or the same names. It is also needed to report payments to the Internal Revenue Service.

Approximately 3,000 RI 38–45 forms are completed annually. Each form requires approximately 5 minutes to complete. The annual estimated burden is 250 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, fax (202) 418–3251 or via e-mail to *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Pamela S. Israel, Chief, Operations Support Group, Retirement Services Programs, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415; and Joseph F. Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

Dan G. Blair,

Acting Director.

[FR Doc. 05–8053 Filed 4–21–05; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51567; File No. SR–AMEX–2003–66]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, 3, 4, 5, 6 and 7 Thereto by the American Stock Exchange LLC Relating to the Listing and Trading of Trust Issued Receipts Based on a Single Issuer

April 18, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 26, 2003 the American Stock Exchange LLC (''Amex'' 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 January 30, 2004, the Commission received Amendment No. 1 to the proposed rule change.[3] On May 10, 2004, the Exchange submitted Amendment No. 2 to the proposed rule change.[4] On August 16, 2004, the Exchange submitted Amendment No. 3 to the proposed rule change.[5] On November 8,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Florence Harmon, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, dated January 28, 2004 (''Amendment No. 1''). Amendment No. 1 revised the original proposal to require the underlying securities in Single TIRs (as defined herein) to meet the market capitalization requirements for equity linked term notes in Rule 107B(d) of the Amex Company Guide (''Company Guide''), modified maintenance listing standards for Single TIRS to increase the minimum amount of receipts required to be outstanding, revised the proposed rule text to allow odd lot trading in Single TIRs, provided a more detailed explanation of how Single TIRs would function, clarified that either Susquehanna Investment Group or an affiliate would be the initial depositor for the Single TIR, and rescinded its earlier request for relief from Commission Rule 10a–1.

[4] *See* letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy J. Sanow, Assistant Director, Division, Commission, dated May 7, 2004 (''Amendment No. 2''). In Amendment No. 2, Amex revised the proposed rule text to require Single TIRs to comply with requirements imposed on equity linked term notes in Rule 107B(e) and (f) of the Company Guide, added rule text requiring a firewall around affected personnel in the event that a broker-dealer selects the underlying security of a Single TIR, added rule text requiring the Exchange to consider distributing guidance to member firms regarding compliance responsibilities for a Single TIR before its issue, and added a representation in the discussion that Single TIRs are exempt from Commission Rule 10A–3.

[5] *See* letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy J. Sanow,

Continued

2004, the Exchange submitted Amendment No. 4 to the proposed rule change.[6] On January 14, 2005, the Exchange submitted Amendment No. 5 to the proposed rule change.[7] On April 4, 2005, the Exchange submitted Amendment No. 6 to the proposed rule change.[8] On April 15, 2005, the Exchange submitted Amendment No. 7 to the proposed rule change.[9] 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 the Substance of the Proposed Rule Change

The Exchange proposes to add new Commentaries .03, .05, .06, and .07 to Amex Rule 1202 to accommodate the listing and trading of trust issued receipts based on the common stock of single U.S. corporate issuers or qualified foreign issuers (the ''Underlying Company''). The Exchange also proposes to add new Commentary .13 to Amex Rule 170 to allow a limited exception for specialists in Single TIRs to buy on plus ticks and/or sell on minus ticks to bring the Single TIR into parity with the underlying securities. The text of the proposed rule change is attached hereto as Exhibit A and is also available on the Amex Web site *http://www.amex.com,* at the principal office of Amex, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex 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. Amex 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

Under Amex Rule 1201, the Exchange may approve for listing and trading trust issued receipts (''TIRs'')[10] based on one or more securities.[11] The Amex in this proposal seeks to list for trading under Amex Rule 1202, TIRs representing ownership interests in a trust, the assets of which will consist of either the common stock of a single, U.S. corporate issuer or the stock of non-U.S. companies traded in the U.S. market as sponsored American Depositary Receipts, ordinary shares or otherwise (collectively, ''foreign securities'') that is listed and traded on a national securities exchange or quoted through The Nasdaq Stock Market, Inc. (''Single TIRs''). The Exchange proposes that the minimum number of receipts or Single TIRs required to be outstanding when trading commences be 150,000. The Exchange expects Susquehanna Investment Group (''SIG'') to offer Single TIRs under the trade name of ''BIGS.''[12]

Introduction

In September 1999, the Exchange adopted rules for the listing and trading of TIRs.[13] TIRs are negotiable receipts issued by trusts that represent investors' discrete identifiable and undivided beneficial ownership interest in the securities deposited into the trust. Since that time, the Exchange has listed 17 TIRs under the trade name of HOLDRS,[14] representing a wide variety of industry sectors and the market as a whole. The original HOLDR was the Internet HOLDR.

To accommodate the listing of additional TIRs, the Exchange in September 2000 revised the existing listing criteria and trading rules to permit the listing and trading, including pursuant to unlisted trading privileges, of TIRs pursuant to Rule 19b–4(e) under the Act (the ''Generic Listing Standards'').[15] In order to efficiently list

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Assistant Director, Division, Commission, dated August 13, 2004 (''Amendment No. 3''). In Amendment No. 3, Amex extended the application of Rule 107B(e) and (f) of the Company Guide to Single TIR underlying securities issued by U.S. issuers as well as foreign issuers, added a requirement that a minimum of 150,000 receipts be outstanding when trading in a Single TIR commences, and eliminated a provision of the proposed rule text deemed to be redundant. Amendment No. 3 also provided guidance on the applicability of Commentary .05 of Amex Rule 190 to Single TIRs.

[6] *See* letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy J. Sanow, Assistant Director, Division, Commission, dated November 8, 2004 (''Amendment No. 4''). In Amendment No. 4, Amex added Commentary .13 to Amex Rule 170 to provide a limited exception for specialists in Single TIRs to buy on plus ticks and/or sell on minus ticks to bring a Single TIR into parity with the underlying security.

[7] In Amendment No. 5, Amex provided: (1) A clarification of the fee structure in connection with Single TIRs; (2) a revision to the continued listing standards stating that an underlying security must be registered pursuant to Section 12 of the Exchange Act; (3) a revision to the eligibility requirements for a component security of a Single TIR; (4) the addition of Commentary .05 to Amex Rule 1202 proposing that side-by-side trading and integrated market making is not permitted in connection with Single TIRs; (5) a description of the trading halt provisions applicable to Single TIRs; and (6) a description of the prospectus delivery requirements.

[8] In Amendment No. 6, Amex made the following revisions: (1) A clarification in the continuing listing standard for TIRs in Amex Rule 1202 that each component security must be listed on a national securities exchange or traded through the facilities of Nasdaq and reported national market system security; (2) an amendment to proposed Commentary .03(a)(iii) providing that each component security must be a security of a U.S. or foreign issuer that meets the requirements of Section 107B(f) of the Company Guide (and not (d) and (e)); (3) the addition of paragraph (f) in proposed Commentary .03 providing that for the continued trading of a Single TIR, the underlying security must be eligible for standardized equity options trading pursuant to Amex Rule 916; (4) the addition of proposed Commentary .06 regarding trading halts and (5) the addition of proposed Commentary .07 regarding the allowable percentages set forth in Section 107B(f) of the Company Guide.

[9] In Amendment No. 7, Amex revised rule text in proposed subsection (f) of Commentary .03 of Amex Rule 1202 to clarify that the equity component of a Single TIR must be eligible for standardized equity options trading.

[10] A TIR is defined in Amex Rule 1200(b) as a security (a) that is issued by a trust which holds specified securities deposited with the trust; (b) that, when aggregated in some specified minimum number, may be surrendered to the trust by the beneficial owner to receive the securities; and (c) that pays beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee by an issuer of the deposited securities.

[11] The Exchange defines a ''security'' or ''securities'' to include stocks, bonds, options, and other interests or instruments commonly known as securities. *See* Amex Constitution, Article I, Section 3(j). Pursuant to Commentary .01 to Amex Rule 1202, initially, no component security of a TIR may represent more than 20% of the overall value of the receipt. If the portfolio of securities underlying the TIR drops to fewer than nine, the SRO will consult with the Commission staff to confirm the appropriateness of continued listing of such TIR. *See* Securities Exchange Act Release No. 41892 (September 21, 1999), 64 FR 52559 (September 29, 1999) (''TIR Approval Order'').

[12] SIG, or an affiliate of SIG, intends to form one or more single purpose grantor trusts that will issue BIGS. Bank of New York (''BNY''), a state-chartered bank that is a member of the Federal Reserve System and meeting the standards specified in Section 26(a)(1) of the Investment Company Act of 1940 (the ''1940 Act''), will act as trustee. The BIGS trust will not be a registered investment company under the 1940 Act. Each trust will be formed under a depositary trust agreement among SIG or its affiliate, as the initial depositor, the trustee and the registered owners and beneficial owners of BIGS issued by that trust. SIG or an affiliate, as the initial depositor, will capitalize each trust through purchases of the Underlying Company or other transactions by depositing the common stock of the Underlying Company into the trust. The sole asset of each trust will be the common stock of the Underlying Company.

[13] *See* TIR Approval Order.

[14] *See* HOLDRS No-Action Letter infra note 17 and Registration No. 333–78575 filed with the Commission on September 23, 1999 pursuant to Rule 424 (b)(4) CIK No. 00007286(2).

[15] Commission Rule 19b–4(e), adopted on December 8, 1998, permits the Exchange to list and

TIRs without submitting a separate rule filing with the Commission for each TIR, the Exchange, consistent with Rule 19b–4(e) under the Act, requires, among other things, evidence of sufficient size, liquidity and non-concentration of the underlying component securities of the TIR.[16] Because of the structure of Single TIRs, the Exchange believes that the current Generic Listing Standards require revision to include the listing and trading of TIRs on the common stock of a single U.S. corporate issuer or qualified foreign securities. As a result, the Exchange submits this proposed rule change for the purpose of adding Commentaries .03, .05, .06, and .07 to Amex Rule 1202 to permit the listing and trading of Single TIRs, including pursuant to Rule 19b–4(e), under the Exchange Act and also submits related proposed Commentary .13 to Amex Rule 170.

Listing Criteria

Under Amex Rule 1201, the Exchange may list and trade TIRs based on one or more securities. The securities that are included in a series of a TIR are required to be selected by the Exchange or its agent, a wholly-owned subsidiary of the Exchange, or by such other person as shall have a proprietary interest in such TIRs.[17] Pursuant to Amex Rule 1201, the Exchange submits that it may designate Single TIRs for trading.

Under proposed Commentary .03 to Amex Rule 1202, Single TIRs would have eligibility criteria that would conform substantially to the initial and continued listing standards for all TIRs under Amex Rule 1202(a) and (b).[18] The proposed rule text would also modify the continued listing criteria in Amex Rule 1202(b) to provide that each component security of any TIR must be registered under Section 12 of the Exchange Act and listed on a national securities exchange or traded through Nasdaq and reported as a national market system security; and the proposed rule for Single TIRs also includes these requirements. The Single TIRs trust will be formed under a depositary trust agreement, among the trustee, an initial depositor, and other depositors, if any, and the holders of Single TIRs (the ''Single TIR Trust'' or ''Trust'').[19]

The Underlying Company Securities

The common stock of the Underlying Company or the stock of a foreign issuer (hereinafter the term ''common stock'' will refer to both the common stock of the Underlying Company and the stock of a foreign issuer) for each Single TIR will meet the requirements set forth in proposed Commentary .03 to Amex Rule 1202. These requirements are substantially similar to the existing criteria for TIRs found in Commentary .01 to Amex Rule 1202. The primary differences in new Commentary .03 relate to the omission of the concentration prohibition in paragraph (vi) of Commentary .01 and the addition of the equity linked term note requirements for underlying linked stock as set forth in Section 107B(f) of the Amex Company Guide. In particular, the Exchange believes that each Underlying Company in connection with Single TIRs should either be a U.S. company or a non-U.S. company that meets the requirements of Section 107B(f) of the Company Guide.[20] In the case of a Single TIR, the concentration prohibition is not relevant because the structure by definition is ''concentrated'' in one Underlying Company. The Exchange believes that the proposed criteria for Single TIRs with the addition of the equity linked noted standards for an Underlying Company will help to ensure that a minimum level of liquidity will exist to allow for the maintenance of fair and orderly markets and will serve to ensure that Single TIRs are based on well-capitalized and actively-traded companies.[21] The Exchange submits that the proposed selection criteria will help to ensure that an Underlying Company's common stock is not readily susceptible to manipulation.[22] Furthermore, in the event that the underlying security of a Single TIR is selected by a broker-dealer, or an affiliate of a broker-dealer such as SIG Indices LLLP, the proposed rule change would require that such broker-dealer (or affiliate) erect a firewall around personnel with access to information regarding that selection prior to listing to separate them from the broker-dealer personnel trading the Single TIR or any of the component securities.

The Single TIRs will be comprised solely of shares of the common stock of

trade new derivative securities products without submitting a proposed rule change, provided the Exchange has in place trading rules, procedures, a surveillance program and listing standards that pertain to the class of securities covering the new product. *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

[16] Commentary .01 of Amex Rule 1202 currently provides the eligibility criteria for component securities represented by a series of a TIR as follows: (1) Each component security must be registered under Section 12 of the Exchange Act; (2) each component security must have a minimum public float of at least $150 million; (3) each component security must be listed on a U.S. national securities exchange or traded through the facilities of The Nasdaq Stock Market, Inc. (''Nasdaq'') and a reported national market system security; (4) each component security must have an average daily trading volume of at least 100,000 shares during the preceding sixty-day trading period; (5) each component security must have an average daily dollar value of shares traded during the preceding sixty-day trading period of at least $1 million; and (6) the most heavily weighted component security may not initially represent more than 20% of the overall value of the TIR.

[17] SIG Indices, LLLP, an affiliate of SIG, will determine the particular Underlying Company stock to be included in each BIGS trust.

[18] The initial listing standards set forth in Amex Rule 1202(a) provide that the Exchange must establish a minimum number of Single TIRs required to be outstanding at the time of the commencement of trading on the Exchange. The proposed Commentary .03(c) to Amex Rule 1202 would establish that minimum number at 150,000 receipts for all Single TIRs. The continued listing guidelines for all TIRs are set forth in Rule 1202(b) and currently state that the Exchange will consider the suspension of trading in or removal from listing of a trust upon which a series of TIRs is based under any of the following circumstances: (1) If the trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Issued Receipts for 30 or more consecutive trading days; (2) if the trust has fewer than 50,000 receipts issued and outstanding; (3) if the market value of all receipts issued and outstanding is less than $1,000,000; or (4) if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable. In addition, for Single TIRs, the component equity security must continue to be eligible for standardized equity options trading. Upon termination of a trust, the Exchange requires that any TIRs issued in connection with such trust be removed from Exchange listing. In addition, a trust may terminate in accordance with the provisions of the trust prospectus, which may provide for termination if the value of securities in the trust falls below a specified amount.

[19] The trust is not a registered investment company under the 1940 Act. See SEC No-Action Letter dated September 3, 1999 to Merrill Lynch, Pierce, Fenner & Smith Incorporated, providing relief from registration as a management investment company under the 1940 Act for HOLDRS (the ''HOLDRS No-Action Letter'').

[20] Section 107B(f) of the Company Guide provides requirements to meet in connection with the listing and trading of equity linked notes based on foreign and U.S. underlying securities. In general, this provision limits the amount of outstanding common shares of an entity that may be linked to a derivative instrument. The Exchange has also set forth, in proposed Commentary .07, that if an issuer proposes to list a Single TIR that relates to more than the allowable percentages set forth in Section 107B(f) of the Company Guide, the Exchange will submit a proposed rule change with the Commission pursuant to Section 19(b)(2) and cannot list and trade such Single TIR until the Commission issues an approval order.

[21] An example of such Underlying Companies may include: Lucent Technologies, Inc; Sun Microsystems, Inc.; EMC Corporation; Motorola, Inc.; and Siebel Systems, Inc.

[22] The Exchange notes that it currently lists and trades equity linked notes (''ELNs'') on various well-capitalized and actively-traded common stocks pursuant to Section 107B of the Company Guide. *See* Securities Exchange Act Release Nos. 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993); 42582 (March 27, 2000), 65 FR 17685 (April 4, 2000); and 47055 (December 19, 2002), 67 FR 79669 (December 30, 2002) (Amex 2002–110). The requirements noted above in proposed Commentary .03 to Amex Rule 1202 are more stringent than the ELN standards of Section 107B of the Company Guide.

an Underlying Company. An investment in a Single TIR will accordingly involve risks similar to investing directly in the Underlying Company's common stock. Therefore, the value of the Single TIR will largely depend on the financial performance of the Underlying Company and will be exposed to all the risks associated with an investment in equity securities in general, and, in the common stock of the Underlying Company, in particular.

Product Description

The Exchange states that Single TIRs are designed to provide investors greater access to lower-priced, highly-capitalized companies while reducing transaction costs by aggregating multiple shares of the Underlying Company's common stock into a single trading instrument. Single TIRs represent an undivided beneficial interest in the underlying securities held by the Single TIR Trust. A holder of a Single TIR may exchange the Single TIR to receive the underlying securities. The Exchange states that the expenses associated with trading Single TIRs are expected to be less than the expenses associated with separately buying and selling the Underlying Company security in a traditional brokerage account.

Single TIRs are separate and distinct from the Underlying Company's common stock comprising the portfolio of the Single TIR Trust. In contrast to the prior TIR Approval Order,[23] a Single TIR Trust may issue and retire Single TIRs in both odd-lots and round-lots.[24] Holders of Single TIRs accordingly may obtain, hold, trade or exchange Single TIRs in odd and round lots or multiples thereof.

The number of outstanding Single TIRs will increase and decrease as a result of in-kind deposits and withdrawals of the Underlying Company's common stock. The Single TIRs Trust will stand ready to issue additional Single TIRs on a continuous basis when an investor deposits the required securities with the trustee.

The initial price for Single TIRs issued to the initial depositor will equal the sum of the closing market price of the Underlying Company's common stock on its primary market on the date of the transaction, multiplied by the ''share per receipt ratio amount'' [25] to be determined on the date of issuance, plus an issuance fee.[26] The Trust is expected to issue additional Single TIRs on a continuous basis. Investors may acquire Single TIRs in two ways: (1) through a purchase on the Exchange, or (2) through an in-kind deposit of the requisite number of the Underlying Company's common stock with the trustee during normal business hours evidencing a trust issued receipt. Investors that create Single TIRs by delivery to the Trust of the requisite Underlying Company common stock will be required to pay an issuance fee. In addition, investors will also be responsible for paying any sales commissions that are charged by a broker in connection with any purchase of the Underlying Company's common stock. In selecting the underlying securities, no investigation or review of the Underlying Company, including the public filings, will be performed by the issuer SIG Indices LLLP or the Exchange, other than to the extent required to determine whether the Underlying Company's common stock satisfies the selection criteria for a Single TIR.

After the date of issuance, the ''share per receipt ratio amount'' for an Underlying Company will not change, except for changes due to corporate events, such as stock splits or reverse stock splits. Under no circumstances will the common stock of a different publicly-traded company be substituted for the Underlying Company's common stock established for the Single TIR. The actual number of shares will be determined on the date of the initial capitalization of the Trust by the initial depositor and will appear in the final prospectus delivered in connection with sales of Single TIRs.[27] As stated above, Single TIRs are designed to provide investors with greater access to lower-priced highly-capitalized companies while reducing transactions cost by aggregating multiple shares of the Underlying Company's common stock into a single trading instrument.

Investors may withdraw the Underlying Company's common stock of a Single TIR upon request by delivering an odd or round lot Single TIR to the trustee during normal business hours. The trustee will charge a cancellation fee for retiring Single TIRs and delivering the deposited securities.[28] To the extent that any exchange of Single TIRs requires the delivery of a fractional share, the trustee will sell such share in the market and deliver cash in lieu of such share. Beneficial owners of Single TIRs will have the same rights and privileges as they would have if they beneficially owned the underlying securities outside of the trust.[29] These include the right of investors to instruct the trustee to vote the securities, the right to receive dividends and other distributions on the underlying securities, if any, and the right to exchange Single TIRs to receive the underlying securities. However, except with respect to the right to vote for dissolution of the Trust, holders of Single TIRs will not have voting rights with respect to the Single TIR Trust.[30] The Trust will not be managed and will remain static over the term of the Trust.

The Trust will not publish or otherwise calculate the aggregate value of the underlying security represented by a Single TIR.[31] Bid and asked prices

[23] *See* TIR Approval Order.

[24] Single TIRs will be evidenced by one or more global certificates that the trustee will deposit with DTC and register in the name of Cede & Co., as nominee for DTC. Single TIRs will be available only in book-entry form. Owners of Single TIRs may hold their Single TIRs through DTC, if they are participants in DTC, or indirectly through entities that are participants in DTC.

[25] The ''share per receipt ratio amount'' is the number of shares of the Underlying Company's common stock (or multiplier) for each one (1) Single TIR. Initially, SIG expects this ratio to be ten (10) shares for each Single TIR.

[26] SIG expects the issuance fee to be $5.00 or less for each 100 receipts or portion thereof.

[27] As a result of the share per receipt ratio amount or multiplier, the initial issue price will be a multiple of the current price of the common stock of the Underlying Company. For example, the initial issue price of the Single TIR will be $16.60 provided a multiple of ten (10) and a current price of $1.66 per share for a given stock that qualifies as a Single TIR candidate. In addition, if a Single TIR is surrendered to the trustee, the investor will receive 10 shares of the Underlying Company's common stock for each one (1) Single TIR. In the event that a Single TIR represents fractional shares due to certain corporate events such as stock splits or reverse stock splits or other corporate distributions, the trustee will deliver cash in lieu of such fractional share.

[28] SIG expects the cancellation fee to be $5.00 or less for each 100 receipts or portion thereof.

[29] The trustee will deliver proxy soliciting materials provided to it by the Underlying Company for the benefit of holders of Single TIRs to give the trustee instructions as to how to vote on matters to be considered at any annual or special meeting of shareholders held by Underlying Company.

[30] Beneficial owners of Single TIRs will have the right to vote to dissolve and liquidate the Trust.

[31] In contrast, the Exchange disseminates at least every 15 seconds over the Consolidated Tape Association's Network B a ''per receipt value'' or ''per share value'' for TIRs listed pursuant to Amex Rules 1200, 1201, and 1202 and Commentary .01 of Amex Rule 1202 (which does not reflect the product's fees), due to the fact that the TIR holds multiple securities. The reason that the ''per receipt value'' currently disseminated for TIRs, such as HOLDRs, does not reflect fees is because the only fees charged are for issuance and cancellation and a trustee custodial fee that is paid out of dividends, if any are declared. See Securities Exchange Act Release No. 41593 (July 1, 1999), 64 FR 37178 (July 9, 1999), note 3. Because Single TIR, such as BIGS, hold only one equity component, for which real-time last sale reporting (and bid and offer quotations) are available, the Exchange does not plan to disseminate the intraday valuation of the product based on the fact that sufficient information exists for intraday valuation of the Single TIR shares. The Exchange states that fee structure for Single TIRs is similar to that of existing products and should not affect the intraday trading valuation

will be quoted on a per receipt basis and will be disseminated by the Amex every 15 seconds over the Consolidated Tape Association's Network B. Single TIRs may trade in the secondary market at prices that are lower than the aggregate value of the corresponding underlying security. If, in such case, a holder of a Single TIR wishes to realize the net asset value of the underlying security, that owner will have to exchange the Single TIR.

The Exchange believes that Single TIRs will not trade at a material discount or premium to the underlying securities held by the Trust based on potential arbitrage opportunities. The arbitrage process, which provides the opportunity to profit from differences in prices of the same or similar securities, increases the efficiency of the markets and serves to prevent potentially manipulative efforts. If the price of the Single TIR deviates enough from the price of the Underlying Company's common stock to create a material discount or premium, an arbitrage opportunity is created allowing the arbitrageur to either buy the Single TIR at a discount, immediately cancel them in exchange for the Underlying Company's common stock and sell the securities in the cash market at a profit, or sell the Single TIR short at a premium and buy the Underlying Company's common stock represented by the Single TIR to deposit in exchange for the Single TIR to deliver against the short position. In both instances the arbitrageur locks in a profit and the markets move back into line.

Prospectus Delivery

In connection with the listing and trading of Single TIRs, all investors in Single TIRs who purchase in the initial offering will receive a prospectus. In addition, purchasers of a Single TIR directly from the Trust (by delivering the underlying security to the Trust) will also receive a prospectus. Finally, Amex members purchasing Single TIRs from the Trust for resale to customers will deliver a prospectus to such customers.

Fee Structure

As set forth in the Registration Statement in connection with the BIGS Trust I, the fee structure involves issuance and cancellation fees, commissions and custody fees. The Bank of New York (''BNY''), as trustee, will charge an issuance fee of $5.00 in connection with the creation of each 100 BIGS or portion thereof. In addition, BNY will charge a cancellation fee of $5.00 for each 100 BIGS or portion thereof surrendered for delivery of the underlying security or proceeds of such security.

Brokerage commissions may be charged by a securities broker in connection with the purchase of the underlying security in connection with the creation of the BIGS. In addition, purchases of BIGS on the Exchange may also be subject to brokerage commissions.

BNY as trustee also will charge an annual custody fee of $0.02 for each BIGS, deducted from any cash dividend or other cash distributions, if any. For any calendar year, BNY will waive any portion of the custody fee which exceeds the total cash dividends and other cash distributions paid in that year.

Termination Events

The Single TIR Trust will be terminated if any of the following circumstances occur: (1) Underlying Company no longer has a class of common stock registered under Section 12 of the Act and the trustee has actual knowledge of such event; (2) the Commission finds that Underlying Company or the Trust should be registered as an investment company under the 1940 Act, and the trustee has actual knowledge of the Commission finding; (3) the securities of the Underlying Company are converted or exchanged into, or into a right to receive, securities that are (i) issued by a company or other entity other than the Underlying Company (with certain exceptions for a recapitalization, reorganization or reincorporation), (ii) not registered under Section 12 of the Act or (iii) not listed on a U.S. national securities exchange or included in Nasdaq; (4) the Underlying Company's common stock is not listed for trading on a U.S. national securities exchange or traded through the facilities of Nasdaq National Market System for five (5) consecutive business days and the trustee has actual knowledge of such event; (5) the Single TIRs are delisted from the Amex and are not listed for trading on another U.S. national securities exchange or authorized for quotation on the Nasdaq National Market System within five (5) business days from the date the Single TIRs are delisted; (6) the trustee resigns and no successor trustee is appointed within 60 days from the date the trustee provides notice to the initial depositor of its intent to resign; (7) 75% of beneficial owners of outstanding Single TIRs vote to dissolve and liquidate the trust; and/or (8) the withdrawal of such number of Underlying Company common stock from the Trust so that the aggregate value of the Trust's assets fall below a pre-determined amount.

Upon termination of the Trust, the beneficial owners will surrender the Single TIRs and the trustee will distribute the underlying securities to the Single TIRs holders.

Information Circular

The proposed rule change would require the Exchange to evaluate the nature and complexity of each Single TIR, prior to the commencement of its trading, and, if appropriate, distribute and circulate to the membership guidance regarding member firm compliance responsibilities when handling transactions in such securities. In addition, prior to the commencement of trading in Single TIRs, the Exchange will issue a circular to members informing them of, among other things, Exchange policies regarding trading halts in such securities. First, the circular will advise that trading will be halted in the event the market volatility trading halt parameters set forth in Amex Rule 117 have been reached. Second, the circular will advise that, in addition to other factors that may be relevant, the Exchange may consider factors such as the extent to which trading is not occurring in a deposited share(s) and whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present; however, in any event, trading in the Single TIRs will be halted if trading in the underlying equity security is halted because of a regulatory trading halt as defined in Rule 6h–1 under the Exchange Act.

In addition, the circular will also discuss the special characteristics and risks of trading Single TIRs. Specially, the circular, among other things, will discuss how the Single TIRs are issued and redeemed from the trust, member prospectus delivery requirements, and applicable Exchange rules, such as the limited exception to Amex Rule 170. The circular will also explain the various fees as described in the Registration Statement. The circular will also advise members of their suitability obligations with respect to a recommended transaction in the Single TIR shares.[32]

Trading Rules

Proposed Commentary .13 of Amex Rule 170 would grant a specialist in a Single TIR a limited exception from Commentaries .01, .02, and .07 of Amex

of the Single TIR shares. Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Commission, on April 14, 2005.

[32] *See* Amex Rule 411.

Rule 170. Such exception would allow a specialist in a Single TIR to buy on plus ticks and/or sell on minus ticks for the purpose of bringing the Single TIR into parity with its underlying security. Generally, Single TIRs are equity securities subject to Amex Rules governing the trading of equity securities, including, among others, rules governing priority, parity and precedence of orders, specialist responsibilities, account opening and customer suitability (Amex Rule 411), with the prior approval of a floor official, of a stop or limit order by a quotation (Amex Rule 154, Commentary .04(c)). Initial equity margin requirements of 50% and the regular equity trading hours of 9:30 a.m. to 4 p.m. will apply to transactions in Single TIRs. Unlike HOLDRS, the trading rules pertaining to odd-lot trading in Amex equities (Amex Rule 205) will apply to the trading of Single TIRs, since Single TIRs can be traded in odd-lots. Single TIRs will be deemed ''Eligible Securities,'' as defined in Amex Rule 230, for purposes of the Intermarket Trading System Plan and therefore will be subject to the trade through provisions of Amex Rule 236 that require that Amex members avoid initiating trade-throughs for ITS securities.

Specialist transactions of Single TIRs made in connection with the creation and redemption of Single TIRs will not be subject to the prohibitions of Amex Rule 190.[33] Single TIRs will trade in minimum fractional increments pursuant to Amex Rule 127, resulting in a minimum fractional change of $0.01. Single TIRs will be subject to the short sale rule, Rule 10a–1 under the Act and Regulation SHO under the Act.[34] The Exchange represents that its surveillance procedures applicable to the Single TIRs are adequate to deter manipulation,[35] and will be similar to those used for other TIRs and exchange-traded funds and will incorporate and rely upon existing Amex surveillance procedures governing options and equities.

Proposed Commentary .05 to Amex Rule 1202 also makes clear that Single TIRs may not be traded side-by-side and on an integrated market making basis. Furthermore, the Exchange proposes, in proposed Commentary .06, to halt trading on the Exchange in Single TIRs whenever the Exchange deems such action appropriate in the interests of a fair and orderly market and to protect investors. Among the factors that may be considered are that: (1) Trading in the underlying security has been halted or suspended in the primary market; (2) the opening of such underlying security in the primary market has been delayed because of unusual circumstances; (3) the Exchange has been advised that the issuer of the underlying security is about to make an important announcement affecting such issuer; (4) other unusual conditions or circumstances are present. To the extent that a security underlying a Single TIR is subject to a regulatory halt as defined in Rule 6h–1 under the Exchange Act, the Exchange will halt or suspend trading in such Single TIR.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[36] in general, and furthers the objectives of Section 6(b)(5),[37] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not receive any written comments on the proposed rule change.

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 self-regulatory organization 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–Amex–2003–66 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–Amex–2003–66. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. 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–Amex–2003–66 and should be submitted on or before May 13, 2005.

[33] *See* Commentary .05 to Amex Rule 190.

[34] 17 CFR 240.10a–1; 17 CFR 242.200(g).

[35] Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Commission, on April 14, 2005.

[36] 15 U.S.C. 78f(b).

[37] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[38]

Margaret H. McFarland,

Deputy Secretary.

Exhibit A—American Stock Exchange, Inc.

Proposed Rule Change

It is proposed that the following provisions of the American Stock Exchange Rules be amended as set forth below. [Bracketing] indicates text to be deleted and *italics* indicates text to be added.

Rule 170. Registration and Functions of Specialists

(a)–(e) No Change.

Commentary

.01 through .12 No Change.

.13 *In connection with Trust Issued Receipts listed pursuant to Commentary .03 to Rule 1202 (''Single TIRs''), Commentaries .01, .02 and .07 of this Rule shall not apply to the trading of receipts for the purpose of bringing the price of the receipt into parity with the value of the securities on which the receipt is based, with the net asset value of the securities comprising the receipt or with a futures contract on the value of the securities on which the receipt is based. Such transactions must be effected in a manner that is consistent with the maintenance of a fair and orderly market and with the other requirements of this rule and the supplementary material herein.*

Rule 1202. Initial and Continued Listing

Trust Issued Receipts will be listed and traded on the Exchange subject to application of the following criteria:

(a) No Change.

(b) Continued Listing—Following the initial twelve month period following formation of a Trust and commencement of trading on the Exchange, the Exchange will consider the suspension of trading in or removal from listing of a Trust upon which a series of Trust Issued Receipts is based under any of the following circumstances:

(i) If the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Issued Receipts for 30 or more consecutive trading days;

(ii) If the Trust has fewer than 50,000 receipts issued and outstanding;

(iii) If the market value of all receipts issued and outstanding is less than $1,000,000;[or]

(iv) Each component security must be a section 12 security under the Securities Exchange Act of 1934 and listed on a national securities exchange or traded through the facilities of Nasdaq and reported national market system security; or

(v)[(iv)] If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

Upon termination of a Trust, the Exchange requires that Trust Issued Receipts issued in connection with such Trust be removed from Exchange listing. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of securities in the Trust falls below a specified amount.

(c)–(e) No Change.

Commentary

.01 The Exchange may approve a series of Trust Issued Receipts for listing and trading on the Exchange pursuant to Rule 19b–4(e) under the Securities Exchange Act of 1934 (''Act''), provided each of the component securities satisfies the following criteria:

Eligibility Criteria for Component Securities Represented by a series of Trust Issued Receipts:

(i) Each component security must be registered under Section 12 of the Exchange Act;

(ii) Each component security must have a minimum public float of at least $150 million;

(iii) Each component security must be listed on a national securities exchange or traded through the facilities of Nasdaq and reported national market system security;

(iv) Each component security must have an average daily trading volume of at least 100,000 shares during the preceding sixty-day trading period;

(v) Each component security must have an average daily dollar value of shares traded during the preceding sixty-day trading period of at least $1 million; and

(vi) The most heavily weighted component security may not initially represent more than 20% of the overall value of the Trust Issued Receipt.

.02 The eligibility requirements for Component Securities that are represented by a series of Trust Issued Receipts and that became part of the Trust Issued Receipt when the security was either: (a) Distributed by a company already included as a Component Security in the series of Trust Issued Receipts; or (b) received in exchange for the securities of a company previously included as a Component Security that is no longer outstanding due to a merger, consolidation, corporate combination or other event, shall be as follows:

(i) The Component Security must be listed on a national securities exchange or traded through the facilities of Nasdaq and a reported national market system security;

(ii) The Component Security must be registered under Section 12 of the Exchange Act; and

(iii) The Component Security must have a Standard & Poor's Sector Classification that is the same as the Standard & Poor's Sector Classification represented by the Component Securities included in the Trust Issued Receipt at the time of the distribution or exchange.

.03(a) The Exchange may approve a series of Trust Issued Receipts based on a single component security for listing and trading on the Exchange pursuant to Rule 19b–4(e) under the Securities Exchange Act of 1934 (''Act''), provided, the component security satisfies the following criteria:

Eligibility Criteria for a Single Component Security Represented by a series of Trust Issued Receipts:

(i) The component security must be registered under Section 12 of the Exchange Act;

(ii) The component security must be listed on a national securities exchange or traded through the facilities of Nasdaq and reported national market system security;

(iii) The component security may be a security of a U.S. or foreign issuer that meets the requirements of Section 107B(f) of the Amex Company Guide;

(iv) The component security must have a minimum public float of at least $150 million;

(v) The component security must have an average daily trading volume of at least 100,000 shares during the preceding sixty-day trading period;

(vi) The component security must have an average daily dollar value of shares traded during the preceding sixty-day trading period of at least $1 million.

(b) A series of Trust Issued Receipts based on a single component equity security may be issued, exchange or traded in round lots and/or odd lots.

(c) A minimum of 150,000 receipts are required to be outstanding when trading commences.

(d) Prior to commencement of trading of securities admitted to listing under this section, the Exchange will evaluate the nature and complexity of the issue

[38] 17 CFR 200.30–3(a)(12).

and, if appropriate, distribute and circulate to the membership providing guidance regarding member firm compliance responsibilities when handling transactions in such securities.

(e) If the component security is to be selected by a broker-dealer, the broker-dealer should erect a ''firewall'' around the personnel who have access to information regarding such selection prior to listing.

(f) For continued eligibility for trading Single TIRs, the underlying equity security of such Single TIR must be eligible for standardized equity options trading pursuant to Rule 916.

.04 {*Reserved*}

.05 Trust Issued Receipts listed pursuant to Commentary .03 to Rule 1202 (''Single TIRs'') do not qualify for side-by-side trading and integrated market making as set forth in Rule 175(c)(2) and 958(e).

.06 Single TIR Trading Halts—Trading on the Exchange in Single TIRs shall be halted or suspended whenever the Exchange deems such action appropriate in the interests of a fair and orderly market and to protect investors. Among the factors that may be considered are that: (1) Trading in the underlying security has been halted or suspended in the primary market; (2) the opening of such underlying security in the primary market has been delayed because of unusual circumstances; (3) the Exchange has been advised that the issuer of the underlying security is about to make an important announcement affecting such issuer; (4) other unusual conditions or circumstances are present. To the extent that a security underlying a Single TIR is subject to a regulatory halt as defined in Rule 6h–1 under the Securities Exchange Act of 1934, the Exchange will halt or suspend trading in such Single TIR.

.07 If an issuer proposes to list a Single TIR that relates to more than the allowable percentages set forth in Section 107B(f) of the Company Guide, the Exchange will submit a proposed rule change with the Commission pursuant to Section 19(b)(2) and cannot list and trade such Single TIR until the Commission issues an approval order.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51566; File No. SR–Amex–2004–47]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Listing and Trading of Yield Underlying Participating Securities (YUPS)

April 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 June 10, 2004, the American Stock Exchange LLC (''Amex'' 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 April 15, 2005, the Exchange submitted 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 Exchange proposes to approve for listing and trading Yield Underlying Participating Securities (''YUPS''), representing a beneficial ownership interest in the common stock of a single, publicly-traded company and a series of U.S. Treasury Securities (''Treasury Securities'') with quarterly maturities. YUPS would be eligible for listing and trading, including trading pursuant to unlisted trading privileges, pursuant to Rule 19b–4(e) [4] if the product satisfies the criteria in proposed Commentary .03 of Rule 1202 for ''Single TIRs.'' [5] YUPS would also be subject to proposed Commentary .13 to Amex Rule 170 [6] to allow a limited exception for specialist in Single TIRs, including the YUPS, to buy on plus ticks and/or sell on minus ticks to bring the Single TIR/YUPS into parity with the underlying securities. YUPS would also be subject to the proposed Commentary .05 to Amex Rule 1202, which states that YUPS do not qualify for side-by-side trading and integrated market making as set forth in Amex Rule 175(c)(2) and 985(e).[7] Additionally, YUPS would be subject to proposed Commentary .06 to Amex Rule 1202, regarding trading halts, and proposed Commentary .07 to Amex Rule 1202, regarding allowable percentages set forth in Section 107B of the Amex *Company Guide*.[8] The text of the proposed rule change is available on the Amex's Web site *http://www.amex.com,* at the principal office of the Amex, and at the Commission's Public Reference Room. The text of the proposed rule change appears below. Additions are *italicized,* deletions are bracketed.

* * * * *

Rule 1202. Initial and Continued Listing

Trust Issued Receipts will be listed and traded on the Exchange subject to application of the following criteria:

(a)–(e) No Change.

Commentary

.01 *through* [–.2].*03* [9] No Change.

.04 *A series of Trust Issued Receipts based on a single component security approved for trading pursuant to Commentary .03 of this Rule may also include U.S. Treasury Securities (''Treasury Securities''). Up to 35% of the Trust in such case may consist of Treasury Securities.*

.05 through .07 No Change.[10]

* * * * *

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 Amex 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 placed specified in Item III below. The Amex has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Amex Rule 1201, the Exchange may approve for listing and trading trust

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 makes minor typographical edits to the proposed rule text.

[4] 17 CFR 240.19b–4(e).

[5] *See* Securities Exchange Act Release No. 51567 (April 18, 2005) (SR–Amex 2003–66)(''Single TIR Proposal'').

[6] This new Commentary .13 to Amex Rule 170 is proposed in the Single TIR Proposal.

[7] *See* Single TIR Proposal.

[8] *See* Single TIR Proposal.

[9] *See* Single TIR Proposal for text of proposed Commentary .03 to Rule 1202.

[10] *See* Single TIR Proposal for text of proposed Commentaries .05, .06, and .07 to Rule 1202.

issued receipts (''TIRs'')[11] based on one or more securities.[12] The Amex in this proposal seeks to list for trading under Amex Rule 1202, YUPS, representing ownership interests in a trust, the assets of which will consist of shares of the common stock of a single, publicly-traded company (the ''Common Stock'') and a series of Treasury Securities with quarterly maturities in the form of strips (''U.S. Treasury Strips'').[13] The Exchange proposes that the minimum number of receipts or YUPS required to be outstanding when trading commences is 150,000. YUPS may be approved for listing and trading on Common Stock that meets certain criteria identified below relating to, among other things, public float and trading volume, required in proposed Commentary .03 to Amex Rule 1202.[14] The Exchange expects Cantor Fitzgerald & Co. (''Cantor''), as initial depositor to the trust, to offer the YUPS and Bank of New York (''BNY'') will act as trustee.

Introduction

In September 1999, the Exchange adopted rules for the listing and trading of TIRs.[15] TIRs are negotiable receipts issued by trusts that represent investors' discrete identifiable and undivided beneficial ownership interest in the securities deposited into the trust. Since that time the Exchange has listed seventeen (17) TIRs under the trade name of HOLDRS,[16] representing a wide variety of industry sectors and the market as a whole. The original HOLDR was the Internet HOLDR.

To accommodate the listing of additional TIRs, the Exchange in September 2000 revised the existing listing criteria and trading rules to permit the listing and trading of TIRs pursuant to Rule 19b–4(e) under the Act (''Generic Listing Standards'').[17] In order to efficiently list TIRs without submitting a separate rule filing with the Commission for each TIR, the Exchange consistent with Rule 19b–4(e) requires, among other things, evidence of sufficient size, liquidity and non-concentration of the underlying component securities of the TIR.[18] Because of the structure of YUPS, representing an interest in shares of the Common Stock and a series of U.S. Treasury strips, the Exchange believes that the current Generic Listing Standards cannot be used by the Exchange to list this product. However, based on the TIR Approval Order, the Exchange represents that YUPS may be listed for trading pursuant to Amex Rule 1201 and Amex Rule 1202, subject to Commission review and approval. As a result, the Exchange submits this proposed rule change for the purpose of adding Commentary .04 to Amex Rule 1202 to permit the listing and trading, including pursuant to unlisted trading privileges, of a series of YUPS pursuant to Rule 19b–4(e) under the Act when the product complies with proposed Commentaries .03, .05, .06, and .07 to Amex Rule 1202 and proposed Commentary .13 to Amex Rule 170 in the Single TIR Proposal.

Listing Criteria

Under Amex Rule 1201, the Exchange may list and trade TIRs based on one or more securities. The securities that are included in a series of a TIR are required to be selected by the Exchange or its agent, a wholly owned subsidiary of the Exchange, or by such other person as shall have a proprietary interest in such TIRs.[19] Pursuant to Amex Rule 1201, the Exchange submits that it may designate YUPS for trading.

YUPS will conform to the initial and continued listing criteria under proposed Commentary .03 for Single TIRs in Amex Rule 1202.[20] Each YUPS trust will be formed under a depositary trust agreement, among BNY, as trustee, Cantor, the depositor, and other depositors, if any, and the holders of YUPS (the ''YUPS Trust'' or ''Trust'').[21] The term of each YUPS Trust will expire on or shortly after three (3) years from its date of formation.

As noted above, the Exchange proposes to establish specific criteria in proposed Commentary .03 to Amex Rule 1202, for determining whether Common Stock is eligible for YUPS listing and trading. The criteria are similar to, and based on, the existing criteria for TIRs under the Generic Listing Standards.

[11] A TIR is defined in Amex Rule 1200(b) as a security (a) that is issued by a trust which holds specified securities deposited with the trust; (b) that, when aggregated in some specified minimum number, may be surrendered to the trust by the beneficial owner to receive the securities; and (c) that pays beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee by an issuer of the deposited securities.

[12] The Exchange defines a ''security'' or ''securities'' to include stocks, bonds, options, and other interests or instruments commonly known as securities. *See* Amex Constitution, Article I, Section 3(j). Pursuant to Commentary .01 to Amex Rule 1202, initially, no component security of a TIR may represent more than 20% of the overall value of the receipt. If the portfolio of securities underlying the TIR drops to fewer than nine, the SRO will consult with the Commission staff to confirm the appropriateness of continued listing of such TIR. See Securities Exchange Act Release No. 41892 (September 21, 1999), 64 FR 52559 (September 29, 1999) (''TIR Approval Order'').

[13] A ''stripped bond'' is a bond that is separated into its two component parts: periodic interest payments and principal repayment. In the case of stripped bond, each of the interest repayments and principal repayment are stripped apart by a brokerage firm and sold individually as zero-coupon securities. U.S. Treasury Securities that are ''stripped'' are called ''STRIPS,'' which strands for ''separate trading of registered interest and principal of securities.''

[14] *See* Single TIR Proposal.

[15] *See* TIR Approval Order.

[16] *See* HOLDRS No-Action Letter *infra* note 21 and Registration No. 333–78575 filed with the Commission on September 23, 1999 pursuant to Rule 424(b)(4) CIK No. 00007286(2).

[17] Commission Rule 19b–4(e), adopted on December 8, 1998, permits the Exchange to list and trade new derivative securities products without submitting a proposed rule change, provided the Exchange has in place trading rules, procedures, a surveillance program and listing standards that pertain to the class of securities covering the new product. *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

[18] Commentary .01 of Amex Rule 1202 provides the eligibility criteria for component securities represented by a series of a TIR as follows: (1) Each component security must be registered under Section 12 of the Act; (2) each component security must have a minimum public float of at least $150 million; (3) each component security must be listed on a U.S. national securities exchange or traded through the facilities of The Nasdaq Stock Market, Inc. (''Nasdaq'') and a reported national market system security; (4) each component security must have an average daily trading volume of at least 100,000 shares during the preceding sixty-day trading period; (5) each component security must have an average daily dollar value of shares traded during the proceeding sixty-day trading period of at least $1 million; and (6) the most heavily weighted component security may not initially represent more than 20% of the overall value of the TIR.

[19] Cantor, the initial depositor, and BNY, the trustee, will determine the particular underlying Common Stock to be included in each YUPS trust.

[20] Additionally, the initial listing standards set forth in Amex Rule 1202(a) for all TIRs provide that the Exchange must establish a minimum number of TIRs required to be outstanding at the time of the commencement of trading on the Exchange. As set forth above, the minimum number of YUPS required to be outstanding at the time of trading is 150,000 receipts. The continued listing guidelines for all TIRs are set forth in Amex Rule 1202(b) and currently state that the Exchange will consider the suspension of trading in or removal from listing of a trust upon which a series of TIRs is based under any of the following circumstances: (1) If the trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Issued Receipts for 30 or more consecutive trading days; (2) if the trust has fewer than 50,000 receipts issued and outstanding; (3) if the market value of all receipts issued and outstanding is less than $1,000,000; or (4) if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable. Upon termination of a trust, the Exchange requires that any TIRs issued in connection with such trust be removed from Exchange listing. In addition, a trust may terminate in accordance with the provisions of the trust prospectus, which may provide for termination if the value of securities in the trust falls below a specified amount.

[21] The trust is not a registered investment company under the Investment Company Act of 1940 (''1940 Act''). *See* SEC No-Action Letter dated September 3, 1999 to Merrill Lynch, Pierce, Fenner & Smith Incorporated, providing relief from registration as a management investment company under the 1940 Act for HOLDRS (the ''HOLDRS No-Action Letter''). The depositor, Cantor, has requested similar no-action relief from the staff of the Commission's Division of Investment Management.

Thus, the proposed eligibility criteria for the underlying equity component (''Common Stock'') represented by a series of YUPS are as follows:

1. The component Common Stock must be registered under Section 12 of the Act;
2. The component Common Stock must be listed on a national securities exchange or traded through the facilities of Nasdaq and reported national market system security;
3. The component Common Stock may be a security of the U.S. or foreign issuer that meets the requirements of Section 107B(f) [22] of the Company Guide;
4. The component Common Stock must have a minimum public float of at least $150 million;
5. The component Common Stock must have an average daily trading volume of at least 100,000 shares during the preceding sixty-day trading period; and
6. The component Common Stock must have an average daily dollar volume of shares traded during the preceding sixty-day period of at least $1 million.

Additionally, a minimum of 150,000 receipts are required to be outstanding when trading commences. For continued listing, the component stock must be eligible for standardized equity option trading pursuant to Amex Rule 916. The eligibility criteria were selected to ensure that the Common Stock available for YUPS is well capitalized and actively traded. With respect to public float and trading volume, the Exchange states the criteria track the requirements for qualification as ''actively traded securities'' under Regulation M.[23]

Proposed Commentary .04 to Amex Rule 1202 provides that up to 35% of the YUPS Trust may consist of Treasury Securities. With respect to the U.S. Treasury strip component of YUPS, the Exchange notes that the market for Treasury Securities is the largest and most liquid securities market in the world.[24] For the year 2003, total daily average transaction volume for primary dealers [25] in U.S. Treasury coupon securities was approximately $406.08 billion. During this same period, primary dealer average daily transaction volume in the 1–3 year range was approximately $146.58 billion; average daily transaction volume in the 3–6 year range was approximately $130.67 billion; average daily transaction volume in the 6–11 year range was approximately $103.65 billion; and average daily transaction volume in the more than 11 year range was approximately $25.08 billion.[26] In the first quarter of 2004, average daily transaction volumes for the same duration U.S. Treasury coupon securities were $166.89 billion, $135.4 billion, $106.4 billion and $24.12 billion, respectively. Most of this trading volume occurs in the most recently issued security in a particular maturity class.[27]

The secondary market for Treasury Securities is a highly organized over-the-counter (''OTC'') market. Many dealers, and particularly the primary dealers, make markets in Treasury Securities. Trading activity takes place between primary dealers, non-primary dealers, and customers of these dealers, including financial institutions, non-financial institutions and individuals. Increasingly, trading in Treasury Securities occurs through automated trading systems.[28]

The primary dealers are among the most active participants in the secondary market for Treasury Securities. The primary dealers and other large market participants frequently trade with each other, and most of these transactions occur through an interdealer broker.[29] The interdealer brokers provide primary dealers and other large participants in the Treasury market with electronic screens that display the bid and offer prices among dealers and allow trades to be consummated.

Quote and trade information regarding Treasury Securities is widely available to market participants from a variety of sources. The electronic trade and quote systems of the dealers and interdealer brokers are one such source. Groups of dealers also furnish trade and quote information to vendors such as Bloomberg LLC, Reuters, Moneyline Telerate, and CQG. GovPX,[30] for example, is a consortium of leading government securities dealers that provides market data from leading government securities dealers to market data vendors. TradeWeb, another example, is a consortium of 18 primary dealers that, in addition to providing a trading platform, also provides market data direct to subscribers or to other market data vendors.[31] In addition, an interdealer broker of government securities (Cantor) for many years has provided Moneyline Telerate with market data.

In order to provide investors who purchase or sell YUPS with information regarding the value of the underlying Common Stock and Treasury strips, the Exchange will disseminate every 15 seconds an indicative value of the underlying portfolio.[32]

Product Description

The Exchange states that YUPS are designed to provide investors with a current market yield, while also providing the opportunity to share in the appreciation, if any, of a publicly-traded share of common stock. YUPS represent an undivided beneficial interest in the underlying securities held by the YUPS Trust. A holder of YUPS may exchange the YUPS to receive each of the underlying securities. The Exchange states that the expenses associated with trading YUPS

[22] Section 107B(f) of the Company Guide provides requirements to meet in connection with the listing and trading of equity linked notes based on foreign and U.S. underlying securities. In general, this provision limits the amount of outstanding common shares of an entity that may be linked to a derivative instrument. The Exchange has also set forth, in proposed Commentary .07, that if an issuer proposes to list a Single TIR that relates to more than the allowable percentages set forth in Section 107B(f) of the Company Guide, the Exchange will submit a proposed rule change with the Commission pursuant to Section 19(b)(2) and cannot list and trade such Single TIR until the Commission issues an approval order. *See* Single TIR Proposal.

[23] *See* Securities Exchange Act Release No. 38067 (December 20, 1996), 62 FR 520 (January 3, 1997) at 35–36. Rules 101(c) and 102(d) under Regulation M defines ''actively-traded securities'' as those securities that have an average daily trading volume of at least $1 million and are issued by an issuer whose common equity securities have a public float of at least $150 million.

[24] *See* ''The Treasury Securities Market: Overview and Recent Developments,'' *The Federal Reserve Bulletin,* December 1999; which can be obtained from the Federal Reserve's Web site *www.federalreserve.gov/pubs/bulletin/1999/99index.htm.*

[25] Primary dealers are selected by the Federal Reserve Bank of New York as counter parties for the New York Federal Reserve's open market operations (government securities transactions related to the Federal Reserve's implementation of monetary policy). Primary dealers are required to participate meaningfully in both open market operations and Treasury auctions and are required to provide policy relevant market information to the Federal Reserve Bank of New York.

[26] Primary dealers in Treasury Securities submit statistics to The Federal Reserve Bank of New York regarding their transactions in Treasuries. These statistics may be obtained from the New York Federal Reserve's Web site *http://www.ny.frb.org.*

[27] *See supra* note 24 at page 795.

[28] *See* ''eCommerce in the Fixed-Income Markets: The 2001 Review of Electronic Transaction Systems,'' December 2001. This survey of electronic trading systems in the bond market was prepared by the staff of The Bond Market Association and is available through the Association's Web site *http://www.bondmarkets.com.*

[29] *E.g.,* BrokerTec Global, Cantor Fitzgerald, Garban-Intercapital, and Liberty Brokerage.

[30] *http://www.govpx.com.*

[31] *http://www.tradeweb.com.*

[32] Because YUPS will hold multiple securities (*e.g.,* an equity security and Treasury strips), the Exchange finds it useful to disseminate an estimated intraday valuation indicative of the underlying portfolio.

are expected to be less than the expenses associated with trading each of the underlying securities separately in a traditional brokerage account. YUPS are also expected to provide reduced volatility compared to the trading of each Common Stock, largely due to the existence of downside protection received through the current yield of U.S. Treasury strips.

YUPS are separate and distinct from the underlying securities comprising the portfolio of the YUPS Trust. Consistent with the TIR Approval Order,[33] each YUPS Trust will only issue and retire YUPS in a minimum issuance denominations,[34] which is expected to be eight (8) round-lots of 100 YUPS shares. Each Trust will only issue YUPS upon the deposit of the whole shares represented by the minimum issuance denomination and the series U.S. Treasury strips represented by such minimum issuance denomination. In the event that a fractional share is represented by the minimum issuance denomination, the Trust may require a minimum of more than one minimum issuance denomination for an issuance so that the Trust will always receive whole share amounts for issuance of YUPS. Thus, YUPS will trade on the Exchange only in round lots of 100 YUPS.

The number of outstanding YUPS will increase and decrease as a result of in-kind deposits and withdrawals of the underlying securities. The YUPS Trust will stand ready to issue additional YUPS on a continuous basis when an investor deposits the required securities with the trustee.

The initial public offering price for 100 YUPS will equal the sum of the closing market price on the Nasdaq National Market (for Nasdaq stocks) or the primary listed securities exchange (for listed stocks) on the pricing date for each underlying share of the Common Stock multiplied by the ''share per receipt ratio amount'' [35] to be determined on the pricing, and the closing prices of the U.S. Treasury strips in the futures market on the pricing date, plus an underwriting fee. After the initial public offering, each Trust may issue additional YUPS regarding a specific underlying Common Stock on a continuous basis. Investors may acquire YUPS in two ways: (1) Through a purchase on the Exchange, or (2) through an in-kind deposit with the trustee during normal business hours of the number of the underlying shares of Common Stock represented by the specified round-lots of 100 YUPS and the series of U.S. Treasury Strips represented by the specified round-lots of 100 YUPS. Investors that create YUPS by delivery to the Trust of the requisite underlying Common Stock and U.S. Treasury Strips will be required to pay an issuance fee that is expected to be approximately 1% of the value of the securities represented by the YUP receipt.[36] In addition, investors will also be responsible for paying any sales commissions that are charged by a broker in connection with any purchase of the underlying securities.

The initial weighting of YUPS will be approximately 70% allocated to Common Stock and 30% allocated to the U.S. Treasury Strips. The specific share amounts for each round-lot of 100 YUPS will be determined on the pricing date. The underlying securities of YUPS consist of shares of a Common Stock that is registered under Section 12 of the Act and meets the other listing criteria discussed above, and a series of zero-coupon U.S. Treasury Strips, maturing quarterly. In selecting the Common Stock, no investigation or review of the individual publicly-traded company, including the public filings, will be performed other than to the extent required to determine whether the company and its common stock satisfies the listing criteria for YUPS.

After the pricing, the ''share per receipt ratio amount'' for an underlying Common Stock will not change, except for changes due to corporate events, such as stock splits or reverse stock splits. Under no circumstances will the common stock of a different publicly-traded company be substituted for the initial common stock established for the YUPS. The actual number of shares and weighting will be determined on the date of the initial capitalization of the Trust by the initial depositor and will appear in the final prospectus delivered in connection with sales of YUPS.[37] The notional amount and weighting of the underlying U.S. Treasury Strips will also be determined on the pricing date and, except as a result of the maturity of the U.S. Treasury Strips, will not change during the term of the Trust. The relative weightings of the deposited securities will change based on the current market price of the deposited securities, but the component securities held by each YUPS Trust and represented by a YUPS will not change except as a result of the quarterly maturity of the U.S. Treasury Strips.

Investors may withdraw the underlying securities of YUPS upon request by delivering a minimum issuance denomination (expected to be eight (8) round lots of 100 YUPS) or integral multiple thereof to the trustee during normal business hours. To the extent that any exchange of YUPS requires the delivery of a fractional share, the trustee will sell such share in the market and deliver cash in lieu of such share. Beneficial owners of YUPS will have the same rights and privileges as they would have if they beneficially owned the underlying securities outside of the Trust.[38] These include the right of investors to instruct the trustee to vote the securities, the right to receive dividends and other distributions on the underlying securities, if any, and the right to exchange YUPS to receive the underlying securities.[39] However, except with respect to the right to vote for dissolution of the Trust, holders of YUPS will not have voting rights with

[33] *See* TIR Approval Order.

[34] YUPS will evidenced by one or more global certificates that the trustee will deposit with DTC and register in the name of Cede & Co., as nominee for DTC. YUPS will be available only in book-entry form. Owners of YUPS may hold their YUPS through DTC, if they are participants in DTC, or indirectly through entities that are participants in DTC.

[35] The ''share per receipt ratio amount'' is the number of shares of the underlying Common Stock (or multiplier) for each one (1) YUP. The ''share per receipt ratio'' for each separate YUPS issue will depend on the price of the Common Stock and will vary from issue to issue. In general, the higher the market price of the Common Stock, the lower the ''share per receipt ratio.''

[36] Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Commission, on April 15, 2005.

[37] As a result of the share per receipt ratio amount or multiplier, the initial issue price will be a multiple of the current price of the Common Stock. For example, the initial issue price of a YUP may be $49.99 (plus a 1% issuance fee) provided a share per receipt ratio of 1.7825 and a current price of $20.00 per share for a given stock that qualifies as a YUP candidate and $15.00 principal amount of Treasury Securities (with a current market value of $14.34). If YUPS are surrendered to the trustee in a minimum issuance amount (expected to be eight (8) round lots of 100 YUPS), the investor will receive 1,426 shares of the Common Stock and $12,000 principal amount of Treasury Securities for each minimum issuance denomination. In the event a minimum issuance denomination represents fractional shares due to certain corporate events such as stock splits or reverse stock splits or other corporate distributions, the trustee will deliver cash in lieu of such fractional share.

[38] The trustee will deliver proxy soliciting materials provided by the publicly-traded company underlying YUPS to permit holders of YUPS to give the trustee instructions as to how to vote on matters to be considered at any annual or special meeting of shareholders held by that company.

[39] Dividends and distributions will generally be passed-through to the holders of the YUPS. However, distributions, if any, of additional shares of common stock will be retained by the Trust and added to the quantity of the common stock underlying the outstanding YUPS. Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Commission, on April 15, 2005.

respect to the YUPS Trust.[40] The Trust will not be managed and will remain static over the term of the Trust.

The Trust will not publish or otherwise calculate the aggregate value of the underlying security represented by YUPS. However, as noted above, the Exchange will disseminate every 15 seconds over the Consolidated Tape Association's Network B an indicative value of the underlying portfolio of YUPS. YUPS may trade in the secondary market at prices that are lower than the aggregate value of the corresponding underlying security. If, in such case, a holder of a YUPS wishes to realize the net asset value of the underlying security, that owner will have to exchange the YUPS.

The Exchange believes that YUPS will not trade at a material discount or premium to the underlying securities held by the Trust based on potential arbitrage opportunities. The arbitrage process, which provides the opportunity to profit from differences in prices of the same or similar securities, increases the efficiency of the markets and serves to prevent potentially manipulative efforts. If the price of YUPS deviates enough from the portfolio of the deposited securities to create a material discount or premium, an arbitrage opportunity is created allowing the arbitrageur to either buy the YUPS at a discount, immediately cancel them in exchange for the deposited securities and sell the underlying securities in the cash market at a profit, or sell the YUPS short at a premium and buy the securities represented by YUPS to deposit in exchange for YUPS to deliver against the short position. In both instances the arbitrageur locks in a profit and the markets move back into line.

Prospectus Delivery

In connection with the listing and trading of YUPS, all investors in YUPS who purchase in the initial offering will receive a prospectus. In addition, purchasers of YUPS directly from the Trust (by delivering the underlying securities to the Trust) will also receive a prospectus. Finally, Amex members purchasing YUPS from the Trust for resale to customers will deliver a prospectus to such customers.[41]

Fee Structure

As set forth in the Registration Statement in connection with the YUPS Trust, investors purchasing YUPS by delivery to the Trust of the securities represented by the YUPS are required to pay an issuance fee of 1% of the value of the securities underlying the YUPS receipt. There are no cancellation or withdrawal fees.[42]

Brokerage commissions may be charged by a securities broker for the purchase of the underlying securities in connection with the creation of the YUPS. In addition, purchases of YUPS on the Exchange may also be subject to brokerage commissions.

BNY as trustee also will charge an annual custody fee of .04% of the Trust's assets, to be paid quarterly by Cantor (and thus will not be paid out of the assets of the Trust).

Termination Events

The YUPS Trust will be terminated if any of the following circumstances occur: (1) The individual publicly-traded company of the underlying YUPS no longer has a class of securities registered under Section 12 of the Act; (2) the Commission finds that individual publicly-traded company underlying the YUPS or the Trust should be registered as an investment company under the 1940 Act, and the trustee has actual knowledge of the Commission finding; (3) the securities of the individual publicly-traded company underlying the YUPS cease to be outstanding as a result of a merger, consolidation or other corporate combination; (4) the individual publicly-traded company's common stock is no longer listed for trading on the Amex or New York Stock Exchange, Inc. (''NYSE'') or authorized for quotation on Nasdaq National Market System (''NMS'') for five (5) business days from the date the securities are no longer authorized for listing or quotation; (5) the YUPS are delisted from the Amex and are not listed for trading on another U.S. national securities exchange or authorized for quotation on Nasdaq NMS within five (5) business days from the date the YUPS are delisted; (6) the trustee resigns and no successor trustee is appointed within 60 days from the date the trustee provides notice to Cantor, the initial depositor, of its intent to resign; (7) 50% of beneficial owners of outstanding YUPS vote to dissolve and liquidate the trust; and/or (8) the withdrawal of such number of common stock from the Trust so that the aggregate value of the Trust's assets fall below a pre-determined amount.

Upon termination of the Trust, the beneficial owners will surrender the YUPS and the trustee will distribute the underlying securities to the YUPS holders.

Information Circular

The proposed rule change would require the Exchange to evaluate the nature and complexity of YUPS, prior to the commencement of its trading, and, if appropriate, distribute and circulate to the membership guidance regarding member firm compliance responsibilities when handling transactions in such securities. In addition, prior to the commencement of trading in YUPS, the Exchange will issue a circular to members informing them of, among other things, Exchange policies regarding trading halts in such securities. First, the circular will advise that trading will be halted in the event the market volatility trading halt parameters set forth in Amex Rule 117 have been reached. Second, the circular will advise that, in addition to other factors that may be relevant, the Exchange may consider factors such as the extent to which trading is not occurring in a deposited share(s) and whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present; however, in any event, trading in the YUPS will be halted if trading in the underlying equity security is halted because of a regulatory trading halt as defined in Rule 6h–1 under the Act.[43]

In addition, the circular will also discuss the special characteristics and risks of trading YUPS. Specially, the circular, among other things, will discuss how the YUPS are issued and redeemed from the trust, that shares are not individually redeemable, member prospectus delivery requirements, and applicable Exchange rules, such as the limited exception to Amex Rule 170. The circular will also explain the various fees as described in the Registration Statement. The circular will also advise members of their suitability obligations with respect to a recommended transaction in the YUPS shares.[44]

[40] Beneficial owners of YUPS, other than Cantor, will have the right to vote to dissolve and liquidate the Trust.

[41] Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Commission, on April 15, 2005.

[42] Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Commission, on April 15, 2005 (as to fee structure generally).

[43] Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Commission, on April 14, 2005 (regarding content of information circular generally and definition of regulatory trading halt).

[44] *See* Amex Rule 411.

Trading Rules

YUPS are equity securities subject to Amex Rules governing the trading of equity securities, including, among others, rules governing priority, parity and precedence of orders, specialist responsibilities, account opening and customer suitability (Amex Rule 411), with the prior approval of a floor official, of a stop or limit order by a quotation (Amex Rule 154, Commentary .04(c)). Initial equity margin requirements of 50% and the regular equity trading hours of 9:30 a.m. to 4 p.m. will apply to transactions in YUPS. However, trading rules pertaining to the availability of odd-lot trading in Amex equities will not apply to the trading of YUPS, since they can only be traded in round-lots. YUPS will be deemed ''Eligible Securities,'' as defined in Amex Rule 230, for purposes of the Intermarket Trading System Plan and therefore will be subject to the trade through provisions of Amex Rule 236 that require that Amex members avoid initiating trade-throughs for ITS securities.

Specialist transactions of YUPS made in connection with the creation and redemption of YUPS will not be subject to the prohibitions of Amex Rule 190.[45] YUPS will trade in minimum fractional increments pursuant to Amex Rule 127, resulting in a minimum fractional change of $0.01. YUPS will be subject to the short sale rule, Rule 10a–1 under the Act and Regulation SHO under the Act.[46] In addition, Proposed Commentary .13 of Amex Rule 170 would grant a specialist in a Single TIR a limited exception from Commentaries .01, .02, and .07 of Amex Rule 170.[47] Such exception would allow a specialist in a Single TIR to buy on plus ticks and/or sell on minus ticks for the purpose of bringing the Single TIR into parity with its underlying security. The Exchange represents that its surveillance procedures applicable to the YUPS are adequate to deter manipulation,[48] and will be similar to those used for other TIRs and exchange-traded funds (''ETFs'') and will incorporate and rely upon existing Amex surveillance procedures governing options and equities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act[49] in general and furthers the objectives of Section 6(b)(5)[50] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not receive any written comments on the proposed rule change.

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 self-regulatory organization 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–Amex–2004–47 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–Amex–2004–47. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. 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–Amex–2004–47 and should be submitted on or before May 13, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[51]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–1915 Filed 4–21–05; 8:45 am]

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[45] *See* Commentary .05 to Amex Rule 190. Pursuant to Commentary .05, Amex Rule 190(a) will not restrict the specialist in YUPS from purchasing or canceling the YUP or its component securities in connection with the issuance of the YUP, from the Trust as appropriate to facilitate the maintenance of a fair and orderly market.

[46] 17 CFR 240.10a–1; 17 CFR 242.200(g).

[47] *See* Single TIR Proposal.

[48] Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Commission, on April 14, 2005.

[49] 15 U.S.C. 78f(b).

[50] 15 U.S.C. 78f(b)(5).

[51] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51543; File No. SR–CBOE–2005–23]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Accelerated Approval to a Proposed Rule Change To Amend CBOE Rule 8.4 To Remove the Physical Trading Crowd Appointment Alternative for Remote Market-Makers and To Create an ''A+'' Tier Consisting of the Two Most Actively-Traded Products on the Exchange

April 14, 2005.

On March 15, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend CBOE Rule 8.4(d) to remove the Physical Trading Crowd (''PTC'') appointment alternative for Remote Market-Makers (''RMMs'') and to create an ''A+'' Tier consisting of the two most actively-traded products on the Exchange.

The proposed rule change was published for comment in the **Federal Register** on March 21, 2005.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [4] and, in particular, the requirements of section 6 of the Act [5] and the rules and regulations thereunder. The Commission specifically finds that the proposed rule change is consistent with section 6(b)(5) of the Act [6] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the proposal is published for comment in the **Federal Register** pursuant to section 19(b)(2) of the Act.[7] The Commission believes that accelerating approval of the proposal is necessary to accommodate the rollout of CBOE's RMM program. In particular, the Commission notes that the proposal would enable CBOE to commence its RMM program with two of the most actively-traded products included, options on Standard & Poor's Depositary Receipts (Spiders) and options on the Nasdaq-100 Index Tracking Stock (QQQQs), under a new ''A+'' Tier designation. Furthermore, the Commission notes that the proposal would eliminate the PTC appointment option for RMMs and would require them to have a Virtual Trading Crowd appointment, which should allow them greater flexibility to choose their own appointments. The Commission therefore believes that accelerated approval of the proposed rule change is appropriate and finds that it is consistent with the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CBOE–2005–23) be approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–1883 Filed 4–21–05; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 51371 (March 15, 2005), 70 FR 13557.

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51542; File No. SR-CBOE–2005–22]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Accelerated Approval to a Proposed Rule Change To Adopt an Inactivity Fee To Be Charged Against Remote Market-Makers That Fail To Commence Quoting in Their Appointed Classes

April 14, 2005.

On March 15, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt an inactivity fee to be charged against Remote Market-Makers (''RMMs'') that fail to commence quoting in their appointed classes.

The proposed rule change was published for comment in the **Federal Register** on March 21, 2005.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [4] and, in particular, the requirements of Section 6 of the Act [5] and the rules and regulations thereunder. The Commission specifically finds that the proposed rule change is consistent with section 6(b)(4) of the Act [6] in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the proposal is published for comment in the **Federal Register** pursuant to section 19(b)(2) of the Act.[7] The Commission believes that accelerating approval of the proposal is necessary to accommodate the rollout of CBOE's RMM program. In particular, the Commission notes that accelerated approval of the proposal would enable CBOE to commence its RMM program with the inactivity fee in place, which should help to ensure that RMMs are aware that they will be subject to fees if they fail to submit quotations in their appointed classes. The Commission further notes that the proposal should help to prevent an RMM that obtains an electronic appointment in a product from not initiating quoting in that product. In addition, the Commission notes that the proposed inactivity fee is similar to a fee imposed by the International Securities Exchange (''ISE'').[8] The Commission therefore believes that accelerated approval of the proposed rule change is appropriate and finds that it is consistent with the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 51370 (March 15, 2005), 70 FR 13559.

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(2).

[8] *See* Securities Exchange Act Release 46272 (July 26, 2002), 67 FR 50497 (August 2, 2002); *see also* ISE Regulatory Information Circulars 2002–04 and 2002–09.

[9] 15 U.S.C. 78s(b)(2).

proposed rule change (SR-CBOE–2005–22) be approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–1884 Filed 4–21–05; 8:45 am]

BILLING CODE 8010–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51568; File No. SR–CBOE–2004–16]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Denying Motion for Reconsideration of Order Setting Aside Earlier Order Issued by Delegated Authority and Granting Approval to a Proposed Rule Change and Amendment No. 1 Thereto Relating to an Interpretation of Paragraph (b) of Article Fifth of Its Certificate of Incorporation and an Amendment to Rule 3.16(b)

April 18, 2005.

I

On February 25, 2005, we issued an order (''Order'') setting aside a July 15, 2004 order [1] that approved by authority delegated to the Division of Market Regulation a proposed rule change (SR–CBOE–2004–16) submitted by the Chicago Board Options Exchange, Incorporated (''CBOE''), and approving the proposed rule change as amended.[2] Our Order was in response to a petition for review submitted by Marshall Spiegel (''Petitioner'') on August 23, 2004.[3] The CBOE's proposed rule change interprets certain terms used in Article Fifth(b) of CBOE's Certificate of Incorporation (''Article Fifth(b)''). Article Fifth(b) relates, in part, to the ability of a Board of Trade of the City of Chicago, Inc. (''CBOT'') member to become a member of the CBOE without purchasing a CBOE membership (''Exercise Right''). CBOE's stated purpose behind its proposed rule change is the interpretation of Article Fifth(b) in accordance with the original intent of the Article to clarify which individuals will be entitled to the Exercise Right upon distribution by the CBOT of a separately transferable interest (''Exercise Right Privilege'') representing the Exercise Right component of a CBOT membership.

In issuing the Order, we found that the CBOE provided a sufficient basis for finding that, as a federal matter under the Securities Exchange Act of 1934 (''Exchange Act''), the CBOE complied with its Certificate of Incorporation, as required by Section 6(b)(1) of the Exchange Act,[4] in determining that its proposed rule change was an interpretation of, not an amendment to, Article Fifth(b).[5] Further, we found that the proposed rule change was consistent with the Exchange Act, including Section 6(b)(5) thereunder.[6]

II

A motion to reconsider is governed by Rule 470 of the Commission's Rules of Practice.[7] Rule 470 permits us to reconsider our decisions in exceptional cases.[8] The remedy is intended to correct manifest errors of law or fact or to permit the presentation of newly discovered evidence.[9] We find that Petitioner's motion for reconsideration does not present the exceptional circumstances required to compel us to reconsider our earlier Order in that it does not present any newly discovered evidence [10] and does not support any findings of manifest errors of law or fact underlying our Order.

A. Petitioner's Assertion That the CBOE Board's Proposed Rule Change Is an Amendment Because the Change Affects Equity Holder Rights Is a New Argument

Petitioner's brief in support of his motion to reconsider contends that the CBOE's action of interpreting Article Fifth(b) alters the rights of CBOE equity holders. Petitioner states that ''[p]reviously, exercise rights were inalienable from full CBOT membership,'' and that ''[h]ere, the CBOT unilaterally has sought to change the exercise rights into separate securities.'' [11] Petitioner continues by noting that the way in which these changes by the CBOT are treated by the CBOE under Article Fifth(b) will affect the legal and economic rights of the CBOT exercise right.[12] Because the CBOE honors the changes being made by the CBOT, Petitioner claims it diminishes the rights and interests of CBOE treasury seat holders by recognizing a new class of persons who have economic influence over the CBOE.[13] There would be a different result, Petitioner argues, if CBOE determined that the Exercise Right under Article Fifth(b) would be extinguished if ever transferred apart from the sale or rental of a full CBOT membership.[14] Because the Petitioner believes that the interpretation by the CBOE ''alters the rights of various and distinct classes of CBOE equity interest holders,'' he contends that such interpretation is an amendment under Delaware Law.[15]

This appears to us to be a new argument presented by Petitioner. Petitioner previously argued that the December 17, 2003 agreement between the CBOE and the CBOT (''2003 Agreement'') and the CBOE's proposed rule change amended Article Fifth(b) by redefining the term CBOT member ''by permitting CBOT members to carve up membership rights and sell them separately to third parties without extinguishing their rights to CBOE

[1] Securities Exchange Act Release No. 50028 (July 15, 2004), 69 FR 43644 (July 21, 2004).

[2] Securities Exchange Act Release No. 51252 (Feb. 25, 2005), 70 FR 10442 (Mar. 3, 2005) (hereinafter ''Order'').

[3] Letter from Marshall Spiegel, CBOE Equity Member, to Margaret H. McFarland, Deputy Secretary, Office of the Secretary, Commission, dated September 13, 2004.

[4] 15 U.S.C. 78f(b)(1).

[5] Order, *supra* note 2, at 10444.

[6] *Id.* at 10447.

[7] 17 CFR 201.470.

[8] *See In the Matter of the Application of Reuben D. Peters, et al.*, Securities Exchange Act Release No. 51237 (Feb. 22, 2005), at text accompanying n. 6 (Admin. Proc. File No. 3–11277) (addressing the application of Rule 470).

[9] *See In the Matter of KPMG Peat Marwick LLP,* Securities Exchange Act Release No. 44050 (Mar. 8, 2001), 74 SEC Docket 1351, 1352–53 n.7 (Admin. Proc. File No. 3–9500) (specifying that efficiency and fairness concerns embodied in federal court practice of rejecting motions for reconsideration unless correction of manifest errors of law or fact or presentation of newly discovered evidence is sought ''likewise inform our review of motions for reconsideration under Rule 470'').

[10] Petitioner's brief does, however, appear to present new arguments in support of his position. We note that settled principles of federal court practice establish that a party may not seek rehearing of an appellate decision in order to advance an argument that it could have made previously but elected not to. *See, e.g., Anderson v. Beatrice Foods Co.,* 900 F.2d 388, 397 (1st Cir. 1990). In considering motions for reconsideration of federal district court rulings, courts have likewise cautioned that ''[t]he purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence'' and that a ''motion for reconsideration should not be used as a vehicle to present authorities available at the time of the first decision or to reiterate arguments previously made. * * * *. *Z.K. Marine, Inc.* v. *M/V Archigetis,* 808 F. Supp. 1561, 1563 (S.D. Fla. 1992) (quoting *Harsco Corp.* v. *Zlotnicki,* 779 F.2d 906, 909 (3d Cir. 1985)). The efficiency and fairness concerns that underlie these settled principles of federal court practice likewise inform our review of motions for reconsideration under Rule 470. *See KPMG Peat Marwick LLP,* Order Denying Request for Reconsideration, Securities Exchange Act Release No. 44050 (Mar. 8, 2001), 74 SEC Docket 1351.

[11] Brief in Support of Motion of Marshall Spiegel for Reconsideration of the Commission's February 25, 2005 Order, dated March 7, 2005, at 7 (''Petitioner's Brief in Support of Motion to Reconsider'').

[12] *Id.* at 8.

[13] *Id.*

[14] *Id.*

[15] *Id.*

membership under Article Fifth(b).'' [16] Petitioner argued that ''[t]his fundamental change and augmentation in the economic and legal rights of CBOT members and the structure of CBOT membership materially and profoundly affect the economics and legal rights of CBOE membership and governance.'' [17] In response to this argument, we noted that neither the 2003 Agreement nor the proposed rule change alter CBOT membership rights or permit the CBOT to divide membership rights by issuing Exercise Right Privileges.[18] Petitioner also argued previously that the CBOT actions alter the economic and corporate relationships among current CBOE members and, thus, constitute an amendment to Article Fifth(b).[19] The Petitioner did not, however, make an argument—as he does now—that the interpretation by the CBOE Board diminishes the rights of CBOE equity holders and, therefore, is an amendment under Delaware law. Because Petitioner cannot raise an argument for the first time on a Motion for Reconsideration, the Commission is not addressing the merits of this new argument.[20]

B. Petitioner's Assertion That the Commission Did Not Consider the CBOE Board's Conflict of Interest Is a New Argument

Petitioner contends, in another new argument first raised in his motion to reconsider, that the Commission ''does not even deign to address—and appears oblivious to—the material conflicts of interests of the Board of Directors of [CBOE] in attempting to 'interpret' the Certificate of Incorporation* * *.'' [21] Petitioner elaborates on his position by arguing that ''the CBOE Board, which owes fiduciary duties of honesty, loyalty and good faith to all equity holders, is conflicted with respect to the interpretation it has made* * *.'' [22] Petitioner is not permitted to raise an argument for the first time on a Motion for Reconsideration and, for this reason, the Commission is not addressing the merits of this new argument.[23]

C. Petitioner's Assertion That the Commission Erred in Accepting the CBOE Board's Authority To Determine the Question of What It Means To Be a CBOT Member Is Without Merit

The Petitioner argues that the Commission's Order ''manifestly errs in concluding that the CBOE Board has independent, unilateral, and final authority to determine the answer* * *'' to the question of what it means to be a ''member of the [CBOT]'' under Article Fifth(b).[24] Petitioner asserts that Delaware law does not permit the CBOE Board to make such an interpretation, and that the fiduciary obligations on the CBOE Board under Delaware and federal law preclude the Board from doing so.[25]

First, Petitioner mischaracterizes our conclusion. Nowhere in our Order did we conclude that the CBOE Board has independent, unilateral, and final authority to determine what it means to be a ''member of the [CBOT]'' under Article Fifth(b). The CBOE cannot interpret the term ''member of the [CBOT]'' under Article Fifth(b) in a manner the Commission does not find consistent with the Exchange Act. Instead, we stated that we found ''persuasive CBOE's analysis of the difference between 'interpretations' and 'amendments,' and the letter of counsel that concludes that it is within the general authority of the CBOE's Board to interpret Article Fifth(b) and that the 'Board's interpretation of Article Fifth(b) contemplated by the [2003 Agreement] does not constitute an amendment to the Certificate and need not satisfy the voting requirements of Article Fifth(b) that would apply if the Article were being amended.''' [26] The letter of CBOE's legal counsel also stated that in interpreting Article Fifth(b), the CBOE Board must make such determination in good faith, consistent with the terms of Article Fifth(b) and not for inequitable purposes.

Further, we do not find persuasive Petitioner's assertion that fiduciary obligations on the CBOE Board under Delaware law and federal law preclude the Board from interpreting its Certificate of Incorporation. We have previously found that the CBOE submitted sufficient support for its position that its proposed rule change involved an interpretation of Article Fifth(b) of its Certificate of Incorporation.[27] Accordingly, we do not believe that fiduciary duties preclude the CBOE Board from interpreting its Certificate of Incorporation in an attempt to address potential interpretive ambiguities that the CBOE and CBOT have identified in advance of the CBOT's restructuring. Accordingly, Petitioner's contention regarding the authority of the CBOE Board is without merit.

D. Petitioner Erroneously Asserts a Manifest Error in the Commission's Application of Contract Interpretation

The Petitioner asserts that the Commission's application of principles of contract interpretation to uphold the CBOE Board's interpretation is manifestly erroneous, arguing that the Order ''errs in its conclusion incorporated from the CBOE's Statement in Support of Approval that principles of contract interpretation support the Commission's ruling.'' [28] We did not, contrary to the Petitioner's assertion, apply principles of contract interpretation in our Order in the manner suggested by Petitioner, nor did we incorporate by reference any principles of contract interpretation included in the CBOE's Statement in Support of Approval. Rather, we found that the CBOE provided a ''sufficient basis on which the Commission can find that, as a federal matter under the Exchange Act, the CBOE complied with its own Certificate of Incorporation in determining that the proposed rule change is an interpretation of, not an amendment to, Article Fifth(b).'' [29] Further, we found persuasive CBOE's analysis of the difference between ''interpretations'' and ''amendments'' and the letter of CBOE's counsel concluding that it is within the general authority of the CBOE's Board to interpret Article Fifth(b)* * *.'' [30] Finally, we did ''not believe that Petitioner's argument refuted, to any degree, CBOE's analysis of why its proposed rule change is an interpretation of Article Fifth(b), not an amendment.'' [31] Accordingly, we find Petitioner's assertion of error in the Commission's purported application of contract principles to be without merit.

[16] Legal Memorandum of Points and Authorities in Support of the Statement of Petitioner Marshall Spiegel in Opposition to Staff Action, Oct. 26, 2004, at 4 (''Legal Memorandum'').

[17] *Id.*

[18] Order, *supra* note 2, at 10444.

[19] Legal Memorandum, *supra* note 16, at 5.

[20] *See supra* note 10 (discussing the standard of review for a motion to reconsider).

[21] Petitioner's Brief in Support of Motion to Reconsider, *supra* note 11, at 1.

[22] *Id.* at 2.

[23] *See supra* note 10 (discussing the standard of review for a motion to reconsider).

[24] Petitioner's Brief in Support of Motion to Reconsider, *supra* note 11, at 3.

[25] *Id.*

[26] Order, *supra* note 2, at 10444 (quoting Letter from Michael D. Allen, Richard, Layton & Finger, to Joanne Moffic-Silver, General Counsel and Corporate Secretary, CBOE (June 29, 2004), at 5).

[27] Order, *supra* note 2, at 10444.

[28] Petitioner's Brief in Support of Motion to Reconsider, *supra* note 11, at 10.

[29] Order, *supra* note 2, at 10444.

[30] *Id.*

[31] *Id.*

E. Petitioner's Assertion That the Commission Improperly Relied on the Letter of CBOE's Outside Counsel Is Without Merit

Petitioner further contends that the Commission's ''reliance'' on the opinion of CBOE's outside counsel is manifestly erroneous.[32] Petitioner claims that the opinion letter of CBOE's outside counsel failed to cite any relevant authority or provide any rationale to support its characterization of the CBOE's action as an ''interpretation'' of Article Fifth(b) and accordingly should be given less weight.[33] Petitioner decried the opinion letter's elevation of ''form over substance,'' its failure to ''address the circumstances when an 'interpretation' must also be deemed in substance an amendment,'' and its failure to discuss ''the CBOE Board's conflict of interest in making and enforcing the interpretation at issue here.'' [34]

Petitioner's assertion that the opinion letter of CBOE's outside counsel failed to cite any relevant authority or provide any rationale is incorrect. Further, we did not solely rely on the opinion of CBOE's outside counsel. We found the opinion letter, along with the CBOE's Statement in Support of Approval, to be ''persuasive,'' and we found that those materials provided a ''sufficient basis'' to support a finding that, ''as a federal matter under the Exchange Act, the CBOE complied with its own Certificate of Incorporation in determining that the proposed rule change is an interpretation of, not an amendment to, Article Fifth(b).'' [35] Further, and most importantly, we specifically noted that we did ''not believe that Petitioner's argument refutes, to any degree, CBOE's analysis of why its proposed rule change is an interpretation of Article Fifth(b), not an amendment.'' [36] Accordingly, we find Petitioner's allegation of error based on the letter of CBOE's outside counsel to be without merit.

F. Petitioner's Allegation That the Commission Made a Finding Suggesting That Not Approving CBOE's Interpretation Would Paralyze the Exchange Is Factually Baseless

Petitioner concludes his brief by arguing that ''[t]he Commission's Order finding (incorporated from page 6 of the CBOE's Statement in Support of Approval) that failing to approve the CBOE Board's 'interpretation' would 'paralyze' the Exchange is without basis in fact.'' [37] As stated above, while we cited to the CBOE's Statement in Support of Approval, we did not incorporate by reference the substance of that document into our Order. Nor did we make any finding in our Order that failing to approve the CBOE's rule change would paralyze the CBOE. Accordingly, Petitioner's argument is unsupported and will not be considered as grounds for reconsideration.

III

In the alternative, Petitioner suggests that ''the CBOT's recent formal actions to demutualize have the capacity to render the proposed rule change moot'' since the proposed rule change, the Petitioner argues, is only relevant if the CBOT is structured as a member organization.[38] Accordingly, the Petitioner suggests that the Commission should consider holding final determination of the validity of the proposed rule change in abeyance until the CBOT members' vote on whether to demutualize is complete.[39] We disagree. Self-regulatory organizations are not required to delay making changes to their rules in order to account for future contingencies that may or may not impact such rule in the future. Rather, to the extent that changed circumstances warrant further revisions to the CBOE's rules, the CBOE would need to submit a subsequent rule change pursuant to Section 19(b)(1) of the Act [40] and Rule 19b–4 thereunder.[41] Accordingly, we see no reason to hold final determination of this motion to reconsider in abeyance as suggested by Petitioner.

Accordingly, we find that Petitioner's motion does not present the exceptional circumstances required for us to reconsider our earlier Order.

It is therefore ordered, that the motion for reconsideration filed by Marshall Spiegel be, and it hereby is, *denied.*

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–1912 Filed 4–21–05; 8:45 am]

BILLING CODE 8010–01–P

[32] Petitioner's Brief in Support of Motion to Reconsider, *supra* note 11, at 12. *See also* Statement of Chicago Board of Options Exchange in Support of Approval of Rule Under Delegated Authority, October 26, 2004.

[33] Petitioner's Brief in Support of Motion to Reconsider, *supra* note 11, at 12–13.

[34] *Id.* at 12.

[35] Order, *supra* note 2, at 10444.

[36] *Id.*

[37] Petitioner's Brief in Support of Motion to Reconsider, *supra* note 11, at 13.

[38] *Id.* at 3.

[39] *Id.*

[40] 15 U.S.C. 78s(b)(1).

[41] 17 CFR 240.19b–4.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51522; File No. SR—NASD–2005–050]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Nasdaq Opening Process for Nasdaq-Listed Stocks

April 11, 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 April 11, 2005, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I are II below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as ''non-controversial'' under Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing a proposed rule change to begin the pre-market trading session on a voluntary basis at 8 a.m. rather than 9:25 a.m. The text of the proposed rule change is set forth below. Proposed new language is in *italics;* proposed deletions are in [brackets].[5]

* * * * *

4701. Definitions

(a)—(rr) No Change.

(ss) The term ''Total Day'' or ''X Order'' shall mean, (a) For orders in *ITS Securities* so designated, that if after entry into the Nasdaq Market Center, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display between 7:30 a.m. and 6:30 p.m. and for potential execution between market open *(9:30 a.m.)* and 6:30 p.m., after

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The proposed rule change is marked to show changes from the rule tet appearing in the NASD Manual available at *http://www.nasd.com.*

which it shall be returned to the entering party.

(b) For orders in Nasdaq-listed securities so designated, that if after entry into the Nasdaq Market Center, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display *between 7:30 a.m. and 4 p.m.* and *for* execution between [9:25] *8* a.m. and 4 p.m., after which it shall be returned to the entering party. [X Orders entered prior to 9:25 a.m. will be rejected back to the entering party.]

(tt) No Change.

(uu) The term ''Total Immediate or Cancel'' or ''IOX Order'' shall mean,

(a) For limit orders *in ITS Securities* so designated, that if after entry into the Nasdaq Market Center a marketable limit order (or unexecuted portion thereof) becomes non-marketable, the order (or unexecuted portion thereof) shall be canceled and returned to the entering participant. Such orders are available for potential execution between 9:30 a.m. and 6:30 p.m.

(b) For limit orders in Nasdaq-listed securities so designated, that if after entry into the Nasdaq Market Center a marketable limit order (or unexecuted portion thereof) becomes non-marketable, the order (or unexecuted portion thereof) shall be canceled and returned to the entering participant. Such orders may be entered and are available for potential execution between [9:25] *8* a.m. and 4 p.m.

* * * * *

4704. Opening Process for Nasdaq-Listed Securities

(a) No Change.

(b) Trading Prior To Normal Market Hours. The system shall [open] *process* all eligible Quotes/Orders in Nasdaq-listed securities at [9:25] *8* a.m. in the following manner to prevent the creation of locked/crossed markets.

(1) At [9:25] *8* a.m., the system shall open *in time priority* all *eligible* Quotes *as stated in paragraph (5) below and all eligible Orders in accordance with Rule 4701(ss) and (uu)* [in time priority]. Quotes/*Orders* whose limit price [does] *would* not lock or cross the book shall be added to the book in strict time priority. Quotes/*Orders* whose limit price would lock or cross the book shall be placed in an ''In Queue'' state *except as provided in paragraph (4).*

(2) Next, the system shall begin processing the In Queue Quotes/*Orders* in strict time priority against the best bid (ask) if the In Queue *Quote/O*[o]rder is a sell (buy) order. If an In Queue Quote/*Order* is not executable when it is next in time for execution, the system shall automatically add that Quote/*Order* to the book.

(3) Once the process set forth in subparagraphs (1)–(2) is complete, the system shall begin processing Quotes and X and IOX Orders in accordance with their entry parameters.

(4) Between 8 a.m. and 9:25 a.m., the system shall open Quotes in accordance with the entry parameters set by each Nasdaq Quoting Market Participant provided that Quotes that would lock/cross the market will be rejected or executed in accordance with the Nasdaq Quoting Market Participant's instructions. At 9:25 a.m., the system shall open all remaining unopened Quotes in accordance with each firm's instructions.

(5) Nasdaq Quoting Market Participants may instruct Nasdaq to open their Quotes as follows:

(A) At the last price and size entered by the participant during the previous trading day, either including or excluding reserve size;

(B) At a price and size entered by the participant between 7:30 a.m. and 9:24:59 a.m.; or

(C) At the quotation limits for Nasdaq systems, currently $.01 (bid) and $2,000 (ask).

([4]*6*) All trades executed prior to 9:30 shall be automatically appended with the ''.T'' modifier.

([5]*7*) Notwithstanding subparagraphs (1) through (5), if a Nasdaq Quoting Market Participant has entered a Locking/Crossing Quote/Order into the system that would become subject to the automated processing described above, the system shall, before sending the order to any other Quoting Market Participant or Order Entry Firm, first attempt to match off the order against the locking/crossing Nasdaq Quoting Market Participant's own Quote/Order if that participant's Quote/Order is at the highest bid or lowest offer, as appropriate. A Nasdaq Quoting Market Participant may avoid this automatic matching through the use of anti-internalization qualifier as set forth in Rule 4710(b)(1)(B)(ii)(a). Order Entry Firms that enter locking/crossing Quotes/Orders shall have those Quotes/Orders processed as set forth in subparagraphs (1) through ([4]*3*), unless they voluntarily select a ''Y'' AIQ Value as provided for in Rule 4710(b)(1)(B)(ii)(a).

(c)–(d) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to make available on a voluntary basis a pre-market trading session of the execution service of the Nasdaq Market Center at 8 a.m. rather than at 9:25 a.m. As described below, Nasdaq would open the trading session at 8 a.m. using the unlocking/uncrossing process that it currently uses at 9:25 a.m. All extended hours orders and all quotations so designated by a Quoting Market Participant would be eligible for execution during the pre-market trading session and quotations and orders would participate precisely as they do today. Trades that occur before 9:30 a.m. would continue to receive a trade report modifier denoting execution during extended trading hours, as they do today.

As it does today, Nasdaq would begin the voluntary pre-market trading session at 7:30 a.m. by making the system available for displaying quotations and orders but not for execution. As they do today, firms would continue to have three options for determining the price at which their carryover quotes would be opened at 9:25: (1) The last quotation price entered during the previous day; (2) the last quotation price the firm enters after 7:30 a.m. and before 9:25 a.m.; or (3) the quote limits for Nasdaq, currently $.01 (bid) and $2,000 (ask).

Beginning at 7:30 a.m. until 8 a.m., Nasdaq would display all quotations and eligible orders remaining in the system from the previous night. Market participants would have the ability to update their quotes beginning at 7:30 a.m. and to instruct Nasdaq regarding the display of that updated quote. For example, a market participant would be able, at any time after 7:30 a.m., to enter a quote update and to instruct Nasdaq to open that quote immediately. If the update were to be received before 8 a.m., the quotation would be opened

and executable when the execution functionality became available at 8 a.m. If the quote open update were to be received between 8 a.m. and 9:25 a.m. the quote would be opened upon the receipt of the quote update. At 9:25 a.m. all quotations would be made available for automatic executions.

Also at 7:30 a.m., market participants would be able to begin voluntarily submitting extended and regular hours orders. To facilitate orderly trading beginning at 8 a.m., Nasdaq would make Total Day Orders (''X Orders''), as described in Rule 4701(ss), and Total Immediate or Cancel (''IOX Orders''), as described in Rule 4701(uu), available for execution at 8 a.m. rather than at 9:25 a.m. Extended hours orders would receive a time stamp for purposes of determining time priority and would be displayed but not executed.

At 8 a.m., Nasdaq would open the execution functionality of the Nasdaq Market Center. In preparation for that opening, Nasdaq would construct an unlocked inside in each security by applying the unlocking/uncrossing process described in Rule 4704(b), which it currently applies at 9:25 a.m. In that process, Nasdaq would clear the existing quotation display and ''wake up'' the quotations of market participants that have instructed Nasdaq to open their quotations between 7:30 a.m. and 8 a.m. Quotations that have not been opened between 7:30 a.m. and 8 a.m. would not be displayed and would not participate in the 8 a.m. opening process. Participating quotations would be processed in order of time priority and placed on the Nasdaq book, provided, however, that quotations that would lock or cross the market would be rejected. Immediately upon completion of the 8 a.m. unlocking/uncrossing process, all quotations that have been opened voluntarily and all eligible orders that have been submitted voluntarily would be subject to automatic execution.

At 9:25 a.m., Nasdaq would ''wake up'' all remaining un-opened quotations and introduce them to the Nasdaq book as it does today. A quotation might remain unopened at 9:25 a.m. in two circumstances: If a market participant has entered a quotation update but has not instructed Nasdaq to open the quotation or if the participant has entered no update at all. In the first case, at 9:25 a.m., Nasdaq would open the quotation at the price and size specified by the participant. In the second case, Nasdaq would open the quotation based on the participant's instructions. Quotations that would lock or cross the inside would automatically be rejected.

It is important to note that the parameters governing the entry of Market-on-Open and Opening Imbalance Only Orders, as well as all parameters governing the Nasdaq Opening Cross would remain the same as today, including dissemination of Opening Cross information and the processing of the Opening Cross itself.

Nasdaq believes that these changes are consistent with the Act and would improve the fairness and orderliness of Nasdaq's pre-open trading environment. Having quotes opened voluntarily and executable upon entry would improve the accuracy of Nasdaq's pre-market trading data. Today, because quotations are not executable, the market can appear locked or crossed during the pre-market session. In addition, Nasdaq believes that making quotations and orders available for execution would improve both the transparency and price discovery provided by those quotations and orders. Nasdaq further notes that several other market centers are open for pre-market trading at this time and therefore Nasdaq's proposal would enhance competition for quotation and execution services.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[6] in general, and with Section 15A(b)(6) of the Act,[7] in particular, in that Section 15A(b)(6) requires that the NASD's rules be designed to protect investors and the public interest. Nasdaq believes that its current proposal is consistent with the NASD's obligations under these provisions of the Act because it would extend fair and orderly trading of Nasdaq stocks on Nasdaq during an increasingly active period of the trading day, prevent the occurrence of locked and crossed markets before the start of normal market hours, and preserve price discovery and transparency that is vital to an effective opening of trading.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[6] 15 U.S.C. 78*o*–3.

[7] 15 U.S.C. 78*o*–3(b)(6).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Nasdaq has requested that the Commission waive the 30-day operative delay for ''non-controversial'' proposals, based upon a representation that the proposal is of the utmost importance to the fair and orderly operation of The Nasdaq Stock Market during the pre-opening trading period. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow Nasdaq immediately to implement the proposed rule change which should improve transparency in the pre-opening trading period. For this reason, the Commission designates the proposal to be effective and operative upon filing with the Commission.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). The Commission notes that Nasdaq provided written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change.

[10] For purposes only of waiving the 30-day operative delay of the proposed rule change, the Commission considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2005–050 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–NASD–2005–050. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2005–050 and should be submitted on or before May 13, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–1913 Filed 4–21–05; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5048]

Fine Arts Committee Notice of Meeting

The Fine Arts Committee of the Department of State will meet on May 21, 2005, at 10:30 a.m. in the Henry Clay Room of the Harry S. Truman Building, 2201 C Street NW., Washington, DC. The meeting will last until approximately 12 noon and is open to the public.

The agenda for the committee meeting will include a summary of the work of the Fine Arts Office since its last meeting on September 17, 2004 and the announcement of gifts and loans of furnishings as well as financial contributions from January 1, 2004 through December 31, 2004.

Public access to the Department of State is strictly controlled and space is limited. Members of the public wishing to take part in the meeting should telephone the Fine Arts Office at (202) 647–1990 or send an e-mail to *Craighillmf@state.gov* by May 17 to make arrangements to enter the building. The public may take part in the discussion as long as time permits and at the discretion of the chairman.

Dated: April 5, 2005.

Gail F. Serfaty,

Secretary, Fine Arts Committee, Department of State.

[FR Doc. 05–8124 Filed 4–21–05; 8:45 am]

BILLING CODE 4710–38–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending April 8, 2005

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2005–20893.
Date Filed: April 4, 2005.
Parties: Members of the International Air Transport Association.
Subject:

PTC2 AFR 0157 dated 8 March 2005, TC2 Within Africa Resolutions r1–r23.
Minutes: PTC2 AFR 0158 dated 4 April 2005.
Tables: PTC2 AFR Fares 0055 dated 18 March 2005.
Intended effective date: 1 May 2005.

Docket Number: OST–2005–20950.
Date Filed: April 8, 2005.
Parties: Members of the International Air Transport Association.
Subject:

PTC12 NMS–AFR 0215 dated 11 March 2005, TC12 North Atlantic-Africa (except USA–Reunion) Resolutions.
PTC12 NMS–AFR 0218 dated 18 March 2005, TC12 North Atlantic-Africa (except USA–Reunion) Resolutions—Technical Correction.
PTC12 NMS–AFR 0219 dated 26 March 2005, TC12 North Atlantic-Africa (except USA–Reunion) Resolutions.
PTC12 NMS–AFR 0216 dated 11 March 2005, TC12 North Atlantic USA–Reunion Resolutions.
PTC12 NMS–AFR 0217 dated 11 March 2005, TC12 Mid Atlantic-Africa Resolutions r1–r33.
Minutes: PTC12 NMS–AFR 0220 dated 8 April 2005.
Tables: PTC12 NMS–AFR Fares 0105 dated 18 March 2005, TC12 North Atlantic-Africa Specified Fares Tables.
PTC12 NMS–AFR Fares 0104 dated 18 March 2005, TC12 Mid Atlantic-Africa Specified Fares Tables.
Intended effective date: 1 May 2005.

Renee V. Wright,

Acting Program Manager, Docket Operations, Alternate Federal Register Liaison.

[FR Doc. 05–8086 Filed 4–21–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending April 8, 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–2005–20889.
Date Filed: April 4, 2005.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 25, 2005.
Description: Application of Continental Airlines, Inc., requesting a

certificate of public convenience and necessity to provide scheduled foreign air transportation of persons, property, and mail on daily New York/Newark-Shanghai flights beginning on or about March 25, 2007, an allocation of seven weekly U.S.-China Combination frequencies in 2007, and authority to integrate this authority with its other certificate and exemption authority.

Docket Number: OST–2005–20924.

Date Filed: April 5, 2005.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 26, 2005.

Description: Application of Cargo 360, Inc., requesting a certificate of public convenience and necessity to engage in scheduled interstate air transportation of property and mail, including complementary authority to engage in interstate and foreign charter air transportation of property and mail. Cargo 360 is a start-up all-cargo carrier that intends to engage in world-wide scheduled and charter operations, including provision of wet-lease services to U.S. and foreign airlines similar to those provided by various U.S. all-cargo carriers.

Docket Number: OST–2005–20925.

Date Filed: April 5, 2005.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 26, 2005.

Description: Application of Cargo 360, Inc., requesting a certificate of public convenience and necessity to engage in scheduled foreign air transportation of property and mail from points behind the United States via the United States and intermediate points to a point or points in the Republic of Korea and beyond. Cargo 360 is a start-up all-cargo carrier that intends to engage in world-wide scheduled and charter operations, including provision of wet-lease services to U.S. and foreign airlines similar to those provided by various U.S. all-cargo carriers.

Renee V. Wright,

Acting Program Manager, Docket Operations, Alternate Federal Register Liaison.

[FR Doc. 05–8085 Filed 4–21–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2005 20986]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel BAD CO.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2005–20986 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before May 23, 2005.

ADDRESSES: Comments should refer to docket number MARAD–2005–20986. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Sharon Cassidy, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5506.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel BAD CO is:

Intended Use: ''Charter Fishing.''.

Geographic Region: ''Hawaii.''.

Dated: April 15, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–8065 Filed 4–21–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2005 20983]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ENDLESS PLEASURE.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2005–20983 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted.

Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before May 23, 2005.

ADDRESSES: Comments should refer to docket number MARAD–2005 20983. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001.

You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Sharon Cassidy, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5506.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ENDLESS PLEASURE is:

Intended Use: ''Training platform to teach teenagers how to sail during week long seminars during the summer months. It will also be used for daily, weekend, and weekly charters.''

Geographic Region: ''New England water from Maine to New Jersey including the following states: ME, NH, MA, RI, CT, NY, AND NJ. Southeastern waters from South Carolina to Florida including the following states: SC, GA, and FL (Atlantic and Gulf).''

Dated: April 15, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–8066 Filed 4–21–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2005 20985]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel HIGH VOLTAGE.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2005–20985 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before May 23, 2005.

ADDRESSES: Comments should refer to docket number MARAD–2005–20985. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Sharon Cassidy, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5506.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel HIGH VOLTAGE is:

Intended Use: ''Passenger charter.''

Geographic Region: ''Maine; New Hampshire; Massachusetts; Rhode Island; Connecticut; New York; New Jersey; Delaware; Maryland; Virginia; North Carolina; South Carolina; Georgia; Florida; Alabama; Mississippi; Louisiana; Texas.''

Dated: April 15, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–8067 Filed 4–21–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2005 20987]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel IT'S TIME.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2005–20987 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted.

Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before May 23, 2005.

ADDRESSES: Comments should refer to docket number MARAD–2005 20987. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is

available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Sharon Cassidy, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–5506.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ITS TIME is:

Intended Use: ''6 Pax—Sport Fishing Charters.''

Geographic Region: ''State of Hawaii, Island of Hawaii. Not more than 100 miles off shore.''

Dated: April 15, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–8064 Filed 4–21–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2005 20984]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ROCK–N–ROBIN.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2005–20984 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before May 23, 2005.

ADDRESSES: Comments should refer to docket number MARAD–2005 20984. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Sharon Cassidy, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5506.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ROCK–N–ROBIN is:

Intended Use: ''Charter Fishing.''

Geographic Region: ''The Chesapeake Bay and the Coasts of Virginia and North Carolina.''

Dated: April 15, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–8061 Filed 4–21–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2005 20988]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ROSINANTE.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2005–20988 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before May 23, 2005.

ADDRESSES: Comments should refer to docket number MARAD–2005 20988. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Sharon Cassidy, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–5506.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ROSINANTE is:

Intended Use: ''Private charters and passengers for hire as well as for marketing and business development by owner.''

Geographic Region: ''U.S. East Coast.''

Dated: April 15, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–8063 Filed 4–21–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2005 20989]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel VIVACE.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2005–20989 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before May 23, 2005.

ADDRESSES: Comments should refer to docket number MARAD–2005–20989. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Sharon Cassidy, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–5506.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *VIVACE is:*

Intended Use: ''Occasional passenger charters only. No cargo. Estimate less than 6 weeks per year.''

Geographic Region: ''Washington and California.''

Dated: April 14, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–8062 Filed 4–21–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2005–20933; OMB Control Number: 2127–0621]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: **Federal Register** notice; request for public comment on a proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public; it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information. This document describes an existing collection of information previously approved by OMB. The authority to collect the information is expiring and NHTSA is seeking OMB approval to extend the collection of information for another three years.

DATES: Comments must be received on or before June 21, 2005.

ADDRESSES: Comments must refer to the docket number cited at the beginning of this notice and be submitted to the DOT Public Docket Office, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which comments are provided by referencing its OMB control number. It is requested, but not required, that one original plus two copies of the comment be provided. The Docket Office is open on weekdays from 9 a.m. to 5 p.m. except government holidays. For further information or to find out how to submit comments electronically call (202) 366–9322.

FOR FURTHER INFORMATION CONTACT: William D. Evans, Office of Crash Avoidance Standards at (202) 366–2272. Mr. Evans' FAX number is (202) 366–7002 and you may send mail to him at the National Highway Traffic Safety Administration (NVS–123), 400 Seventh Street, SW., Washington, DC 20590. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) 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;

(ii) 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;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

The information collection described below has been in effect since December 31, 2002 and expires December 31, 2005. OMB requires this process in order to extend the information collection for another three years. In compliance with these requirements,

NHTSA asks for public comments on the following proposed collection of information for which the agency is seeking extension of approval from OMB:

Title: 49 CFR 571.403, Platform lift systems for motor vehicles and 49 CFR 571.404, Platform lift installations in motor vehicles.

OMB Control Number: 2127–0621.

Form Number: None.

Affected Public: Platform lift manufacturers and vehicle manufacturers/alterers that install platform lifts in new motor vehicles before first vehicle sale.

Requested Expiration Date of Approval: Three years from approval date.

Abstract: FMVSS No. 403, Platform lift systems for motor vehicles, establishes minimum performance standards for platform lifts designed for installation on motor vehicles. Its purpose is to prevent injuries and fatalities to passengers and bystanders during the operation of platform lifts that assist persons with limited mobility in entering and leaving a vehicle. FMVSS No. 404, Platform lift installations in motor vehicles, places specific requirements on vehicle manufacturers or alterers who install platform lifts in new vehicles. Under these regulations, lift manufacturers must certify that their lifts meet the requirements of FMVSS No. 403 and must declare the certification on the owner's manual insert, the installation instructions and the lift operating instruction label. Certification of compliance with FMVSS No. 404 is on the certification label already required of vehicle manufacturers and alterers under 49 CFR Part 567. Therefore, lift manufacturers must produce an insert that is placed in the vehicle owner's manual, installation instructions and one or two labels that are placed near the controls of the lift. The requirements and our estimates of the hour burden and cost to lift manufacturers are given below. There is no burden to the general public.

• Estimated burden to lift manufacturers to produce an insert for the vehicle owner's manual stating the lift's platform operating volume, maintenance schedule, and instructions regarding the lift operating procedures:

—10 manufacturers × 24 hrs. amortized over 5 yrs. = 48 hrs. per year.

• Estimated burden to lift manufacturers to produce lift installation instructions identifying the vehicles on which the lift is designed to be installed:

—10 manufacturers × 24 hrs. amortized over 5 yrs. = 48 hrs. per year.

• Estimated burden to lift manufacturers to produce two labels for operating and backup lift operation:

—10 manufacturers × 24 hrs. amortized over 5 yrs. = 48 hrs. per year.

• Total estimated hour burden per year = 144 hours.

• Estimated cost to lift manufacturers to produce:

—Label for operating instructions—27,398 lifts × $0.13 per label = $3,561.74.

—Label for backup operations—27,398 lifts × $0.13 per label = $3,561.74.

—Owner's manual insert—27,398 lifts × $0.04 per page × 1 page = $1,095.92.

—Installation instructions—27,398 lifts × $0.04 per page × 1 page = $1,095.92.

Note: Although lift installation instructions are considerably more than one page, lift manufacturers already provide lift installation instructions in the normal course of business and one additional page should be adequate to allow for the inclusion of FMVSS specific information.

• Total estimated annual cost = $9,315.32.

Issued on: April 18, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05–8068 Filed 4–21–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34666]

Columbus and Greenville Railway Company—Acquisition and Operation Exemption—Line of City of Greenwood, MS

Columbus and Greenville Railway Company (C&G), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from the City of Greenwood (City) and operate approximately 2.99 miles of newly constructed bypass rail line, extending from C&G milepost 113.59 to C&G milepost 116.57, in Leflore County, MS.[1]

C&G certifies that its projected annual revenues as a result of this transaction will not result in the creation of a Class I or Class II rail carrier, and that its annual revenues will not exceed $5 million.

The transaction was scheduled to be consummated after March 30, 2005, the effective date of the exemption (7 days after the exemption was filed).[2]

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34666, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on H. Lynn Gibson, 201 19th Street North, P.O. Box 6000, Columbus, MS 39703.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: April 18, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–8089 Filed 4–21–05; 8:45 am]

BILLING CODE 4915–01–P

[1] C&G's main line runs through the City. C&G intends to file for abandonment authority over a portion of that line, between milepost 112.67 and milepost 114.26, and, once abandonment has been authorized, it intends to deed the abandoned segment to the City for public use. C&G states that the City intends to deed the bypass track and attendant properties to it, which will be an equal exchange and allow the City to reach its goal of moving rail operations out of the City's central commercial area. C&G also states that it will gain a more efficient and safer main line operation over the bypass track.

[2] On March 30, 2005, Morris Recycling, Inc. (Morris), filed petitions to stay and to revoke the transaction. On April 8, 2005, C&G responded, and, on April 14, 2005, Morris filed a petition for leave to file a reply and a reply to C&G's reply. These filings will be addressed in a separate Board decision.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–DIV

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

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 take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting

comments concerning Form 1099–DIV, Dividends and Distributions.

DATES: Written comments should be received on or before June 21, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Dividends and Distributions.

OMB Number: 1545–0110.

Form Number: 1099–DIV.

Abstract: Form 1099–DIV is used by the IRS to insure that dividends are properly reported as required by Internal Revenue Code section 6042, that liquidation distributions are correctly reported as required by Code section 6043, and to determine whether payees are correctly reporting their income.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 111,922,150.

Estimated Time Per Response: 20 minutes.

Estimated Total Annual Burden Hours: 38,156,519.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 12, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–1887 Filed 4–21–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–107069–97]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

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 take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing final regulation, REG–107069–97 (TD 8940), Purchase Price Allocations in Deemed and Actual Asset Acquisitions (§§ 1.338–2, 1.338–5, 1.338–10, 1/338(h)(10)-1, and 1.1060–1).

DATES: Written comments should be received on or before June 21, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6510, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202)622–3179, or through the internet at Larnice.Mack@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Purchase Price Allocation in Deemed and Actual Asset Acquisition.

OMB Number: 1545–1658.

Regulation Project Number: REG–107069–97.

Abstract: Section 338 of the Internal Revenue Code provides rules under which a qualifying stock acquisition is treated as an asset acquisition (a ''deemed asset acquisition'') when an appropriate election is made. Section 1060 provides rules for the allocation of consideration when a trade or business is transferred. The collection of information is necessary to make the election, to calculate and collect the appropriate amount of tax liability when a qualifying stock acquisition is made, to determine the persons liable for such tax, and to determine the bases of assets acquired in the deemed asset acquisition.

Current Actions: There are no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations, and farms.

The regulation provides that a section 338 election is made by filing Form 8023. The burden for this requirement is reflected in the burden of Form 8023. The regulation also provides that both a seller and a purchaser must each file an asset acquisition statement on Form 8594. The burden for this requirement is reflected in the burden of Form 8594.

The burden for the collection of information in § 1.338–2T(e)(4) is as follows:

Estimated Number of Respondents/Recordkeeper: 45.

Estimated Average Annual Burden Per Respondent/Recordkeeper: 34 minutes.

Estimated Total Annual Reporting/Recordkeeping Hours: 25.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments Are Invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 12, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–1888 Filed 4–21–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–107184–00]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

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 take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing final regulation, REG–107184–00, Guidance Necessary to Facilitate Electronic Tax Administration.

DATES: Written comments should be received on or before June 21, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6510, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Guidance Necessary To Facilitate Electronic Tax Administration.

OMB Number: 1545–1783.

Regulation Project Number: REG–107184–00.

Abstract: The regulations provide a regulatory statement of IRS authority to prescribe what return information or documentation must be filed with a return, statement or other document required to be made under any provision of the internal revenue laws or regulations. In addition, the regulations eliminate regulatory impediments to electronic filing of Form 1040.

Current Actions: There are no changes being made to this existing regulation.

Type of Review: Extension of currently approved collection.

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

Estimated Number of Respondents: 1.

Estimated Time per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 1.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 12, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–1889 Filed 4–21–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–106359–02]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

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 take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing final regulation, REG–106359–02, Compensatory Stock Options Under Section 482.

DATES: Written comments should be received on or before June 21, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6510, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Compensatory Stock Options Under Section 482.

OMB Number: 1545–1794.

Regulation Project Number: REG–106359–02.

Abstract: The information will be used to determine whether the participants in a qualified cost sharing arrangement are sharing stock-based compensation costs attributable to the intangible development area in proportion to reasonably anticipated

benefits as required by the proposed amendment to the cost sharing regulations.

Current Actions: There are no changes being made to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 500.

Estimated Time per Respondent: 2 minutes.

Estimated Total Annual Reporting/Recordkeeping: 2000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 13, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–1891 Filed 4–21–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5713 and Schedules A, B, and C (Form 5713)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

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 take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5713, and Schedules A, B, and C (Form 5713), International Boycott Report.

DATES: Written comments should be received on or before June 21, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: International Boycott Report.

OMB Number: 1545–0216.

Form Number: 5713, and Schedules A, B, and C (Form 5713).

Abstract: Form 5713 and related Schedules A, B, and C are used any entity that has operations in a ''boycotting'' country. If that entity cooperates with or participates in an international boycott, it may lose a portion of the following benefits: the foreign tax credit, deferral of income of a controlled foreign corporation, deferral of income of a domestic international sales corporation, or deferral of income of a foreign sales corporation. The IRS uses Form 5713 to determine if any of these benefits should be lost. The information is also used as the basis for a report to the Congress.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals.

Estimated Number of Respondents: 3,875.

Estimated Time per Respondent: 26 hours, 54 minutes.

Estimated Total Annual Burden Hours: 104,236.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 13, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–1893 Filed 4–21–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Multilingual Initiative (MLI) Issue Committee Will Be Conducted (Via Teleconference)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Multilingual

Initiative (MLI) Issue Committee will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, May 17, 2005, from 12 p.m. to 1 p.m. e.t.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or (954) 423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Multilingual Initiative Issue Committee will be held Tuesday, May 17, 2005, from 12 p.m. to 1 p.m. e.t. via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or (954) 423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or (954) 423–7977, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: various IRS issues.

Dated: April 15, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E5–1894 Filed 4–21–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–4: OTS Nos. H–4144 and 02402]

BankFinancial Corporation, Burr Ridge, IL; Approval of Conversion Application

Notice is hereby given that on April 15, 2005, the Assistant Managing Director, Examinations and Supervision—Operations, Office of Thrift Supervision (OTS), or her designee, acting pursuant to delegated authority, approved the application of BankFinancial, F.S.B., Burr Ridge, Illinois, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (phone number: 202–906–5922, or e-mail; *Public.Info@OTS.Treas.gov*) at the Public Reading Room, 1700 G Street, NW., Washington, DC 20552, and OTS Southeast Regional Office, 1475 Peachtree Street, NE., Atlanta, GA 30309.

Dated: April 18, 2005.

By the Office of Thrift Supervision,

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 05–8046 Filed 4–21–05; 8:45 am]

BILLING CODE 6720–01–M

Corrections

Federal Register

Vol. 70, No. 77

Friday, April 22, 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 DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Programmatic Environmental Impact Statement for Community Relocation, Newtok, AK

Correction

In notice document 05–7607 beginning on page 20113 in the issue of Monday, April 18, 2005, make the following corrections:

1. On page 20114, in the second column, in the first line, ''Nightmure'' should read ''Nightmute.''

2. On the same page, in the same column, in the last paragraph, in the 12th line, ''releast'' should read ''release.''

[FR Doc. C5–7607 Filed 4–21–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
April 22, 2005

Part II

Department of the Interior

Bureau of Land Management

43 CFR Part 2800, et al.

Rights-of-Way, Principles and Procedures; Rights-of-Way Under the Federal Land Policy and Management Act and the Mineral Leasing Act; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2800, 2810, 2880, 2920, 9230, and 9260

[WO 350 05 1430 PN]

RIN 1004–AC74

Rights-of-Way, Principles and Procedures; Rights-of-Way Under the Federal Land Policy and Management Act and the Mineral Leasing Act

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

The Bureau of Land Management (BLM) is amending its regulations governing rights-of-way issued under both the Federal Land Policy and Management Act (FLPMA) and the Mineral Leasing Act (MLA). This final rule revises BLM cost recovery (processing and monitoring fee) policies and procedures for issuing right-of-way grants and adjusts cost recovery fees to take into account cost increases since the previous regulations became effective in August 1987. The rule also eliminates automatic exemptions from cost recovery fees for Federal agencies, except for those agencies and projects exempted by law. It establishes policies related to paying rent in advance and adds a financial penalty for paying rents late and allows for automatic adjustment to cost recovery fees based on an economic indicator. This final rule also clarifies how BLM applies the rent schedules for communication site rights-of-way and reorganizes the regulations in a manner similar to the sequence in which BLM takes action on applications and monitors issued grants.

DATES: *Effective Date:* This final rule is effective June 21, 2005.

FOR FURTHER INFORMATION CONTACT: Bil Weigand at (208) 373–3862, or Ian Senio at (202) 452–5049, or write to Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153, Attention: RIN 1004–AC 74.

Persons who use a telecommunications device for the deaf may contact these persons through the Federal Information Relay Service at 1–800–877–8339 24 hours a day, seven days a week.

SUPPLEMENTARY INFORMATION:

I. Background
II. Final Rule as Adopted and Response to Comment
III. Procedural Matters

I. Background

BLM published the proposed rule in the **Federal Register** on June 15, 1999 (see 64 FR 32106) for a 120-day comment period ending on October 13, 1999. As a result of public requests for extensions of the comment period, on October 13, 1999, we extended the public comment period for 30 days ending on November 12, 1999. We received 63 comment letters on the proposed rule. We address public comments in the section-by-section discussion of this preamble.

In these regulations we use the terms ''previous regulations'' and ''final regulations.'' ''Previous regulations'' refers to the regulations in effect prior to June 21, 2005. ''Final regulations'' means the regulations in this final rule. This final rule will replace the regulations in parts 2800 and 2880 of the October 2004 edition of Title 43 of the Code of Federal Regulations.

General Information About BLM Right-of-Way Grants Basis and Purpose of These Regulations

Each year, thousands of individuals and companies apply to BLM to obtain a right-of-way grant on public lands. A right-of-way grant is an authorization to use a specific piece of public land for a certain project, such as roads, pipelines, transmission lines, and communication sites. The grant authorizes a specific use of the land for a specific period of time. The term ''grant'' is defined in the definitions sections in both parts of this rule. The definition of ''grant'' in part 2800 applies to grants authorized by Title V of FLPMA, 43 U.S.C. 1761, and the definition in part 2880 applies to grants authorized by the MLA at 30 U.S.C. 185. Generally, BLM issues a right-of-way grant for a term commensurate with the life of the project. Typically, BLM issues grants with 30-year terms, and most can be renewed. This final rule covers FLPMA grants for rights-of-way that cross public lands and MLA grants for rights-of-way that cross Federal lands. We cover general provisions for right-of-way grants in subparts 2801 and 2881 of this final rule.

BLM places a high priority on working with applicants on proposed rights-of-way to provide for the protection of resource values and to process applications timely. Careful advance planning with BLM personnel is strongly encouraged. If we know about your plans early, we can work with you to tailor your project to avoid many problems and costly delays later in the process.

If you are not familiar with our right-of-way application process or local BLM jurisdictions, the best place to start is by contacting a BLM State Office listed in our regulations at 43 CFR 1821.10. Please note that each state office oversees a number of field offices. Depending on your project, you may be working primarily with personnel at a BLM field office.

As a general rule, you need a right-of-way grant whenever you plan to build a right-of-way facility on public lands. Some examples of land uses which require a right-of-way grant include: transmission lines, communication sites, roads, highways, trails, telephone lines, canals, flumes, pipelines, and reservoirs.

You do not need a right-of-way grant for ''casual use'' activities. Examples of casual use include driving vehicles over existing roads, sampling, surveying, marking routes, collecting data to prepare an application for a right-of-way, and performing certain activities that ordinarily result in no, or negligible, disturbance of the public lands or resources. ''Casual use'' is defined in sections 2801.5 and 2881.5 and is addressed in sections 2804.29 and 2884.25 of this final rule. We encourage you to contact BLM and discuss your planned activity before assuming your use is casual. BLM can then make a judgment based on your particular activity.

Steps In Applying for a Right-of-Way

(A) Contact the BLM office having management responsibility for the land where you need the right-of-way.

(B) Arrange a preapplication meeting with the field office manager or appropriate staff. During this meeting, participants will jointly review the application requirements and Standard Form (SF) 299, Application for Transportation and Utility Systems and Facilities on Federal Lands, to determine what information BLM needs. If you contact us ahead of time to set up the meeting, we can often arrange to hold the meeting at the site of your proposed use.

(C) When you have all the information, bring or mail the application, along with the nonrefundable application processing fee, to the appropriate BLM office.

This final rule covers the application process for FLPMA right-of-way grants in subparts 2803 and 2804, and the application process for MLA grants in subparts 2883 and 2884.

Preapplication Meeting

The preapplication meeting is an important part of the process for both

you and BLM. The meeting provides the opportunity for you to fully discuss and describe your proposal in detail and provides an opportunity for BLM to fully explain processing requirements. The preapplication meeting may also cover fees, safety, work schedules, and other items. This meeting has the potential to save both you and BLM time and expense. For example, in FLPMA, Congress directed that ''rights-of-way in common'' (common use of a right-of-way area by multiple grant holders) be required, to the extent practical, in order to minimize adverse environmental impacts and the proliferation of separate rights-of-way. This is accomplished through a system of designated right-of-way corridors and co-locating communication uses on existing towers and within multi-occupancy buildings when feasible. During the preapplication meeting, BLM staff may examine the proposed right-of-way use to see if it would fit in an existing corridor or in an existing communication facility. Sections 2804.10 and 2884.10 of this final rule address preapplication meetings.

Application forms are available at every BLM office and on the Internet at *www.blm.gov/nhp/what/lands/realty/forms/299/index.html.* BLM wants to make the application process as easy as possible. Accordingly, the application form (SF–299) requests a minimum amount of information. Even so, incomplete information is often the reason BLM cannot process your application quickly.

To avoid problems, you should review the form prior to your preapplication meeting and, if possible, complete it before or during the preapplication meeting with BLM. Be sure to bring any information that you believe BLM would find useful during this session. For example, item 8 requests a map of the project area. You may already have a survey or other adequate map that will satisfy this requirement.

You should arrange for your preapplication meeting well in advance of when you would like to start work on the project. Processing time for an average grant is 60 to 90 days. However, grants for complex projects can take much longer to process. Try to contact BLM as soon as possible. The field office manager and staff are ready to provide information, advice, and assistance to help you prepare your application.

Costs

Both FLPMA (43 U.S.C. 1764(g)) and the Mineral Leasing Act (30 U.S.C. 185(l)) authorize BLM to charge processing fees, monitoring fees, and rent.

Processing Fees. This cost recovery charge reimburses the United States in advance for the expected administrative and other costs we incur in processing the application. You must pay processing fees when you submit the written application. BLM will use the information presented during the preapplication meeting to estimate the application processing fee. Subparts 2804 and 2884 of this final rule address processing fees.

Monitoring Fees. This cost recovery charge is a nonrefundable fee to reimburse the United States for the cost of monitoring compliance with the terms and conditions of the right-of-way grant, including your obligation to protect and rehabilitate the lands covered by the right-of-way. BLM will monitor your construction, operation, and maintenance of the right-of-way and, when the time comes, the shutdown of your activities and the termination of the right-of-way grant. Subparts 2805 and 2885 of this final rule address monitoring fees.

Rents. This is a charge for locating your right-of-way facility on public or Federal lands. It is payable (for a specified term) before we issue the grant and is based on the fair market value of the rights we authorize. We usually establish the rental for linear and communication sites on public lands via two separate administrative schedules. Based roughly on land values in the project area, these schedules are adjusted annually using an economic index. In some cases, the rental is established by an appraisal. Subparts 2806 and 2885 of this final rule address these schedules and other rent issues.

Exemptions, waivers, or reductions in the processing, monitoring, or rental fees may apply to your application and BLM officials can explain these during the preapplication meeting. Subparts 2804, 2806, 2884, and 2885 of this final rule cover these issues.

Temporary Use Permits and Short Term Grants

All activities associated with the construction, operation, maintenance, and termination of your right-of-way grant must be within the specified limits of the authorization. Item 7 on the right-of-way application form is where you would identify your need for the use of additional land during, for example, the construction phase of your project. This additional land may be necessary for construction, stockpiling of excess materials, equipment parking, and the like. If you require additional land for your MLA grant, you will need to apply for a temporary use permit (TUP). The MLA specifically authorizes BLM to issue temporary use permits associated with MLA grants (see 30 U.S.C. 185(e)). BLM can grant TUPs for up to three years. If you require additional land for your FLPMA grant, you will need to apply for a short term grant for the additional lands. FLPMA specifically authorizes temporary use of additional lands for FLPMA grants (see 43 U.S.C. 1764(a)). You should discuss TUP and short term right-of-way grant needs with BLM during the preapplication meeting.

You can apply for a TUP or a short term grant at the same time you apply for a right-of-way by describing the dimension and location of the additional lands, and the term you need in item 7 of the standard right-of-way application (SF–299), or by describing this information in your Plan of Development, as part of your application. You may also apply for a TUP or short term grant after BLM grants your right-of-way. In this case, you must use a separate SF–299 form, and pay additional processing and monitoring fees for BLM to process the TUP or short term grant. This might require a separate environmental clearance and take additional processing time. If there is a possibility that you may need extra width or space, it is best to identify this in your original right-of-way application. Part 2800 of this final rule addresses short term grants and part 2880 of this final rule addresses TUPs.

Processing a Right-of-Way Application

Once you file an application with BLM, we will review it to make sure you have included all necessary information. We will then review and evaluate the application contents and determine the probable impact of the activity on the social, cultural, economic, and physical environment. BLM will also check to see if the proposed right-of-way is consistent with the existing land use plan, and will check to see what valid existing rights currently exist on the lands in question. BLM may deny a right-of-way application for any number of reasons. A preapplication meeting will reduce the possibility of BLM denying your application. Sections 2804.26 and 2804.27 and sections 2884.23 and 2884.24 of this final rule address denials of grant or TUP applications.

Appeals

If BLM denies your application, the official written decision will give the reasons for the denial and information on how to file an appeal. You also have appeal rights at many other decision

points in this final rule. In general, if you are an applicant who is adversely affected by a BLM written decision, you may appeal that decision. Sections 2801.10 and 2881.10 of these regulations address appeals.

Liability

As holder of a right-of-way grant you are responsible for damage or injury to the United States and to third parties in connection with the right-of-way use. You, as the holder, must also indemnify or hold the United States harmless for third party liability, damages, or claims it incurs. Sections 2807.12, 2807.13, 2886.13, and 2886.14 of this final rule address liability issues.

Amendments to Your Grant

If you want to substantially change, improve, or add to a project once you have a right-of-way grant, you must file an application with BLM to amend your right-of-way grant. You must have BLM's prior written approval before you make any substantial change in location or use during construction, operation, or maintenance of the right-of-way. You must contact the field office manager to determine if your proposed changes require you to file an amendment. Sections 2807.20 and 2887.10 of this final rule cover grant amendments.

Monitoring Your Grant

BLM may inspect your project for compliance with the terms and conditions of the grant and these regulations. In addition, under the terms of the grant, BLM reserves the right of access onto the lands covered by the right-of-way grant and, with reasonable notice to the holder, the right of access and entry to any facility constructed in connection with the project (see sections 2805.15 and 2885.13). Subparts 2805 and 2885 of this final rule address grant monitoring.

Grant Suspension and Termination

A right-of-way holder may use the right-of-way for only those purposes permitted in the grant. BLM may suspend or terminate a right-of-way if the holder does not comply with the applicable laws, regulations, terms, or conditions. BLM may require an immediate temporary suspension of activities within a right-of-way to protect the public health or safety or the environment. Sections 2807.16 through 2807.19 and sections 2886.16 through 2886.19 of this final rule address suspensions and terminations.

Assignments

With BLM approval, you may transfer your right-of-way grant to another person. A transfer of your grant is called an assignment. You must submit to BLM, in writing, an application for the proposed assignment, along with a nonrefundable payment. BLM will not recognize an assignment to the new owner until we approve it in writing. BLM will approve the assignment if doing so is in the public interest. Sections 2807.21 and 2887.11 of this final rule address assignments.

Trespass

If you use, occupy, or develop the public lands or their resources without a required authorization or in a way that is beyond the scope and terms and conditions of your authorization, you are considered to be in trespass and you may be penalized. Subparts 2808 and 2888 of this final rule address trespass.

Comparison Between FLPMA and MLA Grants

There are many similarities and differences between FLPMA and MLA grants. The following chart describes FLPMA and MLA right-of-way grants, but is not meant to be a complete description of all of the nuances, similarities, and differences between FLPMA and MLA grants.

	Part 2800 Regulations FLPMA Grants	Part 2880 Regulations MLA Grants
Agency Jurisdiction	BLM issues grants on public lands only (43 U.S.C. 1761(a)).	BLM issues grants on all Federal lands if the lands are administered by two or more Federal agencies. BLM also issues grants on public lands (30 U.S.C. 185(c)).
Term	A reasonable term. This can range from a term of one day to a term in perpetuity. (43 U.S.C. 1764(b)).	A reasonable term not to exceed 30 years (30 U.S.C. 185(n)).
Rental	Fair market rental value required from holders, but exceptions apply. (43 U.S.C. 1764(g)).	Fair market rental value required from all holders (30 U.S.C. 185(l)).
Cost Reimbursement	Collect reasonable costs of processing the application and monitoring except from certain government agencies and cooperative cost share program participants (43 U.S.C. 1764(g)).	Collect actual costs of processing the application and monitoring except from certain government agencies (43 CFR 2884.13).
Renewal	Renewable if it is provided for in the grant and satisfactory operation and maintenance exists (43 U.S.C. 1764(b)).	Renewable if the grant is still being used for commercial operations and satisfactory operation and maintenance exists (30 U.S.C. 185(n).
Citizenship	Individual applicant not required to be U.S. citizen (43 U.S.C. 1761(b)).	Individual applicant required to be U.S. citizen (30 U.S.C. 181, 185).
Width	Variable, depending on purpose of the authorization (43 U.S.C. 1764(a)).	Maximum 50-foot permanent width, plus the ground occupied by the pipeline; exceptions are possible (30 U.S.C. 185(d)).
Assignments	Assignable with BLM's approval (43 U.S.C. 1764(c) and (g)).	Assignable with BLM's approval (30 U.S.C. 185(r)).
Temporary Use	Authorize temporary work areas as part of a right-of-way grant or with a separate short-term right-of-way grant (43 U.S.C. 1764(a)).	Authorize temporary work areas with a Temporary Use Permit (30 U.S.C. 185(e)).
Common Carrier Provision	Does not apply to FLPMA grants	Applies to all pipeline grants (30 U.S.C. 185(r)).
Application form	BLM Standard Form 299 or APD or Sundry Notice for off-lease oil and gas access roads.	BLM Standard Form 299 or APD or Sundry Notice for all off-lease portions of oil and gas pipelines.

II. Final Rule as Adopted and Response to Comment

Part 2800—Rights-of-Way Under FLPMA

We received many comments on the proposed rule that addressed issues common to both the part 2800 and part 2880 regulations. So as not to be redundant, we address the comments only in the section they pertain to in the part 2800 regulations. Comments that specifically address the part 2880 regulations are discussed in that section of the preamble.

Subpart 2801—General Information

This subpart contains material that pertains to all of part 2800 and several sections of part 2880. Part 2800 contains policies and procedures related to right-of-way grants BLM issues under the Federal Land Policy and Management Act and part 2880 to right-of-way grants and temporary use permits BLM issues under the Mineral Leasing Act. More specifically, subpart 2801 contains:

(A) An explanation of the objective of BLM's right-of-way program;

(B) Acronyms and definitions used in the regulations; and

(C) Information about which grants the regulations affect and which they do not.

General Comments

Several commenters said that there is no up-to-date data to support the need for increases in existing right-of-way fees or the creation of new ones, and that BLM should prepare a baseline report and annual reports thereafter to document the needed increases. They also said that there have been significant technology increases, as well as staff reorganizations, that have improved efficiencies that should reduce costs. For a discussion of the justification for increasing cost recovery fees, please see the proposed rule at 64 FR 32107 through 32111.

In 1995, BLM program experts analyzed a cross section of right-of-way cases. This analysis showed that the cost of processing right-of-way cases, including labor costs, had increased since 1986 at approximately the same rate as the Implicit Price Deflator-Gross Domestic Product (IPD–GDP). Therefore, the final rule adjusts costs upward based on the IPD–GDP and allows for automatic adjustments based on this indicator. Technological improvements and staff reorganizations that have taken place recently may have yielded improved right-of-way processes in many BLM offices. Since the processing categories in this final rule are based on the time (hours) required to process an application, this final rule takes into account increases in efficiencies. We note, however, that the number of processing hours may be increased by the increasingly complex resource issues BLM encounters when processing grant applications which add to the amount of coordination required to process applications. Increased public involvement in the National Environmental Policy Act (NEPA) process adds extra levels of analysis and review. Comments relating to BLM creating new fees are misdirected since BLM is not proposing any new fees in this rule (see previous subparts 2808 and 2883 and previous sections 2803.1–2 and 2883.1–2).

We suggest that commenters who requested reports justifying the fee increases refer to the preamble discussion in the proposed rule (64 FR 32107 and 32108). A 1995 audit of BLM's cost recovery efforts by the Office of Inspector General (OIG) for the Department of the Interior found BLM was not recovering all the costs of processing applications and recommended that BLM revise its regulations to recover all applicable costs. The audit estimated that BLM incurred about $640,000 in additional expense in excess of the fees collected in 1993. (This shortfall comes to $213 per application, or $800,000 and $336 respectively when adjusted for the change in IPD–GDP.) BLM is following the OIG's suggestions by increasing the costs for processing and monitoring right-of-way applications and providing for future adjustments to the costs based on economic indicators to reflect the costs of inflation. BLM also prepares yearly reports, some to meet requirements imposed by Congress in the Mineral Leasing Act, that discuss the relative numbers and types of cases that we process each year. BLM publishes this data annually in a statistical report that you can find on the Internet at *http://www.blm.gov/nhp/browse.htm#annual_reports.* While these reports alone do not justify increasing cost recovery fees, they show that the number of right-of-way authorizations BLM grants and administers continues to increase. As such, the monetary losses projected by the OIG in 1995 continue to increase each year. We did not amend the final rule as a result of these comments.

Several commenters from the oil and gas industry suggested that BLM should not increase processing fees because the bonuses, rents, and royalties industry already pays to the government should cover BLM's right-of-way processing costs. We address this comment here because it could apply to grants issued under either FLPMA or the MLA, as some oil and gas lessees do hold FLPMA rights-of-way to assist in transporting product off-lease.

Congress authorized BLM to recover processing costs, and did so fully aware that BLM was already collecting bonuses, rents, and royalties. Congress is presumed to understand the state of the existing law when it legislates. *Bowen* v. *Massachusetts,* 487 U.S. 879, 896 (1988).

In the MLA, Congress specified how mineral royalties and bonuses are distributed to states and to the Treasury (30 U.S.C. 191), and this distribution does not return funds to BLM to cover the costs of processing right-of-way applications. However, as discussed in the preamble to the proposed rule at 64 FR 32107, section 504(g) of FLPMA and section 28(l) of the MLA authorize BLM also to collect the costs to process right-of-way applications. Section 504(g) of FLPMA further provides that the deposit of reimbursements for reasonable costs be placed into a Treasury account to be appropriated to BLM for processing applications.

Also, BLM charges processing fees to everyone who files an application, except those specifically exempted by law or regulation, pursuant to its authorities under the Independent Offices Appropriations Act, as amended, 31 U.S.C. 9701 (IOAA); section 304(a) of FLPMA; Office of Management and Budget Circular A–25; the Department of the Interior Manual 346 DM 1.2 A; and case law (also see the preamble to the proposed rule at 64 FR 32107 and Solicitor's Opinion M–36987 (December 5, 1996)). Congress clearly intended for agencies to recover processing costs in addition to bonuses, rents, and royalties.

The IOAA states that Federal agencies should be ''self-sustaining to the extent possible,'' and authorizes agency heads to ''prescribe regulations establishing the charge for a service or thing of value provided by the agency.'' Section 304(a) of FLPMA specifically authorizes the Secretary of the Interior to ''establish reasonable filing and service fees and reasonable charges and commissions with respect to applications and other documents relating to the public lands.'' IOAA and FLPMA give BLM authority to charge fees for processing applications, which we interpret to include amendments and assignments.

OMB Circular A–25 sets forth a general policy that a user charge will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public. Departmental Manual 346 DM 1.2A

requires (unless otherwise prohibited) that a charge, which recovers the bureau's costs, be imposed for services which provide special benefits or privileges above and beyond those which accrue to the public at large.

A particularly relevant court ruling is *Mississippi Power & Light Co.* v. *United States Nuclear Regulatory Commission,* 601 F.2d 223 (5th Cir. 1979), *cert. denied,* 444 U.S. 102 (1980). The court upheld a Nuclear Regulatory Commission (NRC) licensing fee schedule. The court rejected the petitioners' argument that the work of the NRC benefitted the general public solely and that the conferral of a license or permit does not bestow upon the petitioners any special benefit whatsoever. The court concluded: ''A license from the NRC is an absolute prerequisite to operating a nuclear facility, and as such, is a benefit 'not shared by other members of society.' '' Likewise, a right-of-way grant is a benefit not shared by other members of society. Therefore, BLM charges applicants for processing their applications for grants because they are seeking a benefit not shared by other members of society.

The commenters' contention that BLM should not charge right-of-way processing fees to the oil and gas industry because the industry already pays bonuses, rentals, and royalties misses the point about processing fees. Congress intends for agencies to be reimbursed for processing costs when the agency action benefits an identifiable party. BLM's processing of right-of-way applications benefits the applicant, who will use the right-of-way to aid its operation. Bonuses, rentals, and royalties are related to the use of the resource and are unrelated to agency processing costs. Congress has provided for agencies to collect both for the use of the resource and for the processing of applications and other documents.

Some of these commenters further suggested that any regulations pertaining to rights-of-way should be combined with existing oil and gas regulations, onshore orders, and notices to lessees and that a separate rulemaking is duplicative. We have decided not to combine this rule with other oil and gas rules. We believe that since both the FLPMA and MLA right-of-way programs are administered under BLM's lands and realty program and because of the many similarities between the various lands and realty regulations, both as a matter of policy and a matter of process, BLM's right-of-way regulations should not be located in the same part in 43 Code of Federal Regulations as BLM's oil and gas regulations.

One commenter suggested that BLM should consider the benefits the public receives from industry upgrading access roads and performing special studies that benefit the public. Previous regulations allowed BLM to reduce cost recovery fees to reflect both public benefits from studies connected with processing an application and special services to the public or a program of the Secretary provided by a project (see previous sections 2808.5(b)(5) and (6). Like previous regulations, the final rule contains provisions for FLPMA right-of-way applicants to pay cost recovery fees that reflect the public service or public benefit derived from a right-of-way grant or its processing (see final sections 2804.20 and 2804.21).

Several commenters said that the proposed automatic fee adjustments appear to be a disincentive for future BLM process improvements. We disagree with the commenters. The automatic fee adjustment provisions in this final rule will not act as a disincentive to continuing our process improvement efforts. Even after this rule becomes final, BLM will continue to examine ways to improve processes. The automatic fee adjustments are intended to increase fees based on an economic indicator that reflects yearly increases in the cost of doing business. We have included automatic fee adjustments because the cost to BLM of going through rulemaking each time fees needed to be adjusted would be prohibitive and inefficient. If during periodic review of the fee structure we determine that the fees or fee structure need to be revised, apart from applying the IPD–GDP, we will propose new rulemaking.

Some commenters said that the fee increases were not legal since they were really special use taxes that must be ''approved by Congress and signed by the President.'' BLM does not agree with the commenter. Clearly, both FLPMA and MLA give BLM authority to collect the reasonable or actual costs of processing right-of-way applications (see 43 U.S.C. 1764(g) and 30 U.S.C. 185(l)). Neither statute imposes a limitation on fee increases. Moreover, the Supreme Court has made clear that agencies may charge for special benefits to identifiable recipients, which is what BLM is doing in this rule. See *National Cable Television Association* v. *U.S.,* 415 U.S. 336, 341 (1973), and *Federal Power Commission* v. *New England Power,* 415 U.S. 345, 349 (1973).

One commenter agreed with the proposal to automatically adjust fees to keep pace with inflation. This provision remains in the final rule.

Some commenters thought that the IPD–GDP was not the appropriate indicator for automatic increases in fees. They thought that the Consumer Price Index would be a better economic indicator to use since, due to streamlining, labor costs have decreased since 1987. We disagree. As we stated in the proposed rule's preamble (see 64 FR 32109), we believe that the IPD–GDP is the correct economic indicator on which to base these fee adjustments since the IPD–GDP more closely reflects the relationship of labor to other costs than do other economic indicators and most of BLM's processing and monitoring costs are related to labor costs.

One commenter stated that BLM was attempting to recover costs in excess of the shortfalls in cost recovery identified by the OIG in 1995, and that the new fees would be indexed annually to guarantee additional income. Further, commenters said that BLM was only allowed to recover reasonable or actual costs. We agree that BLM can only charge reasonable or actual costs for processing right-of-way applications. Final section 2804.14 of the FLPMA regulations requires that you pay the United States the reasonable costs of processing your application, and final section 2884.12 of the MLA regulations requires that you pay the United States the actual costs of processing your application.

We believe the commenter who stated that BLM was attempting to recover more that its shortfall misunderstood the explanation in the proposed rule. In 1995, the OIG sampled 75 of the approximately 3,000 right-of-way cases BLM processed in fiscal year 1993 and determined that there was a shortfall in collected processing fees of $16,000 for those 75 cases. The total estimated shortfall for the 3,000 cases processed was thus at least $640,000 for that one year. The proposed rule stated that the maximum fees that possibly could be generated by the proposed regulations over and above fees already being collected, was approximately $2.7 million annually (see 64 FR 32123). We calculated that figure to show that even under the most extreme circumstances this rule would not be considered economically ''significant'' under Executive Order 12866 (which defines ''significant'' as having an annual economic impact of $100 million or more). The $2.7 million figure does not represent anticipated revenue, but indicates the outside limit of the economic impact of the proposed rule, over and above the fees already being

collected, if every right-of-way application, including those that were exempted or reduced under previous regulations, were placed at the highest fee category available. Therefore, the difference between $640,000 and $2.7 million does not represent costs in excess of what BLM needs to process grant applications. BLM anticipates that this rule will, on an annual basis, generate additional revenue from processing fees approximately equivalent to the $640,000 shortfall identified by the OIG, corrected for inflation by application of the IPD–GDP.

One commenter said that BLM and the U.S. Forest Service (FS) should adopt the same rules, procedures, and regulations to reduce application costs and review times. We agree. BLM and the FS are working together on parallel regulations to establish procedures that are consistent to the extent possible for the collection of right-of-way processing and monitoring fees (see 64 FR 66341 for the FS proposed rule).

A few commenters said that the difference between FLPMA and MLA rights-of-way should be pointed out in the final rule since it is confusing to the public and BLM. The basic processing steps, fee determination process, and conditions for approval involved in both types of applications are nearly identical. However, there are some differences between the two types of applications and the two parts of the rule, most of which result from distinctions in the statutory authority for the two types of grants. The major differences between the part 2800 and part 2880 regulations are explained in the table and general discussion above.

A few commenters said that instead of the cost recovery fee in the proposed rule, BLM should use a ''minimal impact flat fee'' similar to that proposed by the FS for flowlines, roads and electric lines being installed in a developing field. The FS proposed a ''minimum impact category'' in their rule that would cover one-time authorizations for the use of forest system lands for events such as recreation events, weddings, or bike races or uses where more than 75 people participate (see 64 FR 66341, 66344, and 66350). The BLM requested comments on the need for such a category. Both agencies decided not to establish a ''minimal impact category'' in their final rules. Instead, in this final rule BLM establishes a new processing and monitoring category for all ROW actions where we spend more than one hour but less than eight hours processing the application or monitoring the grant. The FS also plans to issue a similar final rule.

R.S. 2477

Many commenters were concerned that the regulations would impact rights associated with R.S. 2477 roads. One commenter said that before the rule can be finalized, a Federal court must decide which roads are available for rights-of-way as some may be owned by the county under R.S. 2477. Similarly, another commenter said that BLM needs to make sure we own the road before issuing a right-of-way grant. These final regulations do not change the current policy of the Department of the Interior for handling R.S. 2477 issues and apply only to public lands (Part 2800) and Federal lands (Part 2880). Final section 2801.6 makes clear that these regulations do not apply to valid claims under R.S. 2477.

Temporary Use Permits

Several commenters supported the continued use of temporary use permits (TUPs). Some commenters from the oil and gas industry said that we should not eliminate TUPs for FLPMA rights-of-way since the industry needs them for testing and emergency situations. Other commenters said that BLM only needs to be able to authorize the additional use of public land outside a permanent right-of-way, no matter what you call the authorization. We agree with the basic point of the last comment and have so provided in this rule. Moreover, BLM believes there is little difference between approving the use of public land using short term right-of-way grants and approving the use of Federal land with TUPs. Both authorizations require:

(A) The same application procedure;

(B) Compliance with NEPA and land use plans;

(C) Preparation of a decision; and

(D) Execution of an authorizing document.

BLM can authorize all associated uses with a FLPMA grant, whether they are short or long term, and therefore TUPs are not needed. This is consistent with the proposed rule (see 64 FR 32118).

One commenter said that BLM should authorize in a right-of-way grant access roads, temporary landing sites, and lay down areas rather than in a special use permit since these activities are an integral part of the construction operations. We agree and the final rule is consistent with this comment. The same commenter said that short-term incidental activities, such as those short term construction activities that would temporarily require additional width for a right-of-way, or a temporary access road should be permitted for a term and with stipulations, as a right-of-way, not as a special use, because they are tied to a longer term use. We agree with the commenter. Under this final rule, we will issue right-of-way grants under FLPMA with an appropriate term and stipulations for all authorized uses associated with a right-of-way, including short term construction and access needs.

Section 2801.2 What Is the Objective of BLM's Right-of-Way Program?

This section is new to the final rule and explains it is BLM's objective to grant rights-of-way to qualified individuals and business or government entities, and to direct and control the use of rights-of-way on public lands in a manner that:

(A) Protects the natural resources;

(B) Prevents unnecessary or undue degradation to public lands;

(C) Promotes the use of rights-of-way in common; and

(D) Coordinates, to the fullest extent possible, all BLM actions under the regulations with state and local governments, interested individuals, and appropriate quasi-public entities.

We inadvertently left the objectives section out of the proposed rule, but this final section is consistent with previous section 2800.0–2. We added a similar provision to the part 2880 regulations discussed later in this preamble.

Section 2801.5 What Acronyms and Terms Are Used in These Regulations?

This section contains the acronyms and defines the terms that are used in these regulations. Paragraph (a) is new to the final rule and contains acronyms that are frequently used in the final rule. We also amended the definitions section in the final rule by adding several terms, by deleting unnecessary terms, and by amending the definitions of the terms we proposed.

Two terms not defined in the proposed or final regulations are ''suspension'' and ''termination.'' We discuss those terms here because the public and BLM staff often inappropriately use the terms interchangeably. The two terms have very different meanings. Suspensions involve immediately curtailing activities and privileges authorized under a grant for a specified period of time. Suspensions may be ordered to protect public health, safety, or the environment. Terminations, on the other hand, involve ending the term of a grant because the grant has expired or is required by law to terminate, the holder requests and BLM consents to the termination, or the holder has not complied with laws, regulations, or any

terms and conditions of the grant, including abandonment.

Many comments related to redefining terms used in the proposed rule or adding new terms to make the rule easier to understand.

In the final rule we added a definition of ''actual costs'' to mean the financial measure of resources BLM expends in processing and monitoring right-of-way grants including direct and indirect costs, exclusive of management overhead. We added this definition because ''actual costs'' is one of the criteria spelled out in FLPMA that BLM uses to assess whether costs are reasonable. The term is defined similarly to previous section 2800.0–5(o).

One commenter asked that the final regulation define ''administrative costs of processing,'' as the phrase was vague and subject to interpretation. In the final rule we do not use the phrase ''administrative cost of processing'' and therefore there is no need to define the term.

The Forest Service recommended revising the definition of ''base rent'' to read, in part, as follows:

> Base rent means the initial dollar amount required of a facility owner or a facility manager based on the highest value use in their facility, as determined by the communications rent schedule and the population of the community served. If the facility manager rental rate or the facility owner's type of use rental rate is equal to or greater than other assigned rental rates in that facility, then * * *.

In the final rule we moved the definition of ''base rent'' from proposed section 2806.5 to this section. We also modified the final definition to make it easier to understand that when a communication site facility manager's or facility owner's scheduled rent is equal to the rent for the highest use from the communication use rent schedule, the facility manager or facility owner's use determines the base rent. When the value of any other use in the communication site facility exceeds that of the facility manager or facility owner's use, that other use determines the base rent. Although we did not copy the FS proposed language exactly, we followed the suggested meaning of the FS comment in the final definition.

In the final rule we amended the definition of ''casual use'' to mean ''activities ordinarily resulting in no or negligible disturbance of the public lands, resources, or improvements.'' We also replaced the example proposed with ''Surveying, marking routes, and collecting data to use to prepare grant applications.'' We believe the final rule's definition of ''casual use'' is a more accurate and useful description because it recognizes that casual use may cause no disturbance and because it gives examples that are more useful than that provided in the proposed rule.

In the final rule we moved the definition of ''commercial purpose or activity'' from proposed section 2806.5 to this section and modified it to make it easier to understand. In the final rule, we use the term to describe the situation where a holder attempts to produce a profit by allowing the use of its facilities by an additional user. Under these circumstances BLM may assess an appropriate rent for such commercial activities. The holder's use may not otherwise be subject to rent charges under BLM's rental provisions.

In the final rule we moved the definition of ''communication use rent schedule'' from proposed section 2806.5 to this section and modified it to make it easier to determine where a use will fit into the schedule. The final rule also clearly states that the type of use identified on an FCC license does not supersede either the definition found in this subpart or the procedures for calculating rent in subpart 2806. The definitions in this rule are different from those in FCC's rules because our reason for defining them is so we can determine the correct rent for the use of a right-of-way, whereas the FCC regulations define them for entirely different reasons, such as licensing requirements. Therefore, our definitions continue to focus on determining the type of use. However, there may be circumstances where BLM cannot accurately determine the type of communication use and therefore cannot determine the proper category in the rent schedule for the use. Should this occur, BLM may consult with the FCC to help us determine the use, based on our definitions, and therefore determine where the use would fit into the communication use rent schedule.

Several commenters said BLM should change its definition of ''commercial mobile radio service'' (CMRS) (contained in ''communication use rent schedule) because it differs significantly from the regulatory classifications established by Congress and the FCC. They said BLM's definition of CMRS did not identify cellular, personal communication service, or enhanced specialized mobile radio services as specific types of commercial mobile radio services, but instead focused on communication services to individual customers and ancillary communication equipment for operating, maintaining, or monitoring use. One of the commenters suggested that we use the FCC's definition of CMRS. Another commenter said that the definition contravened section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, which mandated that similar mobile services be subject to consistent regulatory definition and urged BLM to adopt FCC definitions in its final rule. We disagree with the commenters. BLM and the FCC have different definitions for the terms because we use the terms for different purposes. The FCC issues licenses for different classifications of primary uses. BLM defines different types of communication uses for rental calculation purposes only.

In the final rule we moved all communication site related definitions from proposed section 2806.5 to this section. For example, we moved the definition of ''customer'' from proposed section 2806.5 to this section. We also modified the definition to make it clear that:

> (A) BLM includes private or internal communication uses located in a holder's facility as customer uses; and
>
> (B) Customer uses are not included in the amount of rent owed by a facility owner, facility manager, or tenant unless the facility owner or facility manager is operating the facility for a commercial purpose. This more accurately describes how we charge for customer uses than the proposal and is consistent with existing policy and practice.

Several commenters thought the definition of ''designated right-of-way corridor'' should be deleted because it is not compatible with oil and gas field operational practices. We address this comment here because right-of-way corridors, even those for oil and gas operations, are designated under FLPMA. The commenters said that the spider web of flowlines, gathering lines and roads on specific leases cannot be predicted and would not be conducive to corridors. We retained the definition in the final rule because of the advantages to locating major utility rights-of-way in corridors on public land and because section 503 of FLPMA requires that we use rights-of-way in common to the extent practical. Further, the final rule does not require that rights-of-way for all oil and gas field operations be located in a designated right-of-way corridor. Designation of a right-of-way corridor is a land use planning decision that BLM makes only after fully considering the impacts on other existing and planned land uses, including oil and gas development.

We made minor wording changes to the definition of ''facility'' in the final rule to make it easier to understand. The definition makes it clear that ''facility'' includes the improvements or structures on a right-of-way owned or controlled by the grant or lease holder.

In the final rule we moved the definition of ''facility manager'' from proposed section 2806.5 to this section. The final definition makes clear that a communication site facility manager does not own or operate its own equipment, but leases space to tenants and customers in a communication facility. We also moved the ''facility owner'' definition from proposed section 2806.5 to this section and reworded it to be clear that a ''facility owner'' owns and operates its own communication equipment in a facility and may or may not lease space to other users in the communication facility. Both definitions are consistent with current policy and practice.

Several commenters said that the definition of ''field examination'' should make it clear that the BLM staff person making a field trip should look at as many rights-of-way and Applications for Permits to Drill as possible in one trip to make the trip as efficient as possible. We agree. Combining several field examinations or other inspections into one field trip is BLM's routine practice. However, we deleted the proposed definition of ''field examination'' from the final rule because we no longer use the term and it is not part of the criteria for determining a cost recovery category in this final rule. For further information, please see the preamble discussion of final section 2804.14.

Several commenters asked what ''reasonable costs'' are and said that BLM should be responsible for paying for NEPA and other studies since it is our responsibility under the law. We use the phrase ''reasonable costs'' in sections 2804.14, 2804.20, and 2805.16. The final rule defines this phrase in section 2801.5, and final section 2804.20 lists the factors from FLPMA that BLM will use in its determination of the reasonable costs for Processing Category 6 or Monitoring Category 6.

We reworded the definition of ''grant'' to state that a grant is any authorization or instrument (*e.g.*, easements, leases, licenses, or permits) issued under Title V of FLPMA, and that ''grant'' includes those authorizations and instruments BLM and its predecessors issued for like purposes prior to the passage of FLPMA under now expired authorities. Therefore, the term ''grant'' includes communications use leases. We use the term ''lease'' for communication site purposes because of the nature of the rights we authorize to the holder of the authorization. Communication use leases allow holders to sublease space to tenants and customers without first obtaining BLM approval. A typical BLM right-of-way grant does not allow holders to sublease.

We received many comments related to the definition of ''hazardous material.'' Many commenters said that the Environmental Protection Agency (EPA) has an established definition of ''hazardous substance'' and that EPA regulates hazardous substances and BLM therefore need not. Some commenters said the definition was overly broad, inconsistent with other regulatory authorities and should be deleted. Several commenters said that the definitions ''hazardous material,'' ''discharge,'' and ''release'' should all be deleted from the rule and that the rule is expanding BLM's jurisdiction beyond what is required by law. Some commenters said the rule changes statutory requirements and regulations on hazardous materials. The commenters said the rule should not weaken or dilute the Resource Conservation and Recovery Act (RCRA) or the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or eliminate the exemptions provided the oil and gas industry in those statutes. We have not changed these definitions as a result of these comments. The final rule includes these definitions to make clear the regulations addressing use and management of hazardous materials on Federal and public lands. As noted in the proposed rule's preamble (see 64 FR 32118), right-of-way holders use, store, and transport various hazardous materials on and across public lands. BLM seeks to ensure that those using BLM lands are responsible for damage to health, property, and the environment incurred while using and occupying a right-of-way and that they understand which materials we consider to be hazardous.

The terms ''discharge'' and ''release'' take their meanings from the Clean Water Act (33 U.S.C. 1321(a)(2)) and CERCLA (42 U.S.C. 9601(22)), respectively. The terms broadly address the range of circumstances under which, during the use of a right-of-way, a chemical substance may enter the environment.

The term ''hazardous material'' is also intentionally broad and includes, among others:

(A) Hazardous substances as defined by CERCLA (see 42 U.S.C. 9601(14);

(B) Regulated substances managed in tanks as defined by the Resource Conservation and Recovery Act (RCRA) (see 42 U.S.C. 6991 *et seq.*);

(C) Oil, as defined by the Oil Pollution Act (see 33 U.S.C. 2701(23)), and the Clean Water Act (see 33 U.S.C. 1321(a)); and

(D) Other substances defined and regulated as ''hazardous'' under applicable Federal, state, tribal, or local law.

We defined ''hazardous material'' by cross-referencing other laws to ensure that all pollutants, contaminants, and hazardous substances, including oil and petroleum products, fall within the definition. Although some commenters stated that BLM should specify hazardous substances of concern, and should not incorporate into its rule definitions taken from other laws, such an approach would be impracticable in light of the large number and types of hazardous substances that can cause harm to health, property, or the environment. In addition, numerous laws, including CERCLA, define ''hazardous substance'' by incorporating definitions found in other laws. (See section 101(14) of CERCLA, 42 U.S.C. 9601(14), and section 1001(23) of the Oil Pollution Act, 33 U.S.C. 2701(23).) Because numerous jurisdictions have adopted definitions of hazardous substances that, in many respects, differ from those in CERCLA, RCRA, the Oil Pollution Act, and the Clean Water Act, BLM included within its definition a catch-all for substances defined as hazardous under Federal, state, tribal, or local law. Rather than cause confusion and inconsistency, as claimed by some commenters, BLM believes the definition fosters consistency in the meaning and application of key terms and provides clear guidance to users of their obligations and liability under these regulations.

BLM disagrees that, by incorporating definitions of environmental terms taken from other laws, we are attempting to expand our authority into areas administered by EPA and state regulatory authorities under environmental laws. BLM is not seeking to supplant EPA and state authorities to regulate environmental laws on Federal and public lands. To the extent that EPA and the state have such authority, nothing in this rule affects it. These definitions apply only to BLM's right-of-way regulations, which seek to ensure that if someone using and occupying a right-of-way issued under these regulations causes harm to health, property, or the environment, the cost of remedying such harm falls on the grant holder, rather than on the public.

Several commenters stated that BLM should delete the term ''hazardous material'' and replace it with ''hazardous substance'' as defined in CERCLA, because using the term ''hazardous material'' could weaken or dilute the exemption granted to the oil and gas industry in CERCLA and RCRA. The commenters misunderstand the purpose of the rule. Nothing in the rule

affects the exclusion of petroleum from the definition of ''hazardous substance'' under section 101(14) of CERCLA (42 U.S.C. 9601(14)). BLM is not seeking through this rule to enforce CERCLA on Federal or public lands or to regulate users' management of waste under RCRA. Rather, BLM is issuing these regulations to ensure that, as a manager of public lands, it places the risk of harm on the grant holder and not on the public. In this context, the definitions are used in these regulations only as a way to identify which materials we consider to be hazardous and which, therefore, may impact Federal or public lands.

One commenter said that the final rule should define ''holder'' as it is defined in the law, to exclude Federal agencies. The commenter is correct that FLPMA does not include Federal agencies in its definition of holders. However, section 507 of FLPMA clearly provides for rights-of-way for the use of any department or agency of the United States. Title V of FLPMA also applies to any Federal agency that would apply to construct an oil or gas pipeline on public lands. Therefore, we believe it necessary to include Federal agencies in the definition of holders.

In the final rule we added a definition of ''management overhead costs'' to mean the costs associated with the BLM directorate, including all BLM State Directors and the entire Washington Office staff, except where a State Director or Washington Office staff member is required to perform work on a specific right-of-way case. We added the definition because we use the phrase in the definition of actual costs and in final section 2804.20.

In the final rule we also added a definition of ''monetary value of the rights and privileges you seek'' to mean the objective value of what the right-of-way grant is worth in financial terms to the applicant. We added this definition because ''monetary value'' is one of the criteria spelled out in FLPMA that BLM uses to assess whether costs are reasonable and we use the term in final section 2804.20. The meaning of the term is the same as the definition in previous section 2800.0–5(p).

Several commenters said the final rule should define ''monitoring'' in terms of requirements and time frames and that monitoring should not be considered an annual or recurring cost. Another commenter asked if the determination of compliance was part of the ''administrative costs of (renewal) compliance,'' or part of day-to-day monitoring activities. The second comment appears to be asking if compliance inspections prior to renewal of a grant are part of day-to-day monitoring or part of the cost of processing a renewal. In the final rule we added a definition of monitoring, which includes those actions BLM performs to ensure compliance with the terms, conditions, and stipulations of the grant.

Monitoring occurs primarily during the construction and rehabilitation phases of a project. During grant application processing, BLM will estimate the hours we will need to monitor the construction and rehabilitation of a Monitoring Category 1 through 4 application, and we will collect the applicable fees when the applicant accepts the terms, conditions, and stipulations of a grant. For a Category 1 through 4 application, compliance inspections for a renewal are part of the cost of processing the renewal. Monitoring Category 1 through 4 fees are one-time fees. Monitoring for Category 5 Master Agreements and Category 6 projects are in accordance with the terms of the agreement and may include monitoring during the life of the grant through the termination phase of the project.

In the final rule we deleted the definition of ''project'' because there is a common understanding of the term as it is used in this rule.

We also replaced the proposed rule's definition of ''public land'' with a definition more closely following section 103(e) of FLPMA.

In the proposed rule we omitted the definition of ''reasonable costs.'' In the final rule we added the definition of the term, citing the definition in section 304(b) of FLPMA, which is consistent with existing policy and practice.

In the final rule we moved the definition of ''site'' from proposed section 2806.5 to this section.

One commenter supported using the term ''site,'' but recommended a broader definition that would include a geographic area that can accommodate multiple communication facilities under the control of one or more facility managers supporting a combination of recognized communications uses. BLM did not change the definition in response to this comment because we believe the commenter's suggestion is actually more restrictive than the proposed definition. A site is not limited to communication facilities and may contain several other types of right-of-way facilities and uses besides communications facilities.

One commenter said that the definition of ''substantial deviation'' absorbs rights that a Federal agency may already have in an existing grant. As an example, the commenter said that in utility rights-of-way it is common practice for the grant to include terms that allow the holder to construct, modify, and maintain the facilities. The commenter said that if Federal agencies want to do something that is beyond the scope of the grant, they should contact BLM. In the proposed rule BLM provided an explanation of ''substantial deviation'' that was not spelled out in previous regulations (see proposed section 2807.11). We moved the description of substantial deviation from proposed section 2807.11 to final section 2801.5. BLM agrees with the commenter that when an activity is beyond the scope of what is authorized in a grant, the holder should contact BLM before engaging in the activity. We reworded the definition of ''substantial deviation'' to make clear that the notification requirement of proposed section 2807.11(b) applies only in circumstances where the use is outside the scope of an existing grant or outside the boundaries of an existing authorized right-of-way. The requirement does not apply to uses that are in an existing grant. BLM considers adding facilities that are not specifically authorized in the original grant to be a substantial deviation that requires supplemental authorization in the form of a grant amendment.

Several commenters said that as it pertains to the definition of ''temporary use permit,'' public safety is an ''OSHA function,'' not a BLM function. They also said that there should be a definition of ''natural environment'' in the final rule and that under a temporary use permit, there may not be any ''natural environment'' to protect.

In the final rule we deleted the definition of ''temporary use'' from part 2800. Under the final rule, for any use or activity requiring a FLPMA grant for a short duration, BLM will issue a short term right-of-way grant instead of a temporary use permit. When an applicant identifies a short term use during application processing, such as the need for additional work space outside the right-of-way boundary, BLM will approve that use, as appropriate, within the right-of-way grant. When the short term use is identified after a right-of-way grant for a project has been executed, BLM will approve the additional short term use, as appropriate, in a separate short term grant or an amendment to the grant. There is no specified term or duration for a short term grant and BLM will determine the term on a case by case basis.

Under the final rule for part 2880, we will continue to issue TUPs for uses associated with MLA right-of-way

grants. We disagree with commenters' suggestion that the definition of TUPs should not address public safety. The MLA specifically states that BLM may issue TUPS to ''protect the natural environment or public safety'' (see 30 U.S.C. 185(e)). We also disagree with the commenters that said under a TUP there may not be any natural environment to protect. The ''natural environment'' is the land for which BLM issues the original grant and any attendant TUP, which holders must protect.

In the final rule we moved the definition of ''tenant'' from proposed section 2806.5 to this section. The final rule's definition is similar, but more specific, than the previous rule's definition (see previous section 2800.0–5(bb)), and is also consistent with the proposed rule.

We use the term ''third party'' in the proposed and final rules. We did not define it in the proposal, but do define it in the final rule to make clear that BLM considers a third party to be any party aside from the applicant, holder, or BLM.

In the final rule we added a definition of ''tramway'' to eliminate confusion over the meaning of the term. One of the right-of-way uses FLPMA specifically mentions is tramways (see 43 U.S.C. 1761(a)(6)). BLM administers a large amount of timber property in western Oregon and on other public lands where the term is commonly used to describe systems for transporting and hauling timber from the forest. Previous regulations did not define the term and there has been ongoing confusion over what type of transportation system qualifies as a tramway. Therefore, in the final rule we added a definition of tramway that is consistent with common usage of the word and existing policy.

One commenter said that we should add a definition of ''trespass'' to the final rule, while other commenters said that the proposed definition of ''trespass'' was too open ended and gave BLM too much discretion. In the proposed rule we defined the term ''trespass'' in the body of the regulatory text in section 2808.10, as we do in the final rule. We disagree with the commenter that the definition of the term is too open ended and gives BLM too much discretion. The final definition is consistent with previous regulations (see previous sections 2800.0–5(u), (v), and (w)) and does not give BLM any more discretion than do previous rules.

Several commenters said that the definition of ''unnecessary and undue degradation'' should be changed to ''unnecessary and undue damage'' and should not include ''non-willful'' acts. Other commenters said that ''degradation'' can mean almost anything and does not provide guidance to industry on what to avoid. The term ''unnecessary or undue degradation'' is statutory in origin and for that reason we decline to change ''degradation'' to ''damage.'' The term appears in section 302(b) of FLPMA (43 U.S.C. 1732(b) which states that ''In managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.''

In our 1999 proposed rule, we defined the term ''unnecessary and undue degradation'' to mean ''surface disturbance that is greater than that which would occur when the same or a similar activity is being done by a prudent person in a usual, customary, and proficient manner that considers the effects of the activity on other resources and land uses outside the area of the activity. The disturbance may be either willful or nonwillful.'' We have decided to delete this proposed definition (and the existing definition at 43 CFR 2800.0–5(x)) because we find it to be unnecessary. Issuing a right-of-way grant is a highly discretionary act on BLM's part. In final section 2804.26(a), BLM has established standards for exercising this discretion. For instance, as final section 2804.26 makes clear, an application may be denied if the proposed use is not in the public interest or is inconsistent with the purpose for which we manage the public lands.

''Unnecessary or undue degradation'' sets a standard far less stringent that those in section 2804.26. The Secretary, through BLM, will continue to observe the ''unnecessary or undue degradation'' standard in addressing a right-of-way application and in assessing and administering the terms and conditions and conditions of a grant, but will allow the facts posed by a particular situation give meaning to this phrase.

In the final rule we moved the definition of ''zone'' from proposed section 2806.5 to this section. We amended the definition in the final rule to more accurately describe a zone as ''one of eight geographic groupings necessary for linear right-of-way rent assessment purposes, covering all lands in the contiguous United States.''

Section 2801.6 Scope

This section explains what these final regulations apply to and what the final regulations do not apply to. In this final rule we combined proposed sections 2801.7 and 2801.8 into this section. We also amended this section by adding new paragraphs (b)(5), (6), and (7).

We added new paragraph (b)(5) to alleviate the concerns of some commenters that this rule would have a negative effect on rights under R.S. 2477.

We added new paragraph (b)(6) to clarify that the right-of-way regulations do not apply to existing rights for private reservoirs, ditches, and canals established prior to FLPMA under the Mining Act of July 26, 1866. We think this clarification will be helpful in eliminating any confusion associated with the previous regulatory language found in former section 2801.4.

In the 1866 Act, Congress granted Federal protection for vested state law-based water rights and rights-of-way for ditches, canals and other structures necessary for the use of water. Under the Act, a private party could acquire a right-of-way across Federal lands without any action by the government—no application or filing with the government was necessary, and no governmental approval was required. The right-of-way vested once a ditch or canal was constructed and a water right acquired. Once the right-of-way was created, it existed in perpetuity and included the right to operate and maintain the ditch, canal or conduit within the right-of-way. *See, e.g., Utah Power & Light* v. *United States,* 243 U.S. 389, 405 (1917); *Gorrie* v. *Weiser Irr. Dist.,* 153 P. 561, 562 (Id. 1915); *Perry* v. *Reynolds,* 122 P.2d 508, 511 (Id. 1942); *United States* v. *Big Horn Land & Cattle Co.,* 17 F.2d 357, 366 (8th Cir. 1927).

Other statutes enacted after the 1866 Act also allowed private parties to acquire rights-of-way across Federal lands. Unlike 1866 Act rights-of-way, however, these other statutes required government action before rights-of-way vested. For example, the Act of March 3, 1891 required an applicant to file and get government approval of a map before the right-of-way vested. The 1891 Act differed from the 1866 Act in several other ways, too. Unlike the 1866 Act, the 1891 Act defined the physical extent of the right-of-way. In addition, the 1891 Act allowed for establishment of rights-of-way for irrigation purposes on reserved lands; the 1866 Act did not apply to reserved lands.

When FLPMA was enacted in 1976, it repealed the existing laws governing rights-of-way and replaced them with a single mechanism for establishing a right-of-way over the public lands. Section 501(a) of FLPMA provides the Secretary of the Interior with authority to ''grant, issue, or renew rights-of-way over, upon, under, or through'' the

public lands. 43 U.S.C. 1761. In addition, FLPMA provides the Secretary with authority to impose terms and conditions on these rights-of-way that, among other things, ''minimize damage to scenic and esthetic values and fish and wildlife habitat and otherwise protect the environment.'' Section 505(a); 43 U.S.C. 1765.

But FLPMA did not terminate rights-of-way established under the prior statutes. Instead, FLPMA expressly preserved and protected such pre-existing private rights-of-way. Section 701(a) of FLPMA provides that FLPMA does not terminate ''any valid lease, permit, patent, right-of-way, or other land use right or authorization'' existing at the time of FLPMA's enactment. 43 U.S.C. 1701, note 1. In addition, section 701(h) of FLPMA provides that all actions taken by the Secretary in the exercise of her authority under FLPMA are ''subject to valid existing rights.'' 43 U.S.C. 1701, note 1. Together, these provisions of FLPMA ensure that pre-FLPMA rights-of-way are protected and preserved.

This final rule therefore reflects long-standing law and BLM's historical practice by clarifying that 1866 Act rights-of-way are not subject to regulation so long as a right-of-way is being operated and maintained in accordance with the scope of the original rights granted. Because rights-of-way under the 1866 Act are perpetual and do not require renewal, no authorization under FLPMA exists or is required in the future. Therefore, unless a right-of-way holder undertakes activities that will result in a substantial deviation in the location of the ditch or canal, or a substantial deviation in the authorized use, no opportunity exists for BLM to step in and regulate a right-of-way by imposing terms and conditions on the right-of-way's operation and maintenance. Simply stated, there is no current BLM authorization to which such terms and conditions could be attached. Therefore, Title V of FLPMA and BLM's right-of-way regulations do not apply to these rights-of-way.

This does not mean, however, that BLM cannot take action to protect the public lands when a holder of an 1866 Act right-of-way undertakes activities that are inconsistent with the original right-of-way. In such a situation, if the right-of-way holder does not approach BLM for a FLPMA permit authorizing such activities, FLPMA and BLM's trespass regulations provide BLM with the discretion to take an enforcement action against the right-of-way holder.

Title III of FLPMA provides the Secretary of the Interior with broad law enforcement authority. Section 302(b) provides that the Secretary ''shall * * * take any action necessary to prevent unnecessary or undue degradation of the lands.'' 43 U.S.C. 1732(b). In addition, section 303(g) provides: ''The use, occupancy, or development of any portion of the public lands contrary to any regulation of the Secretary or other responsible authority, or contrary to any order issued pursuant to any such regulation, is unlawful and prohibited.'' 43 U.S.C. 1733(g). BLM's trespass regulations, at 43 CFR part 9230, specify that, among other things, the ''extraction, severance, injury, or removal of timber or other vegetative resources or mineral materials from public lands under the jurisdiction of the Department of the Interior, except when authorized by law and the regulations of the Department, is an act of trespass.'' 43 CFR 9239.0–7. Trespassers are liable to the United States in a civil action for damages and may be prosecuted under criminal law. Therefore, with respect to 1866 Act rights-of-way, Section 302(b) of FLPMA and the trespass regulations provide BLM with the authority to take an enforcement action against a right-of-way holder undertaking activities inconsistent with the original grant.

We added new paragraph (b)(7) to address statutory changes to the Federal Power Act (FPA) and FLPMA. These changes incorporate existing policy and implement FPA and FLPMA amendments.

One commenter stated that the final rule should state if there are any rights-of-way outside the scope of the rule and should address rights-of-way in wilderness areas or ''short term rights-of-way on wilderness lands.'' We did not amend the final rule as a result of these comments. However, the final rule explains what the final regulations do not apply to and includes language in paragraph (b)(3) that states that the regulations do not apply to ''Lands within designated wilderness areas, although BLM may authorize some uses under parts 2920 and 6300 of this chapter.''

Section 2801.7 Information Collection Matters

We deleted this section from the final rule because it is not necessary to publish this information in the text of the regulations.

These regulations contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), we submitted a copy of the proposed information collection requirements to the Office of Management and Budget (OMB) for review. OMB approved the information collection requirements under Control Number 1004–0189, which expires October 31, 2005.

Section 2801.8 Severability

This section explains that if any court holds provisions of these regulations invalid, the remainder of the rules are not affected. This principle has always applied to BLM regulations, but it is stated here for clarity. This section was proposed as section 2801.10. We made editorial changes to the section, but its effect is the same as the proposed rule.

Section 2801.9 When Do I Need a Grant?

This section is a combination of proposed sections 2801.7 and 2801.8. It explains that you must have a grant when you plan to use public lands for certain systems or facilities, whether over, under, on, or through public lands. The section lists examples of the types of systems or facilities that require grants. The section also explains additional requirements for rights-of-way for generating, transmitting, or distributing energy. Finally, the section provides a cross-reference to BLM regulations for rights-of-way for transporting oil and gas resources.

Section 2801.10 How Do I Appeal a BLM Decision Issued Under These Regulations?

This is a new section to these regulations. The proposed rule listed the basic contents of this section for each action which allows a right to appeal. This final rule replaces the appeals language in each of those sections with a cross-reference to this section. This eliminates redundancy and brings this rule in line with other BLM regulations that handle appeals sections in a similar manner.

We received several comments on the subject of appeals. One commenter wanted the regulations to state whether or not applicants had the right of appeal if BLM rejected their applications. As a result of this comment, we amended final section 2804.26 and it now states that applicants have the right of appeal to the Interior Board of Land Appeals (IBLA) if BLM denies their applications.

Several commenters wanted the opportunity for State Director review for initial disagreements with BLM before BLM referred the matter to the IBLA. One commenter suggested language to accomplish this administrative review. Although other BLM programs have adopted these reviews, BLM did not add State Director review provisions to this final rule. When you appeal a decision to IBLA, BLM is not prohibited from

reconsidering or discussing the appealed decision with you or other interested parties. If BLM decides to rescind or amend the appealed decision as a result of additional review or discussion with you or other interested parties, we may rescind or amend only after asking IBLA to remand the matter for BLM's further consideration and IBLA's consent to this request. We encourage BLM personnel, grant holders, and applicants to work toward informal resolution of disputes over BLM decisions proposed or made by BLM both before and after appeals are filed. In BLM's right-of-way program these informal reviews and discussions have been and are a useful way to resolve disputes without unnecessarily formal mid-level reviews, such as State Director reviews.

Several commenters said that there is no part 4 in this title. The commenters are mistaken. Part 4 of 43 CFR is in a volume separate from the volume where BLM's regulations are located. Parts 1 through 999, including part 4, are in the first volume of 43 CFR and parts 1000 through 10010, including BLM's regulations, are in the second volume.

Subpart 2802—Lands Available for FLPMA Grants

This subpart describes the lands that are available for rights-of-way and how BLM designates corridors. Generally, BLM designates lands as suitable for right-of-way uses through its land use planning process, as described in FLPMA and existing regulations at 43 CFR 1610. During this process BLM prepares land-use plans, called either ''resource management plans'' or ''plan amendments.'' After going through a process in which the public helps BLM identify issues the plan should address, BLM then:

(A) Identifies resource and information needs;

(B) Formulates alternatives;

(C) Analyzes the effects of the alternatives;

(D) Prepares a draft plan and environmental document for public review and comment; and

(E) Determines what resource and land-use decisions to make in the approved plan. Among these decisions are what land uses are available for right-of-way grants. Land use plans designate lands as:

(1) Open to right-of-way grants;

(2) Right-of-way avoidance areas (where right-of-way grants would not be issued unless there were no other available alternatives); or

(3) Right-of-way exclusion areas where right-of-way grants would not be approved for any reason. Land use plans also designate right-of-way corridors.

Section 2802.10 What Lands Are Available for Grants?

This section explains that BLM grants rights-of-way for lands under its jurisdiction and lists exceptions when we would not issue a right-of-way grant. These exceptions include instances when a statute, regulation, or public land order excluded right-of-way uses, the lands are segregated or withdrawn from right-of-way uses, or when BLM identifies areas as inappropriate in a land use plan or in an analysis of an application. The section explains that BLM may also require common use of rights-of-way and may require location of a right-of-way within an existing corridor. This section states that BLM will designate right-of-way corridors through land use plan decisions. This section also suggests that you contact BLM to determine if the lands you are considering for a right-of-way are available for right-of-way use.

We added new paragraphs (a)(1), (a)(2), and (a)(3) to the final rule to more completely explain the reasons why certain lands under our jurisdiction would not be available for a right-of-way use. These new provisions to the rule are consistent with the proposed rule, our existing regulations at part 2300 (land withdrawals), subpart 2091 (segregation and opening of lands), and part 1600 (planning, programming, and budgeting). We also eliminated the discussion in proposed section 2802.10(b) of notifying the public ''by appropriate means'' of designated corridors because it was vague and because we already require public notification as part of the land use planning process.

Several commenters said that BLM should replace ''may'' with ''will'' where it appears in proposed paragraphs (a) and (b) of this section. We did not make the change to the final rule in either proposed paragraph (a) or (b). Issuing a right-of-way grant remains a highly discretionary act on our part. Section 501(a) of FLPMA authorizes, but does not compel, the Secretary to issue rights-of-way over, upon, under, or through the public lands (see 43 U.S.C. 1761(a)). Section 503 of FLPMA requires common use of a right-of-way but only ''to the extent practical'' (see 43 U.S.C. 1763). There may be circumstances where BLM determines that it is not in the public interest to issue a right-of-way grant or to require common use of a right-of-way area even when the lands are open to the development of right-of-way grants. Therefore, the final rule continues to leave the discretion to issue a grant or require common right-of-way use in BLM's hands.

One commenter said that in paragraph (b) of this section, we should replace ''require'' with ''propose.'' We did not change the final rule as suggested by the commenter. As noted above, Section 503 of FLPMA provides that BLM, to the extent practical, require, not simply propose, common use of a right-of-way. BLM is therefore required to issue rights-of-way in common where it is practical and replacing ''require'' with ''propose'' would be inconsistent with the statute.

One commenter said that BLM must consider the location of existing assets and facilities when determining whether land is available. Another commenter said that BLM should not require common use of a corridor if location in the corridor would render use of existing facilities infeasible or burdensome. We agree with the commenters. When issuing rights-of-way in common, or requiring that a right-of-way be issued in or adjacent to an existing corridor, BLM will consider whether or not the uses are compatible. BLM will also consider the possible impacts a proposed use may place on the future usability of a corridor. In other words, if a proposed right-of-way use would render a corridor unavailable for any future right-of-way uses, BLM could decide that the proposed use should be located in some alternate location.

Several commenters suggested inserting ''or'' between ''regulation'' and ''planning'' in proposed paragraph (a), and deleting the rest of the sentence after ''planning.'' Commenters made this suggestion because they said environmental and other resource conditions should already be addressed in the land management planning process. When BLM completes, updates, or amends a land use plan we undertake an environmental analysis. However, when a project is proposed, BLM will complete a site-specific NEPA analysis. NEPA requires the site-specific environmental analysis and it is designed to identify how the project-specific activities may impact the environment. The planning documents, on the other hand, are more general in nature and generally do not and cannot address site-specific impacts of a given project. Therefore, we made no changes to the final rule as a result of this comment.

The same commenters recommended that we replace ''require'' with ''encourage'' in proposed paragraph (b) since access roads, gathering lines, and flowlines do not always fit neatly into existing corridors. The commenter said

that such a requirement could render an oil and gas project uneconomic. We did not amend this section as suggested by the commenter. As stated above, section 503 of FLPMA says that BLM must require common use of rights-of-way to the extent it is practical. When determining whether it is practical to require a right-of-way to be located in a corridor, BLM will consider whether or not the new use will be compatible with the existing use. If it is not, BLM will informally work with you to determine a right-of-way location that will both protect the public interest and meet your needs. These types of issues are best resolved during the preapplication meeting.

One commenter said that the regulations should make clear that communication site facility managers and facility owners need to allow shared use of a right-of-way for pipelines and communications cables. The commenter said that there should be a minimal process for using existing pipeline rights-of-way for fiber optic cables and the like. The commenter said that this will serve the public and facilitate the installation of facilities with minimal damage to BLM lands. We agree with the commenter and encourage co-location of fiber optic facilities with power line structures and within pipeline rights-of-way. One of the advantages of co-locating uses in one right-of-way is that NEPA work has already been done for the existing use and therefore the amount of additional environmental analysis necessary for any additional use would normally be minimal unless the new use is significantly different or other reasons apply. BLM currently has a categorical exclusion for the granting of rights-of-way wholly within the boundary of compatibly developed rights-of-way. Because exceptions to this categorical exclusion may apply, BLM will determine the amount of analysis and additional work for additional uses on a case-by-case basis. The amount of analysis necessary cannot be determined by a rule of general applicability, and as a result we did not amend the rule to address the comment.

Several commenters said that once BLM designates corridors in land-use plans, it should require common use of the corridor and location of new rights-of-way within the corridor to the extent possible. The commenters said that the proposed regulations give too much discretion. As is stated in the proposed rule's preamble (see 64 FR 32118), BLM designates right-of-way corridors and issues grants within these corridors to the maximum extent possible, but due to resource concerns and conflicts between uses, it is not always possible to restrict uses to designated corridors. We disagree with the commenters that the proposed regulations give BLM too much discretion in issuing grants in right-of-way corridors. BLM must have the flexibility to choose whether or not a use should be located in a right-of-way corridor to make sure uses are compatible and to ensure that the public interest is protected.

Several commenters said that forcing the use of corridors will make lease operations uneconomical and result in a waste of minerals and associated royalties from the public good. BLM agrees that the designation of a corridor in a land use plan can impact, in some cases, the development of mineral resources. The land use planning process described above assures that our analysis considers effects on other resource uses such as impacts to mineral extraction. It is frequently these same mineral extraction interests that need right-of-way corridors to support the transportation of materials to and from their operations. We made no changes to the final rule as a result of this comment.

One commenter said that requiring common use of a right-of-way may be unpractical, for safety considerations, in designing power lines. BLM considers issues of safety when requiring common use of a right-of-way. If BLM determines that common use of a right-of-way is unsafe, BLM will not require it.

Section 2802.11 How Does BLM Designate Corridors?

This section explains that BLM may designate corridors during the land use planning process described in 43 CFR 1610. During this process BLM coordinates with other Federal agencies, state, local, and tribal governments, and the public to identify resource-related issues, concerns, and needs. The process results in a resource management plan or plan amendment, which addresses to what extent you may use public lands and resources for specific purposes. It also explains the factors that BLM considers when determining the locations and boundaries of right-of-way corridors.

Paragraph (a) is new to the final rule and generally explains how we designate corridors in our land use planning process, which is discussed in greater detail in subpart 1610 of existing regulations. This provision provides helpful background to an understanding of paragraph (b). Final paragraph (b) lists the factors BLM considers when designating corridors. Final paragraphs (c) and (d) are new to this final rule and are consistent with section 503 of FLPMA and existing policy.

Several commenters said that this section should identify how corridors are designated. The commenters also said that the process of designation through the land planning process or as provided by section 503 of FLPMA also needs to be briefly described. Proposed and final section 2802.11 identify the factors BLM considers when designating corridors. Therefore, the regulations already address the first part of the comment. As for the second part of the comment, we do not believe these rules should address the land use planning process since BLM's existing regulations at subpart 1610 already address the process and it is not necessary to repeat those regulations here. Final paragraph (a) of this section explains that as part of the planning process under subpart 1610, BLM designates corridors. You can find additional information about the land use planning process in section 202 of FLPMA (see 43 U.S.C. 1712).

Several commenters said that the regulations should emphasize the advantages of reduced NEPA requirements, processing time, and costs that could occur through requiring common use of existing or designated corridors. We agree with the commenters that common use of rights-of-way and proper corridor planning and use can lead to reduced processing times and decreased costs. However, we do not believe it appropriate to discuss motivating factors for using corridors in our implementing regulations. Discussions about cost savings and processing time can occur during the preapplication meetings discussed elsewhere in this final rule.

Subpart 2803—Qualifications for Holding Grants

This subpart describes the qualifications necessary for applicants to receive right-of-way grants. It discusses:

(A) Who may hold a FLPMA grant;

(B) Whether another entity can act on a grant holder's behalf; and

(C) What happens to a grant if the holder dies.

Section 2803.10 Who Can Hold a Grant?

This section explains the qualifications for holding a grant and requires that you are:

(A) An individual, association, corporation, partnership, or similar business entity, or a Federal, state, tribal, or local government;

(B) Technically and financially able to construct, operate, maintain, and terminate the grant; and

(C) Of legal age and authorized to do business in the state where the right-of-way would be located.

This section is essentially the same as that proposed, except that we added a new paragraph (c) stating that you must be of legal age and authorized to do business in the state where the right-of-way is located. Although this provision was not in the proposed rule, it is consistent with previous section 2802.3(a)(5).

One commenter asked if BLM is authorized to issue grants to foreign entities and if so, what the qualifications are. FLPMA is silent on the subject of whether BLM may issue a FLPMA grant to foreign entities. The part 2800 regulations are similarly silent. Regarding MLA requirements, however, 30 U.S.C. 185(a) makes the qualifications provisions of 30 U.S.C. 181 applicable to section 185. The part 2880 regulations reflect these considerations. For example, final section 2883.10 states in part:

> To hold a grant or TUP [temporary use permit] under these regulations, you must be a United States citizen, an association of such citizens, or a corporation * * * organized under the laws of the United States, or of any state therein.

As in previous section 2802.3(a)(5), final section 2803.10 requires all entities seeking a right-of-way grant under FLPMA to be qualified to do business in the state where the right-of-way is located. Thus state law must be examined to determine the eligibility of a right-of-way applicant. Final section 2803.10 is substantially the same as previous regulations.

Section 2803.11 (Proposed) Must I Submit Proof of My Qualifications With My Application?

Due to reorganization, we moved the substance of this proposed section to paragraph (b) of final section 2804.12. Please see that section for a discussion of this matter.

Section 2803.11 (Final) Can Another Person Act on My Behalf?

This section allows another person to act on your behalf if you have authorized the person to do so under the laws of the state where the right-of-way would be or is located. This section is slightly different from what we proposed in that the final rule requires that you follow the laws of the state where the right-of-way would be or is located. We believe this is reasonable, consistent with the intent of the proposed rule, but most importantly, it sets the appropriate legal standard.

Section 2803.12 What Happens to My Grant If I Die?

This section explains that if an applicant or grant holder dies, any inheritable interest in an application or grant will be distributed under state law. In this rule, the term ''inheritable'' is not used in its technical sense. Here, it refers to property passing by will or intestate succession.

If the distributee of a grant is not qualified to hold a grant under section 2803.10, BLM will recognize the distributee as grant holder and allow the distributee to hold its interest in the grant for up to two years. During that period, the distributee must either become qualified or divest itself of the interest. We added this provision to the final rule to make sure we have consistent processes in place for cases where an applicant or a grant holder dies.

Subpart 2804—Applying for FLPMA Grants

This subpart contains information and policies concerning how to apply for right-of-way grants under FLPMA. It discusses:

(A) Where applicants should file their applications;

(B) What information BLM needs to process their applications;

(C) Filing fees for the various categories of applications;

(D) Exemptions from paying filing fees and criteria for establishing reasonable costs; and

(E) How BLM processes applications, including a customer service standard.

Section 2804.10 What Should I Do Before I File My Application?

This section encourages you to schedule a preapplication meeting with BLM to discuss your right-of-way grant application. This section also explains that we may share any information you provide to us at this initial meeting with other agencies to help us to better coordinate the application process. Final section 2804.13 provides that we will keep confidential any information you submit that you identify as such, to the extent allowed by law.

We received no substantive comments on this section and except for editorial changes, it remains as proposed.

Section 2804.11 Where Do I File My Grant Application?

This section explains where you must file your right-of-way grant application.

We received no substantive comments on this section and except for editorial changes, this section remains as proposed.

Section 2804.12 What Information Must I Submit in My Application?

This section explains the information you must include in your application. It requires you to file your application on Standard Form 299 and fill in the required information. This includes a description of the project, a project schedule, the estimated life of the project, and construction and reclamation techniques. You must also include a map of the project, a statement of your financial and technical ability to run the project, and any plans, contracts, and agreements concerning the proposed use(s) on the right-of-way and its effect on competition. We require a complete proposed project description to process the application, to complete an accurate NEPA analysis, and to make a determination whether the proposed use(s) indicate existing or potential competitive interest. BLM requires materials such as plans, contracts, agreements, etc., only if they have a direct bearing on the proposed right-of-way uses. Section 501(b)(1) of FLPMA (and this final rule at section 2804.12(a)(6)) requires a right-of-way applicant to submit and disclose plans, contracts, agreements, or other information reasonably related to the use, or intended use, of a proposed right-of-way, ''including its effect on competition,'' which the Secretary deems necessary. BLM typically relies on application filing activity as the indicator of competitive interest, but may also examine the plans, contracts, and other information supplied by an applicant to make a determination on competitive interest. We usually process applications on a first come-first serve basis, unless:

(A) Application activity indicates there is a competitive interest; or

(B) Planning decisions, applicant plans, contracts, agreements, or other information indicate there is a competitive interest.

This section also requires business entities to submit additional information about their business. Paragraph (b) of this section was proposed as section 2803.11. BLM requires the information in paragraph (b) to verify the legal status of applicants, including verification that the persons representing the applicant are authorized to do so. Under this paragraph a business entity must submit copies of the formal documents creating the entity and evidence that the party signing the grant application has authority to act on the business entity's behalf. To make it clearer, this final rule uses different terminology than the

proposed rule, but the effect of this final rule is the same as that proposed.

This section also informs you that if you are an oil and gas lessee or operator, and you need a right-of-way for access to your production facilities or oil and gas lease, you may include your right-of-way requirements in your Application for Permit to Drill or Sundry Notice. This improves processing and is consistent with existing policy.

One change from proposed section 2804.12 is our deletion of ''On the form, give your name and address and the name and address of any authorized agent * * *'' from the second sentence of proposed paragraph (a). We did this because the form itself requires you to submit this information and therefore these words are redundant. In final paragraph (a)(2), we added ''operating'' and ''terminating'' the project to the list of things you need to address in your application to ensure that you describe a proposed project completely. As a result of these changes, final paragraph (a)(2) now includes all phases of a proposed project.

In final paragraph (a)(4), the term ''facilities'' replaces the term ''improvements.'' We made this change to make this section consistent with the rest of the rule and because the definition of ''facility'' includes structures and improvements.

In final paragraph (b)(4), we added text concerning identification of the number and percentage of any class of voting shares of the entity which certain shareholder(s) are authorized to vote. This makes final paragraph (b)(4) consistent with business entity qualification requirements in section 501(b)(2)(B) of FLPMA and previous section 2882.2–1(b)(2). We made the same type of change in final paragraphs (b)(6) and (b)(7) by adding ''directly or indirectly,'' to be consistent with business entity requirements in section 501(b)(2)(C) of FLPMA and previous section 2882.2–1(b)(3) and final section 2883.12 of this rule. Also, in final paragraph (d) of this section we corrected the citation to BLM's oil and gas operating regulations.

One commenter said that proposed section 2804.12(a)(6) is vague. The commenter also said that we should define ''competition'' in the final rule. Section 501(b)(1) of FLPMA requires a right-of-way applicant to submit and disclose those plans, contracts, agreements, and other information reasonably related to the use, or intended use, of the right-of-way, ''including its effect on competition.'' As discussed above, BLM typically relies on application filing activity to determine whether competition exits, but we may also ask an applicant for additional information concerning the proposed right-of-way to verify whether competitive conditions exist. We believe that adding a definition of competition to this regulation would not add any new or useful information to the common understanding of the word, and therefore did not add a definition of the term.

Several commenters said the final rule should provide for applicant-prepared Environmental Assessments and third-party prepared Environmental Impact Statements. The commenters said this practice is authorized by Council on Environmental Quality (CEQ) regulations at 40 CFR 1506.5. Environmental documentation (resource surveys and reports, environmental assessments, and environmental impact statements) prepared by third parties or provided by right-of-way applicants is a well-established and common practice under existing BLM NEPA guidance in H–1790–1. Chapter V–B.1.h, states contracting may be used for preparation of an environmental impact statement (EIS) or for certain analyses to support preparation of an EIS and that either standard Federal contracting procedures or third-party contracting approaches may be followed. H–1790–1, Appendix 7.B. further clarifies that a third-party contract is an option when BLM cannot prepare a required NEPA analysis due to time, budget, or other limitations or when either the BLM or the applicant requests that a contractor be hired to prepare the EA or EIS. Therefore, adding this guidance to the final rule would be repetitive and unnecessary.

We also agree with the commenters that under CEQ rules the practice is acceptable. Although this practice is not specifically restated in the final rule under section 2804.12, this option remains available to applicants. BLM will consider environmental documentation offered by or agreed to by an applicant in determining the appropriate cost recovery category under section 2804.14. The environmental documentation, however, must meet BLM standards, and any conclusions drawn from the documentation remain BLM's jurisdiction. This final rule contains no provision to either discourage or prohibit applicants from providing environmental documentation for BLM to use to determine appropriate cost recovery categories and process applications more efficiently and timely.

Several commenters said that the final rule should make clear that the additional information allowed under paragraph (c) of this section should be limited to requests for ''relevant'' information or all ''pertinent'' information, and any requirements in the regulations to ask for more information is ''too broad and open-ended,'' and could result in limitless requests for additional information. Final section 2804.12(c) states that BLM can require an applicant to provide additional information at any time while processing an application. The comment implies that BLM could require information not relevant to evaluating an application. We disagree. BLM will implement this provision in a common sense manner, limiting requests to only that additional information that is both relevant and necessary for BLM to properly evaluate a right-of-way proposal and to process an application in an efficient and timely manner.

Examples of the type of information we may require are provided by a reference to final section 2884.11(c).

Several commenters objected to the requirement to give BLM a plan of development and stated that it is overly burdensome, expensive, and unnecessary. Final section 2804.25(b) does not require submission of a plan of development as a universal requirement for all applicants. BLM would require a plan of development only where detailed information about a proposed right-of-way development and use is both relevant and necessary for BLM to properly analyze a proposal and render a decision. This is consistent with proposed sections 2804.20(b).

A few commenters said that BLM should require an applicant to provide an ''initial environmental assessment'' as part of the application since that would enable BLM, other Federal agencies, and state governments to better assess impacts on endangered species, cultural resources, and the like. BLM disagrees with the commenter and we did not amend the final rule as a result of this comment. Because we receive a wide range of applications in terms of scope and impact, we believe that a universal requirement that all applicants be required to submit environmental studies would be inappropriate. However, under this final rule, applicants may continue to volunteer such information to facilitate the processing of an application. Under final sections 2804.12(c) and 2804.25(b), BLM may require an applicant to provide this type of information if we determine it is necessary to process an application.

Section 2804.13 Will BLM Keep My Information Confidential?

This section makes it clear that BLM will keep confidential any information in your application that you mark as ''confidential'' or ''proprietary'' to the extent allowed by law.

We amended this section slightly by replacing ''to the extent allowed under the Freedom of Information Act (5 U.S.C. 552)'' with ''to the extent allowed by law'' to be consistent with other BLM regulations. We received no substantive comments on this section.

Section 2804.14 What Is the Processing Fee for a Grant Application?

This section requires you to submit a processing fee for a right-of-way grant application before BLM incurs the costs to process your application.

This final rule changes the terminology describing this fee. In the proposed rule we used the phrase ''filing fee'' to describe the fee. The final rule uses the phrase ''processing fee'' because that term more accurately describes the fee.

We added a new provision to paragraph (b) of this section which explains that there is no fee if BLM takes one hour or less to process your application. We believe that the minimal costs involved to process an application requiring one hour or less of work does not justify charging a fee.

We added a provision at final section 2804.14(f) that we inadvertently omitted from the proposed rule. This provision allows applicants to pay full actual costs for processing applications and monitoring grants. Although FLPMA requires the Secretary to consider the factors at section 304(b) of FLPMA in determining reasonable fees, and these regulations provide for that, BLM has found that some applicants prefer to pay actual processing and monitoring costs to assist us in processing their applications in a more timely manner. This rule is consistent with previous section 2808.3–1(f) and section 307(c) of FLPMA (43 U.S.C. 1737(c)). Section 307(c) allows the Secretary of the Interior to ''accept contributions or donations of money, services, and property, real, personal, or mixed, for the management, protection, development, acquisition and conveying of the public lands * * *.''

BLM has not increased processing fees since publication of its final rule in July 1987. Since January 1986, the Consumer Price Index for All Urban Consumers (CPI–U) has risen by an average annual rate of about 3.83 percent or a total of about 73 percent. The Implicit Price Deflator, Gross Domestic Product (IPD–GDP), has risen by an average annual rate of about 2.88 percent or a total of about 55 percent.

A 1995 audit of BLM's cost recovery efforts by the OIG found BLM was not recovering all the costs of processing applications and recommended that BLM revise its regulations to recover all applicable costs and to provide for adjusting processing costs on an annual basis to reflect changes in economic conditions. The audit estimated that BLM incurred about $640,000 in additional expense in excess of the fees collected in 1993. (This shortfall comes to $213 per application, or $800,000 and $336 respectively when adjusted for changes in the IPD–GDP.) Since section 504(g) of FLPMA requires that BLM set these costs by regulation and the current regulations contain fixed charges, BLM must revise the regulations to revise the processing fees. The final rule will establish a mechanism to adjust the processing fees on an annual basis to reflect changes in economic conditions.

The preamble to the proposed rule at 64 FR 32107 states that BLM conducted field studies in 1982 and 1983 which measured the costs of processing right-of-way applications and monitoring grants. Between November 12, 1982, and July 25, 1986, BLM field offices kept and reported actual time and cost on some 500 right-of-way projects in non-major categories (see 51 FR 26840 (July 25, 1986)). In 1986, the agency conducted an extensive field study of processing and monitoring costs, which generally verified the processing costs developed from the earlier studies (see 64 FR 32108).

When we set the MLA processing fees in 1985 (50 FR 1308, Jan. 10, 1985) and in the proposed rule, we set fixed MLA processing and monitoring fees at our estimated actual cost, as required by section 28 of the MLA. The preamble to the rule proposing MLA cost recovery fees in 1983 makes plain that the fees were developed by a BLM task force consisting of employees with expertise in the processing and monitoring of right-of-way cases, budgeting, and cost accounting. The task force analyzed data from a representative sample of actual right-of-way cases and examined several demographic variables which might influence cost, including location and area of the right-of-way or temporary use area. Fees were based on the estimated work effort required to accomplish the processing actions, including personnel costs, fringe benefits, vehicle usage, and indirect costs (see 48 FR 48478, 48479 (Oct. 19, 1983) and 64 FR 32108 (June 15, 1999)).

In 1995, BLM program experts analyzed a cross section of our right-of-way cases. This analysis showed that the cost of processing right-of-way cases, including labor costs, had increased since 1986 at approximately the same rate as the IPD–GDP. Therefore, the final rule adjusts costs upward based on the IPD–GDP and allows for automatic adjustments based on this indicator. However, in the final rule we also made several other adjustments in the proposed rule fee schedule, in response to comments, which affect the final amounts and number of categories for both the processing and monitoring schedules.

The proposed rule requested public comment (see 64 FR 32108) on whether BLM should adopt a ''Minimum Impact'' category similar to the one proposed by the U.S. Forest Service. We received several comments suggesting BLM establish a minimum impact processing fee category or a category for any action which might take from 1 to 8 hours to process, such as most assignments and many renewals. We agree that some right-of-way actions can be accomplished in less than eight hours, but saw no benefit in referring to the category as the ''minimal impact category,'' or restricting the category to only work on assignment and/or renewal applications. Therefore, in the final rule, BLM establishes a new processing and monitoring category (Category 1) for all right-of-way actions where we spend more than one hour, but less than or equal to eight hours, processing the application or monitoring the grant, but we did not use the ''minimal impact category'' title.

In the final rule we increased the number of processing categories to six from four, adding a Category 1 for processing routine applications that require greater than one hour and less than or equal to 8 hours to process, as just discussed, and another category for processing Master Agreements. Under the final rule no fee is assessed for any action that takes 1 hour or less to process. We then adjusted new Category 2 to include actions that are estimated to take a maximum of 24 hours but greater than eight hours. New Categories 3 (>24 hours ≤ 36 hours) and 4 (>36 hours ≤ 50 hours) are the same as proposed Categories II and III. Category 5 in the final rule is for Master Agreements only. The proposed regulations did not contain a specifically numbered category for Master Agreements, and in this final rule BLM gave these agreements their own category number. Category 6 in the final rule (Category IV in the proposed rule) is for processing applications where the estimated work hours are greater than 50.

For Processing Categories 1 through 4, labor costs are by far the largest percentage of processing costs. Costs associated with environmental analysis and other application processing steps for these categories are predominantly labor costs. The costs of supplies, printing, fuel, and lodging are relatively small. For Processing Category 5 and 6 applications, the extent of the required environmental analysis is usually an important factor in determining processing costs, particularly if the application requires an EIS. Processing costs for Category 5 and 6 applications are, however, worked out in advance between BLM and the applicant either through a Master Agreement or a detailed accounting of work hours spent on processing an application.

In the proposed rule we used the term ''field examination'' in the category definitions and defined it in section 2801.5 of this part. In the final rule we eliminated this term and instead based the categories on the number of Federal work hours needed to process the document or request. We made this change for Categories 1 through 4 because the non-labor costs are relatively insignificant compared to labor costs, and for Categories 5 and 6 because the non-labor costs are considered as part of a Master Agreement or are otherwise negotiated. As used in the proposed rule, field examinations conducted during the processing of applications included the time and travel costs for BLM personnel. Because, as explained, labor costs constitute nearly all costs associated with field examinations, we decided to measure costs by work hours.

For processing and monitoring fees that we collect under FLPMA, we are required to consider the ''reasonableness'' factors at section 304(b) of FLPMA. These factors are:

(1) BLM's actual costs to process an application, including monitoring construction, operation, maintenance, and termination of a facility authorized by a right-of-way grant. Actual costs do not include management overhead, which means costs of BLM State Directors and Washington office staff, except when a member of this group works on a specific right-of-way application or grant. Actual cost includes both direct and indirect costs and other costs such as money spent on special studies, environmental impact statements and other analysis, and monitoring activities. We estimated actual cost figures for each category using data from the studies described previously. Where an appraisal is necessary to calculate rent for a right-of-way, such costs may be included in actual costs;

(2) The monetary value, or objective worth, of the right-of-way or what the right-of-way grant is worth in financial terms to the applicant. The preamble to the proposed rule at 51 FR 26837 (July 25, 1986) sets forth a number of ways to estimate monetary value, such as computing residual return or the residual profit of the project. Monetary value can be an enhancing factor when that value is greater than BLM's processing costs. This enhancing factor may offset a diminution caused by another of the ''reasonableness'' factors, such as public service provided. In considering and applying this factor since 1987, we have noted that the monetary value of the right or privilege sought has been much greater than the processing cost;

(3) The efficiency with which BLM processes an application. This factor refers to BLM's ability to process an application with a minimum of waste by carefully managing agency expenses and time. An explanation of this factor is set forth at 51 FR 26838 (July 25, 1986). Among the considerations there is the establishment of a cost recovery process that does not cost more to operate than would be collected under the process. Charging fixed fees based on the number of Federal work hours necessary to process an application benefits applicants by informing them in advance what the fee will be, and eliminates the enormous time and expense that would be required to track the processing of each document on a case-by-case basis. The use of current average costs to set a fee schedule is a commonly accepted practice in both the private and public sectors (see 50 FR 1309 (Jan. 10, 1985) (preamble to the final rule setting fees for MLA rights-of-way). Our application processing and grant administration procedures, which are based on standard steps in internal BLM Manuals and Handbooks, are reasonably efficient;

(4) Costs incurred for the benefit of the general public interest rather than for the exclusive benefit of the applicant. Under this factor, we examine whether any of the costs for such things as studies and data collection have value to the Federal Government or the general public apart from processing the application. Courts have held that processing which an agency is required to perform in connection with a specific request (for example, before approving a permit or grant) provides a special benefit to an applicant, even if it also provides some benefit to the public. (See, e.g., *Mississippi Power & Light Co.* v. *United States Nuclear Regulatory Comm'n,* 601 F.2d 223 (5th Cir. 1979), *cert. denied,* 444 U.S. 1102 (1980)). In our preamble to proposed rules at 51 FR 26840 (July 25, 1986), we stated that for non-major projects, there is little opportunity for public benefits or public services because of the local nature of such projects. We find, in practice, that any small benefit to the public provided by the processing of fixed-fee right-of-way applications is speculative and outweighed by the monetary value to the applicant of the right or privilege sought. Major categories 5 and 6 present more opportunities for public benefits;

(5) Any tangible improvements, such as roads, trails, recreation facilities, or other direct services to the public, which provide significant public service and are expected in connection with constructing and operating the project. This is referred to in section 304(b) of FLPMA as ''public service.'' A negative factor, such as an adverse impact on wildlife or surface drainage, may prevent an improvement from being a public service. Data collection that we need to monitor an activity is not a public service. As mentioned above, for non-major projects such as those falling in categories 1 through 4, there is little opportunity for public service in such projects. If a project provides a small public service, it will usually be outweighed by the monetary value to the applicant of the right or privilege; and

(6) Other relevant factors (see section 2804.21 of the final rule). This factor allows BLM State Directors to reduce actual processing costs based on a wide range of special circumstances, including unique instances of public benefits or services. These reductions generally fall under the broad category of ''hardship,'' that is, paying full actual costs would create an undue hardship on the applicant. There are an insignificant number of applications (less than 1 percent of the total processed) where ''other relevant factors'' can be applied.

In our proposed rule at 64 FR 32110, we acknowledged that ''[f]or all but complex projects * * * the reasonability factors have little or no effect on actual costs.'' The final rule reflects this conclusion. Thus, for categories 1 through 4, processing and monitoring fees under FLPMA are identical to the analogous category under the MLA. (As noted above, MLA fees are based on actual costs.) For example, a category 2 processing fee under FLPMA is identical to a category 2 processing fee under the MLA. A category 3 monitoring fee under FLPMA

is identical to a category 3 monitoring fee under the MLA.

We were aided in this analysis by a 1996 Solicitor's Opinion on cost recovery (M–36987), entitled ''BLM's Authority to Recover Costs of Minerals Document Processing.'' That opinion clarified that ''[a] factor such as 'the monetary value of the rights or privileges sought by the applicant' could, when that value is greater than BLM's processing costs, be weighed as an enhancing factor, offsetting a diminution due to another factor such as 'the public service provided' '' (see M–36987 at 36). Major categories 5 and 6 are more likely to reflect differences in FLPMA and MLA fees.

In the final rule, we define each processing and monitoring category by the estimated number of Federal work hours necessary to process or monitor the application/grant rather than a combination of criteria (number of hours, availability of data, number of field examinations, and need for land use plan amendment) which in the proposed rule were used to define all the categories (except the Master Agreement category). In doing so, it was necessary to determine a ''mean hour'' or average number of hours for processing or monitoring for each category, and then apply the appropriate cost figure to the mean hour in each FLPMA or MLA category. This ensures that each category is cost-weighted the same. For example, the mean hour for Category 1 is 4.5; for Category 2 the mean hour is 16; for Category 3 the mean hour is 30; and for Category 4 the mean hour is 43.

The next step in arriving at the cost recovery fees in the final rule was to determine the ''mean per hour rate or cost figure'' for FLPMA and MLA processing and monitoring categories. In this final rule Category 4 (which in the proposed rule was Processing Category III) was used as the basis for determining the mean per hour rate for all categories. We determined that a mean per hour rate of $21.46 was appropriate. Multiplying the mean hour for each category by the mean per hour rate gives the fee for each category.

The following brief analysis verifies the appropriateness of the above fees:

The $21.46 mean per hour rate for processing and monitoring fees would approximately equal the hourly wage in 2005 for an employee at the GS 9, Step 3 level.

These rates compare favorably with the 1987 processing fees which, if adjusted to a mean per hour rate, would average $11 per mean hour or an hourly wage earned by an employee in 1987 (when the existing rule was published) at the GS 9, Step 2 level (according to the 1987 General Schedule).

Most right-of-way actions are processed and monitored by employees who are at the GS 9 to GS 11 levels and who will earn between $20.02 (GS 9/1) and $31.48 (GS 11/10) per hour in 2005.

Several commenters pointed out that reasonable costs criteria only apply to FLPMA rights-of-way and that the MLA requires BLM to collect actual costs. A few commenters said that we should amend the final regulations to make it clear that the applicant and BLM must agree on what are reasonable costs and that the applicant must have the ability to monitor BLM to make sure it is following the agreement. We received similar comments on the MLA right-of-way regulations.

Sections 304(b) and 504(g) of FLPMA require that right-of-way cost recovery fees represent reasonable costs. BLM's process to identify reasonable cost recovery fees has been in place since 1987 (see previous subpart 2808). This final rule continues to identify reasonable costs using cost recovery categories for a right-of-way grant under FLPMA. BLM must apply the factors at section 304(b) of FLPMA unless the applicant chooses to pay the actual costs. Likewise, the MLA requires that we collect ''administrative and other costs'' incurred for processing applications under that statute (30 U.S.C. 185(l)). Under the previous rule, and this final rule, BLM determines in a processing fee schedule the cost recovery fees for Categories 1 through 4. We will determine cost recovery fees in the new Category 5 (Master Agreement) through a negotiated agreement between the applicant and BLM, as the comment suggests. All parties have generally accepted the process of identifying set fees in Categories 1 through 4 (and their corresponding categories in the previous regulation) as reflecting average reasonable costs for processing applications in those categories. The same applies for the MLA right-of-way regulations at section 2884.12 of this final rule. Although BLM determines whether an application falls into Category 6, the decision typically reflects an agreement between an applicant and BLM based on communication and cooperation. We also added a definition of ''actual costs'' to section 2801.5 to help explain the difference between actual and reasonable costs.

The previous regulations contained no provision for applicants to monitor BLM in its determination of cost recovery fees, whether by decision or agreement, and such a provision is unnecessary in this final rule. BLM's internal management reviews and periodic Inspector General and Government Accounting Office audits ensure that BLM is following proper procedures based on law, our regulations, and internal guidance. The final rule contains provisions for appeals in the case of disagreement with a BLM cost recovery decision (section 2804.14(d)), and for consideration of hardship and other factors under section 2804.21(a).

Several commenters said that BLM should make cost adjustments based on the reasonable or actual processing costs from the previous year rather than basing it on the IPD–GDP or any other economic index. Previous section 2808.3–1, which established cost recovery fees in 1987, had no provision to make annual adjustments in its Categories I through IV. The preamble to the proposed rule explained BLM's determination that periodic adjustment of the fees was reasonable, and included consideration of various ways to accomplish it. This final rule uses the IPD–GDP as the basis for making annual adjustments in the new Categories 1 through 4.

We evaluated the question of annual indexing while preparing the 1987 final rule and have used the IDP–GDP since August 1987 to make annual adjustment to right-of-way rent schedules under previous section 2803.1–2(c)(1)(ii). Following consideration of various alternatives, and consultation with the Department of Commerce, BLM determined that applying this known and generally accepted economic indicator is the most efficient method of ensuring that processing category fees adjust with changes in economic conditions. Conducting annual reviews and analyses of the prior year processing costs would be a time and labor intensive effort, which, considering the widely accepted use of economic indicators to make these kind of adjustments, we have determined is unnecessary. BLM continues to believe that the IPD–GDP is the appropriate method for annual indexing of processing fees because it reflects a heavily labor-based activity (see 64 FR 32109 and 32110) and we retained it in the final rule.

One commenter said that BLM should make it clear that we may enter into a Master Agreement at the applicant's option, but that BLM has approval authority over the final agreement. The commenter said the proposed rule suggests that entering into a Master Agreement could be done entirely at the option of the applicant. We made the rule clearer by defining a Master Agreement as a written agreement

negotiated between BLM and an applicant to document cost recovery and other aspects of how application(s) are to be processed. Master Agreements are, under the right conditions, available to applicants, but it requires agreement between BLM and the applicant, and is not at the sole option of either party. Final section 2804.18(b) makes it clear that BLM will not enter into a Master Agreement if it is not in the public interest.

Several commenters said that in determining the processing costs, BLM should consider reducing fees in cases where the applicant does a considerable amount of work that benefits the public, such as archaeological collection and mitigation. We agree with the commenter that BLM may consider beneficial work performed by an applicant, such as archaeological collection above and beyond what is required, in determining whether fees might be reduced. BLM can consider such factors under final section 2804.21(a)(7), which allows consideration of appropriate management of public lands and the applicant's equitable interest. We do not agree that BLM should consider reducing fees due to mitigation the applicant undertakes. Mitigation addresses the consequences of the project; it is not equivalent to, for example, a public service provided by a project.

Several commenters suggested that the final rule should require automatic yearly processing fee adjustments for inflation and that BLM should review the categories every ten years. We agree with the commenters. Final section 2804.14(c) uses the IPD–GDP to make annual adjustments and a new section 2804.15 provides that BLM will reevaluate the processing fees for each category, and the categories themselves, five years after the effective date of this final rule, and then every 10 years after that.

Many commenters supported adding a minimal impact cost recovery category. As discussed above, this rule does not add a category specifically called a ''minimal impact cost recovery'' category. However, this final rule establishes a new cost recovery Category 1 for any right-of-way action requiring more than one hour, but less than or equal to eight hours to process. The Forest Service plans to adopt a similar category to replace the ''minimal impact category'' found in its proposed rule.

One industry group thought we should include a minimum impact category in the processing fee regulations to take into consideration activities such as emergency access for repair of facilities damaged by a storm or other disaster. We did not revise the rule in response to this comment, because activities necessary to ensure safe and reliable right-of-way use are normally provided for by the grant, and would be considered within the scope of the authorized use. If maintenance or emergency activities are not within the scope of an existing grant, the proposed use would require a separate application. Under section 2804.21(a)(4) of this final rule, if you include relevant information in your application, the BLM State Director will consider, in determining your processing fee, whether you need a right-of-way grant to mitigate certain damages or hazards. We encourage applicants to include provisions for emergency use or maintenance in the original grant so as to avoid having to apply for the use separately.

One commenter said that there is no reason to charge a fee for less than eight hours of work. We disagree. Section 504(g) of FLPMA requires that the United States be reimbursed for reasonable costs associated with processing right-of-way applications. FLPMA does not provide for fee reduction or elimination based on the number of hours an application takes to process. As explained earlier, we determined that for actions taking less than one hour to process, the minimal costs involved to process an application does not justify charging a fee. For all other actions, unless you are exempt, as provided in final section 2804.16, you must reimburse BLM for the reasonable cost of processing a right-of-way application. We did not amend the rule as a result of this comment. A similar rationale applies to actual costs under the Mineral Leasing Act.

Several commenters said that there should be criteria for measuring ''full reasonable costs.'' We believe that the final rule provides these. Section 304(b) of FLPMA identifies criteria for determining reasonable costs, as did proposed section 2804.18. These ''FLPMA factors'' appear in this final rule at sections 2804.20 and 2804.21. BLM considered these factors when developing the schedules for this rule and previous rules.

The fixed fees in FLPMA Categories 1 through 4 all reflect consideration of the FLPMA factors and represent reasonable costs, as FLPMA requires. As explained earlier, the fixed category fees originate from field studies conducted in 1982 and 1983, and supplemented with additional studies in 1986 and 1995. These studies gathered detailed information on processing nearly 3,000 FLPMA and MLA right-of-way applications.

We also apply the FLPMA factors to fees that are determined on a case-by-case basis (Category 6) or by agreement (Category 5). For those fees, BLM would give the applicant an estimate of the proposed fee after estimating the actual cost of processing the application and considering the other FLPMA factors. If the fee is set at less than our actual costs because of one of the FLPMA factors, processing could not proceed until funding for the shortfall became available through the BLM budget, contributions by the applicant, or other means.

For additional information on how BLM applies the FLPMA factors in determining processing fees, and other elements affecting processing costs, please refer to 64 FR 32107 to 32111 (June 15, 1999) and 51 FR 26836 to 26841 (July 25, 1986).

One commenter said that the premise that BLM should determine category fees by the number of hours spent in processing the application is false, but that there is not enough data to evaluate alternatives. Another commenter said that the bulk of an agency's processing and monitoring costs is most accurately measured by the total number of person hours devoted to processing and monitoring activity, not whether the activity involves one or more ''field examinations'' and one or more vehicles. BLM has determined that using the number of hours spent in processing an application is an appropriate measure to identify cost recovery categories. We base this determination on previous studies and sampling efforts completed in 1982–83, 1986, and 1995, and a review of known economic indicators. BLM also believes that it is reasonable to equate application processing costs to hours of staff time required. We agree with the commenter that the number of field examinations should not be the determining factor for processing categories and have deleted that requirement from the final rule. In the final rule, field examinations are considered only to the extent that they add to the number of hours necessary to process and monitor a right-of-way use or grant.

Several commenters asked that we provide a schedule of costs in the regulations so that the public will know what the costs are before starting a project. We agree with the commenter. Final section 2804.14(b) identifies the set processing fees for Categories 1 through 4.

Several commenters were concerned that BLM will use proposed Category IV

(final Category 6) costs to pay for new NEPA and field studies. There is no provision in section 504(g) of FLPMA or in this or previous regulations that permits BLM to collect fees from a right-of-way applicant for purposes of conducting any work beyond that necessary to process an application. Moreover, section 304(b) of FLPMA expressly identifies ''environmental impact statements'' and ''special studies'' as among the reasonable costs for which an agency may be reimbursed. In *Nevada Power Co.* v. *Watt,* 711 F. 2d. 913, 933 (10th Cir. 1983), the Court of Appeals held that ''[r]easonable costs of processing include the reasonable costs of EIS preparation, as determined using the section 304(b) factors.''

Several commenters asked if BLM does routine Category I (in the proposed rule, Category 2 in the final rule) applications in blocks and stages in which BLM handles several applications at a time, will companies be charged the full amount for each right-of-way. Where efficiencies can be gained by handling the processing of similar or related applications in combination, BLM will do so. If we process several applications in a combined effort, BLM will identify that portion of the effort, in hours, attributable to each application and determine the appropriate cost recovery categories based on those hours. Such efficiencies will most likely occur in Categories 1 through 4, and in the context of a Master Agreement (Category 5).

Several commenters asked that BLM provide clear-cut examples of specific types of activities that fall into each category. Because hours are the measure BLM uses to determine the processing costs category, and since there may be several proposed right-of-way uses in a given category, there is no such thing as a typical application. Therefore, we have not provided specific examples for each category in the final rule. However, we expect that most assignment and renewal applications will require fewer than eight hours to process and will, therefore, fall into Category 1. Beyond that, the hours BLM requires to process the application, including those for assignments and renewals, and not the type of proposed use itself, determines the cost recovery category.

Many commenters said that fees for processing assignments are too high. They also said that if the amount of time necessary to process the application is less than the category designation, the fee should be lower. We changed the final rule to lower processing fees for any right-of-way action requiring eight hours or less to process, as suggested in these comments. The new Processing Category 1 will apply to all applications requiring eight or fewer hours to process. The processing fee for Category 1 applications is now $97, a significant reduction from the proposed rule's Category I fee of $230. If you believe that BLM has incorrectly designated an application's fee category, you may appeal our determination to the IBLA.

Several commenters stated that the oil and gas industry pays its own way through bonuses and royalties and therefore should not pay any fees for rights-of-way to develop and produce mineral resources. They stated that BLM should reduce or eliminate fees for the oil and gas industry since:

(A) The revenue stream to the public good resulting from mineral extraction is significant and roadways constructed for oil and gas operations are used by the public and other governmental agencies;

(B) BLM's operating budget is less than the revenues received from the oil and gas industry;

(C) Oil and gas rights-of-way are the infrastructure (roads and pipelines) that allows the treasury to realize the revenues being developed;

(D) BLM should recognize the tangible and valuable benefits that right-of-way grants provide, such as archaeological and threatened and endangered species surveys, road upgrades, and maintenance that benefits recreational users; and

(E) There must be a distinction between those entities that simply use the land and those that pay bonuses and develop minerals and pay royalties.

Please see the discussion in the General Comments section at the beginning of this preamble for a discussion of why we disagree with the commenters. We note that any benefits to the public provided by BLM's processing or any public service provided by the applicant through tangible improvements are factored into the fees BLM charges. See final section 2804.20 and the discussions in the preamble to the proposed rule at 64 FR 32110–32111.

Many commenters said that BLM should not increase fees. They said that if we do so, fees should only be adjusted to the 1986/1987 levels, based on the study. Commenters said that the public should not suffer a 30-percent increase because BLM did not make proper administrative decisions in the past. BLM does not agree with these comments. First, we note that the fees are charged to right-of-way applicants, not the public. Second, any increase reflects an adjustment in the proposed rule, based on the increase in the IPD-GDP since the 1986 studies and comments. BLM has not increased these fees since 1987. As stated in the proposed rule, the IPD-GDP is a reasonable measure to adjust fees that are heavily dependent on labor costs. This final rule contains a periodic review requirement to reevaluate these fees. The adjusted fee categories in this final rule represent BLM's determination of current, reasonable costs as required by section 504(g) of FLPMA.

A few commenters said the rule should make clear that fee increases will not be applied retroactively. The processing fees in section 2804.14(b) for new Category 1 through 4 applications and the Monitoring Categories in section 2805.16(a) Category 1 through 4 grants apply only on and after the effective date of this final rule. Applications pending on the effective date of this final rule will be charged processing fees under subpart 2808 of the previous rule. However, the holder of a new grant authorized after the effective date of these regulations will be subject to the new monitoring fees.

One commenter said that BLM must continue to be responsible for NEPA costs and that if industry chooses to pay NEPA costs because of BLM delays from staffing issues, industry should be able to offset the costs against processing and monitoring fees. We do not agree with the comment. FLPMA is clear that the agency may charge fees for NEPA work, and any application-related NEPA costs will be charged to the applicant in Category 5 or 6. If BLM agrees to allow an applicant to supply NEPA or other documentation, that may reduce the time BLM requires to process the application (depending on factors such as completeness and technical adequacy), which may reduce the fee BLM charges. This could also hold true for set fees (Categories 1 through 4) if the number of BLM processing hours is reduced enough that the application falls into a lower processing fee category. We note, however, that regardless of whether BLM or the applicant supplies the documentation, the applicant is responsible for the costs.

A few commenters said BLM needed to make clear what the fees are targeted toward recovering. We believe the rule does that. Section 504(g) of FLPMA and these regulations provide for the reimbursement of all reasonable administrative and other costs BLM incurs to process a right-of-way application and to inspect and monitor the construction, operation, and termination of a facility authorized by a grant. A variety of tasks are involved as

BLM processes an application, including an analysis of environmental impacts, as set forth at section 304(b) of FLPMA. In this final rule, the range of tasks that BLM performs during application processing is measured by the hours necessary to perform them.

Another comment stated that BLM should recognize that fees could be reduced if economic indices go down. We agree with the commenter. As provided in final section 2804.14(c), BLM will use the IPD-GDP as the basis to make an annual adjustment in fees. The annual adjustment in fees will follow any annual second quarter to second quarter change of this index, either up or down. Under final section 2804.15, fee adjustments, either up or down, may also occur after BLM completes a periodic review of the fees and categories.

Two non-profit cooperatives opposed the fee increases because they stated that they would have to pass the costs along to their customers and that, instead of increasing the fees, BLM should streamline its operations to become more efficient and cost effective. Although non-profit applicants are not exempt from paying processing fees, final section 2804.21 provides a mechanism for BLM to consider the non-profit's status in determining reasonable processing fees. One of the factors BLM may consider is whether the studies undertaken in connection with processing the application of a non-profit have a public benefit. If during the periodic review of processing fees and categories BLM determines that revising the fees and fee structure is warranted, we will make an adjustment as set forth in section 2804.15. If you believe that BLM's category determination for your application is incorrect, you may appeal the decision to IBLA.

Section 2804.15 When Does BLM Reevaluate the Processing and Monitoring Fees?

This is a new section to the final rule that explains that BLM reevaluates processing and monitoring fees for each category, and the categories themselves, within five years after they go into effect and at 10-year intervals after that. This section also lists some examples of the types of factors BLM considers when reevaluating these fees.

Several comments suggested a periodic review and evaluation of the processing and monitoring fees and categories, and this section is in response to those concerns. Previous rules established fixed processing and monitoring fees with no provision for reviewing them. BLM added this provision in this final rule to ensure that the fees and categories are systematically reviewed. Any adjustment that BLM makes to the fees or fee structure as a result of a review under this section, apart from applying the IPD-GDP, would require a separate rulemaking.

Section 2804.16 Who Is Exempt From Paying Processing and Monitoring Fees?

This section explains that under certain conditions, state and local governments or their agencies are exempt from paying processing and monitoring fees. It also explains that if a grant application is associated with a cost-share road or a reciprocal right-of-way agreement, the applicant is exempt from processing and monitoring fees. Section 502 of FLPMA and existing regulations at 43 CFR subpart 2812 provide for the issuance of cost share and reciprocal rights-of-way. A reciprocal right-of-way is the grant to the United States of an access right or easement across private lands as a condition of receiving a right-of-way authorization from the United States. A cost share road authorization is created where the United States and a private party participate, through agreement, to share costs of road construction and maintenance.

This section was proposed as section 2804.15 and except for minor editorial changes, it remains as proposed.

Several commenters said that BLM should not exempt Federal Power Marketing Agencies and other non-profit energy providers from processing fees and rent payments because that would give them an unfair competitive advantage in an open power market. Other commenters said that Federal Power Marketing Agencies and other non-profit energy providers should be exempt from processing fees. Under section 504(g) of FLPMA, BLM may, by regulation, require an applicant to reimburse the United States for all reasonable costs incurred in processing a right-of-way application. The previous rule at section 2808.1(b) identified ''automatic'' exemptions from payment of processing costs only for Federal agencies; for state and local governments and their instrumentalities where the right-of-way use is for governmental purposes benefitting the general public; and for cost share roads or reciprocal right-of-way agreements. The only substantive change we made from previous regulations is that Federal agency applicants are no longer automatically exempt. Any applicant, including a Federal Power Marketing Agency, that does not meet the new exemption requirements must pay reasonable processing costs. Final sections 2804.20 and 2804.21 identify factors that BLM will take into account for purposes of determining these costs.

Several commenters said that the rule should not eliminate the Federal agency exemption for processing fees. Other commenters said we should establish a threshold over which we would begin charging an agency processing fees. Another commenter said that the rules should exempt Federal agencies from having to pay rent, but not from paying processing fees. Although previous section 2808.1(b) provided for a Federal agency exemption, common practice has been that many Federal agency right-of-way applicants do provide funds, usually through a negotiated agreement, to reimburse BLM for processing costs. To recognize this common practice, and to provide consistency and efficiency in fund transactions, we eliminated the automatic Federal agency processing costs exemption in this final rule.

Several commenters said that BLM does not have the authority to remove the exemption for Federal agencies or those agencies whose facilities are eligible for financing under the Rural Electrification Act (REA). The commenters said that this regulatory change would require an amendment to FLPMA section 504(g) (43 U.S.C. 1764(g)). We disagree. Section 504(g) of FLPMA does not require BLM to exempt Federal agencies. It does allow us to require a right-of-way applicant to reimburse the United States for reasonable processing costs. Although the previous rule provided for an automatic exemption to Federal agencies, that rule may be changed by subsequent rulemaking. Section 504(g) gives BLM discretion to require, by promulgation of regulations, right-of-way applicants, including Federal agencies, to pay reasonable processing costs. Regarding facilities eligible for REA financing, section 504(g) of FLPMA exempts from rent rights-of-way for electric or telephone facilities eligible for financing under the REA, but specifically reinforces the authority for requiring reimbursement of reasonable processing costs from such applicants. The final proviso of section 504(g) addresses this point.

One commenter said that BLM needs to have the flexibility to determine when to waive processing and monitoring payments for Federal agencies. Under final sections 2804.20 and 2804.21, BLM will examine a number of factors, e.g., public benefits or public services, in determining the reasonable costs to be charged an applicant, including Federal agencies.

One commenter said that a weak argument could be made that the Western Power Administration is exempt from paying processing fees because it is in the business of supplying electrical power to rural electric associations. As explained earlier, section 504(g) of FLPMA addresses facilities eligible for REA financing and exempts from rent rights-of-way containing these facilities. It does not exempt such holders from reimbursement of reasonable application processing costs. Therefore, the Western Power Administration is not exempt from payment of reasonable processing costs.

One commenter was concerned that under these regulations, a non-commercial private individual would pay agency costs for processing a grant, but a commercial user may not. The commenter may be referring to the fact that an applicant for a right-of-way involving a cost-share road or reciprocal right-of-way agreement is exempt from paying processing and monitoring fees under section 2804.16. Section 504(g) of FLPMA provides that BLM may require reimbursement of the reasonable costs associated with processing right-of-way applications. This section further provides that BLM need not secure reimbursement in any situation where there is in existence a cooperative cost-share right-of-way program.

Section 2804.17 What Is a Master Agreement (Processing Category 5) and What Information Must I Provide to BLM When I Request One?

This section explains that a Master Agreement is a negotiated agreement between you and BLM covering processing and monitoring fees for multiple applications and grants within a defined geographic area. This section also explains how to apply for a Master Agreement.

In the final rule we split proposed section 2804.17 into this section and the following section, which covers the provisions and limitations of a Master Agreement. This revised section provides a clearer description of what a Master Agreement is. The proposed rule identified it as a ''cost recovery'' Master Agreement, whereas this final rule identifies it simply as a Master Agreement. We made this change to make clear that a Master Agreement is not strictly limited to negotiation of processing and monitoring fees. A Master Agreement may contain negotiated agreements between BLM and an applicant concerning other aspects of application processing and monitoring as indicated in final section 2804.18. Revised section 2804.17 and new section 2804.18 also provide a clearer distinction between the information BLM requires when you request a Master Agreement, and the required content of a final negotiated agreement.

We amended paragraph (a) in the final section 2804.17 to be more descriptive of what Master Agreements are and amended paragraph (b)(2) of this section by making clear what a preliminary work plan is. Final paragraph (b)(3) is also different from the proposal in that the final rule requires you to submit a timetable along with the preliminary cost estimate. We added this requirement so BLM knows when you expect BLM to complete processing your application. The customer service standard in final section 2804.25(c) for Processing Category 5 applications is ''As specified in the Master Agreement.'' Your expectation of processing times is critical information for BLM to know in order to proceed and reach a final agreement.

We also made other changes to this section. We simplified proposed paragraph (b)(4) and moved it to final section 2804.18(a)(1). Proposed paragraph (b)(5) now appears as section 2804.18(a)(3).

One commenter said that the rule should require BLM and the applicant to meet to determine the scope of the data needed to process the application to limit the amount of additional information that BLM may request under this section. The same commenter asked who in BLM has the authority to sign the agreement. Since this final rule defines a Master Agreement as an agreement negotiated between BLM and an applicant, communications are by implication necessary to reach such agreement. Therefore, a regulatory requirement to compel a meeting is unnecessary. Signature levels for right-of-way grants are identified in the BLM delegation of authority Manual at section 1203. For most rights-of-way, the delegated authority is at the field manager level, and therefore, we will usually authorize Master Agreements at that level. Master Agreements would not apply to those major rights-of-way not delegated below the BLM State Director signature level, as these are usually single or related one-time actions which are handled in Processing Category 6.

Two commenters said that BLM must commit to making the private party an integral party in agreeing on the level of work necessary to adequately monitor and administer plans for lands affected by Master Agreements. Several commenters asked that the final rule provide for an appeals process for Master Agreements to resolve disagreements over Master Agreements. Inherent in the concept of a Master Agreement is a cooperative relationship between BLM and an applicant. BLM is committed to working with any applicant wishing to pursue a Master Agreement. Under the proposed rule and final section 2804.14(d), an applicant's signature on a Master Agreement constitutes an agreement with the processing category decision. More specifically, an applicant's signature on a Master Agreement constitutes agreement with all of its provisions, including the negotiated application processing costs. A signed Master Agreement documents BLM's decision on the processing category and the applicant's agreement with it. Therefore, we believe that an appeal of a negotiated agreement would be rare. If there are disagreements during the Master Agreement negotiation process that cannot be resolved, negotiations would not culminate in an approved Master Agreement. At that point, if the applicant still wished to pursue applying for a right-of-way grant, BLM would make a processing category decision outside the context of the Master Agreement process, and that decision would be subject to administrative appeal.

Section 2804.18 What Provisions Do Master Agreements Contain and What Are Their Limitations?

This is a new section that incorporates some new provisions and some from proposed section 2804.17. This section describes the provisions in a Master Agreement and explains that BLM will not enter into any agreement that is not in the public interest. It also explains that if you enter into a Master Agreement, you waive your right to request a reduction of processing and monitoring fees. We added paragraphs (a)(1), (a)(2), (a)(4), and (b) to more clearly describe the content of a Master Agreement and added language concerning compliance with all applicable laws and regulations, assignment of tasks and responsibilities of BLM and an applicant, and the public interest standard that will guide BLM's decision to enter into a Master Agreement.

A few commenters recommended that Master Agreements be for a term of twenty years or longer. The term of a Master Agreement is negotiated and agreed to by an applicant and BLM. A 20-year or longer term may be appropriate in some circumstances and not in others, and therefore should not be a regulatory standard. Also, a Master Agreement may or may not specify a fixed term. A Master Agreement may

provide that it stays in effect until or unless specific conditions or circumstances occur. Whether or not a term is specified, every Master Agreement must contain provisions for termination under final section 2804.18(a)(7).

Many commenters asked for an explanation of the ''other information'' in proposed section 2804.17(b)(9). Others said the application form should contain all of the information necessary for BLM to process an application. Final section 2804.12(c) allows BLM to require you to submit additional information to BLM ''at any time while processing your application.'' Similarly, final section 2804.17(b)(5) states that the application must contain ''any other relevant information that BLM needs to process the application.'' We believe that these sections make clear that any additional information we request will be relevant to the application, and necessary for us to process it. Examples of the type of additional information we may request include plans of development, cultural resource surveys, and inventories for threatened and endangered species (see sections 2804.25(b) and 2804.12(c) of these regulations). Due to the wide variety and types of right-of-way applications and uses involved in BLM's right-of-way program, we must have some flexibility to determine the type of additional information we may require to process and approve an application. Therefore, we did not amend this section.

Section 2804.19 How Will BLM Process My Processing Category 6 Application?

This section describes how BLM will process a Category 6 application. In processing your application BLM will:

(A) Determine the issues subject to analysis under NEPA;

(B) Prepare a preliminary work plan that identifies data needs, studies, survey and other reporting requirements, and level of NEPA documentation and outline consultation and coordination requirements, public involvement needs, and a proposed schedule to complete application processing;

(C) Develop a preliminary financial plan that estimates the costs of processing your application and monitoring the project;

(D) Discuss with you the preliminary plans addressed above; and

(E) Work with you to develop final work and financial plans which reflect any work you have agreed to do. As part of this process BLM will complete our final estimate of the costs you must pay BLM for processing the application and monitoring the project.

BLM may allow you to prepare environmental documents and conduct any studies related to your application. However, if BLM agrees to allow you to perform this work, you must do it to BLM standards. Previous section 2808.3–1(d) encouraged applicants to do all or part of any study or analysis, including completing a NEPA document, required in connection with processing the application. The practice of applicant-provided information and NEPA documents is well established and is successful in increasing efficiency and reducing BLM costs. Under final section 2804.19, dealing with Processing Category 6, we continue to encourage this successful practice. BLM will continue to allow applicants to provide us additional information to assist us in processing their application. As with previous regulations, this final rule requires that all environmental information an applicant provides meets BLM standards.

Finally, this section states that BLM will set out timeframes for periodic estimates of processing costs for a specific work period. You must pay the amount due before we will continue to process your application. BLM will refund excess payments or adjust the next payment amount to reflect any overpayment.

Previous section 2808.3–1(f) provided for payment of up to one percent of actual construction costs as an alternative method for an applicant to pay reasonable processing costs. One commenter said that the 1 percent fee would not be used because companies do not want to divulge the cost of their projects. Several other commenters supported eliminating the 1 percent fee. As mentioned in the preamble to the proposed rule (see 64 FR 32110), this provision has only been used once by an applicant. This final rule eliminates this provision.

Section 2804.20 How Does BLM Determine Reasonable Costs for Processing Category 6 or Monitoring Category 6 Applications?

This section explains that for Processing Category 6 or Monitoring Category 6 applications BLM will consider the factors in this section to determine reasonable costs for processing your application, unless you agree in writing to waive consideration of reasonable costs and elect to pay full actual costs. These factors are set forth in section 304(b) of FLPMA and are referred to as FLPMA factors in paragraph (a). With your application you should provide an analysis that shows how your application meets each of the FLPMA factors. After considering your analysis, BLM will notify you in writing of what you owe. You may appeal this determination under section 2801.10 of this part.

The provisions in this section and final sections 2804.21 and 2804.22 were all proposed in section 2804.18. We divided that proposed section into these sections and modified the content of the rule because we believe the proposed rule did not accurately reflect policy. We also replaced the proposed rule's use of the term ''reasonability criteria'' with ''FLPMA Factors'' because the latter promotes greater clarity owing to its statutory basis. BLM policy is to apply the FLPMA Factors when determining processing fees for Category 6 applications. BLM has previously used these FLPMA Factors in setting the processing fees in Categories 1 through 4.

In the final rule, we added a definition of ''cost incurred for the benefit of the general public interest (public benefit)'' to this section to describe that portion of the funds spent in connection with processing an application on collecting data or performing studies that are determined to have value to the Federal Government or the general public aside from being needed to process the application. The term's definition is substantially similar to that in previous regulations at section 2800.0–5(q). Adding it makes the rule clearer.

One commenter said that since the word ''actual'' does not appear in the cited portion of the MLA, there is no need for the regulations to distinguish between the treatment of fees under parts 2800 and 2880. The commenter said that the regulations should apply a ''reasonableness standard'' to both parts. Section 28 of the Mineral Leasing Act (30 U.S.C. 185(l)) authorizes the Secretary of the Interior to recover administrative and other costs of processing an application, while sections 304(b) and 504(g) of FLPMA provide for the recovery of reasonable administrative and other costs. Because the standards for cost recovery differ between the MLA and FLPMA, so must the regulations.

One commenter said that the regulations sometimes use the term ''waive'' and sometimes say ''reduce to zero'' when referring to fees. The commenter said the regulations should be consistent. We agree. Previous section 2808.5 used the terms ''reduction'' and ''waiver.'' The preamble to proposed section 2804.18 used the term ''reduction'' to include a potential reduction to zero dollars (see 64 FR 32119). In this final rule we are

consistent in our use of the terms ''reduction'' and ''waiver.''

Section 2804.21 What Other Factors Will BLM Consider in Determining Processing and Monitoring Fees?

This section sets out the factors the BLM State Director will consider in determining your processing or monitoring fee in any category, if you include this information in your application. If the factors do apply to your application, you need to include an analysis of how each of the factors applies. BLM will notify you in writing of the BLM State Director's fee determination. You may appeal this decision under section 2801.10 of this part. This is consistent with existing policy and previous regulations.

One commenter suggested eliminating ''financial hardship'' as a criterion for waiving or reducing cost recovery fees. The commenter said that if a cost recovery fee creates a financial hardship to an applicant, BLM should evaluate whether the applicant has the financial capability to conduct the proposed use according to the terms and conditions of the grant. Financial hardship for waiving or reducing cost recovery fees has existed since previous section 2808.5 became effective on August 7, 1987. The ''other factors'' mentioned in section 304(b) of FLPMA is the basis for using financial hardship as a criterion for lower cost recovery fees. This provision is rarely utilized for the reasons stated by the commenter. Yet, in a very few instances, an applicant may show technical and financial capability to hold (construct, operate, maintain, and terminate) a right-of-way grant, but the additional expense of paying a processing fee may be just enough of an additional burden that its payment would create undue financial hardship. This final rule continues to allow for consideration of an applicant's financial hardship. Section 504(j) of FLPMA makes clear that all grant holders must be technically and financially able to construct the project for which the right-of-way grant is requested. As required by final section 2804.12(a)(5), each applicant must provide a statement of financial and technical capability.

One commenter said that the regulations should give BLM the ability to waive or recover costs and charge other agencies for its services depending on the benefits to the public. As proposed, and as carried through in this final rule, BLM has the authority to recover fees from other agencies. Final section 2804.16 retains exemptions for state or local governments or an agency of such government if a right-of-way grant is for governmental purposes benefitting the general public. This final rule eliminates the previous automatic exemption for Federal agencies.

One commenter said that small, non-profit associations, such as domestic water associations, should be exempt from paying any processing fees ''in view of the public benefits derived from our services.'' Previous section 2808.1(b) provided no automatic exemption for non-profit associations, and we did not propose a change in this policy. The final rule makes no provision for an automatic exemption for non-profit associations, but does provide that BLM will consider, in setting a reasonable processing fee, whether an applicant is a non-profit organization and the studies undertaken in connection with processing its application have a public benefit or the facility or project will have a benefit or special service to the general public or a program of the Secretary.

Section 2804.22 How Will the Availability of Funds Affect the Timing of BLM's Processing?

This section explains that if BLM has no funds to process your application, we will not process it until funds become available or you elect to pay full actual costs under section 2804.14(f) of this part. If reasonable costs to be charged to an applicant are significantly less than BLM's actual processing costs, the customer service standards at section 2804.25(c) may not apply, since the resources necessary to process these applications will be subject to the availability of appropriated funds. This is consistent with existing policy and previous section 2808.5.

Section 2804.23 What If There Are Two or More Competing Applications for the Same Facility or System?

This section was proposed as section 2804.19. It explains that if there are two or more competing applications for the same facility or system and your application is in:

(A) Processing Category 1 through 4, you must reimburse BLM for processing costs as if the other application or applications had not been filed; or

(B) Processing Category 6, you are responsible for processing costs identified in your application. Cost sharing agreements by applicants are possible. You must pay the processing fee in advance. Consistent with existing policy, BLM will not process your application without the advance payment.

This section also explains that BLM determines whether applications are compatible in a single right-of-way system, or are competing applications for the same system. We added new paragraphs (b) and (c) to this section to make it clear that BLM determines whether competition exists and the procedures for a bid announcement if we determine that competition does exist. Section 501(b)(1) of FLPMA and final section 2804.12(a)(6) require a right-of-way applicant to submit and disclose plans, contracts, agreements, or other information related to the use, or intended use, of a proposed right-of-way, and ''its effect on competition.'' You should not construe this filing requirement as requiring you to make a determination on whether competition exists or is likely. This new paragraph reinforces the fact that BLM determines, based on information provided in an application, whether competition exists.

Several commenters said that the current process of BLM's beginning to process applications when they are received should remain and that BLM should provide the applicant an estimate of processing costs before the right-of-way is granted. The majority of right-of-way applications BLM processes are on a noncompetitive basis, and we expect this to continue. However, if we determine that competition exists, we will follow these regulations and FLPMA. Under the previous rule and as provided in this final rule and section 2804.25, we will inform the applicant in writing of the processing fee and will collect the fee before we process a right-of-way application.

Section 2804.24 Do I Always Have To Submit an Application for a Grant Using Standard Form 299?

This section explains that if BLM determines that competition exists under section 2804.23 of this subpart, you are not required to submit an application using Standard Form 299, because there will be a competitive bid process for the lands you propose to use. Section 2804.23 notes that BLM will describe the procedures in a notice published in a newspaper in the area of the lands involved and in the **Federal Register**.

You are also not required to submit an application if you are an oil and gas operator and have need for a FLPMA right-of-way. You may submit your right-of-way requirements in your Application for Permit to Drill or Sundry Notice. This section is consistent with existing policy and except for editorial changes, remains as proposed.

Section 2804.25 How Will BLM Process My Application?

This section explains that BLM will notify you in writing when we receive your application and will identify your processing fee. BLM may require you to submit additional information to complete your application. If we need additional information to process your application, we will send you a written deficiency notice. BLM will also notify you of any other applications for rights-of-way which involve lands in your application.

This section also lays out estimated processing times for the different categories of applications based on the complexity of the application and the amount of analysis that we must perform. The final rule uses a chart in place of the description of the processing times that was in the proposed rule. We also replaced the term ''working days'' with ''calendar days'' to be consistent with the rest of the rule, other BLM regulations, and the Forest Service right-of-way cost recovery regulations.

BLM's current policy for right-of-way approvals, set forth at BLM manual section 2801.35.B.2.(1), provides that most ''low impact'' right-of-way applications needing a categorical exclusion or EA should be processed in 30 days, and requires BLM to notify an applicant in writing if processing would take more than 60 days. Proposed section 2804.20(c) identified very similar customer service standards for application processing times. However, the current standard has caused confusion for some of our applicants, as well as BLM employees, because the notification deadline is twice as long as the processing deadline. A more logical standard would have the notification deadline prior to the processing deadline, if the processing deadline can not be met. This final rule sets the customer service standard for processing a completed Category 1 through 4 application at 60 calendar days. However, if BLM knows beforehand that this standard can not be met, then BLM will notify an applicant (prior to the 30th calendar day) if we expect the processing time to take longer than 60 days. The 60 calendar day processing standard for Categories 1 through 4 does not mean that BLM intends to take that long to process all applications in these categories. Actual processing times will vary among categories. For example, we will generally process Category 1 actions in significantly less time than 60 days.

This section also explains that before BLM will issue a grant, we will:

(A) Complete a NEPA analysis for the application or approve a NEPA analysis previously completed for the application. We amended this paragraph in the final rule by adding specific citations to the Council on Environmental Quality regulations and by making it clear that the NEPA analysis may be approved or completed for the specific application;

(B) Determine whether or not your proposed use complies with applicable Federal and state laws;

(C) If your application is for a road, determine whether it is in the public interest to require you to grant the United States an equivalent authorization across lands that you own. In the final rule we made this paragraph clearer by pointing out that situations requiring a holder to grant equivalent rights to BLM always involve access needs. BLM requires no equivalent rights involving other proposed right-of-way uses;

(D) Consult, as necessary, with other governmental entities;

(E) Hold public meetings if sufficient public interest exists to warrant their time and expense; and

(F) Take any other action necessary to fully evaluate and decide whether to approve or deny your application.

This final rule moves BLM's notification responsibilities from proposed section 2804.20(c) to the ''Conditions'' column in the chart in final section 2804.25(c). We also moved proposed section 2804.20(e) to final section 2805.10 because these provisions are part of BLM's decision concerning the content and terms and conditions in a grant.

A few commenters suggested that the regulations require the applicant to provide the location and extent of designated or existing corridors that are proposed for use. This information may be important in determining the NEPA classification for the proposal and subsequently the processing and monitoring costs for the project. The commenters said that they understood that if they use an existing corridor or right-of-way they would not be required to perform an EIS, but only an EA. Under section 503 of FLPMA, BLM identifies existing corridors and designates new corridors. We do this through cooperation with industry and other interested parties. Final sections 2802.10(b) and 2802.11 contain information on right-of-way corridors. It is not incumbent on an applicant to identify or otherwise supply corridor information in a right-of-way application. The preapplication meeting identified in final section 2804.10(a) provides the opportunity to discuss corridor designations. Given this process, BLM believes requiring applicants to provide corridor information is not necessary.

A few commenters said that requiring an inventory for threatened or endangered species is another extravagant cost for applicants to bear and they opposed it. They also said that it was ''redundant, inefficient and costly to our customers'' for them to prepare reports and then be charged for BLM staff to go out to the field to confirm that they are accurate. Final section 2804.25(b) (proposed section 2804.20(b)) states that BLM may require an applicant to submit additional information ''necessary to process the application.'' This same standard applies to BLM review and verification of applicant-supplied information. If information is not necessary to process an application, BLM will not request it.

Several commenters objected to the provision in proposed section 2804.20(e)(1) allowing BLM to modify the area applied for and said that changing the route or location of facilities may render a project uneconomic. Proposed section 2804.20(e)(1) provided that in deciding to issue a right-of-way grant, BLM may modify a proposed use or change the route or location. This provision is in previous section 2802.4(f) and is consistent with section 504(c) of FLPMA and the discretionary nature of a right-of-way grant. Final section 2805.10(a)(1) contains a provision giving BLM discretion to modify a proposed right-of-way use or change its route or location. NEPA and implementing regulations at 40 CFR 1500–1508 require an evaluation of alternatives to proposed actions. These alternatives must be reasonable and capable of meeting the purpose and need of the proposed project. We will follow that standard when processing applications that may need modifications to the proposed use, route, or location.

Several commenters objected to the requirement in proposed section 2804.20(e)(2) for a plan of development. The commenters said the plan would serve no purpose other than to ''create another document that is only for the Federal government.'' Several commenters said that requiring plans of development is new to oil and gas and is not cost effective. The commenters said that they only fill a file in a BLM office and that independents do not have the staff to create a document whose only purpose is to fill a file for BLM. Proposed section 2804.20(b) provided that BLM may require an applicant to submit additional

information, including a plan of development, ''necessary to review the application.'' The final rule at section 2804.25(b) does not change this provision. Section 501(b)(1) of FLPMA is the authority for BLM to require information necessary to determine whether BLM should issue a grant and the terms and conditions which BLM should include. Section 504(d) of FLPMA requires a plan of construction, operation, and rehabilitation for proposed rights-of-way uses that may have a significant impact on the environment. It is important to note that a plan of development is not a universal requirement. We will require one when necessary to fully describe the proposed use.

Several commenters said that there should be mandatory approval times for each category. They also said that we should amend the proposed rule to require that if BLM does not approve a grant within an agreed upon time, then the grant is automatically approved at the expiration of that time, whether or not BLM has finished processing the application. Several commenters also said that the final rule should establish an agreed upon mandatory approval time for Category IV applications. The previous rule contained no standards for application processing times.

As stated above, it has been BLM's policy to process ''low impact'' right-of-way applications needing a categorical exclusion or EA in 30 days, and to notify an applicant in writing if processing would take more than 60 days. Proposed section 2804.20(c) identified very similar customer service standards for application processing times. Paragraph (c) of final section 2804.25 contains changed customer service standards for application processing times. BLM made these customer service standards flexible because there are a variety of factors that can influence processing time. Requiring that BLM approve an application within a regulatory timeframe or it would be approved by default would remove BLM's discretion in granting a right-of-way and would be inconsistent with the provisions in FLPMA for management of the public lands. Therefore, we did not change the rule.

One commenter suggested that as costs rise, the services BLM provides with the accompanying fee increases should get better. Final section 2804.25 establishes a customer service standard which states that BLM will attempt to process your completed application within 60 calendar days of receiving it. If processing is expected to take longer than 60 calendar days, then prior to the 30th calendar day after filing a complete application BLM will notify you in writing of this fact including an estimate of when we will complete processing your application.

One commenter said that the final regulations should require the potential grantee to submit an initial assessment of the environmental conditions of the land being proposed for use as a right-of-way. The commenter said that such assessment was necessary to evaluate the impact of the activity on the land and to allow BLM to complete its obligations under NEPA, 42 U.S.C. 4321 *et seq.*, and that this assessment will also allow the Fish and Wildlife Service, and public and private applicants, to comply with the Endangered Species Act, 16 U.S.C. 1531 *et seq.*, and the Migratory Bird Treaty Act, 16 U.S.C. 701 *et seq*. The commenter also said that BLM should require the potential grantee to provide an environmental assessment as part of the right-of-way application and make such assessment available for public comment. We did not amend this section as the commenter requested.

NEPA and its implementing regulations require assessments of environmental conditions and impacts. BLM's obligations under the authorities the commenters cited are already covered in other parts of BLM's regulations. Repeating these existing requirements in this right-of-way rule is unnecessary. A universal requirement that all applicants provide an initial environmental assessment or other environmental documentation was not a part of the previous regulation, was not proposed, and does not appear in this final rule. Due to the wide range and scope of proposed right-of-way uses, from very minor actions to major projects, such a requirement is not practical. However, applicants may continue to volunteer such information to facilitate the processing of an application. Or, under final sections 2804.12(c) and 2804.25(b), BLM may require an applicant to provide this type of information if BLM determines it is necessary to process an application. We disagree with the commenter that an applicant should be required to provide such preliminary assessment. Neither CEQ regulations, NEPA, nor the other statutes cited contain such requirements.

One commenter recommended that BLM should clearly state that the agency retains the authority to conduct the environmental analysis that is associated with processing a right-of-way grant application, at the applicant's expense, in those rare circumstances when BLM determines that it may be in the public interest to do so (as opposed to the applicant, or its contractor, conducting that activity). We agree with the commenter that BLM retains the authority to prepare NEPA-related documents. We note too BLM's authority to approve any NEPA-related documents prepared by the applicant or a third party. In final section 2804.19(c) we clearly state that BLM retains the option to prepare any environmental document related to a Category 6 application and that if BLM allows the applicant to prepare these documents, they must be prepared to BLM standards. BLM will make the final determinations and conclusions arising from this work. In final section 2804.25(d), we state that before issuing a grant, BLM will complete a NEPA analysis for the application or approve a NEPA analysis previously completed for the application, as required by 40 CFR parts 1500 through 1508.

Several commenters asked that BLM provide mandatory approval times for each category, including proposed Category IV (final Category 6). BLM sees the customer service standards in final section 2804.25(c) as reasonable goals, and expects to meet them in most cases. However, in some cases, other agency consultations or other actions may result in extended processing times beyond the standards BLM has identified. Therefore, we believe that mandatory processing and approval times set by regulation are not appropriate. We did not include them in the final rule.

One commenter said that stating a 30 working day processing time for applications may be unrealistic because of cuts in personnel and other resources. Final section 2804.25(c) establishes a customer service standard of 60 calendar days for Processing Category 1 through 4 applications. Proposed section 2804.20(c) included a 30 working day processing period. Because a 60 calendar day processing period is much more realistic and is consistent with the Forest Service's customer service standard the final rule sets a customer service standard of 60 days. If we require more than 60 calendar days to process your Category 1 through 4 application, we will provide you written notice prior to the 30th calendar day.

Several commenters said that in proposed section 2804.20, BLM should change the ''60 working day'' response time to ''30 calendar days.'' The proposed rule identified a 30 working day processing time for the ''minor'' categories, but included a provision for notification to an applicant if the processing time were to take more than 60 working days. In this final section

2804.25(c) we set the processing time customer service standard as 60 calendar days for Categories 1 through 4, a change consistent with the provision to notify an applicant if the processing time will be more than 60 days in those categories. We did not make the change the commenter suggested since 30 calendar days is not enough time to thoroughly review and process Category 1 through 4 applications. In the final rule we lengthened the processing time from the proposed rule's 30 working days to the final rule's 60 calendar days to reflect a more realistic time for processing MLA grant applications.

Several commenters said that public hearings are not necessary for right-of-way applications affiliated with oil and gas field operations and that hearings would cause interminable delays. The previous rule at section 2802.4(e), proposed section 2804.20(d)(5), and final section 2804.25(d)(5) all make it clear that BLM will hold public meetings in connection with a right-of-way application only if sufficient public interest exists to warrant their time and expense. Depending on how applications affiliated with oil and gas field development are handled, public meetings may or may not be necessary. For example, there may be in place a programmatic NEPA document that includes field development activities, and appropriate levels of public review have already been conducted. In such a case, public meetings may not be necessary.

Section 2804.26 Under What Circumstances May BLM Deny My Application?

This section explains that BLM may deny your application if:

(A) The proposed use is inconsistent with the purpose for which BLM manages the lands;

(B) The proposed use would not be in the public interest;

(C) You are not qualified to hold a grant;

(D) Issuing the grant would be inconsistent with the Act, other laws, or these or other regulations;

(E) You do not have or cannot demonstrate the technical or financial capability to construct the project or operate facilities within the right-of-way; or

(F) You do not adequately comply with a deficiency notice or with any BLM requests for additional information needed to process the application.

You may appeal BLM's decision to deny your application under section 2801.10 of this part. With the exception of minor editorial changes, this section is the same as proposed section 2804.21.

Several commenters said that the regulations should state whether applicants have the right of appeal if BLM denies their applications and should require BLM to indicate in writing reasons for denying an application. We agree. Under final section 2804.26(b) you may appeal a BLM decision denying an application. As a matter of policy, BLM always provides written justification for denying right-of-way applications.

Section 2804.27 What Fees Do I Owe if BLM Denies My application or if I Withdraw My Application?

This section explains that if BLM denies your application or if you withdraw your application you owe the processing fee, unless you have a Category 5 or 6 application. If you have a Category 5 or 6 application that:

(A) BLM denied, you are liable for all reasonable costs the United States incurred processing it. Consistent with existing policy and previous regulations (see previous section 2808.3–3), the money you have not paid is due within 30 calendar days after you receive a notice of payment; or

(B) You have withdrawn before BLM issues your grant, you are liable for all reasonable processing costs the United States has incurred up to the time you withdraw the application and for the reasonable costs of terminating your application. Any money you paid that is not used to cover costs the United States incurred as a result of your application will be refunded to you.

In the final rule we replaced ''BLM'' with ''the United States,'' where we talk about the government incurring costs. This is because BLM may not be the only Federal agency that incurs costs in processing your application. This is consistent with existing policy and section 504(g) of FLPMA. We also added a sentence explaining that any money you paid that is not used to cover costs the United States incurred as a result of your application will be refunded to you. We added this sentence to explain existing policy. With the exception of this change and editorial changes, the substance of this section is the same as the proposed section 2804.22.

Section 2804.28 What Processing Fees Must I Pay for a BLM Grant Application Associated With Federal Energy Regulatory Commission (FERC) Licenses or Relicense Applications To Which Part I of the Federal Power Act (FPA) Applies?

This section requires that you pay BLM the costs the United States incurs in processing your application associated with a FERC licensing or relicensing project, other than those described in section 2801.6(b)(7) of this part. BLM also requires reimbursement for processing a right-of-way grant application associated with a FERC project licensed before October 24, 1992, that involves the use of additional public lands outside the original area reserved under section 24 of the FPA. In determining what you owe, BLM will use the processing categories in section 2804.14 of this part. FERC will address other costs it incurs in processing your license or relicense.

This section is different from proposed section 2804.24. Section 2401 of the Energy Policy Act of 1992 (Pub. L. 102–486) amended portions of section 501 of FLPMA regarding Federal rights-of-way associated with hydropower projects licensed by FERC. The 1992 Act amended section 501(a) to authorize the Secretary to issue rights-of-way with respect to the public lands, including ''public lands, as defined in section 103(e) of [FLPMA], which are reserved from entry pursuant to section 24 of the Federal Power Act (16 U.S.C. 818).'' BLM issues rights-of-way under Title V of FLPMA for public lands withdrawn and reserved under the Federal Power Act. The Energy Policy Act also amended section 501 of FLPMA by adding a new paragraph (d), which provides that no right-of-way authorization is required for continued operation on FPA-reserved lands of a project that did not receive a BLM right-of-way prior to October 24, 1992. We inadvertently omitted regulations to implement these provisions from proposed section 2804.24. Therefore, we revised final section 2804.28 to be consistent with the statutory changes.

Section 2804.29 What Activities May I Conduct on the Lands Covered by the Proposed Right-of-Way While BLM Is Processing My Application?

This section explains that you, or any member of the public, may conduct casual use activities on the BLM lands covered by your application. For activities that are not casual use, you must get prior BLM approval. ''Casual use'' is defined in section 2801.5 of this final rule. With the exception of editorial changes, the substance of this section is the same as proposed section 2804.25.

Subpart 2805—Terms and Conditions of Grants

This subpart contains information and policies about:

(A) The terms and conditions of grants;

(B) When a grant is effective;

(C) The rights that grants convey and that the United States retains; and

(D) Information about monitoring costs.

Section 2805.10 How Will I Know Whether BLM Has Approved or Denied My Application?

This section contains some new information and explains that BLM will send you a written response to your application. If we do not deny your application, we will include an unsigned right-of-way grant for you to review, sign, and return that:

(A) Will include any terms, conditions, and stipulations that BLM determines to be in the public interest. This includes modifying your proposed use or changing the route or location of the facilities;

(B) May prevent your use of the right-of-way until you have an approved Plan of Development and BLM has issued a Notice to Proceed; and

(C) Will impose a specific term for the grant and may include provisions for periodic review of the grant and its terms and conditions.

These provisions were part of previous regulations.

Under this section, if you agree with the terms and conditions of the unsigned grant, you should sign and return it to BLM with any monitoring fee payment that may still be due for the application. If the regulations in this part, including section 2804.26, remain satisfied, BLM will then sign the grant and return it to you with a decision letter.

If you do not agree with any of the terms and conditions contained in the grant, you may appeal BLM's decision to IBLA under section 2801.10 of this part.

If BLM denies your application, we will send you a written decision:

(A) Stating the reasons for the denial;

(B) Identifying any processing costs you must pay; and

(C) Notifying you of your right to appeal the decision.

These provisions are consistent with existing policy and previous regulations (see previous section 2808.3–3). The substance of this section is the same as proposed section 2804.19(e).

Several commenters said that the language allowing BLM to include in a grant any terms or conditions that BLM determines are in the public interest is ''gratuitous.'' We disagree. Section 505(b) of FLPMA provides that a right-of-way grant contain such terms and conditions as the Secretary deems necessary to, among other things, ''otherwise protect the public interest in the lands traversed by the right-of-way or adjacent thereto.'' The regulatory language implementing that provision of FLPMA was in the proposed rule at section 2804.20(e)(1), and is in final section 2805.10(a)(1).

Section 2805.11 What Does a Grant Contain?

The grant states what your rights are on the lands subject to the grant and describes what lands you may use or occupy. These lands may or may not correspond to the lands in your application. This section lists the factors BLM considers when determining which lands to include in the grant. This section contains the same four provisions as those in proposed section 2805.10(a) and explains that your grant will state the length of time that you are authorized to use the right-of-way and lists the factors BLM will consider in establishing the term of the grant.

In the final rule we added a provision stating that BLM will limit the grant to those lands on which we determine operations will not result in unnecessary or undue degradation. We added this provision because FLPMA directs BLM, in managing the public lands, to take any action necessary to prevent unnecessary or undue degradation of the lands (see 43 U.S.C. 1732(b)). We believe that in order to comply with FLPMA's mandate, it is necessary to take into consideration the unnecessary or undue degradation standard when determining which lands to include in a right-of-way grant. Section 504(a)(4) of FLPMA sets forth similar, though not identical, language (see 43 U.S.C. 1764(a)(4)).

We added a provision to this section stating that the time necessary to accomplish the purpose of the grant is a relevant factor in fixing the duration of the grant. We inadvertently omitted this provision from the proposed rule. This provision, which was in previous section 2801.1–1(h), is consistent with section 504(b) of FLPMA and is necessary for us in determining the appropriate length of the term of a grant.

In the final rule we also added a provision to this section stating that all grants, except those issued for a term of less than one year and those issued in perpetuity, will expire on December 31 of the final year of the grant. The reason we added this provision is so that the expiration date of a grant will coincide with the calendar year rental term.

Several commenters stated that granting an ''easement'' on lands that do not correspond to those in the application is unacceptable, since doing so may make the grant ''unsatisfactory to accomplish the desired project.'' In processing your application, BLM will examine your proposed action, and consider all reasonable alternatives to accomplish your purpose, including the no action alternative. We develop alternatives in consultation with the applicant and potentially affected parties. If BLM were to select an alternative that did not satisfy you or one that contained conditions or stipulations that were unsatisfactory to you, you may challenge those conditions by appealing BLM's decision to the IBLA under section 2801.10 of this part.

Section 2805.12 What Terms and Conditions Must I Comply With?

This section explains that by accepting a grant, you agree to comply with and be bound by the terms and conditions set forth in this section. This section requires that during construction, operation, maintenance, and termination of the project you must:

(A) To the extent practicable, comply with all existing and subsequently enacted, issued, or amended Federal laws and regulations and state laws and regulations applicable to the authorized use. We made minor changes to this paragraph and added the phrase ''To the extent practicable,'' which was inadvertently omitted from proposed section 2805.10. The phrase has been in the Department's regulations since 1980 and is set forth here to qualify a holder's compliance with Federal and state laws and regulations applicable to the authorized use. Practicability is important because a right-of-way may cross through multiple jurisdictions, and strict compliance with the laws and regulations of each may be impractical and inefficient. The phrase will be interpreted as in years past. This section also makes clear that a holder must comply with any changes to applicable law or regulation that occur during the term of the right-of-way grant. This is consistent with long-standing BLM policy and previous section 2801.2;

(B) Rebuild and repair roads, fences, and established trails destroyed or damaged by the project;

(C) Build and maintain suitable crossings for existing roads and significant trails that intersect the project;

(D) Do everything reasonable to prevent and suppress fires on or in the immediate vicinity of the right-of-way area;

(E) Not discriminate against any employee or applicant for employment during any phase of the project because of race, creed, color, sex, or national origin. You must also require subcontractors to not discriminate;

(F) Pay monitoring fees and rent described in section 2805.16 of this subpart and subpart 2806 of this part;

(G) If BLM requires, obtain, and/or certify that you have obtained, a surety bond or other acceptable security to cover liabilities and obligations listed in the regulations. BLM may require a bond, an increase or decrease in the value of an existing bond, or other acceptable security at any time during the term of the grant;

(H) Assume full liability if third parties are injured or damages occur to property on or near the right-of-way (see section 2807.12);

(I) Comply with project-specific terms, conditions, and stipulations, including those listed in the section. This paragraph contains editorial changes to make it easier to understand. BLM added the term ''and stipulations'' to the first sentence of paragraph (i) to make it clear that a grant may contain standard terms and conditions, and also stipulations that address site-specific conditions. The final rule lists seven types of requirements that BLM typically adds to grants in the form of site-specific terms, conditions, or stipulations. Paragraph (i) is not new to our regulations (see previous section 2801.2(b)). Paragraph (i)(4) of this section uses different terminology than that in the proposed rule. In the final rule we replaced the term ''subsistence purposes'' with the term ''subsistence uses'' since that is the term used in the appropriate statute (see 16 U.S.C. 3111 *et seq.*). We also added a new paragraph (i)(6) to this section requiring you to comply with state standards for public health and safety, environmental protection, and siting, constructing, operating, and maintaining any facilities and improvements on the right-of-way when state standards are more stringent than Federal standards. This provision is authorized by section 505(a) of FLPMA and is in previous regulations at section 2801.2(b)(6). We inadvertently omitted it from the proposed rule;

(J) Immediately notify all Federal, state, tribal, and local agencies of any release or discharge of hazardous material reportable to such entity under applicable law. You must also notify BLM at the same time, and send BLM a copy of any written notification you prepared. The proposed rule did not include ''tribal'' in the list of jurisdictions that you must notify in case of a hazardous material spill. BLM added the term ''tribal'' because Federal lands are frequently intermingled with tribal lands for many large linear right-of-way projects and tribes should be notified of any hazardous material spill that may occur as a result of operations on a FLPMA right-of-way;

(K) Not dispose of or store hazardous materials on your right-of-way, except as provided by the terms, conditions, and stipulations of your grant. Any storage of hazardous waste on site must be in compliance with applicable Federal and state law;

(L) Certify your compliance with all requirements of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001 *et seq.* (EPCRA), when you receive, assign, renew, amend, or terminate your grant. Unless provided otherwise, your signature on an application is certification that you have complied with these requirements. This provision is consistent with proposed section 2805.10(c)(11). We added ''amend'' to the list of events when you must certify that you are complying with EPCRA. We added it to address situations where a change in your use would require a grant amendment. We deleted the requirements of annual certification due to commenter's concerns. Please see the discussion of comments that follows for an explanation of why we eliminated the annual certification;

(M) Control and remove any release or discharge of hazardous materials on or near the right-of-way arising in connection with your use and occupancy of the right-of-way, whether or not the grant authorizes release or discharge. You must also remediate and restore lands and resources affected by the release or discharge to BLM's satisfaction and to the satisfaction of any other Federal, state, tribal, or local agency having jurisdiction over the land, resource, or hazardous material. We added ''tribal'' to this paragraph because a tribe could have jurisdiction over land near the right-of-way;

(N) Comply with all liability and indemnification provisions and stipulations in the grant;

(O) As BLM directs, provide diagrams or maps showing the location of any constructed facility. This paragraph is new to the final rule. This provision allows BLM to require you to file an as-built survey or diagram of the right-of-way facility. Frequently, during the construction of a project, BLM approves or even requires changes from the original design. These changes may not be incorporated into the design drawings or surveys. BLM added this requirement so that if there are changes to a right-of-way facility during construction, we will have the most up-to-date design drawings and surveys for our records. This ongoing policy is consistent with previous section 2802.3; and

(P) Comply with all other stipulations that BLM may require.

Except for the changes listed above, and minor editorial changes, this section contains provisions substantially the same as those in proposed section 2805.10(c).

Several commenters said that the final rule should make it clear that under proposed section 2805.10(c)(1) (final section 2805.12(a)), BLM should not require applicants to comply with state requirements concerning radio frequency (RF) emissions. They said that would contravene section 704(a)(7)(B)(4) of the Telecommunications Act of 1996 which prohibits state and local governments from regulating directly or indirectly ''the placement, construction, and modification of personal wireless facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the [Federal Communications] Commission regulations concerning such emissions.'' This is not the forum to decide the merits of the commenters' statement. The final rule makes clear that a holder must comply to the extent practicable with applicable Federal and state law and regulations. Statutes and case law addressing the issue of pre-emption will determine the question posed by the commenters.

Several commenters said that proposed section 2805.10(c)(3) (final section 2805.12(d)) makes it sound like every right-of-way holder must have a fire department. They also said that the requirement is new and could be very costly. BLM disagrees. This provision is in previous regulations at section 2801.2(a)(4) and has been BLM policy for many years. BLM has, on rare occasions, enforced this provision when, for example, during construction activities, the holder's or holder's contractor's equipment was used for immediate fire suppression activities on a fire caused by actions of the holder. More importantly, this condition requires holders to maintain their rights-of-way so as not to create a fire hazard. BLM expects holders to do only what is reasonable to prevent and suppress fires in the immediate vicinity of a right-of-way. As a practical matter, BLM will not allow unauthorized equipment or untrained personnel to work on any wildland fire.

Several commenters said that it is inappropriate to include provisions relating to discrimination in these regulations as there are already laws relating to discrimination and including it here is duplicative. BLM disagrees. This provision is in previous regulations

at section 2801.2(a)(2) and is carried forward into the final rule.

BLM received many comments regarding bonding. Several commenters said that we should allow for bonding coverage to include statewide or nationwide oil and gas bonds. We disagree. Statewide and nationwide oil and gas bonds are not an acceptable security for MLA or FLPMA right-of-way grants. Oil and gas leases and right-of-way grants are separate instruments, with different terms, conditions, and liabilities, and authorize different activities in different locations. An oil and gas lease bond covers only those activities on the lease; a right-of-way bond covers those activities off the leased lands and on the grant. Generally speaking, a lessee would not need a right-of-way to conduct activities or to construct or to maintain lease-related structures, including roads, on an oil and gas lease. Lessees would need right-of-way grants for those activities and structures off the lease, such as roads connecting drill pads when the roads go off the lease or to connect leases. For these reasons, BLM separately bonds oil and gas leases and right-of-way grants.

Another commenter asked BLM to limit the amount of the bond. We assume the commenter means we should only require the minimum amount in a bond to recover any losses or damages resulting from construction or operation of a right-of-way. BLM calculates what is needed to recover possible losses, damages, or injuries associated with a right-of-way on a case-by-case basis. Bonding continues to be part of BLM standard operating procedures. Previous section 2803.1–4 also required bonding.

Proposed section 2805.10(c)(6) and final section 2805.12(g) add to our existing regulations by specifically requiring that bonding cover releases or discharges of hazardous materials and by allowing BLM to adjust bonding limits over the life of the grant to meet changing conditions. Previous section 2803.1–4 allowed BLM to require a bond to secure the obligations imposed by the grant and applicable laws and regulations. We consider the release or discharge of hazardous materials to be an appropriate consideration when setting a right-of-way bond. This regulation makes explicit what has up to now been implicit in our regulations. BLM continues to believe that bonding of right-of-way grants is an effective way to protect the Federal Government from liabilities associated with right-of-way operations, including any liability associated with the use of hazardous materials.

Another commenter believed that there was no justification for automatic increases in a bond. Under this final rule there is no automatic increase in the bond amount. The final rule allows BLM to increase or decrease the amount of an existing bond at any time during the term of a grant if changing conditions warrant it. BLM's experience in monitoring grants indicates that there are occasions when conditions on a grant change sufficiently to require an increase or decrease in the face amount of the bond. For example, if during construction, BLM discovers conditions such as unstable slopes or highly erosive conditions that we did not identify during application processing, BLM could increase the bond amount during the reclamation and restoration phase to take into consideration the potential additional liability that these conditions may cause. Likewise, BLM may reduce bond amounts when you satisfactorily complete components of a project or there are other changes in conditions that lower the potential liability of right-of-way operations.

Several commenters objected to the requirement in proposed section 2805.10(c)(9) that a grant holder notify authorities of any actual or threatened release or discharge of hazardous materials. Several commenters suggested that we replace the phrase ''actual or threatened'' with ''reportable.'' In response to this comment, we reworded the final rule at section 2805.12(j) by removing the phrase ''actual or threatened'' and limiting notification requirements to releases or discharges reportable to the named authorities under applicable law.

Several commenters said that proposed section 2805.10(c)(9) is too broad since it requires reporting of releases, no matter how small, whereas CERCLA requires notice of only reportable quantities of hazardous substances. EPA regulations at 40 CFR 302.4 establish a specific threshold amount for each substance, commenters noted. We reworded the final rule to make clear that the section only applies to reportable releases or discharges of hazardous materials. The final rule makes clear that if reporting is required under applicable law, the grant holder must notify BLM at the same time that it notifies appropriate authorities. Under the final rule, the holder must provide BLM a copy of any written notification required under applicable law at the same time that the holder sends it to the appropriate regulatory authority. We believe this notification is reasonable in light of FLPMA's mandate that BLM protect public lands and resources.

A few commenters objected to proposed section 2805.10(c)(10), which prohibits a grant holder from storing hazardous materials on the grant for more than 90 days, less if required by law. These commenters stated that crude oil would be stored on a lease for the life of a producing oil well, and other chemicals may be stored for longer than 90 days. The commenters said BLM's proposed rule goes beyond the agency's jurisdiction and duplicates other requirements. BLM deleted from this final rule the prohibition for on-site storage of hazardous materials beyond 90 days. Final section 2805.12(k) prohibits any storage or disposal of hazardous materials that is not provided for by the terms, conditions, or stipulations of the grant. This means that you may store or dispose of hazardous materials on the right-of-way, only if the grant specifically authorizes that storage or disposal. In approving a grant, BLM may place restrictions on the amount of hazardous materials stored or disposed of, the length of the time during which such material may be stored or disposed of, and the manner in which such storage or disposal may take place, among other conditions. Any storage of hazardous waste on site must be in compliance with applicable Federal and state law.

Several commenters said that there is no rationale for requiring an annual report for each grant on EPCRA and said that proposed section 2805.10(c)(11) defeats the purpose of streamlining and creates even more burden on industry and applicants. Commenters also said that right-of-way grantees must already file this under title III of the Superfund Amendments and Reauthorization Act. In the final rule we removed the requirement for an annual statement from each holder, but we expect grant holders to notify BLM, as appropriate, should reporting conditions change on their right-of-way, even if there is not an assignment, renewal, amendment, or termination action. The purpose of this provision is to ensure that BLM has current information about a holder's use of certain substances on a right-of-way by requiring certifications stating that a holder has complied with EPCRA, including emergency reporting, timely submission of inventory forms, preparation of emergency response plans, and reporting of toxic chemical releases.

Several commenters suggested that proposed paragraph 2805.10(c)(12) be amended to read ''to a condition as near as possible (or practical) to the area's original condition'' rather than to the satisfaction of the BLM. We did not change the final rule as a result of this

comment. In enforcing this final rule at section 2805.12(m), BLM expects, in general, to require remediation and restoration to pre-release conditions. However, BLM is responsible for administration of the public lands and is ultimately responsible for determining what is acceptable reclamation. BLM cannot rely solely on cleanup standards and requirements imposed by other regulatory agencies, because those standards and requirements vary widely among jurisdictions, and frequently only require that significant public health risks be abated. BLM has obligations under FLPMA and other laws to protect public lands and resources from degradation and must make the final determination as to the adequacy of any remediation or restoration.

A number of commenters objected to the requirement in proposed section 2805.10(c)(12) that a holder control and remove any release or discharge of hazardous materials that occurs on or near the right-of-way. One commenter said that a grantee's duties should be limited to those releases and discharges for which a grantee is personally responsible because a grantee cannot always restrict access to the right-of-way. The commenter said that to control any release on or near the right-of-way is an impossible standard. For example, a hunter might change the oil in his car while waiting for the birds to come in, or an unknown person might dump a load of old batteries and oil filters on a right-of-way. The commenter asked how an operator can be held responsible for an occurrence near his right-of-way that he has no control over. We amended the proposed rule because of these concerns. The final rule at section 2805.12(m) imposes an obligation on the holder to control and remove any release or discharge of hazardous materials arising in connection with the holder's use and occupancy of the right-of-way. That is, the grant holder is responsible for controlling any release or discharge of such material on or near the right-of-way, and attributable to the holder's operations. For example, the holder will be responsible for remediating any such releases or discharges, whether on the right-of-way or nearby areas, caused or contributed to by its construction, use, operation, or maintenance activities.

BLM does not agree, however, that a holder's obligation to control and remove releases or discharges of hazardous materials should be limited to those releases or discharges caused by the holder. Final section 2807.12(b)(2) and its predecessor 43 CFR 2803.1–5(b) impose strict liability upon a holder for costs incurred by the United States to control or abate conditions, such as fire or oil spills, which threaten life, property, or the environment. Consistent with this strict liability, holders have a corresponding duty to control and remove any release or discharge of hazardous materials, notwithstanding the conduct of a third party causing such release or discharge. Thus, if a third party enters onto a right-of-way and causes a release or discharge of hazardous materials resulting from activities or facilities associated with the right-of-way area, even if the release or discharge is unauthorized by the grant holder, the grant holder must control and remove the hazardous materials. The grant holder can, as provided under applicable state or Federal law, seek contribution or reimbursement from any otherwise liable third party. Subrogation provisions appear at final section 2807.12(b)(5) and previous section 2803.1–5(c).

In providing in final section 2805.12(m) that a holder's remediation and restoration obligations go beyond the boundaries of the right-of-way, BLM intends that holders fully address releases and discharges of hazardous materials attributable to the holder's operations. Thus a holder's duty extends to any such release or discharge on the right-of-way itself and on any nearby lands to which the release or discharge has migrated. This duty to address a release or discharge of hazardous materials off Federal lands does not enlarge the geographic scope of a holder's duty. Previous 43 CFR 2803.1–5(b) and final section 2807.12(b) extend a holder's strict liability to costs incurred by the United States to control or abate conditions, such as fire and oil spills, which threaten lives, property, or the environment, regardless of whether the threat occurs on areas that are under Federal jurisdiction.

Section 2805.13 When Is a Grant Effective?

This section explains that a grant is effective after you and BLM sign it and that you must accept its terms and conditions in writing and pay any necessary rent and monitoring fees. In general, the process involves BLM sending you an unsigned right-of-way grant and you returning the signed grant for BLM's signature. The package we send you will include a:

(A) Grant, containing terms, conditions, and site specific stipulations;

(B) Determination of the estimated rental, if appropriate; and

(C) Monitoring fee determination, if that determination was not previously made.

You must accept the provisions of the grant and signify that by signing the grant and sending it back to BLM with any required rental payment and monitoring fee payment. When BLM receives the grant and all fees and signs the grant, it is effective. You may also ask BLM for the process to occur face-to-face, so that you may avoid delays caused by mailings. This section was proposed as section 2805.11.

Section 2805.14 What Rights Does a Grant Convey?

This section explains that the grant conveys only those rights it expressly contains and that BLM issues the grant subject to valid existing rights of others, including the United States. The grant conveys to you the right to:

(A) Use the lands described in the grant for authorized purposes;

(B) Allow other parties to use, and charge for the use of, your facilities on the grant for authorized purposes. You may do this only if the grant specifically authorizes it or BLM authorizes or requires it in writing;

(C) Allow others to use your right-of-way as your agent;

(D) Do minor trimming, pruning, and removing of vegetation to maintain the right-of-way or facility;

(E) Use common varieties of stone and soil which are necessarily removed when constructing part of the project, without additional BLM authorization or payment, in constructing other parts of the project within the authorized right-of-way; and

(F) Assign the grant to another, provided that you obtain BLM's prior written approval.

With the exception of editorial changes, this final section contains the same requirements as proposed section 2805.12.

One commenter said that the second sentence of proposed paragraph (b) should be rewritten to read: ''Otherwise, you may not let anyone else use your facility unless BLM authorizes it.'' The commenter said that the phrase ''or requires it in writing'' should be stricken. BLM disagrees. Paragraph (b) says that you may not allow other parties to use your facility unless your grant specifically authorizes it or BLM authorizes it or requires it in writing. This means that when a third party wants to use your facility and your grant does not specifically allow you to sublease your facility or approve the third party use, the third party must request and receive a separate right-of-way grant from BLM for the use.

If the added third party use is a change of use on your right-of-way, you must request an amendment to your grant so BLM can recognize the change in use of the facility beyond what was originally granted. An example of this is a proposal for a third party phone cable to be installed on an existing electric power distribution line right-of-way. If the power line grant did not provide for the phone cable, we would require a new right-of-way grant for the phone company use and an amendment to the power line right-of-way grant to recognize the change in use of the original grant. Experience has shown that there are circumstances where BLM will require joint use of an authorized facility. For example, we may condition access road grants with requirements that you share maintenance responsibilities with other authorized road users. This is consistent with final section 2805.15(b), which allows BLM to require common use of your right-of-way for compatible uses.

The same commenter opposed BLM requiring grant holders to allow joint-use on power poles without full consent, a joint-use agreement with the second party, and full compliance with the National Electrical Safety Code. Paragraph (b) does not give BLM authority to authorize a third party to use a grant holder's facility without the holder's permission, unless that grant specifically stated that the holder would provide space for additional users. The paragraph limits the holder's ability to lease or sublease its facility to another party without first obtaining BLM approval.

Several commenters said that the final rule should make clear whether BLM intends to preclude electric utilities from charging the ''just and reasonable rates'' utilities are required to charge telecommunications entities who attach facilities to existing utility structures under the authority of the Pole Attachments Act (47 U.S.C. 224). BLM believes the comments are outside the scope of these regulations. There is nothing in the final rule that affects the rights of a holder to charge a reasonable rate to a telecommunications utility that wants to attach facilities to existing structures.

One commenter wanted a more thorough explanation of the minor trimming, pruning, and vegetation removal allowed to maintain a right-of-way facility because of the importance to insure safety and reliability on electric utility rights-of-way. The commenter suggested that we amend paragraph (d) by adding ''for the prevention of fire, and promotion of public health and safety, using appropriate industry standards, and in accordance with an integrated vegetation management plan if one is warranted and has been developed as part of the terms of the grant'' to the end of the sentence. The commenter said that the practice of charging timber cost for the removal of trees that jeopardize facilities in an authorized right-of-way is inconsistent with the partnership established between BLM and the grant holder at the time of the grant regarding safety and fire prevention. Further, the commenter said that the regulations should be clarified to exempt the cost of removing timber or other vegetation immediately adjacent to a grant. The commenter said that holders should not be charged for removing trees that may fall into transmission wires and result in fires, outages, or injuries to personnel maintaining the right-of-way.

BLM did not amend the final rule as a result of these comments. However, we will describe our trimming, pruning, and removal practices in the terms and conditions of the grant, and they will be part of the grant's plan of development, as necessary. We recognize the need for utility companies to perform maintenance pruning, trimming, and clearing under aboveground electric distribution and transmission lines for safety purposes. Minor pruning, trimming, and clearing refers only to maintenance activities after the right-of-way is constructed, not to removal of vegetation during initial construction.

Any time a holder plans to remove vegetation that is not authorized by the terms of the grant or that falls outside the boundary of the right-of-way, the holder must submit to BLM a request for approval to perform those activities prior to commencing the activity (see section 504(f) of FLPMA). Although not specifically mentioned in the proposal or this rule, the Materials Act of July 31, 1947, as amended (30 U.S.C. 601, 602), requiring you to pay for the removal of merchantable timber or common varieties of stone, applies to rights-of-way issued under these regulations (see 43 CFR parts 3600 and 5400). Once you construct on the right-of-way, you may perform minor trimming, pruning, and clearing of lands covered by the grant to maintain safety of right-of-way operations. If you need to perform additional work outside the boundary of the right-of-way, BLM would require an amended grant or new approval. We recommend that you plan and request this well in advance of the anticipated work schedule.

Many utility companies are now cooperating with Federal agencies in preparing vegetative treatment plans on a landscape basis to reduce the threat of catastrophic fires. These plans address vegetation treatment projects near large transmission facilities to help prevent catastrophic fires from damaging transmission facilities.

Oil and gas industry commenters recommended that the following language should be incorporated as terms and conditions in lieu of BLM's language:

> Lessees and operators have the responsibility to see that their exploration, development, production, and construction operations are conducted in a manner that conforms with:
> (a) Applicable Federal laws and regulations;
> (b) State and local laws and regulations;
> (c) Terms and conditions of permits and other approvals;
> (d) Notices to Lessees; and
> (e) Written orders or other BLM instructions.

BLM did not change the final rule as a result of this comment. The language suggested by the commenters is too broad to be useful for terms and conditions in FLPMA and MLA right-of-way grants. We believe the terms and conditions in this final rule are more appropriate for both FLPMA and MLA right-of-way grants than those listed by the commenters.

Section 2805.15 What Rights Does the United States Retain?

This section describes the rights that the United States retains when it issues a right-of-way grant. The United States retains any rights the grant does not expressly convey to you, including the right to:

(A) Access the lands covered by the grant at any time and enter any facility you construct on the right-of-way. BLM will give you reasonable notice before it enters any facility on the right-of-way;

(B) Require common use of your right-of-way, including subsurface and air space, and authorize use of the right-of-way for compatible uses. You may not charge for the use of the lands made subject to such additional right-of-way grants. Proposed section 2805.13(b) stated BLM could require common use of the land in your right-of-way. BLM has reworded the paragraph and added the phrase ''including subsurface and air space'' to the final rule to make it clear that BLM would also consider the subsurface and associated air space, including air waves, to be areas open to common use. The interest granted in a FLPMA (or MLA) right-of-way is, and always has been, a non-exclusive right (see section 503 of FLPMA). It does not convey to the holder any right to use the land for purposes other than those stated in the grant;

(C) Retain ownership of the resources of the land. You have no right to use

these resources, except as noted in section 2805.14 of this subpart;

(D) Determine whether or not your grant is renewable; and

(E) Change the terms and conditions of your grant through changes in legislation or regulation or as otherwise necessary to protect public health or safety or the environment.

Except for the changes noted above, and minor editorial changes, the requirements of this section are the same as proposed section 2805.13.

Several commenters said that BLM should not be allowed access to right-of-way grant areas until its employees can demonstrate adequate safety training commensurate with the facility. BLM did not amend the final rule to address this comment, but agrees with the comment's emphasis on safety. Should activities on the lands in a right-of-way grant pose any kind of threat to any visitors of a site, whether during construction or operation of the facility, the holder should provide adequate safety training to all such visitors. This is not limited to BLM personnel, but to anyone visiting the site. It is the holder's responsibility to identify unsafe conditions and provide suitable training. Where appropriate, this will be a term and condition of a grant. Likewise, if any required safety equipment is necessary to visit a right-of-way area, the holder should identify those needs and provide the appropriate equipment. This is consistent with existing policy.

A few commenters said that BLM should notify grant holders when others request a grant using the same corridor and should allow the current grant holder to make recommendations to maintain the integrity of its facilities in the corridor. BLM agrees with the comment but did not amend the final rule. It is our continued policy to notify all affected interests of new right-of-way proposals, especially existing right-of-way holders, in situations where we require common use of a right-of-way area.

Several commenters said that it must be clear that both parties, BLM and the holder, are bound by grant terms and conditions and BLM cannot later change or add conditions. BLM believes it necessary to include provisions in the final rule that allow BLM to amend the terms and conditions of right-of-way grants. Over the life of a grant, many things change that affect management of public lands. New laws are passed and new regulations are enacted that holders must comply with. Thus, if conditions warrant, BLM must be able to change, add, or delete terms and conditions of a grant to comply with these changing conditions on affected lands and to protect the public interest. Section 2805.12(a) of this final rule is consistent with this position.

Our position is in harmony with FLPMA. Section 504(e) of FLPMA gives the Secretary the authority to ''issue regulations with respect to the terms and conditions that will be included in rights-of-way pursuant to section 505 of this title,'' and makes revised regulations applicable to ''every right-of-way granted or issued pursuant to this title and to any subsequent renewal thereof * * *'' In addition, protection of public health or safety or the environment is set forth at section 506 of FLPMA as a basis for the Secretary to abate and temporarily suspend a holder's activities on the right-of-way, even prior to an administrative hearing. These two statutory provisions set reasonable limits on our ability to change terms and conditions. If BLM should add terms and conditions adversely affecting a holder, a right of appeal to IBLA would lie under 43 CFR Part 4.

Section 2805.16 If I Hold a Grant, What Monitoring Fees Must I Pay?

The provisions in this section were proposed in section 2805.14. In the final rule we renumbered the monitoring categories and modeled them (and the category fees) after the final numbering and associated fees of the processing categories in final section 2804.14. We did this to make the final rule easier to understand, and to be able to recover the necessary costs associated with monitoring a right-of-way grant.

Under this section you must pay to BLM a fee for the reasonable costs the Federal Government incurs in monitoring the following six activities: project construction, operation, maintenance, termination, and protection and rehabilitation of the public lands the grant covers. Category 1 through 4 monitoring fees are one-time fees and are not refundable. BLM categorizes the monitoring fees based on the estimated number of work hours necessary to monitor your grant.

In the proposed regulations at section 2805.14(a), we said that BLM would use the same category for monitoring as it did in establishing the processing fee category. Alternatively, we requested public comment on whether to separate processing fees from monitoring fees (see 64 FR 32109). One commenter thought that processing and monitoring fees should remain linked. Another commenter agreed that it is generally appropriate to associate monitoring costs with the size of the project, and to set a rate schedule accordingly. BLM's alternative proposal would establish monitoring fees based on the number of work hours required to monitor grants. We have determined that there are enough instances where the processing times and monitoring times for a given application would not fall into the same category that separating the processing and monitoring categories is warranted.

One commenter stated that BLM should continue to determine both the processing and the monitoring category fees as one process because it would be more efficient. We disagree with the commenter. BLM will determine the processing categories and monitoring categories separately, based on hours, as described in the ''revised category definitions'' section of the preamble of the proposed rule (64 FR 32109). Determining processing and monitoring costs separately provides a more accurate calculation of reasonable costs. The hours to monitor a grant may vary significantly from the hours BLM needs to process the application. If there is any increase in staff time to make the determinations separately, we expect it to be minimal.

The final rule uses the total number of hours necessary to ensure compliance with the terms, conditions, and stipulations of a grant to determine the category. Our rationale for eliminating the proposed criteria for setting the monitoring fee is the same as we discussed at section 2804.14 of this preamble for eliminating the proposed criteria for processing fees.

For Categories 1 through 4, holders pay monitoring fees in accordance with the chart, which will be adjusted annually. For Categories 5 and 6, holders pay monitoring fees in accordance with signed agreements for those categories (see section 2805.17(b) and (c)).

BLM annually updates Category 1 through 4 monitoring fees in the manner described at section 2804.14(c) of this part. BLM updates Category 5 monitoring fees as specified in the Master Agreement. The monitoring cost schedule is available from any BLM office or on BLM's National Home Page on the Internet at *http://www.blm.gov* and is published for calendar year 2005 in the final rule in a chart format.

In the final rule we added a chart showing monitoring fee amounts for each category, similar to the processing fee chart in section 2804.14(b). The chart clearly describes the divisions between monitoring fee categories. We made this chart consistent with the anticipated Forest Service rule for cost recovery to minimize confusion for those right-of-way customers that do business with both agencies.

The Forest Service recommended that we revise the first sentence of proposed section 2805.14(b) to read: ''For Categories I through IV, there is a one-time payment for all monitoring fees based on a fee schedule available from any BLM office.'' BLM agrees that we should clarify this. In the final rule we added a sentence to section 2805.16 to make it clear that Category 1 through 4 monitoring fees are one-time fees and are not refundable.

One commenter thought that categories for monitoring fees based on the number of hours it takes to monitor a grant was not an appropriate measure because each case and each EA could require different monitoring based on the mitigation required for that case. BLM believes that by eliminating the link between processing and monitoring fees that existed in previous regulations, we will be able to more accurately estimate the hours necessary to monitor the grant. When we issue a grant, we will have completed an EA or EIS that will set out the required mitigation. Therefore, there should be enough information to support our estimate of the time required to monitor the project.

One commenter thought that BLM should not charge for monitoring because:

(A) The costs of monitoring right-of-way grants are paid for out of taxpayers' money; and

(B) Monitoring is a fairly simple, straightforward process.

BLM disagrees with the comment and did not amend the final rule as a result of it. While monitoring can be a fairly straightforward process, we believe the costs to perform compliance inspections should not be paid for with taxpayers' money. Were it not for the existence of the right-of-way, there would not be the need to monitor. The holder of the grant should be responsible for these costs. Statutory authority supports our position. Section 504(g) of FLPMA gives BLM the authority to require right-of-way grant holders to reimburse the United States for inspection and monitoring of construction, operation, and termination of right-of-way grants. Section 28 of the MLA, 30 U.S.C. 185(l), provides similar authority.

One commenter thought that monitoring should be a one time event to ensure compliance and not an annual or continuing function. We amended the final rule by making it clear in the definition of monitoring (see section 2801.5), that we monitor Categories 1 through 4 from the time of construction and until the holder completes rehabilitation activities and BLM approves them. For Categories 5 and 6, monitoring will occur as defined in the agreement for those categories, which may include long-term monitoring throughout the life of the project.

Several commenters thought that taking multiple trips to a right-of-way was an integral part of the duties of land stewardship and should not be charged as part of monitoring fees. They were concerned that BLM was proposing to require industry to pay for functions BLM currently covers. Under this final rule and previous regulations it is the grant holder's responsibility to reimburse the Federal Government for monitoring grants. As stated above, section 504(g) of FLPMA makes it clear that inspections and monitoring of construction, operation, and termination of a facility are costs that the United States can require an applicant or holder to reimburse. Most monitoring costs are incurred during construction and rehabilitation activities. In order to ensure a grant holder is complying with the terms and conditions of the grant, it is likely that BLM will make multiple trips to a right-of-way area during the construction and rehabilitation phase of the project for most types of right-of-way projects that we would not make if there were no authorization in place.

One commenter thought BLM should prorate monitoring fees when the costs incurred by the agency are spread over two or more permit holders as would be the case with communication sites. The commenter thought there should be a fixed schedule in cases where the monitoring activity involves a number of different facilities managers/permit holders at the same site. They said that BLM's actual monitoring costs per permit holder are likely to be lower because monitoring expenses are spread over a larger number of permit holders. BLM disagrees and did not amend the final rule as a result of this comment. As previously stated, most monitoring costs are incurred during construction and rehabilitation activities. Even in the case of communication sites where a number of facilities are located together, it is unlikely that initial construction or other phases of the project would take place for multiple holders at the same time. Therefore, prorating monitoring fees among various holders, even on a communication site lease, is not practical or appropriate.

Several commenters said that costs associated with BLM's review of monitoring data collected by industry should be included in the base charge and rental for rights-of-way. We disagree. Section 504(g) of FLPMA makes a distinction between rent and those ''reasonable administrative and other costs incurred in processing an application * * * and in inspection and monitoring.'' Two separate charges are authorized, and BLM is careful to avoid mixing the two. BLM typically only requests monitoring data for Category 6 applications. In these cases, BLM will include the costs of reviewing monitoring data supplied by the applicant in our determination of monitoring costs.

Section 2805.17 When Do I Pay Monitoring Fees?

This section explains that for:

(A) Monitoring Categories 1 through 4, unless BLM otherwise directs, you must pay monitoring fees when you submit to BLM your written acceptance of the terms and conditions of the grant;

(B) Monitoring Category 5, you must pay the monitoring fees as specified in the Master Agreement. BLM will not issue your grant until it receives the required payment;

(C) Monitoring Category 6, you must pay the monitoring fee as specified in the financial plan of your cost recovery agreement. If BLM has underestimated the monitoring costs, we will notify you of the shortfall. In addition, BLM may periodically estimate the costs of monitoring your use of the grant; and

(D) Monitoring Categories 1–4 and 6, if you disagree with the category BLM has determined for your grant, you may appeal the decision under section 2801.10 of this part.

Subpart 2806—Rents

The final subpart is organized differently from the proposed rule in that it is divided into several sections as follows:

(A) General provisions, applicable to all grants;

(B) Linear rights-of-way, applicable to linear grants only;

(C) Communication site rights-of-way, applicable to grants containing telecommunications facilities; and

(D) Other rights-of-way, applicable to miscellaneous grants, such as those for wind energy facilities.

We also divided the final rule into the several different areas by subject matter so that it is easier to read and follow.

General Provisions

Section 2806.5 (Proposed) What Definitions Do I Need To Know To Understand These Regulations?

We moved most of the definitions proposed in this section to the general definitions section of this rule (see section 2801.5) and deleted others from the rule. As a result, we deleted this section from the final rule. Please refer to the discussion of section 2801.5 for responses to any comments and

explanations of any changes to the definitions proposed in this section.

We deleted the definitions of ''Reselling'' and ''Zone value'' from the final rule. We deleted the definition of ''Reselling'' because the term is not used in the final rule. We deleted the definition of ''Zone value'' because it is only used in the Per Acre Rent Schedule (see final section 2806.20). However, the rule continues to define the term ''Zone'' (see final section 2801.5) and the schedule makes it clear that rent is based on the zone where the linear right-of-way is located and that rental values change in each zone.

Section 2806.10 What Rent Must I Pay for My Grant?

Paragraph (a) of this section explains that before you receive a right-of-way grant you must pay in advance a rent that BLM established based on sound business management principles and as far as practical and feasible, using comparable commercial practices. This section makes clear that rent does not include processing or monitoring fees, but is in addition to those fees. Also, BLM may exempt, waive, or reduce rent as provided in sections 2806.14 and 2806.15 of this final rule.

Paragraph (b) of this section explains that if your grant was issued before FLPMA, you may request an informal hearing with BLM before we increase your rent as, for example, a result of initially placing your grant on the rent schedule at section 2806.20.

We amended the final rule to make clear that rent is separate from and in addition to processing or monitoring fees to eliminate possible confusion for applicants concerning fees that are associated with obtaining a right-of-way grant. This section was proposed as the opening paragraph of proposed section 2806.10 and with the exception of the changes mentioned above and editorial changes, it remains as proposed.

Some commenters asked that the final rule define the term ''sound business management principles.'' This term has appeared in BLM's rental regulations for over 15 years. When first introduced in 1987, BLM described at length the standards and assumptions that inform this term (see 52 FR 25811–25818 (July 8, 1987). We did not define ''sound business management principles'' in the final rule. We believe it is sound business management to determine rent through a system of rent schedules. Using rent schedules eliminates the need to prepare an individual appraisal report for each of the estimated 3,500 grants and leases BLM issues each year. It is not feasible or cost effective to prepare, review, and approve individual appraisal reports for each right-of-way because of the time and expense required to prepare and review appraisal reports. The phrase is in previous section 2803.1–2(a) and it is only used once in these regulations in section 2806.10.

Several commenters asked how BLM establishes fair market value and how fair market value compares to the appraised value. Several commenters asked if the method for determining fair market value established in this section was an accurate method. Another commenter said that BLM should establish in the regulations the process for determining fair market value.

As previously explained, BLM uses rent schedules to determine fair market value rent for some types of right-of-way grants. The rents in the schedules are based on a comparative market analysis of rents for rights-of-way in the private sector. Please see the preamble discussion in BLM's 1987 rule at 52 FR 25811 for more information. We started using a schedule system (in 1987 for the linear schedule and in 1997 for the communication site schedule) in response to multiple appeals and legal challenges to our linear and communication site appraisals that we used at the time to determine rent. We believe that if BLM reverted to using individual appraisals to determine rent, rentals may be higher than under the current schedule system, but the cost to the agency to prepare individual appraisals would be more than the amount of rent we could collect and therefore would not be justified. BLM believes the schedules are customer friendly, efficient to implement and use, and reflect fair market value for the use of the land.

This final rule does not change our existing policy, reflected in BLM regulations since 1987 (52 FR 25818, July 8, 1987; 52 FR 36576, Sept. 30, 1987, as amended at 60 FR 57070, Nov. 13, 1995) for rent schedules for linear rent and since 1995 for communication site rents. We developed both the linear rent schedule and the communication site rent schedule based on analysis of market data and a great deal of public comment and involvement.

We do not agree with the comment that the process to determine fair market value should be established in the rule. BLM is required to follow recognized standards in determining fair market value. In determining fair market value we rely on the standards in the ''Uniform Appraisal Standards for Federal Land Acquisition'' published by the Appraisal Institute in cooperation with the Department of Justice and the ''Uniform Standards of Professional Appraisal Practice'' published by the Appraisal Standards Board.

Several commenters said that the final regulations should make clear what costs the rents are targeted toward recovering and what value or rights the payment of rents conveys. The rule does not authorize BLM to recover costs through rent collection. With one exception, rental payments go directly into the U.S. Treasury and are not allocated to BLM. The one circumstance where BLM is allowed to keep rental payments is for communication site rights-of-way. In 1996 Congress passed the 1996 Interior and Related Agencies Appropriation Act, which allowed BLM to keep the first $2 million in annual communication site rent collections. BLM uses this money to manage communication site rights-of-way. We did not change the final rule to address this comment.

The same commenters said that it was unclear to what extent improvements on rights-of-way, including the co-location of fiber optic transmission facilities, results in additional occupation of Federal lands. The commenters said that it seemed reasonable to charge rent for the extent to which right-of-way activities foreclose other activities, but that it seemed unreasonable to charge grantees additional rent for improvements on a line, such as adding telecommunication facilities, that have no additional material impact on public lands. We disagree with the comment that it is not reasonable to charge rent for co-located facilities on a right-of-way. BLM establishes rent using schedules that reflect what many right-of-way holders pay for comparable right-of-way uses on non-public lands.

BLM issues a non-exclusive grant for right-of-way uses. The terms and conditions in BLM grants do not allow additional uses or users beyond what the grant specifies. Any co-location of additional facilities by third parties requires the party to obtain its own separate grant (except in the case of a communication site lease which allows third parties to act as customers and tenants without a grant from BLM). The third party must pay rent unless the use qualifies for a rental reduction or is exempted from paying rent. A proposal by a grant holder to co-locate new facilities in an existing right-of-way facility requires a grant amendment if there is a substantial deviation or change in use from the original grant. Amendments, therefore, usually result in added rental for the holder, even when the new use may not physically impact public lands. We interpret section 504(g) of FLPMA to require the holder to pay the fair market value

(FMV) of the use of the land, not simply for impacts to the land, as the commenter suggests (see 43 U.S.C. 1701(a)(9)). An example of this occurs when additional communication facilities are added to an existing communication site building with no changes to the structure. In many cases, right-of-way grants acquired in the private market do not allow the holder to add more facilities without first acquiring additional rights from the private landowner at additional cost. BLM believes it is reasonable for the Federal Government to require rental payments when holders acquire additional rights from BLM to co-locate facilities.

A few commenters said that rents are far too low. They said that the public will never receive FMV for rights-of-way unless BLM increases rents. This final rule does not change our current policies regarding payment of rent except that final section 2806.12 makes adjustments to the cycle BLM will use to send out rental notices. We believe that existing policy and these regulations provide payment of FMV for the use of public lands in accordance with section 504(g) of FLPMA (see the preamble to the 1987 rule at 52 FR 25811).

Section 2806.11 How Will BLM Charge Me Rent?

Paragraph (a) of this section explains that BLM will charge you rent beginning on the first day of the month following the effective date of the grant through the last day of the month when the grant terminates. It also provides an example. This provision will make it simpler for field offices to uniformly calculate rents.

Paragraph (b) of this section explains that BLM will set or adjust payment periods to coincide with the calendar year by prorating rents based on 12 months.

We moved the substance of proposed section 2806.10(c) to final section 2806.23. Please see the discussion of that section for changes to the rule.

Under final paragraph (c) of this section, if you disagree with the rent BLM charges, you may appeal the decision to the IBLA.

With the exception of editorial changes and the changes noted above, this section is the same as proposed sections 2806.10(a), (b), and (e).

Section 2806.12 When Do I Pay Rent?

This section explains that you must pay the rent for the initial rental period before BLM issues you a grant. You must make all other rental payments for linear rights-of-way according to section 2806.23 of this subpart.

This section also explains that after the first rental payment, all rent is due on January 1 of the first year of the succeeding rental period. We amended the proposed provision of this section to make it more administratively efficient to pay and collect rent. This section is consistent with previous section 2803.1–2. Prior to the 1987 regulations, BLM sent rental notices to many right-of-way holders prior to the grant's anniversary date and payment was due each year on the anniversary date of the grant. This was an ongoing administrative burden on BLM personnel because they had to send rental notices to holders throughout the entire year on the anniversary date of each grant. In a BLM field office that administers thousands of right-of-way grants, it made tracking payments and sending rental notices a labor intensive task each month. In 1987, BLM modified our right-of-way regulations and required that all grants be converted to a calendar year billing cycle with rent due January 1 of each year (see 52 FR 25814). We also started sending consolidated rental notices to the holders of multiple grants, instead of multiple notices. This process reduces the number of rental notices, and simplifies notifying holders of multiple right-of-way grants. A rental notice is provided as a courtesy by BLM. Since all of BLM's rental notification workload is completed at one time of the year, we find fewer past due rental accounts. For these reasons, the final rule carries forward these procedures.

Section 2806.13 What Happens If I Pay the Rent Late?

This section explains that if BLM does not receive your rent payment within 15 calendar days after the rent is due (January 15), BLM will charge you a late payment fee of $25.00 or 10 percent of the rent you owe, whichever is greater, not to exceed $500 per authorization. In the proposed rule we asked for your comments on late payment assessments and cited 43 CFR 2920.8(a)(3) and 43 CFR 4130.8–1(f) as examples. This final provision is similar to existing regulations at 43 CFR 4130.8–1(f) except that it sets the cap on late payment assessments at $500, double the amount in 43 CFR 4130.8–1(f). Under this rule, the assessment is for each authorization so that a holder with multiple right-of-way grants would be assessed the late payment fee for each right-of-way grant. BLM's rental notice is provided as a courtesy. Failure to receive a courtesy notice will not excuse late payment of rent.

Under this section, if BLM does not receive your rent payment and late payment fee within 30 calendar days after rent is due, BLM may collect other administrative fees provided in BLM's National Business Center Manual, Collections Reference Guide, 1998, including fees chargeable under the Debt Collection Improvement Act, 31 U.S.C. 3701, and other statutes. This rule does not change already established procedures under the Debt Collection Improvement Act which we follow regarding all monetary debts owed.

If BLM does not receive the rent, late payment fee, and any administrative fees within 90 calendar days after the rent is due, BLM may terminate your grant under final section 2807.17. If BLM terminates your grant for this reason, you may not remove any structures, buildings, or equipment without BLM's written permission. Any rent due, late payment fees, and administrative fees remain a debt that you owe to the United States. Of course, holders may take corrective measures within this 90-day period so the grant is not terminated. Proposed section 2806.13 stated that BLM may terminate your grant when rent payment is delinquent for 30 days after BLM sends you a payment notice.

If you pay the rent, late payment, and any administrative fees after BLM terminated the grant, the grant is not automatically reinstated. You must file a new application with BLM. BLM will consider the history of your failure to timely pay rent in deciding whether to issue you a new grant.

BLM does not send bills for rent due on a right-of-way grant. Instead, BLM sends grant holders a courtesy notice on December 1 for any rent that is due on the following January 1. This notice is currently generated by our automated lease management system. The system consolidates all amounts due for one holder and generates an itemized statement for multiple grants. After the first rental payment, rent is always due on January 1 of the first year of each succeeding rental period for the term of the grant, even if a courtesy notice does not reach the holder.

In addition to the rent, late payment, and administrative fees authorized under these regulations, BLM collects interest on outstanding debts owed the Federal Government (see 31 U.S.C. 3717). BLM currently collects interest for late payment of rental fees and will continue to do so after publication of this final rule.

You may appeal any adverse action BLM takes against your grant to the IBLA under section 2801.10 of this part.

We received several comments on late payment assessments. Several commenters supported this concept, as

it is a standard industry practice to add penalties for late payments. One commenter said that the final rule should allow grant holders to rectify the error within 90 days of a notice. Several commenters said that due to the burden and cost of administering late payment fees, they would recommend against using them. In the final rule we adopted a late payment fee. If you do not pay your rent, this fee is applied automatically 15 calendar days after the due date (*e.g.*, if we do not receive your payment by close of business January 15, you will receive a notice assessing a late payment fee). We do not agree that holders should be given 90 days to rectify errors without assessing the late payment fee and did not change the final rule as a result of this comment. It is common practice in landlord/tenant situations to charge a late payment fee upon default of the payment terms, and we believe it is reasonable for the Federal Government to do so.

One commenter said that it was concerned that under the proposed rule, there are situations where a new company could be assessed a penalty for a permit that was ''not in the original assignment and was found at a later date.'' The commenter said that the cost of the rent should rightly be assessed, but the late penalty should not. We agree with the commenter in part.

BLM must approve all proposed assignments in writing before they are effective. Prior to this approval, BLM must ensure that the holder is in compliance with all terms and conditions of the grant, including any rental obligations. Any past due rent, including late fees and administrative fees, must be paid before BLM will approve the grant assignment to the new entity. The new holder would not be liable for late fees or administrative fees incurred by the previous holder, but could voluntarily pay past rent, late fees, and administrative fees to facilitate completion of the assignment.

Several commenters said they did not object to late payment charges as long as BLM gives the grant holder at least 90 days prior notice that rent is due. The commenters said late fees should not apply if late payments resulted from BLM's late notice or late credit. BLM strives to make sure you receive a courtesy notice of your due rent in a timely manner. However, if you do not pay your rent on time, a late payment fee will be charged, regardless of whether you received a courtesy notice. We do not agree with the comment that holders should be given a 90-day notice of rent being due. In many landlord-tenant relationships, tenants are not given any notice that rent is due. We believe a 30-day courtesy notice is reasonable and provides adequate notice. Also, payment of rent is a term and condition of a grant and this fact provides additional notice at the outset of the grant of a holder's obligation to pay rent.

Several commenters said the existing regulation's requirements for late payment (*i.e.*, grant termination and resubmittal requirements) are deterrent enough for late payments and that if BLM decides that there should be a late payment fee, the right-of-way industry should be involved in setting the guidelines. We disagree with this comment. In a 1995 report, the Department's Inspector General found that it cost one Department of the Interior agency approximately $34 to issue, process, and collect individual bills. In light of this finding, the $25 or 10 percent of the rent owed standard is reasonable, is consistent with other BLM regulations (*e.g.*, 43 CFR 4130.8–1(f)), and will apply to late payment of right-of-way rents as well.

Section 2806.14 Under What Circumstances am I Exempt From Paying Rent?

This section explains that you do not have to pay rent for your use if:

(A) BLM issues the grant under a statute which does not allow BLM to charge rent;

(B) You are a Federal, state, or local government or its agent or instrumentality, unless you are:

(1) Using the facility, system, space, or any part of the right-of-way area for commercial purposes. We added the term ''facility'' and the phrase ''any part of the right-of-way area'' to this section to help explain that BLM would require a Federal, state, or local government to pay rent if any part of the right-of-way area is being used for commercial purposes; or

(2) A municipal utility or cooperative whose principal source of revenue is customer charges;

(C) You have been granted an exemption under a statute providing for such; or

(D) Electric or telephone facilities constructed on the right-of-way were financed in whole or in part, or eligible for financing, under the Rural Electrification Act of 1936, as amended (REA) (7 U.S.C. 901 *et seq.*), or are extensions of such facilities. You do not need to have sought financing from the Rural Utilities Service to qualify for this exemption, but BLM may require you to document the facility's eligibility for REA financing. For communication site facilities, the addition or inclusion of non-eligible facilities as, for example, by tenants or customers, on the right-of-way will subject the holder to rent in accordance with sections 2806.30 through 2806.44 of this subpart.

The proposed rule specified that BLM would charge rents to REA holders if they operated their right-of-way as a commercial communications company, had tenants in their communication site, or provided communication services for commercial purposes. We made the final rule consistent with the statute and specifically address communication site facilities with subleasing provisions.

We modified the proposed rule to be consistent with changes to the statutory provisions dealing with the REA exemptions. In 1996, Congress enacted Public Law 104–333, amending section 504(g) of FLPMA to read: ''Rights-of-way shall be granted, issued, or renewed, without rental fees, for electric or telephone facilities eligible for financing pursuant to the Rural Electrification Act of 1936, as amended, determined without regard to any application requirement under that Act or any extensions from such facilities.'' Congress made this change to exempt from rent those rights-of-way for electric or telephone facilities eligible for REA financing, but not financed through REA. Therefore, it is the eligibility of the facilities, rather than the eligibility of the owner or operator of the facilities, that is the focus of amended section 504(g). If electric or telephone facilities within a right-of-way are financed by REA, *or are eligible for such financing,* the right-of-way qualifies for a rent exemption. Thus, large utilities and rural cooperatives alike are eligible for rent exemptions if the facilities that they build are REA eligible. Previous regulations did not reflect the 1996 changes to the statute and final paragraph (d) of this section implements current statutory authority.

Several commenters said that the proposed rent increase would disproportionately and adversely impact ''about 750 RUS [Rural Utilities System] telephone borrowers that serve sparsely populated high cost rural areas.'' The commenters said that they face uncertainty about maintaining revenue streams, ever increasing regulatory burdens and costs, and ''carrier of last resort'' obligations to serve customers throughout their service areas. The commenters said that the increases frustrate the goals of the REA and the 1996 Telecommunications Act. The commenters also said that there are more than 200 rural telephone systems eligible for financing, but who do not borrow from the Rural Utilities System that administers REA loans, who will also be disadvantaged. We believe the

comments are misplaced because nothing in the proposed or final rule increases the amount of rent BLM collects. As explained earlier, REA eligible facilities do not pay rent, and the final rule conforms to the provisions of section 504(g) of FLPMA.

Several commenters said that eligibility for telephone loans under REA is not determined by corporate structure. They said that section 201 of REA (7 U.S.C. 922) makes loans eligible to all ''persons now providing or who may hereafter provide telephone service in rural areas, to public bodies now providing telephone service in rural areas and to cooperative, nonprofit, limited dividend, or mutual associations.'' One commenter said that the 1996 amendment applied to all not-for-profit rural telephone and electric utilities that may choose to operate without Federal financing, but not to the exclusion of other entities which might be eligible under the amendment. We agree and the final rule is consistent with these comments.

Several commenters said that BLM misinterpreted section 504(g) of FLPMA. The commenters said that the 1996 amendment did not restrict the rent waiver to non-profit telephone and electric cooperatives whose facilities are eligible for REA financing, but expanded the exemption to include eligible facilities, regardless of the owner. BLM agrees with the commenters that the exemption for REA utilities applies to any eligible facility and an entity's non-profit status is not a determining factor in whether the facility is qualified for an exemption. The final rule is clear on this matter.

Several commenters said that proposed section 2806.11(d) should be deleted in its entirety since it has no basis in the statute and is extraneous to it. BLM disagrees. Public Law 104–333 amended FLPMA to clarify the exemptions under the REA, and this provision remains in the final rule at section 2806.14(d). Based upon the comments above, we did, however, replace proposed paragraphs (d)(1), (2), and (3) with a new final paragraph (d) that more accurately implements the REA exemption. We based these changes on the criteria and definitions in the Rural Electrification Act of 1936 and its implementing regulations (see the Rural Utilities Service regulations at 7 CFR) for ''eligible'' facilities, that is, electric or telephone facilities providing service to rural areas. The commenters pointed out that the terms ''telephone service'' and ''rural area'' are defined in sections 203(a) and (b) of the REA, respectively. Under those provisions, telephone service ''shall be deemed to mean any communication service for the transmission or reception of voice, data, sounds, signals, pictures, writing, or signs of all kinds by wire, fiber, radio, light, or other visual or electromagnetic means, and shall include all telephone lines, facilities, or systems used in the rendition of such service; but shall not be deemed to mean message telegram service or community antenna television system services or facilities other than those intended exclusively for educational purposes, or radio broadcasting services or facilities within the meaning of section 3(o) of the Communications Act of 1934, as amended.'' Rural area ''shall be deemed to mean any area of the United States not included within the boundaries of any incorporated or unincorporated city, village, or borough having a population in excess of 5000 inhabitants.''

Final section 2806.14(d) provides rental exemptions to electric or telephone facilities that are financed or are eligible for financing under the REA. This exemption is for electric or telephone facilities that provide service to rural areas. BLM will exempt rent for electric or telephone facilities if the facility is either being financed with loans pursuant to the REA, or is eligible for financing under that statute. BLM may require you to document a facility's eligibility for REA financing. Only electric and telephone facilities that serve rural areas, as those terms are defined by the REA, are eligible for REA loans.

The last sentence of final section 2806.14(d) only applies to communication site authorizations with subleasing provisions. The typical right-of-way grant only authorizes a single use. BLM reserves the right to issue additional right-of-way authorizations for lands on or adjacent to areas described in any previously issued right-of-way. The holder does not have the right to sublease to third parties unless BLM specifically authorizes it in the grant. BLM only grants subleasing rights on a regular basis in authorizations for communication uses and facilities, and we will customarily use the term ''leases'' to apply to those multiple use authorizations. In these leases the holder and BLM have agreed that the holder can lease space in its facility for additional communication uses without additional BLM approval and the holder is liable for rental payments.

The REA exemption for communication facilities is limited by the statute to ''telephone'' facilities that provide telephone service in a rural area. The terms ''telephone service'' and ''rural area'' are defined in section 203(a) and (b) of the REA (see above). Non-telephone uses (TV and radio broadcasting and message telegram service in particular) are not rent-exempt since they are not eligible for financing through the REA.

The last sentence of section 2806.14(d) is intended to provide the holder of a rent-exempt authorization with the same benefits that might be given to other holders of a communication use authorization. Non-telephone uses (and the associated facility for those uses such as radio and TV broadcasting) cannot be financed via the REA, nor are they eligible to be financed via the REA. However, at the request of the holder of the rent-exempt authorization, BLM has and will continue under this final rule, to allow for subleasing of these non-telephone uses. Under these circumstances, BLM will assess rent to the holder under final sections 2806.30 through 2806.44 for the non-telephone uses within the facility. Thus the holder of the otherwise rent-exempt authorization will now pay rent for any facilities not eligible for REA financing. This is a benefit to the holder and to BLM since without this provision, BLM would either:

(A) Not allow non-telephone uses in that facility; or

(B) Issue a separate authorization for the non-telephone uses, and assess rent to that holder for that use.

Several commenters said that the rent waivers for REA-eligible facilities prevent a level playing field for those in the electric utility industry. This comment is outside the scope of this rule. This final rule implements section 504(g) of FLPMA, which requires that we provide the exemption to eligible facilities.

One commenter asked if the rent exemptions are retroactive to the date of the Act. Section 1032(b) of Public Law 104–333 provides that the amendment to section 504(g) (inserting ''eligible for financing'') ''shall apply with respect to rights-of-way leases held on or after the date of enactment of this Act'' (November 12, 1996). The exemption from having to pay rental for REA eligible facilities is established in current policy and practice and is not changed by this rule. BLM is not currently charging rent to any utility with facilities eligible for REA financing unless the utility never told us its facility is eligible or requested the rent exemption. Therefore, there should be no retroactive exemptions to consider. The burden of notifying BLM of eligibility for the rent exemption rests with the right-of-way holder or applicant.

Several commenters said that limiting the REA exemption to cooperative or non-profit entities would only create another disincentive for extending and improving telecommunications service in high-cost-to-serve rural areas. The final rule does not restrict or limit exemptions to non-profit and cooperative entities. The exemption applies to any eligible facility regardless of the holder's organizational status. It is worth noting that BLM can consider the organizational status of non-profit organizations for rental reduction under section 2806.15 of this final rule.

One commenter said that the tax exemption for non-profits in the Federal tax code is section 501(c)(12), not section 501(c)(3). BLM amended the proposed rule to make it clear that it is the eligibility of a facility for REA financing that is important, not whether or not the holder is considered a non-profit organization under the tax code. Therefore, for the purposes of these final regulations the question of whether the appropriate cite to the tax code is section 501(c)(3) or section 501(c)(12) is irrelevant.

Section 2806.15 Under What Circumstances May BLM Waive or Reduce My Rent?

This section explains that BLM may waive or reduce your rent payment, even to zero in appropriate circumstances. BLM may require that you submit information to support your request for waiver or reduction.

To receive a rental waiver or reduction, you must show BLM that:

(A) You are a non-profit organization, corporation, or association which is not controlled by, or is not a subsidiary of, a profit making corporation or business enterprise and the facility or project will provide a benefit or special service to the general public or to a program of the Secretary. We added the phrase ''and the facility or project will provide a benefit or special service to the general public or to a program of the Secretary'' to make it clear we do not believe that a non-profit entity's rent should be reduced unless, for example, the public receives a benefit from the use. Previous regulations only required that a holder be a non-profit corporation or association to qualify for a waiver or reduction. We made this change because many non-profit entities only provide benefits to their members, for example, a right-of-way for a homeowners road association. The association's status as a non-profit entity would not be the sole factor in determining whether to reduce rent. We would consider a rent reduction if the road association provided a public benefit such as maintenance of a road available to the public at large. The BLM State Director could also consider a hardship waiver or reduction under paragraph (c) of this section. Therefore, any non-profit grant holder has multiple opportunities to request waivers or reductions under the final rule;

(B) You provide without charge, or at reduced rates, a valuable benefit to the public at large or to the programs of the Secretary of the Interior. This provision is not intended and should not be used by either BLM or a holder to avoid the payment of rent in exchange for free use of an authorized facility. For example, prior to 1995, it was not uncommon for BLM and the FS to require that an applicant reserve a percent (typically 20 to 25 percent) of the space in a communication facility for use, rent-free, by the agency as a condition of the authorization. (The agency would typically house its internal communication equipment in the facility.) This practice is no longer acceptable;

(C) You hold a valid Federal authorization in connection with your grant and the United States is already receiving compensation for this authorization. We reworded this paragraph in the final rule to make clear that BLM will provide no waiver or rental reduction for a FLPMA right-of-way, such as for a road, that is associated with an oil and gas lease. If you need access under FLPMA to reach an oil and gas lease, then the holder would pay rent for the off lease road. In the final rule we clearly spell out that FLPMA access road grants associated with an oil and gas lease are not subject to a waiver or reduction in rent; and

(D) Your grant involves a cost share road or a reciprocal right-of-way agreement not subject to subpart 2812 of this title. Section 504(g) of FLPMA provides that BLM may waive rentals when a FLPMA right-of-way holder conveys a right-of-way to the United States in connection with a cooperative cost share program between the United States and the holder. In these cases, BLM will determine the rent based on the proportion of use. For example, if BLM granted a two mile long right-of-way across public land and the grant holder gave BLM an equivalent grant across one mile of its property, under this provision, the holder would only pay one-half of the fair market value rent for the FLPMA right-of-way. Previous section 2803.1–2(b)(2)(v) stated that BLM may waive or reduce rent under similar circumstances.

This section also explains that if the BLM State Director determines that paying the full rent will cause you undue hardship and it is in the public interest to waive or reduce your rent, the State Director may waive or reduce your rent. Please note that unlike paragraph (b) of this section, the BLM State Director makes the hardship determination. An undue hardship can be a financial impact on a small business or it could involve situations where there is a need to relocate the facility to comply with public health and safety and environmental protection laws not in effect at the time the original grant issued. These conditions are part of existing policy and practice and are not changed in the final rule.

In the final rule we added language to this section to require applicants to include information in their requests for rental reduction suggesting alternative rental payment plans and time frames when applicants expect to resume paying full rental. In addition, BLM may also ask for specific financial data or other information that corrects or modifies the statement of financial capability required by final section 2804.12(a)(5) of this part. The language in final paragraph (c) has been clarified so that there will be consistency between offices in evaluating requests for hardship rental reductions. BLM should approve a rental reduction for hardship reasons only for a specified time frame and it will be periodically reevaluated. We proposed this section as section 2806.12.

Section 2806.16 When Must I Make Estimated Rent Payments to BLM?

This section explains that to assist us in the processing of your application in a timely manner, BLM may estimate the rental payment and collect that amount before it issues the grant. Section 504(g) of FLPMA requires you to pay rental in advance of grant approval. Section 2806.16 does not apply to rental determined from a schedule, only for rent BLM otherwise determines. If you make an advance estimated payment, BLM will credit any overpayment, and you are liable for any underpayment. This provision is consistent with current practice and policy (see previous section 2803.1–2(e)(2)) and was proposed in section 2806.28(c).

Linear Rights-of-Way

Section 2806.20 What Is the Rent for a Linear Right-of-Way?

This section contains the linear rent schedule for linear rights-of-way. The schedule provides consistency in how we determine rent and eliminates the need to perform individual appraisals on linear right-of-way grants. BLM first implemented the linear rent schedule in

1987 (see 52 FR 25811, 25821, July 8, 1987).

This section explains that BLM may use an alternate means to compute your rent if the rent determined by comparable commercial practices or by an appraisal would be 10 or more times the rent from the schedule.

This section also explains that once you are on a rent schedule, BLM will use the schedule to calculate rent unless the BLM State Director decides to remove you from paying rent under paragraph (d) of this section or you file an application to amend your grant. These provisions are consistent with existing section 2803.1–2(c)(1)(v) and are carried forward in the final rule. Finally, this section explains that you may obtain the current linear right-of-way rent schedule from any BLM office or from BLM's National Home Page on the Internet.

One commenter said it opposed the changes proposed section 2806.14 would make because the rule would allow BLM to recover ''fair market value'' based on land use, rather than land value. BLM disagrees. The linear rent schedule is based on general land values on a county-by-county basis. This section is consistent with existing policy and procedure.

One commenter said that there are no criteria in the rule explaining what level of expected rent would warrant a separate appraisal, or on what this expectation would be based. The commenter said that BLM should not use a higher rental valuation for telecommunication carriers, as opposed to other types of carriers, and that the rent should be based on rent schedules developed through traditional appraisal theories, to value the burden placed on the land. Final paragraph (c) of this section establishes the conditions under which BLM may use alternate means to compute rent. The regulations do not mandate that BLM deviate from the schedule, but only provide us discretion to do so if certain conditions apply. BLM currently has a policy prohibiting us from deviating from the schedule (see WO–IM 2002–172). That guidance states that BLM will use the current schedule to calculate rent for all linear right-of-way uses, including telecommunications (fiber optics lines) uses. The current policy of not deviating from the linear schedule is in response to Congressional direction contained in the appropriations bill for the Department of the Interior for FY 2001. BLM bases the schedules we use to calculate rent on traditional appraisal methods. BLM expects to use schedules to determine rent whenever possible to avoid unnecessary expenditures preparing appraisal reports. In response to the comment that we should not charge telecommunication carriers higher rent than other carriers, these final regulations do not.

Section 2806.21 When and How Does the Linear Rent Schedule Change?

This section explains that BLM updates the rent schedule each calendar year based on the previous year's change in the IPD–GDP, as measured second quarter to second quarter. This provision is similar to previous section 2803.1–2(c)(1)(ii).

We received no substantive comments on this section. This section was proposed as section 2806.15 and, with the exception of editorial changes, is the same as that proposed.

Section 2806.22 How Will BLM Calculate My Rent for Linear Rights-of-Way the Schedule Covers?

This section explains that BLM calculates your rent for a linear right-of-way by multiplying the rent per acre for the appropriate category of use and county zone price from the current schedule by the number of acres in the right-of-way area that fall into those categories and the number of years in the rental period (rent per acre X number of acres X number of years in the rental period = rent for a linear right-of-way). If BLM has not previously used the rent schedule to calculate your rent, we may do so after giving you reasonable written notice. If an existing grant is a pre-FLPMA authorization, BLM will provide you with an opportunity for an informal BLM hearing as described in final section 2806.10(b) of this final rule. With the exception of editorial changes, this section is the same as proposed section 2806.16.

Section 2806.23 How Must I Make Rental Payments for a Linear Grant?

This section explains that you must make either nonrefundable annual rental payments or a nonrefundable payment for more than 1 year, as follows:

(A) You may pay in advance the required rent amount for the entire term of the grant; and

(B) If you choose not to pay the entire amount, you must pay according to one of the following methods:

(1) If your annual rent is less than $100, private individuals must pay at 10-year intervals not to exceed the term of the grant. If your annual rent is greater than $100, individuals have the option to pay annually or at other multi-year intervals that you may choose.

(2) All other right-of-way holders, including corporations, companies, partnerships, and associations, must pay rent at 10-year intervals not to exceed the term of the grant.

These provisions are based on proposed section 2806.10(c), but provide additional detail to more accurately describe the process. Consistent with existing policy and practice, once you make a rent payment, BLM will not refund it. This is because once BLM deposits a payment, it goes into the general fund of the U.S. Treasury and is no longer accessible to BLM.

We added a new paragraph (b) to the final rule to further explain the process of calculating rent. BLM considers the first partial calendar year in the payment period described above to be the first year of the rental payment term. We will prorate the first year rental amount based on the number of months left in the calendar year after the effective date of the grant. For example, the effective date of a grant is June 2 and the annual rental is $49.32 per year. Since the annual rent is less than $100, a 10-year payment method would be appropriate. Rent begins on the first day of the month after the effective date of the grant. BLM would calculate rent beginning in July and would prorate the first year's rent to cover the six months remaining. (*e.g.,* $49.32 × .5 = $24.66 for year one.) Therefore for years 2 through 10, rent is $49.32 × 9 years = $443.88. Total rent is $443.88 + $24.66 = $468.54.

BLM received a variety of comments regarding rental terms. Several commenters thought that due to the administrative costs of processing rent payments, the final rule should bill for rent every five years rather than yearly. Several commenters said that in circumstances where the annual fee would be less than $1,000, the fee should be a lump-sum fee based on a 25-year period. The commenters said that where the annual fees are higher than $1,000, the fee should be paid in lump-sum every 5–10 years. Another commenter said that BLM should require advance payment of rent for lower rent amounts, for which the administrative cost of processing monthly or more frequent rent payments would expend a significant portion of the rent payment. BLM considered several rental terms including one year, five years, ten years, and longer. We determined that ten years is a satisfactory compromise between minimizing the impact a long-term large rent payment might have on a right-of-way holder and the costs to BLM and

industry of tracking numerous payments for relatively low dollar transactions.

One commenter said that small annual rents may generate less revenue than the cost of collecting them. The commenter said that therefore BLM should calculate how much it costs to send, collect, and process a rent bill, and automatically require advance payment for any rent amount below that cost. BLM agrees with the commenter in part and the final rule allows all right-of-way grant holders the option of making a non-refundable lump sum rental payment for the entire term of the grant. For private individuals not electing this one-time payment, you must pay at 10-year intervals if the annual rent is $100 or less or you may pay annually, or at some other annual interval, if the annual rent is more than $100. For all other holders, including corporations, associations, or other entities, you pay either a lump sum for the entire term or at 10-year intervals regardless of the amount of the annual rent. We did not establish a minimum rental requiring an automatic advance payment, as suggested, because we believe most grant holders having very low rental amounts will opt to pay the lump sum in advance so as not to be bothered with multiple future payments.

Several commenters said that the final rule should allow the option of paying all fees in advance and BLM should set grant fee amounts using net present value and the payments should be discounted by the time value of money. BLM agrees with this comment in part and the final rule allows for advance payments for the term of a grant. BLM does not agree with using any formula that would discount a lump sum rental payment to allow for the time value of money because there are many unknown variables used in determining discount rates and future rate increases in the schedule. Holders who pay rent in a lump sum up-front do not pay the rent increases (based on increases in the IPD–GDP) that would occur yearly over the term of the grant. This offsets the need to discount the lump sum payment by the time-value of money. This approach would reduce the already low linear schedule rentals and is not in the public interest.

Under certain limited circumstances BLM issues grants in perpetuity and therefore, BLM needs to establish a consistent process for calculating rent for these grants. Current BLM regulations and guidance do not specify the conditions under which BLM will issue a grant in perpetuity. There are a variety of circumstances under which it would be appropriate for us to issue a perpetual grant. For example, a perpetual grant may be necessary for BLM to protect the rights of grant holders when we dispose of Federal land encumbered by a right-of-way grant. We may also need to issue a perpetual grant in circumstances when holders must comply with local land use ordinances that may require a perpetual right in order to develop private property interests. We frequently issue perpetual grants to governmental entities for permanent facilities such as county roads.

In the preamble to the proposed rule, BLM invited comments concerning how long advance rental periods should be and what amounts should trigger a lump-sum rental payment (64 FR 32112). While we received several comments, none were related to determining lump sum rent for perpetual grants. Nonetheless, BLM believes it is important to establish an advance lump sum rental payment for any grant issued in perpetuity so that if BLM disposes of land, the holders will be protected from future rent increases imposed by a new landowner.

Under the final rule, for linear right-of-way grants issued in perpetuity, you must make a one-time rental payment before BLM will issue the grant, except individuals may make payments as described in (a)(2)(i) of this section. BLM calculates rent for grants issued in perpetuity by multiplying the annual rent by 100 or you may request from BLM a rent determination based on the prevailing price established by general practice in the vicinity of the right-of-way. In order for BLM to determine rent based on the prevailing price, you must prepare an appraisal report that explains how you estimated the rent. The appraisal report must meet all Federal appraisal standards and explain why you believe the rental amount initially calculated by BLM unreasonably exceeds the fair market value of the perpetual grant. You must prepare this report at your expense, and submit it for approval by a review appraiser delegated by BLM or the Department of the Interior. The BLM State Director must concur with the alternative rental payment amount approved by the review appraiser before BLM approves your request. If BLM denies your request, you must pay the amount BLM calculated in paragraph (c)(1) of this section. You may appeal this decision under section 2801.10 of this part.

The provisions in paragraph (c) were not in previous regulations. We added these provisions to provide a consistent approach across BLM for determining rent for perpetual right-of-way grants.

BLM believes it is reasonable and practical to collect rent based on a 100-year rental for a perpetual right-of-way. A common industry practice is to use a 99-year lease to represent near full ownership of a property. The 100-year term extends through 2 to 3 generations, and is considered sufficient ownership by many banks and lending institutions to provide security to justify large loan encumbrances. If a right-of-way holder needs a grant for a perpetual term to protect its rights, such as when BLM is planning to dispose of a parcel of land encumbered by a right-of-way grant, the holder should pay a fair market value rent to acquire the perpetual right-of-way grant.

In its 1995 audit of BLM's right-of-way program (U.S. Department of the Interior, Office of Inspector General Audit Report, Right-of-Way Grants, Bureau of Land Management, Report No. 95–I–747, March 1995) the Inspector General (IG) did a comparison of linear rents between public and private lands using a net present value method (see pages 5–7 and Appendix 4, pg 19 of the report). The IG obtained data on 18 rights-of-way (easements) granted by states and private individuals for various types of facilities across lands in four different states. These 18 rights-of-way were issued in perpetuity for a one-time, up-front, lump-sum payment. This data was converted to a common base to compare what the same rights-of-way would have cost had they been located on public lands. The data indicated that BLM was collecting only about 18 percent (utilizing the linear rent schedule) of the rent that the private and state land owners received in one-time, up-front, lump-sum payments. However, under final section 2806.23(c)(1), BLM will collect nearly 80% of the rent that the private and state land owners received in one-time, up-front, lump-sum payments. The provisions of section 2806.23(c)(1) are administratively simple to apply, and, as the above data indicates, will return a more realistic rental rate when BLM issues grants in perpetuity.

As noted above, in the proposed rule BLM invited suggestions and comments on how long an advance rental payment should cover and what amount should trigger an advance lump sum payment (see 64 FR 32106 and 32112). We received several comments on the subject of advance rental payments. Most industry-related comments supported advance rental payments for a longer term than one year or five years, including payments for the term of the grant, because this approach comes close to normal business practice

for private right-of-way acquisitions. Other commenters thought that advance rental payments for the term of a grant would result in lost revenues to the government on those lands where property values continue to rise. Because of the large number of low dollar rental payments, BLM believes it is a good business practice, administratively efficient, and cost saving to allow a holder to pay rent for the term of a grant. Allowing advance rental payment for the term of a grant eliminates BLM's workload associated with annually preparing notices, tracking payments, and recording deposits in cases where there is a minimal dollar return (see the U.S. Department of the Interior, Office of Inspector General Audit Report, Right-of-Way Grants, Bureau of Land Management, Report No. 95–I–747, March 1995, showing that 7,700 rental notices were for $34 or less). It also reduces paperwork for grant holders because they would not be required to track and pay rent numerous times over the life of the grant.

We disagree that collecting rent for the term of a grant, frequently a 30-year term, will result in lost revenue. If we collect fair market value rent for the term of a grant, the Government has ensured the up-front receipt of rental payments to the Treasury. While the Government may forego future indexed increases to the rent schedule over the term of the grant, this loss is offset by the Government saving administrative costs over the term of the right-of-way grant and by not having to pay the cost of tracking when payments are due and sending notices for those grants. Further, BLM does not reduce the one-time payment by discounting it to the present value of the payment.

Communication Site Rights-of-Way

BLM published a rule on November 13, 1995 (see 60 FR 57073), that provided for a communication use rent schedule and rent collection procedures. The final rule we publish today makes no substantive changes to the policies or procedures in that rule. BLM received a variety of comments about the communication use rent schedule that were previously addressed in the 1995 rule. Where appropriate, this rule cross references the preamble to the 1995 rule to address some of the public comments on the proposed rule that follow.

In the final rule we refer to communication use ''leases'' and communication use ''grants.'' The standard authorization BLM issues for communication site rights-of-way is a Communication Uses Lease, BLM Form 2800–18. This form's standard provisions allow the holder to sublease space in its facility to other users. When BLM determines it is appropriate to issue a right-of-way authorization that does not allow subleasing, such as to other Federal agencies, we use a standard BLM right-of-way grant Form 2800–14. This authorization does not allow the holder to sublease space in its facility without BLM's approval. Because a ''grant'' is defined at section 2801.5 to include a lease, a communication use lease is a form of a right-of-way grant. The terms are frequently used interchangeably, even though the authorizations have different terms and conditions, particularly those relating to subleasing.

Section 2806.30 What Are the Rents for Communication Site Rights-of-Way?

BLM uses the rent schedule for communication uses found in this section to calculate the rent for communication site rights-of-way. You can find a complete discussion of the rationale for using a schedule for determining communication site rent in the proposed rule at 64 FR 32112 through 32114. Please note that we do not use this schedule to calculate rent for telephone line or fiber optic rights-of-way, because they are linear rights-of-way and are covered by the linear rent schedule in section 2806.20. We amended final paragraph (c)(3) of this section to make this clear. Rights-of-way for cellular telephones are covered by the schedule in paragraph (b) of this section.

The communications use schedule is based on nine population strata (the population served), as depicted by the Ranally Metro Area population rankings (RMA), and the type of communication use or uses for which BLM normally grants communication site rights-of-way. You can find a detailed discussion of RMAs in the preamble for the communication site final rule at 60 FR 57062 (November 13, 1995). The uses the schedule covers are listed in the definition of ''communication use rent schedule,'' set out at section 2801.5 of this rule. You may obtain a copy of the communication use rent schedule from any BLM office or on BLM's National Home Page on the Internet.

BLM annually updates the communications use rent schedule based on two sources: the U.S. Department of Labor Consumer Price Index for All Urban Consumers, U.S. City Average (CPI–U), as of July 31 of each year (difference in CPI–U from August 1 of one year to July 31 of the following year); and the RMA population estimates. You can find a discussion of why BLM uses the CPI–U to update the schedule in the preamble to the communication site final rule at 60 FR 57064. The 1995 rule also explains why BLM limits annual adjustments based on the CPI–U to no more than 5 percent. Under this section, at least every 10 years BLM will review the rent schedule to ensure that the schedule reflects a rational fair market value estimate. Both the provision addressing adjustments and the provision addressing the time between reviews of the rent schedule are consistent with previous section 2803.1–2(d)(2)(i). There are several situations to which the communication use rent schedule does not apply, and those are listed in this section as well. This section is a rewording of proposed sections 2806.17(b)(1) through (5) to make them more clear.

We also made several other changes to proposed section 2806.17. We deleted from proposed paragraph (b)(1) (final section 2806.30 (c)(1)) ''Any other communication use, not directly associated with the lease operation, is not excluded'' because the sentence is unnecessary and does not add substance to the rule. We also added ''oil and gas pipeline grant'' to proposed paragraph (b)(2) (final section 2806.30(c)(2)) because it is a more common example than that in the proposed rule. There are far more communication sites ancillary to pipelines than railroad rights-of-way. In proposed paragraph (b)(4) we deleted reference to when rent is determined by appraisals or other reasonable methods and moved it to final section 2806.50 of these regulations. Finally, we reworded proposed paragraph (b)(5) (final section 2806.30(c)(5)), making it clear that the BLM State Director is the only authority that can make the determination that estimated rent would exceed the scheduled rent by five times or that in populations of more than one million, the rent is expected to exceed the scheduled rent by more than $10,000. For new technologies and the conditions listed in final paragraphs (c)(4) and (5), BLM would determine rent according to section 2806.50 of this subpart.

Several commenters addressed various issues related to communication site rights-of-way. The comments principally concerned the rent schedule and the way in which BLM would charge rents for communication sites.

One commenter said that if BLM increases rent payments for communication sites, counties will increase rents also. We believe the commenter was concerned that BLM will begin charging rent to the counties for communication site uses. Under this

final rule, local governments are exempt from paying rent, except when they are using the facility, system, space, or any part of the right-of-way area for commercial purposes (see section 2806.14(b)(1)).

For example, when BLM issues a communication site lease to a local government, *e.g.*, a county, and the local government (facility owner) leases space to other users for commercial purposes, then the local government must pay rent to BLM for the commercial activities being conducted on the right-of-way. In these cases the rent the local government owes would be based upon the tenant uses in the facility, not the local government's uses. In cases where there are only customer uses in a facility owned by a local government, and the local government is profiting from the occupant uses within the facility, then BLM would assess the local government based on the highest value use within the facility pursuant to section 2806.34(d). This is consistent with existing policy and previous section 2803.1–2(b)(1).

One commenter stated that BLM appeared to rely on the misapplied use of comparables from exceptionally high value urban areas. We received similar comments about other sections of this rule. One basis for the rent schedule is the population served, which recognizes a range of populations, from the high value urban areas to rural communities of less than 25,000 people. We believe that basing the rent schedules on the population served is a proper consideration in arriving at the fair market value of a communication site right-of-way. In addition, the population ranges appearing on the schedule fairly represent populations on and around public lands. This final rule does not change the communication uses rent schedule amounts in previous regulations. We continue to believe that the rent schedule amounts established pursuant to that rule are appropriate. Therefore, we did not amend the final rule as a result of the comments.

One commenter asserted that charging rents for telecommunications facilities was tantamount to a toll imposed by BLM on electronic commerce and discouraged co-locating facilities on rights-of-way. We disagree. Communication site right-of-way holders on public land paid rental under FLPMA and even pre-FLPMA authorities prior to the 1995 communication site policy (see 60 FR 57058). As previously stated, section 504(g) of FLPMA requires holders to pay fair market value for the use of public land. This final rule restates existing policy and law and is not imposing a ''toll'' on electronic commerce. We also disagree that this policy discourages co-locating facilities. This rule and the 1995 policy encourage co-location of facilities by allowing a holder to sublease space in its facility to customers and tenants. Prior to 1995, customers and tenants were required to hold separate grants and all users paid full fair market value.

Several commenters objected to the way that BLM proposed to calculate rents for communications sites when the nature of the site is such that BLM would conduct a separate appraisal rather than use the rent schedule for the site. These commenters asserted that individual appraisals would cause undue hardship for many communication site grant holders and would single out telecommunications carriers for higher rents. We disagree with the commenter. One of the objectives of today's rule, consistent with BLM's 1995 communication site rule, is to eliminate the need to perform individual appraisals for communication sites because of the high costs to perform the analysis. Previous regulations at 2803.1–2(c)(1)(i) contained similar provisions. This final regulation allows for individual appraisals in population areas of 1,000,000 or more when the rent is expected to be $10,000 above the scheduled rate, or in situations where estimated rent exceeds the schedule by five times. BLM State Director approval is needed in both of these circumstances. Appraisals may also be necessary to set minimum rents in competitive bid situations and to set rents for uses and technologies not currently on the schedule. We believe that there will be very few situations where an appraisal will be necessary for communication sites.

Several commenters opposed separating the criteria that BLM would use to determine when to conduct a separate appraisal of the rent due on a grant. One stated that conducting individual appraisals would be a disincentive to co-locate facilities and would cause undue hardship for many grant (permit) holders. Another commented that there were no criteria as to what types of use would trigger an alternative valuation or what level of expected rent would warrant a separate appraisal. The final rule is clear on the criteria for not using the schedule. As explained above, individual appraisals would be considered if new technologies are present or the criteria in final paragraphs (c)(4) and (5) are met. We believe that final sections 2806.30(c)(1) through (5) adequately describe the situations when BLM would not use the schedule to calculate a communication use rent.

One commenter suggested that the final rule should more accurately describe how BLM annually indexes the fees, and suggested the following language for the final rule:

> BLM annually updates the schedule based on two sources: the U.S. Department of Labor Consumer Price Index for All Urban Consumers, published in July of each year and the population estimates for the Ranally Metro Areas published annually in the Rand McNally Commercial Atlas and Marketing Guide.

We believe that final paragraph (a)(2) of this section provides adequate guidance on indexing fees and is similar to what the commenter suggested.

Commenters said that for communities of less than 50,000 people, BLM uses the most recent Census Bureau data to determine the size of communities served by communication sites. They recommended that size be more accurately stated, saying that for communities of less than 50,000 people, the agency will use the populations listed in the most current edition of the Rand-McNally Road Atlas as the source for determining the appropriate ''population served'' category in the communications use fee schedule. BLM agrees with the commenters. The preamble to the proposed rule stated that BLM uses the most recent Census Bureau data to determine population size for communities of less than 50,000 people. In the final rule we use the most current edition of the Rand-McNally Road Atlas as the source for these population determinations. The final rule states this clearly (see final section 2806.32(a)(4)).

Section 2806.31 How Will BLM Calculate Rent for a Right-of-Way for Communication Uses in the Schedule?

This section explains that for single-use facilities, BLM applies the rent from the communication use rent schedule for the type of use and the population strata it serves. For multiple-use facilities, whose authorization provides for subleasing, BLM sets the rent of the highest value use in the facility or facilities as the base rent (taken from the rent schedule) and adds to it 25 percent of the rent from the rent schedule for all tenant uses in the facility or facilities, if a tenant use is not used as the base rent (rent = base rent + (25 percent of all rent due to additional uses in the facility or facilities). For example, a single use commercial mobile radio service (CMRS) facility owner would pay the CMRS rate for the population served. If the same CMRS facility owner subleased space in his facility to a cellular

provider, the cellular provider's rent would be the base rent, and 25 percent of the CMRS rate would be added to that to determine the total rent due. You can find additional details on calculations for single-use facilities in final section 2806.33 and for multiple-use facilities in final section 2806.34.

When calculating rent, BLM will exclude customer uses, except as provided for in final sections 2806.34(b)(4) and 2806.42, and those exempted uses described in section 2806.14, and any uses whose rent has been waived or reduced to zero as described in section 2806.15.

By October 15 of each year, you, as a communication site grant or lease holder, must submit to BLM a certified statement listing any tenants and customers in your facility or facilities and the category of use for each tenant or customer as of September 30 of the same year. BLM may require you to submit any additional information needed to calculate your rent, such as private lease agreements with tenants and customers that would provide information on fees the building or facility owner charges for space in its facility. BLM will determine the rent based on the certified statement provided. We require only facility owners or facility managers to hold a grant or lease (unless you are an occupant in a federally-owned facility as described in section 2806.42), and will charge you rent for your grant or lease based on the total number of communication uses within the right-of-way and the type of uses and population strata the facility or site serves. This final rule is slightly different from the proposal. We reworded it to provide additional explanation of the process BLM uses to calculate rent for communication uses. We originally established this process in previous section 2803.1–2(d).

We reworded proposed sections 2806.18(a)(1) and (a)(2) (final sections 2806.31(a)(1) and (a)(2)) to make them clearer and added language in final section (a)(2) to explain that in order to have a multiple use facility, the authorization must allow for subleasing. We added this provision to explain existing policy. We added similar language in final sections 2806.34(a) and 2806.36(a).

Final section 2806.31(b) explains the exclusions that BLM considers in calculating rent and references the sections in the final regulations where those exclusions are described. Exceptions are also noted. Final paragraph (c) of this section makes clear that it is only the holder of a grant or lease, not tenants and customers, that must submit an annual statement of who is in the facility.

Several commenters said that in paragraph (c) we should replace ''tenants'' with ''tenants and customers'' since that is the phrase used in the ''clauses or stipulations in the leases used by BLM and the Forest Service.'' The commenters also said that facility managers and owners may not understand the definition of ''customer or tenant'' and therefore may not report an accurate inventory of all of the uses in each facility. BLM agrees with the comment and added the phrase ''tenants and customers'' in this section rather than only ''tenants.'' Section 2801.5 of these regulations provides definitions for both terms.

Section 2806.32 How Does BLM Determine the Population Strata Served?

This section outlines the processes currently described in BLM policy for determining the population served by a communication facility. This information was in the proposed rule at section 2806.19(b). We made it a separate section in the final rule so that our communication site users clearly understand how we determine the population served. We also eliminated proposed section 2806.19(c), because we do not make case-by-case exceptions to the population guidelines described below.

BLM determines the population served as follows:

(A) If the site or facility is in a designated RMA, BLM will use the population strata of the RMA;

(B) If the site or facility is in a designated RMA, but serves two or more RMAs, BLM will use the population of the RMA having the greatest population;

(C) If the site or facility is outside an RMA, but it serves one or more RMAs, BLM will use the population of the RMA having the greatest population;

(D) If the site or facility is outside an RMA and the site does not serve an RMA, BLM will use the population of the community it serves having the greatest population as identified in the current edition of the Rand McNally Road Atlas. BLM will not add the populations of several communities together to determine the population served; and

(E) If the site or facility is outside an RMA and serves a community of less than 25,000 persons, BLM will use the lowest population strata shown on the rent schedule.

In calculating rent, all uses within the same facility must serve the same RMA or community, and all uses in the same facility or authorized under the same lease must serve the same population strata. In other words, when BLM issues a grant or lease, the holder and all of the tenant and customer uses in the facility are considered to serve the RMA or community with the greatest population. High and low power uses may be located in the same facility and serve different RMAs or communities, but they would all be charged according to the largest RMA or community served by any user within the facility. A site may accommodate a mix of high and low power users, but as long as these users are not located in the same facility or authorized by the same lease, BLM can make a case-by-case determination of the population served by each facility (*e.g.*, the high power facility could serve an RMA and the low power facility could serve a closer community and not reach the RMA). The section also makes clear that BLM will not modify or change the population rankings published in the Rand McNally Commercial Atlas and Marketing Guide or the population of the community served.

Several commenters said that proposed paragraph (b)(2) should make clear that if a site or facility is located in an RMA, but serves two or more RMAs, you should use the population of the largest RMA served in calculating rent. We agree and the final rule is clear on this issue at final section 2806.32(a)(2).

Several commenters said that under the proposed rule, a permit holder could serve a ''*de minimus* percentage of a large RMA'' and still be required to pay rent as if the entire RMA was served. The commenters said that the proposed rule ensures that BLM will charge the highest possible rent regardless of the percentage of the population served in a given area and that may be inequitable. In situations where only a small part of a large RMA is served, under this final rule and under existing policy, we calculate rent for the entire RMA. This is because no accurate means exists to measure and verify percentages of the population served within any given RMA. Even if it were possible to verify that a particular communication use served only 10 percent of the population of an RMA, for example, it would be incorrect to use the population figure represented by the 10 percent as the basis to establish rent. The reason is that RMAs are an indicator of current economic activity that is taking place within that area. Markets in a particular area determine rent, not the area of the market that the use serves. For example, a television station serving the Phoenix market pays significantly more rent for its

communication facility, whether it is located on private or public lands, than does a television station serving the Dillon, Montana market.

The rent or payment for a particular communication use is not dependent on that service reaching 100 percent of the population in an RMA. In fact, most communication uses do not serve the entire population of an RMA, either due to natural physical constraints (frequency shadow area from mountains, for example) or from the user's own business decisions, or because a particular use, such as PCS (mobile telephone use), is limited by its own technology to serve only a portion of a particular area or RMA. For example, one television station may have a 50% market share in an RMA, while another competing television station may only have a 10% market share in the same RMA. A private communication provider would charge each TV station the same rental rate, as should BLM using our communication use rent schedule. Likewise, the programming format of a television or radio station, which inherently limits the population the station might serve, has no bearing on the rent. The programming format of one station may be jazz, while another is country, while another is classical, and another talk. While most programming is in English, some radio stations may broadcast in a different language and intentionally try to reach a very limited market. Each may only serve a narrow percentage of the total RMA, but the rent for each use is calculated based on the population of the entire RMA.

BLM realizes that some users have been subject to significant rent increases when a smaller RMA that their communication use had been serving is combined by Rand McNally with a much larger RMA. The holder's communication use may still be serving the same number of people, but now its service area has been combined and made part of a much larger economic unit. Under these conditions, BLM is still obligated to determine rent based on service to the new, larger RMA. If payment of the new rental amount creates undue financial hardship, the holder can request a reduction in rent under final section 2806.15. The final rule makes clear that BLM will not modify or change the population rankings published in the Rand McNally Commercial Atlas and Marketing Guide or the population of the community served due to the reasons cited above.

Section 2806.33 How Will BLM Calculate the Rent for a Grant or Lease Authorizing a Single Use Communication Facility?

This section explains that BLM calculates the rent for a grant or lease authorizing a single-use communication facility from the communication use rent schedule based on the type of use and the population served.

This section was proposed as section 2806.19(a) and is similar to that provision. The provisions in proposed sections 2806.19(b) and (c) are now in final section 2806.32.

Section 2806.34 How Will BLM Calculate the Rent for a Grant or Lease Authorizing a Multiple-Use Communication Facility?

This section explains that for multiple-use communication facilities:

(A) BLM first determines the population strata the communication facility serves according to section 2806.32 of this subpart; and

(B) Then calculates the rent assessed to facility owners or facility managers for a grant or lease for a communication facility that authorizes subleasing with tenants, customers, or both, using the procedures listed.

Under this section, using the communication use rent schedule, BLM will determine the rent of the highest value use in the facility or facilities as the base rent, and add to it 25 percent of the scheduled rent for each tenant use in the facility or facilities. The highest value use is the use that has the highest dollar value in the communication use rent schedule. This highest value use is central to the definition of base rent. If the highest value use is not the use of the facility owner or facility manager, BLM will consider the owner's or manager's use like any tenant or customer use in calculating the rent. However, if a facility owner is engaged in a PMRS, internal microwave, or ''other'' use, and that use is not the highest value use in the facility, then BLM excludes these uses when calculating the additional 25 percent amount under paragraph (a)(1) (see final section 2806.35(b)). Likewise, BLM excludes the facility manager's use in the 25 percent calculation (see final section 2806.39(a)) when its value does not exceed the highest value in the facility. If a tenant's use is the highest value use, BLM will exclude the rent for that tenant's use when calculating the additional 25 percent amount under paragraph (a)(1) of this section.

If the same grant or lease authorizes a grant holder multiple uses, such as a TV and a FM radio station, BLM will calculate the rent as in paragraph (a)(1) of this section. In this case, the TV rent would be the highest value use and BLM would charge the FM portion according to the rent schedule as if it were a tenant use. The proposed rule at section 2806.20(a)(4) stated we would use ''the sum of each use'' when calculating rent in these situations. We believe that this phrase was misleading. For example, one might have incorrectly determined that the base rent for the example discussed above was the full value of the TV and FM stations added together. Therefore, we deleted the phrase from the final rule.

This section also describes the process to calculate rent for several combinations of holder, tenant, and customer situations. These rental calculation situations were not covered in previous regulations, but are included here so members of the public and BLM staff would better understand when certain special calculation policies apply.

In calculating rents, BLM will exclude a facility owner's or facility manager's exempted uses described in final section 2806.14, or uses whose rent has been waived or reduced to zero in final section 2806.15. Uses of certain non-profit corporations providing benefits to the public would qualify under this latter citation.

BLM will exclude exempted uses, or uses whose rent has been waived or reduced to zero, of a customer or tenant if they choose to hold their own lease or are occupants in a Federal facility.

BLM will charge rent to a facility owner whose own use is either exempted, waived, or reduced to zero, but who has tenants in its facility, in an amount equal to the rent of the highest value tenant use plus 25 percent of the rent from the rent schedule for each of the remaining tenant uses subject to rent. For example, a non-profit facility owner operates an FM radio translator whose rent BLM has waived, and it has two tenants in the facility, one of which operates a CMRS and the other a television translator. Rent for the holder is based on the CMRS use, which is the highest value use, and to this is added 25 percent of the schedule rate for the television translator. Under this example, the holder's not-for-profit FM radio use does not contribute to rent.

This section also explains (at section 2806.34(b)(3)) that BLM will not charge rent to a facility owner, facility manager, or tenant (when it holds a grant or lease) when all of the following occur:

(A) BLM exempts from rent, waives, or reduces to zero the rent for the holder's use;

(B) Rent from all other uses in the facility is exempt, waived, or reduced to zero or BLM considers such uses as customer uses; and

(C) The holder is not operating the facility for commercial purposes with respect to such other uses in the facility.

If a holder whose own use BLM exempts from rent, or whose rent has been waived or reduced to zero, is conducting a commercial activity with customers or tenants whose uses are similarly without rent, BLM will charge rent based on the highest value use within the facility. For example, if an exempt county grant holder subleases space to a private mobile radio customer (PMRS) and charges the customer a fee to locate its equipment in the facility, the county and customer are conducting a commercial activity in the facility. BLM would assess rent to the county at the PMRS rate. Proposed section 2806.20(b)(4) incorrectly stated this rule in providing that the customer or tenant uses were ''not'' exempt from rent. The rule only applies to exempted uses or those uses whose rent has been waived or reduced to zero. This paragraph does not apply to facilities exempt from rent under section 2806.14(d) of this subpart except when the facility also includes non-eligible facilities.

Several commenters said that the final rule should add ''plus 25% of the fee schedule rate for all other exempted tenant uses'' to the end of proposed section 2806.20(b)(4) (final section 2806.34(b)(4)). BLM disagrees. Proposed section 2806.20(b)(4) contained an error that changes the meaning of the rule. The phrase ''customers and tenants that are *not* exempt from rent'' should have been ''customers and tenants that are *also* exempt from rent.'' For example, in situations where all uses in a facility are customer-related uses or exempted tenant uses and the holder of the facility is operating that facility for commercial purposes, BLM will assess a rent for the highest value use in that facility, but does not add 25 percent for the additional exempted uses. This rule recognizes the commercial activity in the facility and allows the United States to collect a rental for the commercial activity. Therefore, we did not add the language suggested by commenters.

Section 2806.35 How Will BLM Calculate Rent for Private Mobile Radio Service (PMRS), Internal Microwave, and ''Other'' Category Uses?

The term ''other'' is defined in section 2801.5 of this rule (see the ''Communication use rent schedule at (9)) and is used in the rent schedule at the far right of the rent schedule chart. This section explains that when an entity engaged in a PMRS, internal microwave, or ''other'' use is:

(A) Using space in a facility owned by either a facility owner or facility manager, BLM will consider the entity to be a customer and not include these uses in the rent calculation for the facility. In the final rule we replaced the phrase ''in someone else's facility'' with ''facility owner or facility manager'' to make the rule more specific and easier to understand; or

(B) The facility owner, BLM will follow the provisions in section 2806.31 of this subpart to calculate rent for a lease involving these uses. However, we include the rent from the rent schedule for a PMRS, internal microwave, or other use in the rental calculation only if the value of that use is equal to or greater than the value of any other use in the facility. BLM excludes these uses in the 25 percent calculation (see final section 2806.31(a)) when their value does not exceed the highest value in the facility. This is because these uses become customer uses and are not subject to rent (see the definition of ''customer''). We reworded proposed section 2806.21 to make the final rule clearer.

One commenter said that BLM should avoid using the term ''exempt'' when describing how BLM considers customer uses when determining communication use rentals. The commenter said the final regulations should read: ''The PMRS, internal microwave, or ''other'' use would not be included in the rental calculation.'' We agree with the commenter. In the final rule we do not use the term ''exempt.'' The uses commenter listed are excluded from the rental calculation.

Section 2806.36 If I Am a Tenant or Customer in a Facility, Must I Have My Own Grant or Lease and, if So, How Will This Affect My Rent?

This section explains that you may have your own authorization (a lease or a grant), but BLM does not require a separate lease for tenants and customers using a facility authorized by a grant or lease that allows subleasing. BLM charges the facility owner or facility manager rent based on the highest value use within the facility (including any tenant or customer use authorized by a separate lease) and 25 percent of scheduled rent for each of the other uses subject to rent (including any tenant or customer use authorized by a separate lease and the facility owner's use if it is not the highest value use). We included ''facility manager'' in the final rule to reflect the fact that a facility manager is generally the right-of-way holder.

We added a new paragraph (b) to this section to make it clear that when someone owns a building, equipment shelter, or tower on public lands for communication purposes, they must have a BLM right-of-way authorization for their improvements, even if they are a tenant or customer in someone else's facility. This provision is consistent with current policy and will eliminate confusion among some right-of-way holders.

This section also explains that BLM will charge tenants and customers who hold their own lease in a facility, as grant or lease holders, the full annual rent for their use based on the BLM communication use rent schedule. Moreover, BLM will include such tenant or customer use in calculating the rent the facility owner or facility manager must pay.

The provisions in this section were proposed in section 2806.22, and except for the changes listed above and minor changes in terminology, this section remains as proposed.

Section 2806.37 How Will BLM Calculate Rent for a Grant or Lease Involving an Entity With a Single Use (Holder or Tenant) Having Equipment or Occupying Space in Multiple BLM-Authorized Facilities To Support That Single Use?

This section explains that for leases involving an entity (holder or tenant) with a single use having equipment or occupying space in multiple BLM authorized facilities to support that single use, BLM will include the single use to calculate rent for *each* grant or lease occupied by that use. A single use occurs, for example, if a television station locates its antenna on a tower authorized by lease ''A'' and locates its related broadcast equipment in a building authorized by lease ''B.'' Under the requirement in final section 2806.31(c) to list tenants and customers in each facility, television use would be included in each facility because each facility is benefitting economically from having the television broadcast equipment located there, even though the combined equipment is supporting only one single end use. The television station use would be included in the rental calculation for both lease ''A'' and lease ''B.'' With the exception of minor editorial changes, this section is substantially equivalent to proposed section 2806.23(a).

Section 2806.38 Can I Combine Multiple Grants or Leases for Facilities Located on One Site Into a Single Grant or Lease?

Under this section, with BLM's approval, if you hold multiple authorizations for two or more facilities on the same site, you can combine all those uses under one grant or lease. The highest value use in all the combined facilities becomes the base rent. BLM then charges each remaining use in the combined facilities at 25 percent of the rent taken from the schedule. These uses include uses we previously calculated as base rents when BLM authorized each of the facilities on an individual basis. This section was proposed as section 2806.23(b).

One commenter said that this final section should state that authorizations will be combined when it is in the public interest and at BLM's discretion. The commenter also said that the final rule should make clear that when facilities are combined under a single authorization, the previous base rents will be included at the 25 percent rate as tenants. BLM agrees with this comment and added language to the final rule to specify that you must have BLM approval to combine multiple leases for facilities on one communication site into one lease. We also added the last sentence to the paragraph to make it clear that once facilities are combined under one authorization, there would be one highest value use determining base rent and all other contributing tenant uses would be at the 25 percent rate.

Section 2806.39 How Will BLM Calculate Rent for a Lease for a Facility Manager's Use?

This section explains that BLM will follow section 2806.31(a) to calculate rent for a lease involving a facility manager's use. However, we include the rent from the rent schedule for a facility manager's use in the rental calculation only if the value of that use is equal to or greater than the value of any other use in the facility. BLM excludes the facility manager's use in the 25 percent calculation in section 2806.31(a) when it does not exceed the highest value use. For example, if a facility manager leased space to a lower valued broadcast translator, the facility manager would be the highest value use setting base rent and the broadcast translator would enter the 25 percent calculation in section 2806.31(a). If the facility manager also leased space to a cellular company, the higher valued cellular company use would determine the base rent, the broadcast translator would enter the 25 percent calculation, and we would not include the facility manager in the rent calculation. This section was proposed as section 2806.24.

If you are a facility owner and you terminate your use within the facility, but want to retain the lease for other purposes, BLM will continue to charge you for your authorized use until BLM amends the lease to change your use to facility manager or to some other communication use. We added this paragraph to the final rule to make it clear that when a holder's use changes, the holder needs to amend its lease to reflect the change in use. If the holder didn't request an amendment, the holder would continue to pay for a use that no longer exists in the facility.

Section 2806.40 How Will BLM Calculate Rent for a Grant or Lease for Ancillary Communication Uses Associated With Communication Uses on the Rent Schedule?

This section explains that if you use ancillary communication equipment, such as a microwave relay, directly related to operating, maintaining, and monitoring the primary use of a grant (see the definition of ''Communication use rent schedule'' in section 2801.5 of this part), BLM will calculate and charge rent only for the primary use. This section was proposed as section 2806.25(a). In the final rule we replaced the phrase ''internal mobile radio and microwave systems'' with ''ancillary communications equipment'' because we no longer use the term ''internal mobile radio'' anywhere in this rule. Also, we replaced the phrase ''give support or connect one another on the same communications facility'' with ''is used solely in direct support of the primary use'' and added a cross-reference to the definition of ''Communication use rent schedule.'' This definition states that ancillary communication equipment is directly related to operating, maintaining, and monitoring the primary use, and more accurately describes what uses we consider to be ancillary. We dropped proposed section 2806.25(b) from the final rule because it did not describe ancillary uses and was therefore unnecessary in this section. We received no substantive comments on this section.

Section 2806.41 How Will BLM Calculate Rent for Communication Facilities Ancillary to a Linear Grant or Other Use Authorization?

When BLM authorizes a communication facility which is ancillary to a linear grant, or some other type of use authorization (*e.g.*, a mineral lease or sundry notice), BLM will determine the rent using the linear rent schedule (see section 2806.20) or rent scheme associated with the other authorization, and not the communication use rent schedule. This section was proposed as section 2806.25(c). We reworded the entire paragraph of the proposed rule making it easier to understand. We deleted the last sentence of the proposed rule because it was not an accurate statement.

Section 2806.42 How Will BLM Calculate Rent for a Grant or Lease Authorizing a Communication Use Within a Federally-Owned Communication Facility?

This section explains that if you are an occupant of a federally-owned communication facility, you must have your own grant or lease and pay the full rent from the rent schedule. If a Federal agency holds a grant or lease and agrees to operate the facility as a facility owner under section 2806.31 of this subpart, occupants do not need a separate BLM grant or lease. In this case, BLM will calculate and charge rent to the Federal facility owner under sections 2806.30 through 2806.44 of this subpart.

This section was proposed as section 2806.26. We reworded the proposed rule to clear up misunderstandings about Federal agency grant holders paying rent. Several commenters were concerned BLM was going to start assessing rent for Federal grant holders (see the discussion of comments in section 2806.14) and this section explains how that may occur in the case of a communication site lease. We reworded the second paragraph of the proposed rule to explain that a Federal agency must be willing to accept a grant or lease and operate the facility as a facility owner before tenants would not need a separate right-of-way grant.

Commenters said that Federal agencies do not fit within the definitions of ''facility manager'' or ''facility owner,'' since subpart 2806, regarding rent, cannot apply to Federal agencies, even those that have commercial ventures and otherwise may fit the descriptions of ''facility manager or owner.'' For the reasons discussed earlier in sections 2801.5 and 2806.14, BLM disagrees with this comment. The final rule allows for a Federal agency to become a facility owner if it so chooses. In practical terms, we realize that few Federal agencies will choose to become a facility manager or owner.

One commenter said that we should rewrite the first sentence of proposed section 2806.27 as follows: ''In the first year of implementation of the rent

schedule, CY 1997, BLM will phase-in over a 5-year period any rent in excess of $1,000 increase from CY 1996 rents.'' The commenter said that the proposed rule could be misinterpreted to mean that BLM would apply the phase-in of rent any time there was an increase in rent of $1,000 or more. We assume that the commenter's mention of CY 1997 refers to the fact that calendar year 1997 was the first year that the communication use rent schedule was effective. The preamble to the proposed rule at 64 FR 32113 (June 15, 1999) notes that 1997 was also the first year of BLM's 5-year phase-in period for the communication use rent schedule. Because more than five years have passed since the communication use rent schedule was effective, all qualifying cases for phase-in rent have been completed. This fact has caused us to delete this section from the final rule.

Section 2806.43 How Does BLM Calculate Rent for Passive Reflectors and Local Exchange Networks?

This section explains that BLM calculates rent for passive reflectors and local exchange networks by using the same rent schedules for passive reflectors and local exchange networks that the Forest Service uses for the region in which the facilities are located. You may obtain the pertinent schedules from any Forest Service or from any BLM state office in the region in question. For passive reflectors and local exchange networks not covered by a Forest Service regional schedule, BLM uses the provisions in section 2806.50 of this subpart to determine rent.

This section also includes definitions of the terms ''passive reflector'' and ''local exchange networks'' that are new to the final rule. We added these terms so that BLM field personnel and grant holders understand the terms and, for example, do not confuse a radio phone local exchange network with a private mobile radio service. We use Forest Service definitions here since we base our rent for these uses on the Forest Service schedule (see Forest Service Handbook 2709.11–2000–1, Chapter 48.12 (e) and (f)). This section was proposed as sections 2806.28(a) and (d). Proposed section 2806.28(b) is covered in final section 2806.50 and proposed section 2806.28(c) is covered in final section 2806.16.

Section 2806.44 How Will BLM Calculate Rent for a Facility Owner or Facility Manager's Grant or Lease Which Authorizes Communication Uses Subject to the Communication Use Rent Schedule and Communication Uses Whose Rent BLM Determines by Other Means?

This section explains how BLM calculates rent for a facility owner or facility manager's lease which includes communication uses subject to the communication use rent schedule *and* communication uses whose rent BLM determines by other means. BLM determines the rent for a use not on the communication use rent schedule under section 2806.50 of this subpart. For those uses on the rent schedule, BLM establishes rent using sections 2806.30 and 2806.31 of this subpart. We determine the facility owner or the facility manager's rent by identifying the highest rent in the facility and adding to it 25 percent of the rent of all other uses subject to rent. We erroneously omitted this section from the proposed rule. Although it rarely occurs, BLM believes it is necessary to make clear how rent should be calculated in these situations.

Other Rights-of-Way

Section 2806.50 How Will BLM Determine Rent for a Grant When Neither the Linear Rent Schedule at Section 2806.20 Nor the Communication Use Rent Schedule at Section 2806.30 Applies?

This section explains that when neither the linear nor the communication use rent schedule is appropriate, BLM determines your rent through a process based on comparable commercial practices, appraisals, competitive bid, or other reasonable methods, such as developing a new schedule. BLM will notify you in writing of the rent determination. If you disagree, you may appeal BLM's final determination under section 2801.10 of this part. This section is based on proposed section 2806.28(b) and the requirements are the same as that proposed rule.

Several commenters were opposed to the alternate rent calculation to recover fair market value. The commenters said that the provision did not contain criteria ''as to what types of use would trigger an alternate valuation or what level of expected rent would warrant a separate appraisal or on what the expectation would be based.'' The commenters also said that BLM should not use a higher rental valuation for telecommunication carriers than we do for other types of carriers. BLM disagrees with the commenters. Final section 2806.30(c)(1) through (5) sets forth the occasions when we would not use the communication use rent schedule to determine rent. Appraisals may be appropriate for new technologies, competitive bidding, and certain conditions described in paragraph (c)(5) of this section. Finally, we do not use a higher valuation for telecommunication carriers than we do for other types of carriers.

Subpart 2807—Grant Administration and Operation

This subpart describes administration and operations activities under grants. It covers topics such as:

(A) When grant holders can start using their right-of-way;

(B) When grant holders must contact BLM;

(C) Liability for different kinds of grant holders;

(D) Policies relating to terminating or suspending grants;

(E) How to amend or assign grants; and

(F) Policies relating to renewing grants.

Section 2807.10 When Can I Start Activities Under My Grant?

This section explains that when you can start activities under your grant depends on the terms of the grant. You can start activities when you receive the grant you and BLM signed, unless the grant includes a requirement for BLM to provide a written Notice to Proceed. If your grant contains a Notice to Proceed requirement, you may not initiate construction, operation, maintenance, or termination until BLM issues you a Notice to Proceed.

We received no comments on this section. With the exception of editorial changes, this section remains as proposed.

Section 2807.11 When Must I Contact BLM During Operations?

This section explains that you must contact BLM:

(A) At the times specified in your grant;

(B) When your use requires a substantial deviation from the grant. You must obtain BLM's approval before you begin any activity that is a substantial deviation;

(C) When there is a change affecting your application or grant, including, but not limited to, changes in:

(1) Mailing address;

(2) Partners;

(3) Financial conditions; or

(4) Business or corporate status;

(D) When you submit a certification of construction, if the terms of your grant

require it. A certification of construction is a document you submit to BLM after you have finished constructing a facility, but before you begin operating it. The certification verifies that you have constructed and tested the facility to ensure that it complies with the terms of the grant and with applicable Federal and state laws and regulations; and

(E) When BLM requests it. You must update information or confirm that information you submitted before is accurate.

We changed paragraph (b) of this section by moving the definition of the term ''substantial deviation'' from this section to the definitions section of subpart 2801. We did this because the term is used more than once in these regulations and it is redundant to define the term the same way in two separate places. We also added language to specify that you must obtain BLM's approval before you begin any activity that substantially deviates from the activity the grant allows. This is a requirement of previous section 2803.2(b) that we inadvertently omitted from the proposed rule.

We amended paragraph (d) of this section by adding a better explanation of a ''certification of construction.''

We also added a new paragraph (e) to this section. This provision is in previous section 2803.2(c). We inadvertently omitted it from the proposed rule.

Several commenters objected to being required to contact BLM every time they have to install a piece of equipment on existing poles on the lands in the grant to correct for hazardous situations or low clearances. Other commenters had the same concerns over small buildings used for storage. Some of the commenters said this type of information is not essential to BLM. The contact requirement of section 2807.11(b) applies only to uses that are not authorized in an existing grant. The National Environmental Policy Act requires BLM to assess the impacts of uses of the public lands before authorizing or allowing such uses and this contact requirement is essential to enable BLM to meet its obligations under this statute.

Section 2807.12 If I Hold a Grant, for What Am I Liable?

This section explains your liabilities as a grant holder. You are liable to the United States for any damage or injury it incurs in connection with your use and occupancy of the right-of-way. Similarly, you are liable to third parties for any damage or injury they incur in connection with your use and occupancy of the right-of-way.

You are also strictly liable for any activity or facility associated with your right-of-way area that BLM determines presents a foreseeable hazard or risk of damage or injury to the United States. BLM will specify in the grant any activity or facility posing such hazard or risk, and the financial limitations on damages commensurate with such hazard or risk. BLM will not impose strict liability for damage or injury resulting primarily from an act of war, an act of God, or the negligence of the United States, except as otherwise provided by law. As used in this section, strict liability extends to costs incurred by the Federal Government to control or abate conditions, such as fire or oil spills, which threaten life, property, or the environment, even if the threat occurs to areas that are not under Federal jurisdiction. This liability is separate and apart from liability under other provisions of law.

This section explains that you are strictly liable to the United States for damage or injury up to $2 million for any one incident. BLM will determine liability for any amount in excess of this strict liability cap through the ordinary rules of negligence under section 504(h)(2) of FLPMA.

The proposed rule would have increased the strict liability cap from $1 million to $5 million. Many comments indicated that the increase was too great. The final rule increases the strict liability cap from the previous $1 million cap to a $2 million cap. We arrived at the $2 million cap by looking at the increases from 1980 (when the cap was instituted) to 2004 in both the IPD–GDP (+ 105%) and the CPI–U (+ 138%). Adjusting the $1 million cap by the change in the IPD–GDP over this period equals $2,050,000. Adjusting the $1 million cap by the change in the CPI–U over this same period equals $2,380,000. Therefore, we believe that increasing the strict liability cap to $2 million is reasonable.

To keep the cap current with changes in economic conditions, the final rule applies an annual adjustment factor based on the change in the CPI–U, as of July of each year (the difference in CPI–U from July of one year to July of the following year). This increase (rounded to the nearest $1,000) will take into account inflation and will provide better protection of Federal lands.

The $2 million cap does not apply to the release or discharge of hazardous substances on or near the grant, or where liability is unrestricted under other laws.

This section explains that the rules of subrogation apply in cases where a third party caused the damage or injury. This means that when a grant holder compensates the United States in strict liability for damage or injury caused by a third party, the grant holder steps into the place of the United States and has the right to pursue compensation from the third party for the damage or injury done to the United States.

If you cannot satisfy claims for injury or damage, all owners of any interests in, and all affiliates or subsidiaries of any holder of, a grant, except for corporate stockholders, are jointly and severally liable to the United States. If BLM issues a grant to more than one person, each is jointly and severally liable. Joint and several liability in a grant means that each person who holds an interest in a grant is responsible for the full amount of liability if the other grant holders cannot satisfy the liability. This provision is in previous regulations at sections 2803.1–5(g) and (i).

This section also explains that by accepting the grant, you agree to fully indemnify or hold the United States harmless for liability, damage, or claims arising in connection with your use and occupancy of the right-of-way areas.

The provisions of this section do not limit or exclude other remedies. This provision is consistent with existing policy and previous section 2803.1–5. We inadvertently omitted it from the proposed rule and therefore added it here.

We reworded and reorganized proposed sections 2807.12(b) and (f) by consolidating the provisions describing the strict liability items that will appear in a grant into final section 2807.12(b) and by making it clear that the financial limitations on damages specified in the grant will be commensurate with the hazard or risk BLM determines. We also added wording to make clear that the strict liability cap applies for any one incident. Previous section 2803.1–5(b) stated that the limitation was for any one event. We inadvertently omitted the wording in the proposed rule and therefore added it to the final rule to be consistent with ongoing policy and previous regulations.

We revised proposed section 2807.12(h) to add tribal governments and to remove the statement that state and local governments may be excepted from the requirements of section 2807.12. This exception language may cause confusion and is not consistent with previous section 2803.1–5(f) or BLM policy. Liabilities of state, tribal, and local governments are discussed in final section 2807.13.

Except for the changes in the increase in the maximum strict liability financial limitation from $1 million to $2 million, and the provision for no maximum

limitation on strict liability resulting from damages or injuries caused by the release or discharge of hazardous substances or as otherwise provided by law, the final rule is substantially equivalent to previous section 2803.1–5.

Several commenters said that final section 2807.12(a) should make clear that the grant holder is only liable to third parties for damage or injury that is a result of the grant holder's intentional negligence. The provision regarding liability to third parties is a requirement of previous section 2803.1–5(d). The proposed rule clarified this section, and the proposal has been carried forward into the final rule intact.

Numerous commenters objected to the strict liability provisions of proposed section 2807.12(b). Several commenters said that the strict liability provisions in this rule are arbitrary and capricious and that a right-of-way grant holder cannot be held responsible for activities on the right-of-way if he does not have the ability to limit access to that right-of-way. Commenters said that if the holder is to be held strictly liable, he must be allowed to secure and control the right-of-way. Several commenters said that the liability provisions should not apply to cases involving negligence by a third party and objected to being held liable for costs arising from damages, injuries, fees, and costs that are beyond their control. One commenter said that any responsibility for liability should be limited to acts of or under the control of the permit holder, or acts of its customers. The commenter said that removing the Federal Government's liability as landowner is unfair and shifts liability to the innocent permit holder. One commenter said that the strict liability standard is unfair and should be replaced with an ordinary negligence standard. The commenter said that just as the right-of-way grantee does not enjoy full ownership of the right-of-way, it should not bear full liability for all damage. The commenter said that the strict liability standard presents a potentially crippling expense to the nation's rural electric cooperatives that may force some of them to choose not to apply for right-of-way grants, and that could result in depriving some rural customers of electricity. The commenter said that under an ordinary negligence standard, grantees would not be liable for damages that could not be prevented by reasonable measures and that standard was fairer to grantees. The same commenter said that an ordinary negligence standard is not inconsistent with FLPMA. Several commenters said that there should be a specific exclusion of liability if the cause of the pollution was principally that of another permit holder or another party. The commenters also said the final rule should make clear how the standard will operate where there are multiple permit holders on a site and the polluter is unable to pay damages. Other commenters said that the normal negligence rules are adequate protection for landowners and for holders of nonfederal rights-of-way in the United States and that the Federal Government should be bound by the same standard.

The strict liability standard in section 2807.12(b) is specifically authorized by section 504(h)(2) of FLPMA (43 U.S.C. 1764(h)(2)), which provides:

> Any regulation or stipulation imposing liability without fault shall include a maximum limitation on damages commensurate with the foreseeable risks or hazards presented. Any liability for damage or injury in excess of this amount shall be determined by ordinary rules of negligence.

BLM regulations addressing strict liability have been in effect since 1980. Previous section 2803.1–5 authorized BLM to impose strict liability on grant holders for any activity or facility within the right-of-way that presented, in the agency's discretion, a foreseeable hazard or risk of damage or injury to the United States. In the preamble to the 1980 rule, BLM addressed and rejected concerns similar to those expressed by the current commenters that a holder's inability to restrict access to the right-of-way precluded the imposition of strict liability. BLM stated at 45 FR 44518, 44524 (July 1, 1980):

> Section 504(h) of the Federal Land Policy and Management Act gave the Secretary of the Interior discretionary authority to impose strict liability in connection with right-of-way grants or temporary use permits under the circumstances described. The decision to exercise the authority was made after careful consideration of all aspects of the issue. The overriding reason for imposing strict liability was the need to provide the Federal Government and the tax paying public with protection from damages resulting from extra hazardous activity on the public lands by those holding a right-of-way grant or temporary use permit and gaining a benefit from such use.

Additional support for imposing strict liability is in the preamble to the 1979 proposed rule at 44 FR 58106, 58113 (October 9, 1979).

BLM continues to believe that strict liability is properly imposed on a holder for certain foreseeable risks and hazards. The fact that a holder may not always be able to control access to the right-of-way does not mean that strict liability may not be applied to specified activities or facilities associated with the right-of-way area. Under the common law, strict liability has been regularly applied to abnormally dangerous activities, irrespective of the liable party's ability to control access to the activity. In fact, it is the inability to control the harm that, in turn, can justify imposing strict liability in the first place. Certain activities undertaken on FLPMA and MLA rights-of-way, such as transmitting electricity, transporting oil and gas, and using and storing hazardous materials, are inherently dangerous. Strict liability for such activities is both necessary and appropriate to ensure that the cost of remediation and restoration falls on the grant holder, rather than the public, and to encourage grant holders to take extraordinary care when conducting inherently dangerous activities on public lands. For these reasons, BLM is retaining the strict liability standard in this final rule and is not adopting a negligence or knowing and willful standard, as suggested by commenters.

In addition, BLM points out that Congress authorized the imposition of strict liability in section 28(x) of the MLA, 30 U.S.C. 185(x), and imposed a policy of strict liability in section 204(a) of the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. 1653(a). Senate Report 94–583, part of the legislative history of FLPMA, notes the similarities (at page 73) between the strict liability provisions of FLPMA and the MLA. In the preamble to the 1979 proposed rule, BLM acknowledged that the strict liability provisions of FLPMA were modeled after the MLA, as amended (see 44 FR 58106, 58113).

One commenter requested that BLM explain the terms ''primarily'' and ''except as otherwise provided by law'' in proposed section 2807.12(b)(1). As noted above, that paragraph states that BLM will not impose strict liability for damage or injury resulting primarily from an act of God, act of war, or the negligence of the United States, except as otherwise provided by law. BLM intends that the word ''primarily'' have its commonly accepted meaning.

''Primarily'' means principally or chiefly. Accordingly, BLM will not impose strict liability where, for example, the negligence of the United States was the principal cause of the loss or damage. Strict liability would be appropriate, in contrast, where the United States's negligence was a contributory factor, provided that it was not the principal cause. BLM expects that the law of the state where the right-of-way is located will govern the rules regarding fault.

''Except as otherwise provided by law'' means, for example, that if the acts or omissions giving rise to damage or

injury support a claim under a strict liability statute, such as CERCLA, the negligence of the United States will not preclude a strict liability claim.

One commenter remarked that BLM should clarify whether the term ''right-of-way area,'' as used in proposed sections 2807.12(b) and 2807.12(f) (final sections 2807.12(b) and 2807.12 (e)), includes land not specific to the holder's grant. BLM intends that the phrase ''right-of-way area'' in these paragraphs refer to the land specifically included in the holder's grant.

Many commenters objected to the proposed raising of the liability ceiling to $5 million from the current $1 million, and several even objected to the previous regulation's $1 million ceiling. The commenters stated that BLM had given no evidence that there was a need for the increase and that the increase would discourage, if not prevent, oil and gas exploration and small electric cooperatives from serving rural areas. Some of the commenters said the liability cap increase would disproportionately affect small right-of-way holders who may not have access to, or be able to afford, the required commercial insurance. Under this final rule, we would only include a strict liability provision in a grant after analyzing the foreseeable hazard or risk of damage or injury to the United States. It is not common for BLM to issue grants with strict liability provisions. Therefore, this provision will not have a significant effect on a substantial number of small entities. The scarcity of cases challenging BLM's application of the strict liability provisions of section 504 suggests that the agency has applied these provisions in a reasonable manner.

Section 504(h)(2) of FLPMA (43 U.S.C. 1764(h)(2)) requires that any regulation imposing strict liability without fault include a maximum limitation on damages commensurate with the foreseeable risks or hazards presented. The ordinary rules of negligence determine any liability for damage or injury in excess of this amount. In 1980, BLM instituted a $1 million ceiling on strict liability cases. At all times, however, damages could exceed this $1 million limit if determined by ordinary rules of negligence.

The previous regulations, issued in July 1980, established a maximum strict liability limit of $1 million for any one event. This final rule raises the amount to $2 million for any one incident. (We changed the term ''event'' to ''incident'' in the final rule to be more consistent with the terminology in CERCLA and other environmental legislation.) The increase recognizes inflation that has occurred since 1980 and the increasing complexity involved in responding to incidents that damage or threaten life, property, or the environment.

As noted earlier, the proposed rule included an increase in the liability limitation to $5 million. A number of commenters objected to the increase and said that it would disproportionately affect small right-of-way holders who may not have access to commercial insurance. In the final rule, we reduced the increase in the strict liability limitation to $2 million in an effort to reduce adverse impacts to grant holders while still providing the Federal Government and the tax-paying public with reasonable protection from damages resulting from activities and facilities on the public lands. Inflation alone warrants the increase to $2 million. The IPD–GDP has increased 105 percent from 1980 to 2004 and the CPI–U has increased 138 percent during this same period. BLM believes that the CPI–U is a good measure to use in estimating inflation in the costs to control or abate conditions which threaten life, property, or the environment. The $2 million strict liability limit will be updated annually by this index.

A few commenters supported the ''polluter pays'' strict liability standard for hazardous materials. The commenters said that because hazardous materials are intrinsically dangerous to the public, accidents involving them must be prevented at all costs and a strict liability standard gives the proper incentive to prevent such accidents. The commenters said that strict liability eliminates lengthy, expensive litigation which is costly to both the grantee and to BLM. Commenters also said that it is inappropriate to place a cap on strict liability even for non-hazardous materials. The commenters said that if a company seeks the privilege of using the public's land for commercial use, it should be strictly liable for whatever damages occur as a result of such use. As stated earlier, the cap on strict liability is a requirement of section 504(h)(2) of FLPMA. The cap does not apply where another applicable statute (such as CERCLA) provides for unlimited damages, or otherwise pre-empts the damage limits in FLPMA.

Several commenters said that in the final rule we should strike the phrase ''even if the threat occurs on areas that are not under federal jurisdiction'' because the Federal Government has no jurisdiction or right to impose strict liability on any property other than Federal property. One commenter said that it is not clear whether the Federal Government is entitled to recover such costs under the applicable laws and that it would be more logical for the grantee to assume responsibility/liability consistent with ''applicable law.'' The final rule replaces ''on'' with ''to'' in the cited phrase to make clear that strict liability would include costs incurred by the United States for a threat that occurred to non-federal land. Examples might include a fire or landslide that started on the right-of-way and migrated off Federal land, causing damage or injury to non-federal land. A similar policy was set forth in the previous regulations at section 2803.1–5(b). We have not adopted the suggestion that the cited phrase be removed from the final rule.

Several commenters said that we should be consistent in the regulations and use either the term ''hazardous substance'' or ''hazardous materials.'' The commenters said that the term ''hazardous substance'' is not defined in the rule. One commenter said that the ''collective definition'' of hazardous materials is a problem because it is doubtful that all the laws referenced in the definition call for unlimited financial liability. The commenter said that in the proposed rule BLM cites a case decided under CERCLA for the proposition that there are no limits to cost recovery under CERCLA, but then uses this rationale to support the same principle with respect to liability under any of the other statutes in the definition of ''hazardous materials.'' To the extent that these other laws would place a limitation on one's financial exposure, proposed section 2807.12(f) removed that limitation by the collective definition of ''hazardous materials,'' the commenters continued. The commenters said that this is inappropriate. One commenter said that because this section causes uncertainty for the public and BLM, it should be deleted.

In response to those comments, BLM has changed the language of proposed section 2807.12(f) (final section 2807.12(b)(3)) to reference ''hazardous substances,'' as defined by CERCLA and not ''hazardous materials.'' BLM notes, however, that the $2 million cap also may not be applicable to other specified pollutants, contaminants, and substances where controlling law so provides, such as section 1002(a) of the Oil Pollution Act (33 U.S.C. 2702(a)). Where a release would give rise to a claim under Federal or state law that provides for unlimited damages, or otherwise pre-empts the damage limits contained in FLPMA, the limitations of FLPMA will not apply.

Several commenters found the provisions of proposed section 2807.12(g) (final sections 2807.12(b)(3) and (4)) to be confusing. That proposed section stated that a holder is strictly liable for all costs above $5 million (now $2 million in the final rule) that accrue because of negligence regarding hazardous substances. The commenters said that this rule adds a new concept of negligence to this provision which for the most part imposes strict liability. The commenters also said the rule should make clear whose negligence triggers this provision. We agree with the commenters. The purpose of final sections 2807.12(b)(3) and (4) is to implement section 504(h)(2) of FLPMA (43 U.S.C. 1764(h)(2)). The final rule, accordingly, removes the reference to negligence regarding hazardous substances and states that any liability in excess of the $2 million strict liability cap will be determined by the ordinary rules of negligence.

In referring to the strict liability provisions of the proposed rule, several commenters asked if there have been verifiable losses to the U.S. Treasury as a result of rights-of-way crossing Federal land. BLM has not researched case records to determine the extent of unreimbursed costs the United States has incurred stemming from damage or injury associated with rights-of-way crossing Federal land. The intent of the strict liability provisions is to help prevent the public from incurring such unreimbursed costs in the future in those situations where a foreseeable hazard or risk of damage or injury to the United States can be identified at the time a right-of-way grant is authorized.

Several commenters said that the joint and several liability provision of proposed section 2807.12(c) ''* * * ignores corporate separateness, a fundamental principle of corporate law. Each corporation must be held separately liable.'' The provisions of proposed section 2807.12(c) to which the commenters object were first promulgated in 1980 at 43 CFR 2803.1–4(g) and have been effective ever since that time, although the citation changed in 1987 to 43 CFR 2803.1–5(g). This section is necessary to ensure that, where the loss or damage is substantial and potentially exceeds the assets of the grant holder, related entities will also be liable. It also ensures that between grant holders and the public, the grant holder and not the public will pay for rehabilitating damage to the affected lands. Similar liability is imposed at paragraph 28(x) of the MLA, 30 U.S.C. 185(x), and at section 204(c) of the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. 1653(c).

One commenter asked why there is an exception for corporate stockholders being jointly and severally liable to the United States when the holder cannot satisfy claims for injury or damage. The exception for corporate stockholders was first promulgated in 1980 as 43 CFR 2803.1–4(g) and has been effective since that time, although the citation changed in 1987 to 43 CFR 2803.1–5(g). The exception has been carried forward into the final rule. It is a fundamental principle of corporate law that a corporation is a legal entity distinct from its owners. Owners of a corporation are its stockholders. We preserve this distinction in final section 2807.12(c) and accordingly did not amend this rule to make corporate stockholders jointly and severally liable with the corporation.

Several commenters said that proposed section 2807.12(e) (final section 2807.12(d)) should be deleted since multiple holders should be jointly and severally liable only to the extent applicable law would impose such liability. We first published provisions similar to those in this paragraph in our regulations in 1980 at 43 CFR 2803.1–4(i). It has been effective since then, although the citation changed in 1987 to 43 CFR 2803.1–5(i). BLM has retained the provision as final section 2807.12(d) because it has provided clarity that would be lacking if the commenter's view was adopted.

Several commenters said that the final rule should guarantee that the grant holder has sufficient authority to mitigate its liability for fires through appropriate maintenance of vegetation. In processing an application for a grant, BLM will attempt to incorporate terms and conditions relative to the management of vegetation that balance the grant holder's need to minimize its liability exposure for fires with other environmental concerns that might be present in the right-of-way area. Because resource issues and concerns can vary widely among locations, BLM does not believe that it is practical or would protect the public interest to incorporate such a regulation of general applicability in this final rule.

Several commenters said that BLM should amend the rule so that current permit holders would be subject only to current BLM regulations on liability until they renew their permit(s). Alternatively, the commenters said that the environmental liability under the rule should be phased-in over the existing term of a holder's right-of-way permit. They said that this would afford innocent permit holders an opportunity to assess the environmental condition of the site and make reasonable business decisions based on environmental findings, including whether to seek renewal of the permit at the current site location. Under the previous and final rule, existing holders are subject to changes in regulations that occur mid-term. No phase-in is appropriate. Previous section 2801.2 and proposed section 2805.10(c)(1) (final section 2805.12(a)) state that an applicant, by accepting a right-of-way grant, agrees to comply with and be bound by all applicable Federal and state laws, including regulations, that may be issued during the term of the grant. All BLM grants contain the following provision: 'This grant or permit is issued subject to the holder's compliance with all applicable regulations contained in Title 43 Code of Federal Regulations part 2800.'' Although the increase in the strict liability cap will occur mid-term for many grant holders, holders of FLPMA rights-of-way have at all times been liable for amounts in excess of the previous $1 million cap. Liability above that amount would have been based on ordinary rules of negligence.

One commenter said that ''* * * because BLM can apply to federal agencies only those provisions that are applicable to a federal entity, the provisions regarding liability, guarantee bonds, releases of third party environmental damage, and other such provision should not apply to federal agencies. An agency's liability for torts, for example, is covered by the Federal Tort Claims Act.'' BLM agrees generally with the comment. Final section 2809.10 states that ''The regulations in this part apply to Federal agencies to the extent possible * * *.'' To the extent, therefore, that the liability provisions of the rule are not appropriate for Federal agencies, they will not apply.

Section 2807.13 As Grant Holders, What Liabilities Do State, Tribal, and Local Governments Have?

This section explains that state, tribal, or local governments or their agency or instrumentality are liable to the fullest extent the law allows at the time that BLM issues the grant. If a state, tribal, or local government or their agency or instrumentality does not have the legal power to assume full liability, it must repair damages or make restitution to the fullest extent of its powers. Senate Report No. 94–583 notes at 73, in commenting on section 403(g) of S. 507, a predecessor to section 504(h)(1) of FLPMA, that governmental entities may not be legally able to assure protection of the United States because of limitations in state law or State Constitutions.

This section also explains that BLM may require a state, tribal, or local government to provide a bond, insurance, or other acceptable security to:

(A) Protect the liability exposure of the United States to claims by third parties arising out of your use and occupancy of the right-of-way;

(B) Cover any losses, damages, or injury to human health, the environment, and property incurred in connection with your use and occupancy of the right-of-way; and

(C) Cover any damages or injuries resulting from the release or discharge of hazardous materials incurred in connection with your use and occupancy of the right-of-way.

Based on the state, tribal, or local government's record of compliance and changes in risk and conditions, BLM may require it to increase or decrease the amount of its security. The provisions of this section do not limit or exclude other remedies.

Except for minor editorial changes and some reorganizing of proposed paragraphs (b)(1) through (b)(3), this section is the same as in the proposed rule.

Section 2807.14 How Will BLM Notify Me If Someone Else Wants a Right-of-Way Grant for Land Subject to My Grant or Near or Adjacent to It?

This section explains that BLM will notify you in writing when it receives an application for a right-of-way grant for land subject to your grant or near or adjacent to it. BLM will consider your written recommendations as to how the proposed use affects the integrity of, or your ability to operate, your facilities. The notice will contain a time period within which you must respond. The notice may also inform you of additional opportunities to comment.

We added this section to the final rule to provide notice of BLM's long-established policy of informing existing grant holders of new applications for grants that might affect the use of existing rights-of-way. This policy helps BLM to avoid authorizing a new grant that would adversely affect the integrity of existing uses or the ability of existing grant holders to operate their facilities. The recommendations of existing grant holders are desirable to help ensure that this does not happen.

Section 2807.15 How Is Grant Administration Affected If the Land My Right-of-Way Encumbers Is Transferred to Another Federal Agency or Out of Federal Ownership?

This section explains that if there is a proposal to transfer the land your right-of-way encumbers to another Federal agency, BLM may, after reasonable notice to you, transfer administration of your grant for the lands BLM formerly administered to another Federal agency, unless doing so would diminish your rights. If BLM determines your rights would be diminished by such a transfer, BLM can still transfer the land, but retain administration of your grant under existing terms and conditions.

It also explains that if there is a proposal to transfer the land your right-of-way encumbers out of Federal ownership, BLM may, after reasonable notice to you and in conformance with existing policies and procedures, do one of the following three things:

(A) Transfer the land subject to your grant. In this case, administration of your grant for the lands BLM formerly administered is transferred to the new owner of the land;

(B) Transfer the land, but BLM retains administration of your grant; or

(C) Reserve to the United States the land your grant encumbers, and BLM retains administration of your grant.

This section also explains that BLM or, if BLM no longer administers the land, the new land owner may negotiate new grant terms and conditions with you. This may include increasing the term of your grant, should you request it, to a perpetual grant under section 2806.23(c) of this part or providing for an easement. We added the phrase ''for an easement'' to the end of the last paragraph in this section to allow BLM to issue easements in cases where an easement would be a more appropriate instrument than a perpetual grant. Section 103 of FLPMA (43 U.S.C. 1702 (f)) defines ''right-of-way'' to include easements and therefore recognizes that easements are an acceptable BLM authorization.

We proposed this section as section 2807.14 and have renumbered it to account for new section 2807.14, as discussed above. We also reworded paragraphs (a) and (b) and added a new paragraph (c) in response to public comments. Paragraphs (a) and (b) are consistent with previous section 2803.5.

Under paragraph (b), the option BLM chooses for lands transferred out of Federal ownership depends on the circumstances of the proposed transfer and the grant involved. Our choice would be that which would be the least disruptive to the parties involved and that which is in the public interest.

Several commenters said that in the final rule BLM should:

(A) Clarify procedures for maintaining rights-of-way on lands that are exchanged or transferred;

(B) Improve its practice of communicating to grant holders its intent to transfer, exchange, or sell lands; and

(C) Grant easements in perpetuity to existing grantees before transferring or require transferees to grant easements when there is a transfer.

BLM agrees that the description of procedures in the proposed rule at section 2807.14 for maintaining grants on lands that are exchanged or otherwise transferred from BLM could be improved. We rewrote this section and added detail to make it clearer. We added a new sentence at the end of final section 2807.15(a) to describe the existing procedure when BLM's transfer of land to another Federal agency would diminish a grant holder's rights. In this case, BLM could transfer the land, but retain administration of the grant under existing terms and conditions so that there would be no change in administration of the grant.

BLM also agrees that we could improve our practice of communicating to grant holders our intent to transfer, exchange, or sell lands. We added the phrase ''after reasonable notice to you'' to sections 2807.15(a) and (b) to specify that BLM will always provide advance notice to affected grant holders of any proposal to transfer land encumbered by their grants.

We added section 2807.15(c) in response to the third comment above. The new paragraph describes existing practices. Upon the request of a grant holder, BLM will consider extending the term of an existing grant to that of a perpetual grant before transferring the land encumbered by the grant. If an affected grant holder and the proposed new land owner can negotiate a new authorization to replace the existing BLM grant, BLM can arrange the timing of approvals so that termination of the BLM grant and its replacement by the new authorization occur at the same time the transfer of the land is completed.

Section 2807.16 Under What Conditions May BLM Order An Immediate Temporary Suspension of My Activities?

This section explains that if BLM determines that you have violated one or more of the terms, conditions, or stipulations of your grant, we can order an immediate temporary suspension of activities within the right-of-way area to protect public health or safety or the environment. BLM can require you to stop your activities before holding an administrative proceeding on the matter. Existing regulations and section 506 of FLPMA authorize BLM to order

an immediate temporary suspension without an administrative proceeding.

The section also states that BLM may issue an immediate temporary suspension order orally or in writing to you, your contractor or subcontractor, or to any representative, agent, or employee representing you or conducting the activity. When you receive the order, you must stop the activity immediately. BLM will, as soon as practical, confirm an oral order by sending or hand delivering to you or your agent a written suspension order explaining the reasons for it.

You may file a written request for permission to resume activities at any time after BLM issues the order. In the request, state the facts supporting your request and the reasons you believe that BLM should lift the order. BLM must grant or deny your request within 5 business days after receiving it. If BLM does not respond within 5 business days, BLM has denied your request. You may appeal the denial under section 2801.10 of this part.

The immediate temporary suspension order is effective until you receive BLM's written notice to proceed with your activities.

This section was proposed as section 2807.15. In the final rule we replaced the term ''promptly'' in paragraph (b), describing when BLM will follow an oral order with a written one, with the phrase ''as soon as practical.'' This is more consistent than the proposal with previous section 2803.3(b). We also reorganized proposed paragraphs (c), (d), and (e) to make them clearer. We moved proposed paragraph (c) to final paragraph (d) and consolidated proposed paragraph (e) with proposed paragraph (d) because the ''request'' in proposed paragraph (e) is identical to the request in proposed paragraph (d). The result is final paragraph (c). With the exception of minor editorial changes and the reorganization of final paragraphs (c) and (d) explained above, this section of the final rule remains as proposed. The section is consistent with previous section 2803.3.

Several commenters said that the words ''violation of one or more of the terms of the grant'' are too broad and subject to abuse. Commenters also said that safety is the Occupational Safety and Health Administration's (OSHA) responsibility. We disagree. Both the proposed and final rules state that when there is a violation of one or more of the terms, conditions, or stipulations of a grant, BLM may order an immediate temporary suspension of activities ''to protect public health or safety or the environment.'' This provision is not new. It has been in previous section 2803.3 since 1980 and is supported by section 506 of FLPMA (43 U.S.C. 1766). Only violations that cause or threaten damage or injury to public health, safety, or the environment can lead to an immediate temporary suspension of activities. Under the rule, BLM would not have the authority to issue an immediate temporary suspension order for any other type of violation. Although OSHA has responsibility for occupational health and safety in the workplace, it is not charged with responsibility for health and safety in other situations. BLM's authority to suspend a holder's activities to protect public health or safety or the environment is expressly granted in section 506 of FLPMA. This includes the authority to ensure operations on rights-of-way are performed safely and in a manner that protects users of public lands.

Several commenters said that BLM must not be allowed to suspend activities without providing an opportunity for an administrative hearing, unless it determines that the operator has willfully and knowingly created serious permanent damage to the environment or public health and safety following a notice. Commenters also said that the correct standard is that BLM must have ''convincing evidence'' before suspending activities. One commenter said that BLM did not have authority to temporarily suspend activities on a grant to protect public health and safety or the environment without an administrative hearing. We disagree with these comments. Section 506 of FLPMA provides authority for this section of the rule. It states:

> If the Secretary concerned determines that an immediate temporary suspension of activities within a right-of-way for violation of its terms and conditions is necessary to protect public health or safety or the environment, he may abate such activities prior to an administrative proceeding.

Section 506 makes clear that BLM may suspend and abate a holder's activities prior to an administrative hearing. This provision also establishes the standard BLM uses in determining whether to issue an immediate temporary suspension order, namely that such an order is necessary ''to protect public health or safety or the environment.'' Consequently, we have not adopted the alternate standards commenters suggested.

Section 2807.17 Under What Conditions May BLM Suspend or Terminate My Grant?

This section explains that BLM may suspend or terminate your grant if you do not comply with applicable laws and regulations or any terms, conditions, or stipulations of the grant (such as rent payments), or if you abandon the right-of-way.

This section also explains that a grant also terminates when:

(A) The grant contains a term or condition that has been met that requires the grant to terminate;

(B) BLM consents in writing to your request to terminate the grant; or

(C) It is required by law to terminate.

Your failure to use your right-of-way for its authorized purpose for any continuous 5-year period creates a presumption of abandonment. BLM will notify you in writing of this presumption. You may rebut the presumption of abandonment by proving that you used the right-of-way or that your failure to use the right-of-way was due to circumstances beyond your control, such as acts of God, war, or casualties not attributable to you.

You may appeal a decision under this section under section 2801.10 of this part.

This section was proposed as section 2807.16. In addition to minor editorial changes, we made a number of changes and additions to improve the clarity and completeness of the process and to make it more consistent with the previous sections 2803.4(a), (b), and (c).

In this final rule we moved proposed section 2807.16(b) to final section 2807.18, discussed below.

We also modified proposed paragraph (a) by adding the words ''or terminate'' and ''or if you abandon the right-of-way.'' Adding ''or terminate'' consolidates proposed paragraph (c)(3) into paragraph (a) and is more consistent with previous section 2803.4(b). The phrase ''or if you abandon the right-of-way'' is part of previous section 2803.4(b), and refers to a concept which we addressed only indirectly in proposed section 2807.16(d). Our addition of this phrase clarifies the purpose of proposed section 2807.16(d).

We amended proposed paragraph (c)(2) (final paragraph (b)(2)) to provide that BLM's acceptance of your request to terminate a grant must be in writing. It is longstanding BLM policy that such acceptances be in writing.

We consolidated proposed paragraph (c)(3) with paragraph (a) (see discussion above) and added that your grant terminates when it is ''required by law to terminate.'' We added this language to final paragraph (b)(3) to improve the completeness of the section and reflect legal requirements contained in certain pre-FLPMA right-of-way statutes.

Proposed paragraph (d) is now paragraph (c) to account for the transfer

of proposed paragraph (b) to final section 2807.18.

We added a new paragraph (d) to point out that you may appeal a BLM decision issued under this section in accordance with section 2801.10 of this part. Any adverse BLM decision is appealable under the existing 43 CFR part 4. We added this paragraph to give you additional notice of your appeal rights.

We received no substantive comments on this section.

Section 2807.18 How Will I Know That BLM Intends To Suspend or Terminate My Grant?

This section explains that before BLM suspends or terminates your grant under section 2807.17(a) of this part, we will send you a written notice stating that we intend to suspend or terminate your grant. We will give the grounds for such action. The notice will give you a reasonable opportunity to correct any noncompliance or start or resume use of the right-of-way, as appropriate.

Before BLM suspends or terminates a grant issued as an easement, BLM must give you written notice and refer the matter to the Office of Hearings and Appeals for a hearing before an administrative law judge (ALJ) under 5 U.S.C. 554. No hearing is required if the terms of the grant provided for termination on the occurrence of a fixed or agreed-upon condition, event, or time. If the ALJ determines that grounds for suspension or termination exist and such action is justified, BLM will suspend or terminate the grant.

This section was proposed as section 2807.17. In addition to minor editorial changes, we made a number of changes and additions to improve the accuracy and completeness of the process description and to make it more consistent with previous sections 2803.4(d) and (e).

We modified the first sentence of proposed paragraph (a) by adding the reference ''under § 2807.17(a)'' to indicate those suspensions and terminations for which BLM will send a written notice. Previous section 2803.4(d) stated ''Before suspending or terminating a right-of-way grant pursuant to paragraph (b) of this section, the authorized officer shall give the holder written notice that such action is contemplated and the grounds therefor and shall allow the holder a reasonable opportunity to cure such noncompliance.'' We inadvertently omitted the reference from the proposed rule and added it in this rule to be consistent with previous regulations.

We added the phrase ''or start or resume use of the right-of-way'' to the last sentence of paragraph (a) which now reads, ''The notice will give you a reasonable opportunity to correct any noncompliance or start or resume use of the right-of-way'' to make the section consistent with FLPMA. Section 506 of FLPMA states:

> Prior to commencing any proceeding to suspend or terminate a right-of-way the Secretary concerned shall give written notice to the holder of the grounds for such action and shall give the holder a reasonable time to resume use of the right-of-way or to comply with this title, condition, rule, or regulation as the case may be.

We modified the first sentence of paragraph (b) to state that before suspending or terminating a grant ''issued as an easement,'' BLM must refer the matter to the Office of Hearings and Appeals for a hearing. Proposed section 2807.17(b) referred to grants ''issued before October 21, 1976, any subsequent grants issued as an easement, and grants issued under part 2880 of this chapter.'' We moved the provisions for hearings regarding grants issued under part 2880 to final section 2886.18. The proposed rule was in error by including all grants ''issued before October 21, 1976,'' since only those pre-October 21, 1976 grants that were issued as easements are subject to the hearing requirement. Section 506 of FLPMA makes this clear. Previous section 2803.4(e) refers to ''a right-of-way grant that is under its terms an easement.'' Therefore, the final rule is more accurate than the proposal and is more consistent with the previous regulation. We also modified the same sentence by adding that a hearing before an administrative law judge would be conducted under 5 U.S.C. 554. This citation is set forth in section 506 of FLPMA. Previous section 2803.4(e) stated that the hearing would be ''pursuant to 43 CFR part 4'' and the existing regulations at 43 CFR 4.1(a) provide for hearings ''to be conducted pursuant to 5 U.S.C. 554.'' We made the change to make the final regulation more complete than the proposal and more consistent with FLPMA and the previous regulation.

We added a new sentence to paragraph (b), providing that a hearing is not required if the grant contained terms for termination on the occurrence of a fixed or agreed-upon condition, event, or time. We added it to accurately describe the hearing process and to reflect longstanding BLM practice. The final language is consistent with section 506 of FLPMA which states, ''No administrative proceeding shall be required where the right-of-way by its terms provides that it terminates on the occurrence of a fixed or agreed-upon condition, event, or time.''

We received no substantive comments on this section.

Section 2807.19 When My Grant Terminates, What Happens To Any Facilities on It?

This section explains that after your grant terminates, you must remove any facilities within the right-of-way within a reasonable time, as determined by BLM, unless BLM instructs you otherwise in writing, or termination is due to non-payment of rent.

After removing the facilities, you must remediate and restore the right-of-way area to a condition satisfactory to BLM, including the removal and clean up of any hazardous materials.

If you do not remove all facilities within a reasonable period as determined by BLM, we may declare them to be the property of the United States. However, you are still liable for the costs of removing them and for remediating and restoring the right-of-way area.

This section was proposed as section 2807.18. In addition to minor editorial changes, we made a number of changes and additions to make the rule clearer, including dividing the section into three paragraphs. We replaced the terms ''improvements'' and ''structures and improvements'' with the term ''facilities'' to make the rule clearer and consistent with other provisions in the rule and since ''facility'' is defined in section 2801.5 of these regulations.

We added a clause to the last sentence of paragraph (a) providing that you must not remove any facilities or equipment from the right-of-way area if termination of your grant was due to non-payment of rent. This is a requirement of previous section 2803.1–2(h). We added the clause to make the section clearer and to provide a cross-reference to final section 2806.13(c), where similar language also occurs.

We modified paragraph (c) to specify that the reasonable period for the removal of facilities will be ''as determined by BLM.'' This is the same language used in previous section 2803.4–1; we added it to be consistent with that section.

Commenters said that the standard ''any condition satisfactory to BLM'' in paragraph (b) is too broad and subject to abuse. The commenters said that BLM has not presented evidence to justify replacing the current standard of ''restoring the area to a condition as near as possible to the original condition.'' They said that if BLM keeps the change in the rule, it should not also require the former right-of-way holder to pay for

removal. We disagree. The restoration standard in previous section 2803.4–1 is ''to a condition satisfactory to the authorized officer'' and has been in place since 1980. The standard in the proposed and final rule, ''to a condition satisfactory to BLM,'' is essentially unchanged from previous regulations.

Section 2807.20 When Must I Amend My Application, Seek an Amendment of My Grant, or Obtain a New Grant?

This section explains that you must amend your application or seek an amendment to your grant when there is a proposed substantial deviation in location or use. The requirements to amend an application or grant are the same as those for a new application, including paying processing and monitoring fees and rent according to sections 2804.14, 2805.16, and 2806.10 of this rule.

Any activity not authorized by your grant may subject you to prosecution under applicable law and to trespass charges under subpart 2808 of this part.

You must apply for a new grant if BLM issued your grant before October 21, 1976, and there is a proposed substantial deviation in the location or use of the right-of-way or its terms and conditions. If BLM approves your application, BLM will terminate your old grant and you will receive a new grant under 43 U.S.C. 1761 *et seq.* and the regulations in this part. BLM may include the same terms and conditions in the new grant as were in the original grant as to annual rent, duration, and nature of interest if BLM determines, based on current land use plans and other management decisions, that it is in the public interest to do so. Alternatively, BLM may keep the old grant in effect and issue a new grant for the new use or location or terms and conditions.

This section also explains that section 509(b) of FLPMA requires you to apply for a new grant to allow realignment of any railroad and appurtenant communication facilities. FLPMA requires BLM to issue a decision within 6 months after it receives your complete application. BLM may include the same terms and conditions in the new grant as were in the original grant as to annual rent, duration, and nature of interest, if:

(A) These terms are in the public interest;

(B) The lands are of approximately equal value; and

(C) The lands involved are not within an incorporated community.

This section was proposed as section 2807.19. We reworded and reorganized this section in the final rule to make it clear when BLM issues a new grant and when BLM amends an existing grant.

We added the phrase ''or obtain a new grant'' to the title of the section to more accurately reflect the contents of the section.

We modified proposed paragraph (a) by removing the cross reference to section 2808.11(b), which describes the penalties BLM may assess for unauthorized use of public land, and replaced this cross-reference with final paragraph (c). We also modified this paragraph by moving the last sentence to final paragraph (b) and by replacing the phrase ''including cost reimbursement according to § 2804.14'' with the phrase ''including payment of processing and monitoring fees and rent according to sections 2804.14, 2805.16, and 2806.10 of this part.'' Cost reimbursement includes both processing and monitoring fees. In the proposed rule, both fees were in section 2804.14. In the final rule, we moved the provisions for monitoring fees to section 2805.16, making it necessary to add this citation. It is long-standing BLM practice that when an amendment to a grant makes changes in acreage that otherwise affect the determination of rent for that grant, BLM collects any additional rent that may be calculated as part of the amendment process. We added a cross-reference to section 2806.10 to the last sentence of final paragraph (b) to provide more complete notice of the financial impacts that may be involved in an amendment.

We also reorganized proposed paragraph (b) (final paragraph (d)) and modified it in several respects. The proposed rule mirrored previous section 2803.6–1(b) in that it stated that we would issue an amended grant for pre-FLPMA grants whose use or location substantially changed. We believe both the proposed section 2807.19 and previous section 2803.6–1(b) do not accurately reflect FLPMA's intent. Section 509(a) of FLPMA, in referring to grants issued prior to the enactment of FLPMA, says:

> Nothing in this title shall have the effect of terminating any right-of-way or right-of-use heretofore issued, granted, or permitted. However, with the consent of the holder thereof, the Secretary concerned may cancel such a right-of-way or right-of-use and in its stead issue a right-of-way pursuant to the provisions of this title.

To more accurately reflect the intent of section 509(a) of FLPMA, we revised the regulations to clearly state that a pre-FLPMA grant could not be amended, but could rather be replaced with a new FLPMA grant. Our proposed rule at section 2807.19(b) suggested this approach. The cited section of FLPMA provides authority, with the consent of the grant holder, for BLM to cancel the pre-FLPMA grant and in its place issue a new grant under FLPMA authority. We also rewrote the opening paragraph of section (d) to make it clearer as follows:

> If your grant was issued prior to October 21, 1976, and there is a proposed substantial deviation in the location or use or terms and conditions of your right-of-way grant, you must apply for a new grant consistent with the remainder of this section. BLM may respond to your request in one of the following ways.

This changes makes it clear that BLM requires a new grant when you want to change the use, or location, or terms and conditions authorized by a grant issued before October 21, 1976.

We also added a new sentence to final paragraph (d)(1) to specify that when a pre-FLPMA grant is replaced by a new FLPMA grant, BLM may ''include the same terms and conditions in the new grant as were in the original grant as to annual rent, duration, and nature of interest if BLM determines, based on current land use plans and other management decisions, that it is in the public interest to do so.'' This is a provision similar to previous section 2803.6–1(b) that we inadvertently omitted from the proposed rule and we added it to be more consistent with that regulation and existing policy.

We added a new paragraph (d)(2) to make clear that if the pre-FLPMA grant holder does not want to consent to the termination of its pre-FLPMA grant, the holder may apply for a new grant for the new use, location, or terms and conditions. BLM would then process the application in the same manner as any other application filed under this rule. The new grant, as appropriate, would authorize the new location (those lands outside the right-of-way included in the pre-FLPMA grant), the new use (on lands included in the pre-FLPMA grant and/or the new location), or would establish new terms and conditions for the existing use on lands included in the pre-FLPMA grant. BLM would then authorize the holder's operations under two grants (the pre-FLPMA grant and the new FLPMA grant).

We modified proposed section 2807.19(c) (final paragraph 2807.20(e)) to make clear that you must apply for a new grant to allow realignment of any railroad and appurtenant communication facilities. Both previous section 2803.6–2 and the proposed rule do not accurately reflect the intent of FLPMA to the extent that they imply that an existing grant may be amended to allow realignment of a railroad and appurtenant communication facilities.

Section 509(b) of FLPMA states ''When the Secretary concerned issues a right-of-way under this title for a railroad and appurtenant communication facilities in connection with a realinement of a railroad on lands under his jurisdiction by virtue of a right-of-way granted by the United States, he may * * * provide in the new right-of-way * * *.'' This language requires the issuance of a new grant to allow realignment of any railroad and appurtenant communication facilities and we modified the final rule accordingly.

With the exception of editorial changes and those discussed above, the rest of this section is the same as proposed section 2807.19.

Several commenters said that BLM cannot require an amendment to an existing grant that already provides for additional appurtenances (the rights have already been granted). The commenters also said that to the extent that a Federal agency wants to install equipment of any kind that is beyond the scope of the original grant issued under subpart 2809 of these regulations, a Federal agency should seek to amend the grant. BLM agrees with these comments. An amendment is required only when there is a substantial deviation in location or use. This applies whether the applicant or grant holder is a Federal agency or a non-federal entity. The construction, use, or addition of facilities that are already authorized within the scope of an existing grant do not require a grant amendment.

Section 2807.21 May I Assign My Grant?

This section explains that with BLM's approval, you may assign, in whole or in part, any right or interest in a grant. In order to assign a grant, the proposed assignee must file an application and satisfy the same procedures and standards as for a new grant, including paying processing fees.

Assignment applications must also include:

(A) Documentation that the assignor agrees to the assignment; and

(B) A signed statement that the proposed assignee agrees to comply with and be bound by the terms and conditions of the grant that is being assigned and all applicable laws and regulations.

BLM will not recognize an assignment until it approves it in writing. BLM will approve the assignment if doing so is in the public interest. BLM may modify or add bonding and other requirements, including additional terms and conditions, to the grant when approving the assignment. This is consistent with previous section 2803.6–3. BLM may decrease rents if the new holder qualifies for an exemption or waiver or reduction and the previous holder did not. Similarly, BLM may increase rents if the previous holder qualified for an exemption or waiver or reduction and the new holder does not. If BLM approves the assignment, the benefits and liabilities of the grant apply to the new grant holder. The processing times and conditions described at section 2804.25(c) of this part apply to assignment applications.

We added the last clause ''including paying processing fees (see subpart 2804 of this part)'' to paragraph (b) in the final rule to address processing fees in this section and deleted proposed section 2807.21, which also addressed processing fees. We did this because the subject matter of processing fees for assignments should be addressed in the section having to do with assignments.

We modified final paragraph (d) by replacing the last sentence of proposed section 2807.20(d) with ''BLM may decrease rents if the new holder qualifies for an exemption * * * or waiver or reduction * * * and the previous holder did not. Similarly, BLM may increase rents if the previous holder qualified for an exemption or waiver or reduction and the new holder does not.'' We did this to make clear when rents may decrease and when they may increase as the result of an assignment. We also added ''If BLM approves the assignment, the benefits and liabilities of the grant apply to the new grant holder'' to the final paragraph to make clear that any benefits or liabilities of the grant, including any modifications or additional terms and conditions resulting from our approval of the assignment, would apply to the new grant holder.

With the exception of the changes described above, this final section is substantially similar to proposed section 2807.20.

We received many comments on various aspects of assignments. One commenter said that someone could misinterpret the phrase ''in part'' in paragraph (a) of the proposed rule to mean that BLM is granting to someone other than the grant holder the right to construct a project within the boundaries of the original grant. The commenter said that this could result in the first holder being adversely affected by the installation of the second and said that the rule should make clear that BLM will protect the rights of existing facilities. BLM's approval of an assignment, either in part or in full, cannot create any new rights of construction. An assignment can only transfer rights that already exist in a grant. Furthermore, the rule provides that an assignment must include documentation that the assignor agrees to the assignment and without such documentation, BLM will not approve an assignment.

Several commenters believed that the proposed processing fee was too high. One commenter said that all assignments should be designated Category I since the grant being assigned would have already been processed and all information necessary to process the assignment is already in the file. BLM agrees that we can process most routine assignment applications in less time than would usually be needed to process an application for a new grant. We have consequently restructured the processing fee categories (see section 2804.14(b)) to create a new category (final Category 1) that requires more than one, but eight or fewer hours to process. The $97 fee for this category is less than that for the existing fee category for an application for a new grant. We disagree that all information necessary to process an assignment is already in the file. Every assignment application will require new information regarding the assignee's qualifications. It may also be necessary to gather new information in order to determine if the assignor is in compliance with the terms and conditions of the grant, if it is in the public interest to approve the assignment, or if it may be appropriate for BLM to modify or add bonding requirements or to add additional terms and conditions to the grant. If BLM believes that the circumstances involved in an individual assignment application will require more than eight hours of processing time, the appropriate fee category will be determined according to section 2804.14 of this rule. The final rule provides that there will be no processing fee if BLM can process your application in one hour or less.

Several commenters believed that the oil and gas industry should not have to pay any processing fees for assignments because the oil and gas industry produces revenues in the form of royalties and bonuses and therefore pays its own way. Please see the general discussion in this preamble for an explanation of why BLM charges processing fees.

Several commenters said that in order to streamline the process, the final rule should allow BLM to process multi-assignment requests all at one time and that BLM should charge the assignor for the actual time it takes to process the assignments. BLM agrees that when multiple grants are to be assigned to the

same assignee, processing a single mass assignment is usually more efficient than processing the assignment of each grant separately. The final rule does not require an individual application for each grant that is to be assigned. An applicant may include as many grants in a single application as is desired. BLM will determine the processing fee category based on the estimated number of hours that we will need to process the application.

Several commenters opposed any blanket condition of approval that would allow for changing the terms of the grant. The commenters said the provision would make it very difficult to assign a right-of-way where the assignee would have no idea what BLM may change or add to it. Section 505 of FLPMA provides in part that:

> Each right-of-way shall contain (a) terms and conditions which will * * * (iii) require compliance with applicable air and water quality standards established by or pursuant to applicable Federal or State law; and (iv) require compliance with State standards for public health and safety, environmental protection, and siting, construction, operation, and maintenance of or for rights-of-way for similar purposes if those standards are more stringent than applicable Federal standards;

To implement this and other requirements of section 505, the FLPMA right-of-way regulations have contained the following provision (previous section 2801.2(a)(1)) since 1980:

> An applicant by accepting a right-of-way grant, temporary use permit, assignment, amendment or renewal agrees and consents to comply with and be bound by the following terms and conditions, excepting those which the Secretary may waive in a particular case: (1) To the extent practicable, all State and Federal laws applicable to the authorized use and such additional State and Federal laws, along with the implementing regulations, that may be enacted and issued during the term of the grant or permit.

Final section 2805.12 is consistent with previous section 2801.2(a)(1).

BLM believes that it is appropriate to review a grant's terms and conditions when it is being assigned to determine if the terms and conditions are consistent with applicable laws and regulations then in effect and to modify the grant, including additional terms and conditions, if needed, to make the grant consistent with applicable laws and regulations. The grant holder is responsible for complying with applicable laws and regulations whether or not the terms and conditions of the grant are currently consistent with those laws and regulations. We believe that it is desirable for both parties, however, that the terms and conditions of a grant reflect current legal and regulatory requirements as accurately as possible. We anticipate that grant modifications incorporated as part of the approval of an assignment application will be uncommon, but that when they are made, will be made judiciously and for good reason. You may appeal any decision requiring such a grant modification under section 2801.10 of the final rule.

Several commenters said that there should be no requirement to submit a new application for an assignment because the substance of the grant will not change. BLM disagrees. Whenever a grant holder proposes to transfer some or all of the rights contained in the grant to another party, BLM must determine, among other things:

(A) If the proposed assignee is qualified to hold the grant under applicable provisions of law and the regulations in subpart 2803;

(B) Whether the proposed assignee may be exempt from rent or eligible for a waiver or reduced rent;

(C) If it is in the public interest to approve the assignment; and

(D) If it may be appropriate to modify or add bonding or other requirements.

BLM believes that the most efficient way to obtain the information it needs to make these determinations and to meet its responsibilities under applicable law and regulations is through the filing of an application for assignment.

Section 2807.22 How Do I Renew My Grant?

This section explains that if your grant specifies that it is renewable and you choose to renew it, you must apply to BLM to renew the grant at least 120 calendar days before your grant expires. BLM will renew the grant if you are complying with the terms, conditions, and stipulations of the grant and applicable laws and regulations.

If your grant does not address whether it is renewable, you may apply to BLM to renew the grant. You must send BLM your application at least 120 calendar days before your grant expires. In your application you must show that you are complying with the terms, conditions, and stipulations of the grant and applicable laws and regulations. BLM has the discretion to renew the grant if doing so is in the public interest.

You must submit your application in the manner stated in paragraph (a) or (b) of this section and include the same information necessary for a new application. You must reimburse BLM in advance for the administrative costs of processing the renewal in accordance with section 2804.14 of this part. BLM will review your application and determine the applicable terms and conditions of any renewed grant.

BLM will not renew grants issued before October 21, 1976. Section 510(a) of FLPMA supports this practice. If you hold such a grant and would like to continue to use the right-of-way beyond your grant's expiration date, you must apply to BLM for a new FLPMA grant (see subpart 2804 of this part). You must send BLM your application at least 120 days before your grant expires. If BLM denies your application, you may appeal the decision under section 2801.10 of this part.

We made several changes to the final rule to make it clearer and more complete. We modified paragraph (a), which discusses grants that specify that they are renewable, to state that you must apply to BLM at least 120 calendar days before your grant expires if you choose to renew it. The proposed rule specified that an application for renewal was required (see proposed section 2807.22(c)), but did not state when the application should be filed for such grants. Since a grant cannot be renewed after it has expired, it is important that BLM receive the renewal application in sufficient time to enable us to complete our review process prior to grant expiration. The final rule sets the same 120 calendar day requirement for all grants.

We reworded paragraph (b) to remove unnecessary language and to make clear that a request for renewal must be in the form of an application.

We added a new paragraph (e) to the final rule stating that grants issued before October 21, 1976, under authorities FLPMA repealed will not be renewed under those authorities and that if the holder of such a grant wishes to continue using the right-of-way beyond the grant's expiration date, the holder will need to apply for a new FLPMA grant. We added this language to improve the completeness of the section and to reflect long-standing BLM practice.

We also added a new paragraph (f) to inform you that if BLM denies your renewal application, you may appeal the decision to IBLA under section 2801.10 of this part. We added this paragraph to give you additional notice of your appeal rights, especially since previous section 2803.6–5(e) states that decisions denying renewals of grants that do not contain a provision for renewal are final with no right of review or appeal.

Several commenters said that there should be no charge for renewing an existing grant. They said this was particularly appropriate for right-of-way

grant renewals that are categorically excluded from the National Environmental Policy Act compliance process. We disagree. BLM charges processing fees to everyone who files a renewal application, except those specifically exempted by law or regulation. Please see the discussion above addressing our authority to recover processing costs.

Several commenters said that the fee for grant renewal should be an administrative fee based on the time and cost it takes to renew the grant and not be based on the fee category and information used in processing the original grant. Some commenters said that the administrative costs of processing such right-of-way renewals should be minimal, and the costs of seeking cost recovery could outweigh the reasonable costs of processing. Many commenters also said that the administrative requirements for a renewal would likely be minimal and would not justify charging a grantee the same fees associated with a new grant request. Several commenters said that the review time for renewals should be minimal since a renewal does not require the same paperwork and review that an application for a new right-of-way would. One commenter said that the regulations should provide sufficient flexibility to charge fees based on the most applicable fee structure to the project. The commenter said that fees could be:

(A) Based on the amount of time it takes to process the renewal;

(B) Derived from the cost of staff time used to establish the processing fee for the original application; or

(C) Based on an ''as-they-are-processed'' method.

BLM agrees that we can process most routine renewal applications in less time than would usually be needed to process an application for a new grant. We have consequently restructured the processing fee categories (see section 2804.14(b)) to create a new category (Category 1) for assignments and renewals that require more than one, but eight or fewer hours to process. If BLM believes that the circumstances involved with an individual renewal application will require more than eight hours of processing time, we will determine the appropriate fee category according to section 2804.14 of this rule. Please see the discussion on processing fee categories in the discussion of section 2807.21 for more discussion of this matter.

Several commenters said that BLM should not require grant holders to submit a formal application for a grant renewal if they do not propose to modify their existing grant and that a simple notice or letter of request should suffice. Several commenters also said that they did not see a need to submit the same information in a grant renewal application as they initially submitted for the grant. We disagree. In renewing a grant, BLM is responsible for complying with section 501(b)(1) of FLPMA which states that:

> The Secretary concerned shall require, prior to granting, issuing, or renewing a right-of-way, that the applicant submit and disclose those plans, contracts, agreements, or other information reasonably related to the use, or intended use, of the right-of-way, including its effect on competition, which he deems necessary to a determination, in accordance with the provisions of this Act, as to whether a right-of-way shall be granted, issued, or renewed and the terms and conditions which should be included in the right-of-way.

Statutes such as the National Environmental Policy Act also require BLM to assess the impacts of uses of the public lands before authorizing or allowing such uses, including authorizing the continuation of an existing use. BLM believes that the most efficient way to obtain the information it needs to enable it to meet its obligations under such statutes is through the filing of an application using Standard Form 299. If the authorized facility has already been constructed, the information you must include in the renewal application is only that which is relevant to the continuing operation, maintenance, and termination of the facility. If any of the information required on Standard Form 299 was provided in the original grant application and there has been no change, a statement to that effect will generally suffice.

Several commenters said that BLM should not change the terms and conditions of the existing grant for the renewed grant. One commenter said the renewals should include only the minimal administrative exercise of ensuring that a grant holder has upheld the terms of the grant. BLM is responsible for assuring that the right-of-way authorizations it approves are in compliance with applicable statutes and regulations in effect at the time the authorization is approved. This applies to renewals since a renewal creates a right to use public land that would not exist if the BLM does not approve the renewal. In order to meet this responsibility, BLM needs to:

(A) Review the circumstances of an expiring grant beyond the holder's compliance with the terms of the grant; and

(B) Add or modify terms and conditions in order to bring the renewed grant into compliance with current regulations and statutes.

Therefore, we have not adopted the commenters' suggestions.

One commenter said that the final rule should eliminate annual renewals in favor of 5-year renewals or renewals for the original term of the grant. Neither the proposed nor final rule contains a provision or requirement for annual renewals. In your renewal application you may request the renewal term you prefer. BLM determines the term of the renewed grant and will do so in the same manner as the term for new grants (see section 2805.11(b)).

Subpart 2808—Trespass

This subpart contains regulations having to do with trespass on public lands. It explains:

(A) What trespass is, including distinguishing between willful and non-willful trespass;

(B) What actions BLM will take if it determines you are in trespass; and

(C) The limitations for receiving a new grant if you are or have been in trespass.

Section 2808.10 What Is Trespass?

This section explains that trespass is using, occupying, or developing the public lands or their resources without a required authorization or in a way that is beyond the scope and terms and conditions of your authorization. Trespass is a prohibited act. The final language is slightly different from that in proposed section 2808.10(a). We replaced ''and specific limitations of your authorization'' with ''and terms and conditions of your authorization.'' The new language more accurately and clearly describes trespass.

This section also explains that trespass includes acts or omissions causing undue or unnecessary degradation to the public lands or their resources. In determining if such degradation is occurring, BLM may consider the effects of the activity on resources and land uses outside the area of the activity. This sentence is new to this section in the final rule, but is consistent with the previous regulation's definition of ''unnecessary or undue degradation'' (see previous section 2800.0–5(x)).

The section also explains that there are two kinds of trespass, willful and non-willful.

(A) ''Willful trespass'' is voluntary or conscious trespass and includes trespass committed with criminal or malicious intent. It includes a consistent pattern of

actions taken with knowledge, even if those actions are taken in the belief that the conduct is reasonable or legal.

(B) ''Non-willful trespass'' is trespass committed by mistake or inadvertence.

With the exception of editorial changes and the change mentioned above, this section remains as proposed.

Several commenters said that the final rule should follow the common definition of trespass, which requires notice and knowledge and then a willful and knowing act. Commenters also said that trespass, by definition, cannot be by accident. Commenters said, ''Trespass laws require entering or remaining on the property of another knowing that consent to remain or enter is denied.''

We disagree with the commenters. The meaning of the term ''trespass'' is broader than commenters assert (see Black's Law Dictionary and Webster's New University Dictionary). BLM's definition of trespass in these and previous regulations is based on section 303(g) of FLPMA (43 U.S.C. 1733) which states:

> The use, occupancy, or development of any portion of the public lands contrary to any regulation of the Secretary or other responsible authority, or contrary to any order issued pursuant to any such regulation, is unlawful and prohibited.

Several commenters said in the final rule we should replace ''unnecessary or undue degradation'' with ''damage.'' The final rule continues to use the term ''unnecessary or undue degradation.'' The use of the term is consistent with both previous section 2800.0–5(u)), proposed section 2808.10(a), and with FLPMA's mandate that BLM ''take any action necessary to prevent unnecessary or undue degradation of the lands'' (see section 302(b)).

Other commenters said that the proposed rule is too subjective and open-ended. We disagree. The key to trespass is set forth in the terms and conditions of the right-of-way grant, which each holder will receive in writing from BLM. If there exists a question whether the proposed activity goes beyond the scope of the grant, a holder should consult BLM in advance to determine if a grant amendment is necessary.

Section 2808.11 What Will BLM Do if It Determines That I Am in Trespass?

If BLM determines you are in trespass, we will notify you in writing of the trespass and explain your liability. Your liability includes:

(A) Reimbursing the United States for all costs incurred in investigating and terminating the trespass;

(B) Paying rental for the lands, as provided for in subpart 2806 of this part, for the current and past years of trespass, or, where applicable, the cumulative value of the current use fee, amortization fee, and maintenance fee for unauthorized use of any BLM-administered road; and

(C) Rehabilitating and restoring any damaged lands or resources. If you do not rehabilitate and restore the lands and resources within the time BLM provides in the notice, you will be liable for the costs the United States incurs in rehabilitating and restoring the lands and resources.

This section explains that in addition to amounts you owe under paragraph (a) of this section, BLM may assess penalties as follows:

(A) For willful or repeated non-willful trespass, the penalty is two times the rent. For roads, the penalty is two times the charges for road use, amortization, and maintenance, which have accrued since the trespass began;

(B) For non-willful trespass not resolved within 30 calendar days after receiving the written notice under paragraph (a) of this section, the penalty is an amount equal to the rent. To resolve the trespass you must meet one of the conditions identified in 43 CFR 9239.7–1. For roads, the penalty is an amount equal to the charges for road use, amortization, and maintenance, which have accrued since the trespass began; and

(C) The penalty will not be less than the fee for a Processing Category 2 application for non-willful trespass or less than three times this value for willful or repeated non-willful trespass. You must pay whichever is the higher of the:

(1) Amount computed in paragraph (b) of this section; or

(2) The minimum penalty amount. We amended this section of the rule to make clearer what the amount of the penalty would be. The language change does not change the intent of the proposed rule.

In addition to civil penalties under paragraph (b) of this section, you may be tried before a United States magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both, for a knowing and willful trespass, as provided at 43 CFR 9262.1 and 43 U.S.C. 1733(a).

Until you comply with the requirements of 43 CFR 9239.7–1, BLM will not process any of your applications for any activities on BLM lands. We amended this section of the final regulations to be consistent with existing regulatory authority in 43 CFR 9239.7–1.

This section also explains that you may appeal a trespass decision under section 2801.10 of this part and that nothing in this section limits your liability under any other Federal or state law.

Several commenters said that as stewards of the land, it is BLM's job to manage the public land, and therefore, there should be no cost to the grantee for investigations of trespass. We disagree with the commenters. Existing 43 CFR 9239.7–1 requires a trespasser to pay ''costs, damages and penalties'' for a trespass against the United States. These final rules are consistent with that provision of existing regulations.

Several commenters said that since land ownership lines are not always clear, it seems unfair to require a penalty for trespass without giving the permit holder an opportunity to correct the problem. The commenters said that the expense of surveying Federal land in the vicinity of their facilities would be very expensive and in most cases completely unnecessary. The commenters suggested that BLM modify the section to state that when an ''encroachment'' is identified, the encroacher will pursue reasonable efforts to correct the ''encroachment'' to BLM's satisfaction. The commenters said that if after a reasonable period of time the ''encroachment'' is not removed and/or resolved, only then should BLM impose a trespass penalty. We did not amend the final regulations as suggested by the commenters. However, in many circumstances where BLM determines a party is in trespass, we will allow a period of time to correct the trespass violation before initiating formal trespass proceedings. BLM must maintain the flexibility to immediately begin trespass proceedings for those situations where we need to immediately curtail activities that may cause damage to the public lands or health and safety.

Section 2808.12 May I Receive a Grant if I Am or Have Been in Trespass?

This section explains that until you satisfy liability for a trespass, BLM will not process any applications you have pending for any activity on BLM-administered lands. A history of trespass will not necessarily disqualify you from receiving a grant. In order to correct a trespass, you must apply under the procedures described at subpart 2804. BLM will process your application as if it were a new use. Prior unauthorized use does not create a preference for receiving a grant.

We substantially revised this section. In addition to wording changes, we moved proposed section 2808.11(e) to this section. We also added the phrase ''or have been'' to the section title. We did this to provide a more accurate

description of the contents of the final section, since unsatisfied trespass liability may include liability incurred as the result of prior trespass actions, even if those actions are no longer occurring. We also added language stating that a history of trespass will not necessarily disqualify you from receiving a grant and that prior unauthorized use does not create a preference for receiving a grant. These provisions reflect long-standing BLM practice and policy. We added them to provide a more complete description of how we deal with applications filed by parties with a history of trespass.

Several commenters said that proposed section 2808.11(e) (now in final section 2808.12) is arbitrary and capricious, since under this rule, if there is a trespass dispute under appeal, BLM would not process other applications. This rule is not arbitrary and capricious. As stated above, it is consistent with current practice and with regulations that were subject to the Administrative Procedure Act's notice and comment rulemaking. Moreover, 43 CFR 9239.7–1(b) and (c) provides for filing a bond as one means of satisfying trespass liability. Payment of trespass liability under protest during the pendency of an appeal is another means of resolving commenters' concerns.

One commenter said that proposed section 2808.12 was unclear as to whether it refers to trespass on other lands or other grants. We agree that the proposed section was not as clear or complete as it could have been and believe that the changes made in the final rule, as described above, make it clear that BLM will not process any applications you have pending for any activity on BLM-administered land if you have an unsatisfied trespass liability. This includes pending applications for activities other than those involved in the trespass and located on lands other than those where the trespass occurred.

Subpart 2809—Grants for Federal Agencies

This subpart:

(A) Gives information about grants that BLM issues to other Federal agencies;

(B) Explains that these regulations apply to Federal agencies and describes limitations; and

(C) States that Federal agencies are generally not required to pay rent for a right-of-way grant.

The final rule changes the way BLM deals with right-of-way grants we issue to other Federal agencies. Under previous regulations in subpart 2807 we issued right-of-way ''reservations'' to Federal agencies rather than right-of-way grants. In those regulations, right-of-way reservations contained different terms and conditions than right-of-way grants that we issued to individuals, associations, partnerships, and corporations. Under this final rule, BLM will issue to Federal agencies a right-of-way grant on BLM Form 2800–14 Right-of-Way Grant/Temporary Use Permit for right-of-way uses on public land. This grant will contain the same terms and conditions as the grants BLM issues to any other party, unless circumstances warrant different terms (see section 2805.12 for terms and conditions contained in right-of-way grants). BLM does not typically require bonding from Federal agencies. However, this section continues to allow BLM the discretion to require it.

This subpart is different from that which we proposed. We deleted proposed section 2809.10 because we state in final section 2809.10 that these regulations apply to Federal agencies to the extent possible; it is therefore redundant to say that a Federal agency must apply for a grant. We deleted proposed section 2809.11, since the provisions in that proposed rule are all covered elsewhere in the regulations (see for example final section 2805.12). Proposed section 2809.12 is covered in final section 2809.10.

Section 2809.10 Do the Regulations in This Part Apply to Federal Agencies?

This section explains that the regulations in this part apply to Federal agencies to the extent possible. However, BLM may suspend or terminate a Federal agency's grant only if the terms and conditions of the Federal agency's grant allow it or the agency head holding the grant consents to it. This section also explains that under these regulations Federal agencies are generally not required to pay rent for a grant (see section 2806.14).

Several commenters said that the final regulations should make clear that none of the provisions outside of subpart 2804 apply to Federal agencies. We disagree. Section 507(a) of FLPMA (43 U.S.C. 1767) states that the Secretary ''may provide under applicable provisions of this title for the use of any department or agency of the United States a right-of-way over, upon, under or through the land administered by him, subject to such terms and conditions as he may impose.'' Clearly, other sections of Title V of FLPMA and other sections of this rule apply to grants we issue to other Federal agencies. For example, BLM can add terms and conditions (see section 505 of FLPMA and subpart 2805 of this rule) to a grant issued to another Federal agency appropriate to site-specific conditions.

Other commenters said that the final rule should make clear which provisions do apply to Federal agencies. All provisions of the final rule apply to grants we issue to other Federal agencies to the extent possible. BLM did not change the final rule as a result of this comment.

Several commenters said that BLM does not have the authority to charge Federal agencies rents (fair market value) for rights-of-way granted to them. The commenters stated that FLPMA does not give BLM the authority to charge rent because FLPMA does not include Federal agencies in the definition of ''holder'' at 43 U.S.C. 1702(b). The commenters also stated that by charging other Federal agencies rent, BLM is acting outside the scope of its authority. For the same reason, the commenters stated that BLM could not impose on Federal agencies requirements for liability, bonding, or allow BLM to release third parties from liability for environmental damages.

Under this final rule (at section 2806.14(b)(1)), a Federal agency does not have to pay rent for its use of a right-of-way unless it is using the facility, system, space, or any part of the right-of-way for a commercial purpose. We believe that we have the authority to require other Federal agencies to pay rent for their rights-of-way. The commenters base their argument on the use of the term ''holder'' in section 504(g) of FLPMA (43 U.S.C. 1764(g)), but overlook the provision of that section authorizing the Secretary to issue rights-of-way to Federal agencies ''for such lesser charge, including free use,'' as the Secretary finds equitable and in the public interest. This provision authorizing reduced rent, or no rent at all, would be unnecessary if the Secretary lacked authority to charge Federal agencies rent.

Section 507 of FLPMA (43 U.S.C. 1767) provides that the Secretary may issue rights-of-way to any U.S. department or agency, subject to ''such terms and conditions as he may impose.'' Charging other Federal agencies rent in appropriate circumstances is one such applicable term. The broad language of section 507 contradicts commenter's statements.

Part 2880—Rights-of-Way Under the Mineral Leasing Act

We received many comments on the proposed rule that addressed issues in both the part 2800 and part 2880 regulations. So as not to be redundant, we addressed the comments only in the

section they pertained to in the part 2800 regulations. In the following discussion of the part 2880 regulations, if a comment on the part 2800 regulations also pertains to a section in the 2880s, instead of repeating the discussion again here, we provide a cross-reference to the appropriate section in the part 2800 preamble discussion.

General Comments

Several commenters said it was inappropriate and a ''conflict of due process' to include rules addressing the appeal process and oil and gas at a later date. We disagree. Nothing precludes a Federal agency from promulgating rules covering different areas of the same program as long as the public has notice of any regulatory changes and the opportunity to comment. Notice and comment on a rule is due process.

Several commenters believe that the rule mixes many disparate industries in the requirements for a right-of-way. They said that oil and gas operations are significantly different from interstate transmission lines, communication equipment, or other industries, and therefore provisions relating to them should be taken out of the rule. BLM disagrees with this comment and believes that there is no significant difference in the process to analyze a right-of-way application regardless of the industry involved. In this respect, oil and gas pipelines are not so dissimilar to water pipelines, roads, or other linear surface-disturbing facilities that right-of-way grants authorize. In addition, any special character belonging to oil and gas operations is accommodated by our treatment of them in part 2880, distinct from the part 2800 rights-of-way authorized by FLPMA.

Several commenters said that the rule is another financial disincentive for oil and gas development on public lands. We disagree. With the exception of major transmission pipelines, nearly all feeder pipeline and trunk pipeline right-of-way applications fall in Processing Categories 1 through 4 of the rule. These processing fees range from $97 to $923. The minor fee increase this rule implements is insignificant compared to the overall cost of constructing an oil and gas pipeline. In addition, the oil and gas industry has been paying cost reimbursement for grant applications since the previous regulations became effective in 1987.

Several commenters said that the differences between MLA and FLPMA regulations are confusing to BLM and the oil and gas industry. The commenters asked that the final rule spell out any distinction between the MLA right-of-way regulations and the FLPMA right-of-way regulations. Please see the table in the general discussion in this preamble that explains some of the significant differences and similarities between FLPMA and MLA grants.

Subpart 2881—General Information

This subpart contains general information that pertains to right-of-way grants that BLM issues under the Mineral Leasing Act (MLA). It contains policy, procedure, and acronyms and definitions that apply to the part 2880 regulations.

Section 2881.2 What Is the Objective of BLM's Right-of-Way Program?

This section is new to the final rule and explains it is BLM's objective to grant rights-of-way to any qualified individual, business, or government entity, and to direct and control the use of rights-of-way on public lands in a manner that:

(A) Protects the natural resources;

(B) Prevents unnecessary or undue degradation to public lands;

(C) Promotes the use of rights-of-way in common; and

(D) Coordinates, to the fullest extent possible, all BLM actions under the regulations with state and local governments, interested individuals, and appropriate quasi-public entities.

We added this section to the final rule to provide overall guidance for BLM's MLA right-of-way program. It is consistent with 30 U.S.C. 185 and existing policy.

Section 2881.5 What Acronyms and Terms Are Used in These Regulations?

This section contains the acronyms and defines terms used in part 2880. Unless an acronym or term is listed in this section, the acronyms and terms in part 2800 of this title apply to this part. Paragraph (a) is new to the final rule and contains acronyms that are frequently used in this part of the final rule.

Paragraph (b) of this section defines the terms used in this part of the rule.

We deleted the definition of the term ''agency head'' from the final rule because the term is only used once in final section 2886.11. That section describes an agency head as the head of an agency having administrative jurisdiction over the Federal lands involved in an application.

In the final rule we amended the definition of ''casual use'' to mean ''activities ordinarily resulting in no or negligible disturbance of the public lands, resources, or improvements.'' We also replaced the proposed example with ''Surveying, marking routes, and collecting data to use to prepare applications for grants or TUPs.'' We believe the final rule's definition of ''casual use'' is a more accurate and useful description because it recognizes that casual use may cause little or no disturbance and because it gives examples that are more useful than those provided in the proposed definition.

In the final rule we amended the definition of ''facility'' by removing the reference to communication site rights-of-way or uses, since the only communication site uses authorized under the Mineral Leasing Act are for internal operations of the pipeline. BLM authorizes these internal communication uses as part of the MLA linear right-of-way grant and not a communication use lease that would allow the holder to sublease space for commercial purposes.

In the final rule we amended the definition of ''Federal lands'' to mean all lands owned by the United States, except lands:

(A) In the National Park System;

(B) Held in trust for an Indian or Indian tribe; or

(C) On the Outer Continental Shelf.

The proposed rule excepted lands administered by the Tennessee Valley Authority (TVA) from the definition, which is incorrect. TVA lands are acquired lands and are owned by the United States. For the purposes of these regulations TVA lands are considered Federal lands. We deleted the phrase ''whether surface or mineral estate or both'' to make the definition consistent with 30 U.S.C. 185(b)(1). We also deleted the phrase ''without reference to how the lands were acquired'' because the phrase is unnecessary and does not add to the definition.

BLM deleted the proposed definition of, and use of the term, ''field examination'' from the final rule. For all categories of applications, labor costs are by far the largest portion of the costs of processing an application. Costs associated with environmental analysis and other application processing steps are predominately labor and time related. While a portion of labor costs are reflected in the amount of time it takes to do field examinations for an application, a significant amount of time is also spent coordinating with staff, the applicant, and other involved parties, drafting documents, and keeping case file records current. It is more accurate to base a processing fee on the total estimated number of hours it will take for involved staff to process an application, than to count the number of field examinations needed to process

the application. For the same reasons, we eliminated the definition of ''field examination'' from section 2801.5 of this part.

We added a definition of ''grant'' to this part because the definition of the term in final section 2801.5 is for authorizations BLM issues under Title V of FLPMA or a previous right-of-way authority, and the grant definition in this part of the rule is for authorizations BLM issues under the Mineral Leasing Act (30 U.S.C. 185). The final definition is consistent with previous section 2880.0–5(n).

In the final rule we added a definition of ''monitoring'' to this part that is the same as in section 2801.5 of the FLPMA right-of-way regulations. We added the definition to this part since ''monitoring'' is defined in terms of grants and ''grant'' is defined differently in the two parts.

We made edits to the definition of ''production facilities'' that do not change the meaning of the term, but make the definition more clear. We replaced the proposed definition's phrasing ''on the leasehold'' with ''on its Federal oil and gas lease.''

We added a definition of ''right-of-way'' to this part of the final rule because the definition of right-of-way in section 2801.5 is legally inaccurate for this part. The proposed and final definitions for part 2800 refer to ''public lands.'' This final definition uses ''Federal lands'' instead. This is an important distinction because BLM's authority to issue grants under the MLA applies not just to public lands, but to all Federal lands if the right-of-way crosses lands under two or more agencies' jurisdiction, even those lands managed by departments other than the Department of the Interior.

We made edits to the definition of the term ''related facilities.'' We removed the proposed definition's use of the phrase ''and which are authorized under the Act'' because it is unnecessary to the meaning of the term. We would not consider facilities to be related unless they were authorized under the Act. Therefore the wording was surplus.

We added a definition of the term ''substantial deviation'' to this section of the final rule. We use the term in two sections of this final rule and we define it here to indicate a change, in location or use, from the terms of a grant or TUP under the MLA.

In the final rule we amended the definition of ''Temporary Use Permit (TUP)'' to mean ''a revocable, nonpossessory privilege to use specified Federal lands in the vicinity of and in connection with a right-of-way to construct, operate, maintain, or terminate a pipeline or to protect the environment or public safety. A TUP does not convey any interest in land.'' We made editorial changes to this definition and added a sentence stating that TUPs do not convey an interest in land. We added this sentence to better explain the nature of a TUP, as set forth in previous section 2881.1–2.

In the final rule we added the definition of ''third party'' to mean any person or entity other than BLM, an applicant, or a right-of-way grant holder. Third party is used several times in these regulations, but it was not defined, so we included a definition here.

Section 2881.7 Scope

We combined proposed section 2881.8 with this section and reworded it slightly. This section explains that the regulations in this part apply to:

(A) Issuing grants and TUPs, and to administering, amending, assigning, renewing, and terminating grants and TUPs for oil and gas pipelines. We replaced the phrase ''oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced from these materials'' with the phrase ''oil and gas'' because the definition of oil or gas includes those products;

(B) All grants and TUPs BLM and its predecessors previously issued under the Mineral Leasing Act. In the final rule we deleted the phrase ''and to those [grants or permits] issued by the Secretary of the Interior or his delegate in connection with the Trans-Alaska Oil Pipeline System [TAPS],'' because it is inaccurate. Under these regulations the term ''grant'' means an authorization issued under 30 U.S.C. 185. TAPS authorizations are issued under 43 U.S.C. 1652(b), not 30 U.S.C. 185. As a result of this change, we added a new paragraph (c) to this section (see the explanation below); and

(C) Pipeline systems, or parts thereof, on a Federal oil and gas lease owned by:

(1) A party who is not the lessee or lease operator; or

(2) The lessee or lease operator that are downstream from a custody transfer metering device. We reworded this paragraph in the final rule and removed the phrase ''from storage tanks or a'' and replaced it with ''a custody transfer'' because the statement as proposed was incorrect. There are situations where a lessee may install a series of oil storage tanks which are authorized by the terms of the lease. Pipelines located on-lease that are associated with these tanks, either upstream or downstream of the tank, can also be authorized by the terms of the lease and do not need a right-of-way grant. It is at the point on a lease where the oil or gas is metered and sold to a third party pipeline carrier that a right-of-way grant is required. This is because after the point of sale, the third party is responsible for transporting the product downstream. The third party would need a right-of-way for any Federal lands crossed downstream from the custody point. A right-of-way grant is also needed for any oil or gas pipeline located off the lease, regardless of ownership.

We proposed paragraph (b) of this section as section 2881.8. We added this paragraph to this section to make the rule more readable. This paragraph explains that these regulations do not apply to:

(A) Production facilities on an oil and gas lease which operate for the benefit of the lease. The lease authorizes these production facilities. We reworded this paragraph to make it clear that any production related facilities which operate for the benefit of the lease do not need a right-of-way;

(B) Pipelines on Federal lands under the jurisdiction of a single Federal department or agency, including bureaus and agencies within the Department of the Interior, other than BLM. We made minor changes to this paragraph in the final rule, but did not change the meaning from the proposed rule;

(C) Authorizations BLM issues to Federal agencies for oil or gas transportation. We deleted the phrase that was in the proposed rule ''Such grants are subject to the regulations at part 2800 of this chapter'' and substituted for it a reference to section 2801.6; or

(D) Authorizations issued under the authority of the Federal Land Policy and Management Act of 1976 (see part 2800 of this chapter).

We added a new paragraph (c) to this section to explain that notwithstanding the definition of ''grant'' in section 2881.5 of this subpart, the regulations in this part apply, consistent with 43 U.S.C. 1652(c), to any authorization issued by the Secretary of the Interior or his or her delegate under 43 U.S.C. 1652(b) for the Trans-Alaska Oil Pipeline System. We made this change to the final rule to be consistent with the statute. The terms of 43 U.S.C. 1652(c) expressly except certain provisions of 30 U.S.C. 185 from a TAPS authorization. Chief among these exceptions is a holder's liability for damages, which is addressed by TAPS at 43 U.S.C. 1653. In determining whether the regulations in part 2880 can be applied to a TAPS authorization ''consistent with 43 U.S.C. 1652(c),'' a careful reading of 43 U.S.C. 1652–1653 will be required.

Section 2881.8 Information Collection Matters

We deleted this section from the final rule because it is not necessary to publish this information in the text of the regulations.

These regulations contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), we submitted a copy of the proposed information collection requirements to the Office of Management and Budget (OMB) for review. OMB approved the information collection requirements under Control Number 1004–0189, which expires October 31, 2005.

Section 2881.9 Severability

This section was proposed as section 2881.10, and explains that if a court holds any provisions of these rules or their applicability to any person or circumstances invalid, the remainder of these rules and their applicability to other people or circumstances will not be affected. With the exception of editorial changes, this section remains as proposed.

Section 2881.10 How Do I Appeal a BLM Decision Issued Under the Regulations in This Part?

This is a new section to these regulations. The proposed rule listed the basic contents of this section in each place there is a right to appeal. This final rule replaces the appeals language in each of those sections with a cross-reference to this section. This eliminates redundancy and brings this rule in line with other BLM regulations that address appeals. This rule makes no changes to current BLM policy and practice regarding appeals.

Section 2881.11 When Do I Need a Grant From BLM for an Oil and Gas Pipeline?

This section is new to the final rule and explains that you must have a BLM grant issued under the Mineral Leasing Act for an oil and gas pipeline or related facility to cross Federal lands under:

(A) BLM's jurisdiction; or

(B) The jurisdiction of two or more Federal agencies.

We added this section to the final rule to make it clear that a BLM grant under 30 U.S.C. 185 is necessary for an oil or gas pipeline that crosses the jurisdiction of two or more Federal agencies, or crosses lands under BLM's sole jurisdiction. This is consistent with previous section 2880.0–7 and 30 U.S.C. 185(c). ''Federal agencies'' includes Interior agencies such as BLM, U.S. Fish and Wildlife Service, and Bureau of Reclamation (the MLA at 30 U.S.C. 185(b) specifically excludes National Park System lands from the definition of Federal lands and also lands held in trust for an Indian or Indian tribe). It also includes non-Interior agencies such as the Forest Service, Department of Defense agencies, Department of Energy, Corps of Engineers, and Tennessee Valley Authority. Further, under the statute, even when BLM is not one of the ''two or more Federal agencies'' whose land is crossed, BLM still has the responsibility to issue grants and renewals for the Federal lands.

Section 2881.12 When Do I Need a TUP for an Oil and Gas Pipeline?

This section is new to the final rule and explains that you must obtain a TUP from BLM when you require temporary use of more land than your grant authorizes to construct, operate, maintain, or terminate your pipeline, or to protect the environment or public safety. We added this section to the final rule to make it clear that any temporary use taking place outside the boundary of your right-of-way for a pipeline will require you to obtain a TUP from BLM prior to engaging in the use. BLM may grant a TUP for uses occurring any time during the life of the right-of-way. This section is consistent with existing policy and previous section 2881.1–2.

Subpart 2882—Lands Available for MLA Grants and TUPs

This subpart explains which lands are available for Mineral Leasing Act right-of-way grants and temporary use permits.

Section 2882.10 What Lands Are Available for Grants or TUPs?

This section explains that for lands BLM exclusively manages, we use the same criteria to determine whether lands are available for MLA right-of-way grants or TUPs as we do to determine whether lands are available for FLPMA right-of-way grants.

This section also explains that where a proposed oil or gas pipeline right-of-way involves lands managed by two or more Federal agencies, the regulation at section 2884.26 of this part will be followed.

Finally, this section explains that BLM may require common use of a right-of-way and may restrict new grants to existing corridors where safety and other considerations allow. Generally, BLM land use plans designate corridors. The Forest Service also has the authority to designate corridors in its Forest Management Plans. Any MLA right-of-way BLM authorizes would respect these corridors.

We amended the proposed rule at subpart 2882 to more accurately describe our criteria for determining availability of lands for right-of-way authorizations. In the final rule we added the phrase ''for lands BLM exclusively manages'' to the beginning of the section to make it clear that we use the process in subpart 2802 to determine the lands available for MLA right-of-way use only if those lands are exclusively under BLM's jurisdiction. Final paragraph (c) was proposed as the second sentence to this section.

Final paragraph (b) specifies that BLM may require common use of a right-of-way or restrict new grants to existing corridors where safety and other considerations allow. The concept of corridors is new to this rule. We added this paragraph to be consistent with existing BLM policy and previous section 2881.1–3(c). In addition, 30 U.S.C. 185(p) requires the use of rights-of-way in common to the extent practical in order to minimize adverse environmental impacts and the proliferation of separate rights-of-way.

We received several comments related to common use of right-of-way corridors and requiring placement of rights-of-way in existing corridors. Several commenters said that instead of designating specific corridors, BLM should encourage operators to use existing rights-of-way to the extent it is possible and practical. The final rule encourages common use of right-of-way areas and 30 U.S.C. 185(p) specifies that the use of rights-of-way in common ''shall be required to the extent practical.'' BLM reserves the right to require common use as part of the terms of all grants we issue under these regulations. This means that we may grant an additional right-of-way use that may adjoin or overlap your right-of-way. Usually, it is practical and efficient to overlap rights-of-ways and locate facilities as close together as possible to minimize surface disturbance. However, there may be situations where for technical or safety reasons it is not practical to overlap them. An example is constructing oil or gas pipelines under high voltage transmission lines where the transmission line creates corrosion problems for steel pipe buried below the transmission line. We will notify you in advance if we anticipate issuing an additional grant for the lands covered by your grant. However, we do not agree with the comment that using existing rights-of-way will replace designated utility corridors on public lands. Corridor designations in land use plans serve an important purpose in planning and siting major utility projects. Locating a new project in a

designated corridor may speed up the NEPA analysis for a project.

Several commenters questioned whether the corridor requirement can be applied to MLA rights-of-way. The commenters had concerns over siting oil and gas utilities in the same corridor as others. They were concerned that their ability to operate, maintain, and prevent leaks not be compromised. We believe that oil and gas pipelines are well suited to corridor development. There are many thousands of miles of major oil and gas pipelines that are located in designated right-of-way corridors in the United States. As stated above, our standard procedure is to contact existing grant holders whose right-of-way is inside a corridor when any new right-of-way is proposed for the same corridor. BLM must consider compatibility of uses and possible public health and safety issues that can result from utility placement on public lands. Under FLPMA, BLM has the authority to designate corridors and require corridor use on all public lands, including lands through which an MLA right-of-way has or will be authorized. On non-BLM lands, the ''Secretary concerned'' has authority to establish corridors and require their use.

Several commenters said that forcing the use of corridors could make a lease operation uneconomical and result in the waste of minerals and associated royalties. We understand the concern that locating a right-of-way corridor on an existing oil and gas lease could limit uses or production on a lease. Corridor designations are a land use planning decision that we make based on a multi-disciplinary analysis. This rule does not address the designation of right-of-way corridors. We did not change the final rule as a result of this comment.

Another commenter said that BLM should use caution when requiring all rights-of-way to be placed in the same corridor and that BLM must recognize that oil and gas rights-of-way must not be compromised in any way by another right-of-way grantee, particularly in light of the liability requirements BLM proposes to place on grantees. We did not change the final rule as a result of this comment. New grants are subject to valid existing uses, including the uses of other right-of-way holders inside or outside of corridors. In response to a liability issue similar to that raised by commenter, previous regulations and policy established liability requirements for right-of-way grant holders in a manner similar to that contained in these regulations. BLM will continue to consult with all grant holders when we consider common use of existing rights-of-way or designated corridors so as not to compromise existing rights.

Subpart 2883—Qualifications for Holding MLA Grants and TUPs

This subpart explains who is eligible and who is ineligible to hold grants and TUPs. It also explains:

(A) How you prove to BLM that you meet the qualifications to hold a grant or TUP; and

(B) What happens if BLM issues you a grant or TUP and later determines that you are not qualified to hold it.

Section 2883.10 Who May Hold a Grant or TUP?

This section explains that to hold a grant or TUP under these regulations, you must be:

(A) A United States citizen, an association of such citizens, or a corporation, partnership, association, or similar business entity organized under the laws of the United States, or of any state therein, or a state or local government; and

(B) Financially and technically able to construct, operate, maintain, and terminate the proposed facilities.

We added TUPs to this section since they were mistakenly left out of the proposed rule. We added them here and other places in the final rule to be consistent with previous regulations and policy and 30 U.S.C. 185(e). We also added the phrase ''and terminate'' to paragraph (b) of this section. We inadvertently omitted it from the proposed rule, but it is in previous section 2882.2–3(a)(4).

Section 2883.11 Who May Not Hold a Grant or TUP?

This section explains that aliens may not acquire or hold any direct or indirect interest in grants or TUPs, except that they may own or control stock in corporations holding grants or TUPs if the laws of their country do not deny similar or like privileges to citizens of the United States. This section contains minor rewording changes, but is consistent with the proposed rule and previous section 2882.2–1.

Section 2883.12 How Do I Prove I Am Qualified To Hold a Grant or TUP?

This section explains how you prove to BLM that you are qualified to hold a grant or TUP. If you are a private individual, BLM requires no proof of citizenship with your application. However, BLM may request you provide proof of your citizenship should a question of this nature arise during processing your application.

If you are a partnership, corporation, association, or other business entity, you must submit the following information in your application:

(A) Copies of the formal documents creating the business entity, such as articles of incorporation, and including the corporate bylaws. We inadvertently omitted this provision from the proposed rule, but in order to comply with 30 U.S.C. 185(i) and (j), we added the requirement to the final rule. BLM needs this information to assist us in tracking changes in corporate ownership, corporate mergers, and reorganizations. This requirement is consistent with section 2886.12. BLM believes it is reasonable to ask corporations to identify how they are structured and who is responsible in the organization, especially in light of several major corporations' recent financial difficulties;

(B) Evidence that the party signing the application has the authority to bind the applicant. This provision is new to the final rule. We added the provision because of our past experiences in working with representatives of some companies. It is common for applicants to enlist agents to act on their behalf and they may be the only contact BLM has with the applicant. It is important and reasonable for us to know that the person purporting to be an agent of the grant holder or applicant actually has authority to act as such;

(C) The name, address, and citizenship of each participant in the business entity;

(D) The name, address, and citizenship of each shareholder owning 3 percent or more of the shares, and the number and percentage of any class of voting shares of the business entity which such shareholder is authorized to vote;

(E) The name and address of each affiliate of the business;

(F) The number of shares and the percentage of any class of voting stock owned by the business entity, directly or indirectly, in any affiliate controlled by the business; and

(G) The number of shares and the percentage of any class of voting stock owned by an affiliate, directly or indirectly, in the business entity controlled by the affiliate.

If you have already supplied this information to BLM and the information remains accurate, you only need to reference the grant serial number under which you filed it.

Section 2883.13 What Happens if BLM Issues Me a Grant or TUP and Later Determines That I Am Not Qualified To Hold It?

This section explains that if BLM issues you a grant or TUP, and later determines that you are not qualified to hold it, BLM will terminate your grant or TUP under 30 U.S.C. 185(o). You may appeal this decision under section 2881.10 of this part.

In the final rule we added a cross-reference to the appropriate section of the Mineral Leasing Act to indicate our authority for terminating a grant that you are not qualified to hold. We also added a cross-reference to the appeals provisions of these rules.

Section 2883.14 What Happens to My Application, Grant, or TUP if I Die?

This section explains what happens to an application that we have not completely processed or to a grant or TUP that we have issued when the applicant or holder dies. This section is new to this part, although we addressed this same issue at section 2803.13 of the proposed FLPMA regulations (''What happens to my grant if I die?''). We inadvertently omitted a similar provision from the MLA regulations, and therefore are adding it now. This section is based on and is consistent with final section 2803.12 of this rule. This section explains:

(A) If an applicant or grant or TUP holder dies, any inheritable interest in the application, grant, or TUP will be distributed under state law. The word ''inheritable'' is not used here in its technical sense. It refers to property passing by will or intestate succession; and

(B) If the distributee of a grant or TUP is not qualified to hold a grant or TUP under section 2883.10 of this subpart, BLM will recognize the distributee as the grant or TUP holder and allow the distributee to hold its interest in the grant or TUP for up to two years. During that period the distributee must either become qualified or divest itself of the interest.

We added this provision to the final rule to make sure we have consistent processes in place for cases where an applicant or a grant holder dies.

Subpart 2884—Applying for MLA Grants or TUPs

Subpart 2884 explains how to apply for a grant or TUP. More specifically, it explains:

(A) The preapplication process;

(B) What you need to provide in your application;

(C) The processing fees for applications;

(D) Where to file your application;

(E) The public notification requirements for right-of-way and TUP applications; and

(F) Processing of applications for grants and TUPs.

Section 2884.10 What Should I Do Before I File My Application?

This section explains that when you determine that a proposed oil and gas pipeline system would cross Federal lands under BLM's jurisdiction, or under the jurisdiction of two or more Federal agencies, you should notify BLM. Advance notice to us about your intent to propose an oil and gas pipeline system will assist us in planning and in processing your application. The preapplication meeting will also benefit you by providing you information on known resource issues, land use plan constraints, and potential problems you may be able to avoid when filling out your application. It may also save you time completing your application since we can help you determine the information that you need to include in your application.

Before filing an application with BLM, we encourage you to make an appointment for a preapplication meeting with the appropriate personnel in the BLM field office nearest the lands you seek to use. If your project affects multiple states or multiple BLM field offices within a state, you may want to coordinate with the BLM state office so that appropriate offices and agencies can be involved in the preapplication meeting. During the preapplication meeting BLM can:

(A) Identify potential routing and other constraints;

(B) Determine whether or not the lands in the proposed application are located within a designated or existing right-of-way corridor;

(C) Tentatively schedule the processing of your proposed application;

(D) Provide you information about qualifications for holding grants and TUPs, and processing, monitoring, and rent costs; and

(E) Identify any work which will require obtaining one or more TUPs.

BLM may share this information with Federal, state, tribal, and local government agencies to ensure that these agencies are aware of any authorizations you may need from them. BLM will keep confidential any information that you mark as ''confidential'' or ''proprietary'' to the extent allowed by law.

We amended paragraph (a) of proposed section 2884.10 by deleting the phrase ''or the Secretary of the Interior.'' We deleted the phrase because the Secretary has delegated to BLM authority over rights-of-way and therefore it would be more appropriate for you to contact BLM, rather than the Secretary.

We also added a new paragraph (d) to this section to make it clear that BLM will keep confidential any information that you mark as ''confidential'' or ''proprietary'' to the extent allowed by law. This is consistent with existing policy and the Department's Freedom of Information Act regulations in part 2 of this title.

Section 2884.11 What Information Must I Submit in My Application?

This section explains the information you must submit in your application for a MLA right-of-way grant. It explains that you must file your application on Form SF–299, as part of an Application for Permit to Drill or Reenter (BLM Form 3160–3), or Sundry Notice and Report on Wells (BLM Form 3160–5). In your application you must provide a complete description of the project, including:

(A) The exact diameters of the pipes and locations of the pipelines;

(B) Proposed construction and reclamation techniques; and

(C) The estimated life of the facility.

This section also explains that you must file with BLM copies of any applications you file with other Federal agencies, such as the Federal Energy Regulatory Commission (FERC) (see Title 18 of the Code of Federal Regulations for FERC regulations), for licenses, certificates, or other authorities involving the right-of-way. This provision is consistent with previous section 2882.2–1(c). Copies of applications to other Federal agencies, such as the FERC application referenced above, may be sufficient for much of the data we may require to process your application.

To assist us in processing your application, BLM may ask you to submit additional information beyond what the form requires. This information may include:

(A) A list of any Federal and state approvals required for the proposal;

(B) A description of the alternative route(s) and mode(s) considered when developing the proposal;

(C) Copies of, or reference to, all similar applications or grants you have submitted, currently hold, or have held in the past. In the final rule we added the phrase ''or have held in the past'' to this paragraph to help us evaluate your financial or technical capability to implement the project;

(D) A statement of need and economic feasibility of the proposed project;

(E) The estimated schedule for constructing, operating, maintaining, and terminating the project (a Plan of Development). This was proposed in section 2884.19(a);

(F) A map of the project, showing its proposed location and showing existing facilities adjacent to the proposal. This is new to this section, but is consistent with previous section 2882.2–3(a)(3);

(G) A statement certifying that you are of legal age and authorized to do business in the state(s) where the right-of-way would be located and that you have submitted correct information to the best of your knowledge;

(H) A statement of the environmental, social, and economic effects of the proposal;

(I) A statement of your financial and technical ability to construct, operate, maintain, and terminate the project;

(J) Proof that you are a United States citizen. This provision is in previous sections 2882.2–1(a) and 2882.2–3(a)(6). We inadvertently left it out of the proposed rule and therefore added it here; and

(K) Any other information BLM considers necessary to process your application. Previous section 2882.3(d) allowed BLM to require a right-of-way applicant to submit such information as is necessary for review of the application. This requirement appears in the proposed rule at section 2884.11(c)(5).

Before BLM reviews your application for a grant, grant amendment, or grant renewal, you must submit the following information and material to ensure that the facilities will be constructed, operated, and maintained as common carriers:

(A) Conditions for, and agreements among, owners or operators, adding pumping facilities and looping, or to otherwise increase the pipeline or terminal's throughput capacity in response to actual or anticipated increases in demand;

(B) Conditions for adding or abandoning intake, offtake, or storage points or facilities; and

(C) Minimum shipment or purchase tenders.

We added the phrase ''grant amendment'' to the opening sentence of proposed section 2884.11(c) (final section 2884.11(d)) to clarify that we may also require an applicant who is amending an existing grant to submit this information.

If conditions or information affecting your application change, promptly notify BLM and submit to BLM in writing the necessary changes to your application. BLM may deny your application if you fail to do so.

For information purposes, in the final rule we added a cite in paragraph (b) to FERC's regulations.

Several commenters said that all the information this section requires is already in the right-of-way application form and that any information BLM requires should be in the form. We agree with this comment in theory, however, in practice our experience has shown that it is nearly impossible for an applicant to anticipate every question, and design their project to address all the issues at the application stage of processing. BLM requests for additional information to process an application are common, and the provisions of this paragraph are necessary to help us to efficiently process applications.

Section 2884.12 What Is the Processing Fee for a Grant or TUP Application?

This section explains that you must pay a nonrefundable processing fee with your application to cover costs to the Federal Government of processing your application before the Federal Government incurs them. We categorize the fees based on an estimate of the amount of time that the Federal Government will expend to process your application and to issue a decision granting or denying the application. The section also explains that there is no processing fee if the work is estimated to take one hour or less. This section contains a chart that lists the processing fees by category and is based on proposed section 2884.12. For Processing Categories 1 through 4, labor costs are by far the largest percentage of processing costs. Costs associated with environmental analysis and other application processing steps for these categories are predominately labor and time costs. The costs of supplies, printing, fuel, and lodging are small.

For Processing Category 5 and 6 applications, the complexity of the required environmental analysis is usually an important factor in determining processing costs, particularly if the application requires an environmental impact statement. Processing costs for Category 5 and 6 applications are, however, worked out in advance between BLM and the applicant either through a Master Agreement or a detailed accounting of work hours BLM estimates it will spend on processing the application. Because the non-labor costs are insignificant compared to labor costs, we eliminated the term ''field examination'' from the category definitions for Categories 1 through 4, and in final section 2881.5 of this part.

BLM updates the fees for Categories 1 through 4 in the schedule each calendar year, based on the previous year's change in the IPD–GDP, as measured second quarter to second quarter. BLM will round these changes to the nearest dollar. You may obtain a copy of the annually revised schedule from any BLM state or field office or on BLM's Internet Home Page at *http://www.blm.gov.*

After an initial review of your application, BLM will notify you in writing of the category into which your application fits. You must then submit to BLM the appropriate payment for that category before BLM processes your application. If you disagree with the category that BLM has determined for your application, you may appeal the decision under section 2881.10 of this part.

Your signature on a cost recovery Master Agreement (Category 5) constitutes your agreement with the processing category decision. Inherent in the concept of a Master Agreement is a cooperative relationship between BLM and an applicant. BLM is committed to working with any applicant wishing to pursue a Master Agreement. Under the provisions of the proposed rule and this final rule, an applicant's signature on a Master Agreement constitutes an agreement with the processing category decision. More generally, an applicant's signature on a Master Agreement constitutes agreement with all of its provisions, including the negotiated application processing costs. A signed Master Agreement documents BLM's decision on the processing category and the applicant's agreement with it. Therefore, we believe that an appeal of the negotiated agreement would be rare. Any disagreements during a Master Agreement negotiation process that could not be resolved would not result in consummation and signature of a Master Agreement. At that point, BLM would have to make a processing category decision outside the context of a Master Agreement, and that decision could be the subject of an administrative appeal.

If you have submitted the processing fee and you appeal a Processing Category 1 through 4 or a Processing Category 6 determination to IBLA, BLM will process your application while the appeal is pending. If IBLA finds in your favor, you will receive a refund or adjustment of your processing fee. We added this provision to the final rule to explain existing processes.

BLM may determine at any time that the application requires preparing an EIS. If this occurs, BLM will send you a decision changing your processing

category to Processing Category 6. You may appeal the decision under section 2881.10 of this part.

If you hold a grant or TUP relating to the Trans-Alaska Pipeline System (TAPS), BLM will send you a written statement seeking reimbursement of actual costs within 60 calendar days after the close of each quarter. Quarters end on the last day of March, June, September, and December. In the final rule we added language explaining that in processing your application and administering authorizations relating to TAPS, the Department of the Interior will avoid unnecessary employment of personnel and needless expenditure of funds. This provision was not in the proposed rule. We added it to be consistent with previous section 2883.1–1(d).

We added a new provision to paragraph (b) of this section explaining that there is no fee if it takes one hour or less to process your application. We believe that the minimal costs involved to process an application do not justify charging a fee. We also added a new Category 1 for processing routine applications that require greater than one hour but less than or equal to eight hours to process. Please see the preamble to section 2804.14 of this rule for a discussion of why we added this new category.

Several commenters objected to BLM charging grant holders ''actual'' costs. Some of the commenters claimed that the distinction was artificial, as the MLA did not use the word ''actual,'' and BLM should charge MLA grant holders reasonable costs, as it does FLPMA grant holders.

BLM charges MLA grant holders actual costs because the law requires it. Section 28 of the MLA (30 U.S.C. 185(l)) requires applicants for MLA pipeline rights-of-way to reimburse the United States for ''administrative and other costs'' incurred in processing applications and in monitoring the construction, operation, maintenance, and termination of an MLA pipeline. The MLA does not limit or qualify this requirement, nor does it list any factors that BLM may take into account when determining reimbursable costs. This is in marked contrast to section 304(b) of FLPMA, which addresses cost recovery for rights-of-way issued under FLPMA (see 49 FR 25972 (June 25, 1984)). Thus, BLM charges its actual administrative and other costs.

On July 25, 1986, in the preamble to the previous cost recovery regulations at subpart 2808, BLM discussed ''actual costs'' (51 FR 26836–26837). As explained in that preamble and in previous section 2800.0–5(o), ''actual costs'' are the financial measures of resources an agency expends on processing an application for a right-of-way or in monitoring the construction, operation, and termination of a facility BLM authorizes by a grant or permit. BLM bases actual cost information on Federal accounting and reporting systems which conform to the accounting principles and standards of the U.S. Comptroller General. Costs are divided into ''direct'' and ''indirect'' costs.

Direct costs include agency expenditures for labor, material, stores, and equipment usage associated with performing right-of-way responsibilities. These costs include such items as gross wages and employee benefits, material, stores, equipment, and contract costs.

Indirect costs are those costs an agency incurs for providing common services not specific to a particular application and include purchasing, property management, office fixed costs, accounting, automated data management, and personnel services. BLM assesses administrative charges against right-of-way cost recovery accounts on a percentage basis in order to recover costs of indirect support services. Executive and managerial direction are not included in indirect costs.

For Processing Categories 1 through 4, the established fees reflect both direct and indirect costs. For Processing Categories 5 and 6, we apply the annual indirect cost percentage to the direct costs that we determine for a specific application.

''Actual costs'' do not include management overhead costs. We have defined ''management overhead costs'' in section 2801.5 as Federal expenditures associated with BLM's directorate, including all BLM State Directors and the entire Washington Office staff, except where a State Director or Washington Office staff member is required to perform work on a specific right-of-way case. We also note that the costs of studies or other work which BLM must do regardless of whether it receives an application are considered independent public benefits and are not included in processing fees. This work includes preparing land use plans.

Several commenters suggested that BLM and the applicant should agree on what the ''reasonable'' costs of processing an application should be. They were also concerned that under these regulations BLM would do additional field work that is not necessary. Section 504(g) of FLPMA requires reimbursement of ''reasonable'' administrative and other costs incurred in processing applications for grants, and section 304(b) identifies factors to consider in determining reasonable costs. The MLA, in contrast, requires that applicants for grants and TUPs reimburse the United States for ''administrative and other costs'' incurred in processing applications, without providing additional criteria to consider, as does FLPMA. Therefore, BLM must determine administrative and other costs to process an MLA grant or TUP application without considering the factors that FLPMA requires us to consider for FLPMA rights-of-way (see 49 FR 25972 (June 25, 1984)). BLM will undertake or require only that work that is necessary to process an application efficiently and in compliance with applicable laws and regulations. There is no provision in section 28 of the MLA, or in this or previous regulations, that permits BLM to collect processing fees from a grant or TUP applicant for any work beyond what is necessary to process an application.

Some commenters also asked for the basis for costs and the staff hourly rates. Staff hourly rates are set by a government-wide general schedule (see the Office of Personnel Management website at OPM.gov) for most BLM employees, and include hourly rates for various levels or ''grades''of BLM specialists. Please see section 2804.14 and the opening paragraphs of this preamble section for further discussion of processing fees.

Several commenters indicated that the rule uses the wrong ''inflation factor'' and said they believed that the Consumer Price Index would be more appropriate. Previous section 2883.1–1(c), which established cost recovery categories in 1985, had no provision to make annual adjustments in cost recovery categories I through V. This final rule uses the IPD–GDP as the basis for making annual adjustments in the new categories 1 through 4. This is an appropriate standard where, as here, fees are heavily dependent on labor costs. As noted in the preamble to the proposed rule at 64 FR 32109 (June 15, 1999), the Consumer Price Index does not reflect a sufficiently high labor intensiveness to be used to adjust the cost recovery fee structure. Please see the preamble discussion for section 2804.14 for more information.

Several commenters said that significant technological improvements are taking place and offer significant cost savings since the 1986 study and that these savings should be included in the calculations. Please see section 2804.14 for more discussion of comments on processing fees and a response to this comment.

Several commenters asked if they had a right to an appeal if they disagreed with BLM's category determination. Final sections 2884.12(d) and (e) clearly provide that if an applicant disagrees with a final BLM processing category decision, the applicant has the right to appeal that decision. This is consistent with previous sections 2883.1–1(a)(4) and 2884.1 and proposed sections 2884.12(d) and (f).

Section 2884.13 Who Is Exempt From Paying Processing and Monitoring Fees?

This section explains that you are exempt from paying processing and monitoring fees if you are a state or local government or an agency of such a government and BLM issues the grant for governmental purposes benefitting the general public. If your principal source of revenue results from charges you levy on customers for services similar to those of a profit-making corporation or business, you are not exempt.

This section is based on proposed section 2885.14 which cross-referenced the proposed subpart 2804 regulations. That proposed subpart contained proposed section 2804.15, on which this section is based.

Section 2884.14 When Does BLM Reevaluate the Processing and Monitoring Fees?

This is a new section to the final rule that explains that BLM reevaluates processing and monitoring fees for each category, and the categories themselves, within 5 years after they go into effect and at 10-year intervals after that. This section also lists some examples of the types of factors BLM considers when reevaluating these fees. Several comments suggested a periodic review and evaluation of the processing and monitoring fees and categories, and this section is responsive to those concerns. Any adjustment that BLM makes to the fees or fee structure as a result of a review under this section, apart from applying the IPD-GDP, would require a separate rulemaking.

We deleted proposed section 2884.14 because the provisions in that section are covered elsewhere in this final rule.

Section 2884.15 What Is a Master Agreement (Processing Category 5) and What Information Must I Provide to BLM When I Request One? and

Section 2884.16 What Provisions Do Master Agreements Contain and What Are Their Limitations?

The provisions in these two sections were proposed in section 2884.13. That section cross-referenced proposed section 2804.7. In this final rule, instead of the cross-reference, we added the requirements for a Master Agreement application to the sections. Sections 2884.15 and 2884.16 contain one difference from the final FLPMA right-of-way regulations in sections 2804.17 and 2804.18: The provision for the waiver of reductions of processing and monitoring fees in final section 2804.18(c) for FLPMA grants does not appear in this final section because the MLA does not provide for reductions.

Please see the discussion in preamble sections 2804.17 and 2804.18 for more detailed information on the Master Agreement provisions and responses to comments concerning Master Agreements.

Section 2884.17 How Will BLM Process My Processing Category 6 Application?

This section describes how BLM will process a Category 6 application. In processing your application BLM will:

(A) Determine the issues subject to analysis under NEPA;

(B) Prepare a preliminary work plan that identifies data needs, studies, surveys and other reporting requirements, the level of NEPA documentation, consultation and coordination requirements, public involvement needs, and a proposed schedule to complete application processing;

(C) Develop a preliminary financial plan that estimates the actual costs of processing your application and monitoring the project;

(D) Discuss with you the preliminary plans discussed above; and

(E) Work with you to develop final work and financial plans which reflect any work you have agreed to do. As part of this process BLM will complete our final estimate of the costs you must pay BLM for processing the application and monitoring the project.

BLM may allow you to prepare environmental documents and conduct any studies related to your application. However, if BLM agrees to allow you to perform this work, you must do it to BLM standards.

Finally, this section states that BLM will set out timeframes for periodic estimates of processing costs for a specific work period. If your payment exceeds the costs that the United States incurred for the work, BLM will either adjust the next billing to reflect the excess, or refund you the excess under 43 U.S.C. 1734. You may not deduct any amount from a payment without BLM's prior written approval. You must pay any amount due before we will continue to process your application.

Please see the preamble discussion of section 2804.19 for a discussion of Category 6 applications and responses to comments.

Section 2884.18 What If There Are Two or More Competing Applications for the Same Pipeline?

This section explains that if there are two or more competing applications for the same pipeline and your application is in:

(A) Processing Category 1 through 4, you must reimburse BLM for processing costs as if the other application or applications had not been filed; or

(B) Processing Category 6, you are responsible for processing costs identified in your application. You must pay the processing fee in advance. Consistent with existing policy, BLM will not process your application without the advance payment. Cost sharing by competing applicants may be arranged.

This section also explains that BLM determines whether applications are compatible in a single right-of-way, or are competing applications for the same pipeline.

Finally, this section explains that if BLM determines that competition exists, BLM will describe the procedures for a competitive bid through a bid announcement in a newspaper of general circulation in the area affected by the potential right-of-way and by a notice in the **Federal Register**.

This section was proposed as section 2884.15 and it mirrors final section 2804.23. Please see that final section's discussion for an explanation of competing applications, responses to comments, and changes to the final rule.

Section 2884.19 Where Do I File My Application for a Grant or TUP?

This section was proposed as section 2884.16 and explains where you should file your application for a grant or TUP. Under this section, if BLM has exclusive jurisdiction over the lands involved, you should file your application with the BLM field office having jurisdiction over the lands described in the application. One of the changes we made to the final rule was to replace ''State Office'' with ''Field Office,'' because field offices are the most appropriate place of first contact, where applicants can readily obtain information about land use planning, resources, and issues in the area or areas where their pipeline is proposed.

If another Federal agency has exclusive jurisdiction over the land involved, you should file your application with that agency and refer to its regulations for its requirements. If there are no BLM-administered lands involved, but the lands are under the

jurisdiction of two or more Federal agencies, including other Department of the Interior agencies (but not the National Park Service), you should file your application at the BLM office in the vicinity of the pipeline. BLM will notify you where to direct future communications about the pipeline.

If two or more Federal agencies, including BLM, but not the National Park Service, have jurisdiction over the lands in the application, file it at any BLM office having jurisdiction over a portion of the Federal lands. BLM will notify you where to direct future communications about the pipeline.

With the exception of editorial changes and the change discussed above, this section remains as proposed.

Section 2884.20 What Are the Public Notification Requirements for My Application?

This section was proposed as section 2884.17. It explains the public notification requirements for grant applications. When BLM receives your application, it will publish a notice in the **Federal Register** or a newspaper of general circulation in the vicinity of the lands involved. If BLM determines the pipeline will have only minor environmental impacts, it is not required to publish this notice. This final rule continues to require procedures that are consistent with previous section 2882.3(b) and proposed section 2884.17.

If we do publish a notice, it will, at a minimum, contain:

(A) A description of the pipeline system; and

(B) A statement of where the application and related documents are available for review.

BLM will send copies of the published notice for review and comment to the:

(A) Governor of each state within which the pipeline system would be located;

(B) Head of each local government or jurisdiction or tribal government within which the pipeline system would be located; and

(C) Heads of other Federal agencies whose jurisdiction includes areas within which the pipeline system would be located.

If your application involves a pipeline that is 24 inches or more in diameter, BLM will also send notice of the application to the appropriate committees of Congress in accordance with 30 U.S.C. 185(w). We revised previous section 2882.3(a) on September 30, 2002 (67 FR 61276) to incorporate this Congressional notification requirement to comply with amended 30 U.S.C. 185(w). This requirement is carried forward in final section 2884.20(c). Please see the preamble to the September 30, 2002 rule for an explanation of new paragraph (c).

BLM may hold public hearings or meetings on your application if we determine there is sufficient interest to warrant the time and expense of such hearings or meetings. BLM will publish a notice of any such hearings or meetings in advance in the **Federal Register** or in a newspaper of general circulation in the vicinity of the lands involved. If BLM determines that public hearings or meetings are needed, BLM may pay for the cost of holding them, the applicant may pay, or both BLM and the applicant may share the costs. Before BLM holds any public hearings or meetings, BLM and the applicant must reach an agreement on responsibilities and costs associated with them.

We amended proposed section 2884.17(b)(2) by adding ''or tribal government'' to the list of governments we would notify. This corrects an omission in the proposed rule and more accurately describes our notification process.

We amended proposed paragraph (d) in the final rule to make it clear that we will publish any notices of meetings in a newspaper of general circulation in the vicinity of the lands involved. The proposal only said ''local newspaper.'' This change makes this section consistent with other provisions in the rule and more accurately describes where we would publish the notice.

Several commenters said that the public notification requirements should not apply to transmission pipelines and that oil and gas field production operations should be excluded from this regulation. We disagree. Although oil and gas production facilities, including on and off-lease flowlines, generally have minor environmental impacts, there may be some instances where potential impacts warrant formal public notice. This final rule at paragraph (a) states that BLM is not required to provide formal notification through publication in the **Federal Register** or a newspaper of general circulation if it determines that proposed rights-of-way will have minor impacts. This final rule is consistent with previous section 2882.3(b), which provided BLM with discretion in determining whether or not to provide formal notice of applications, based on a review of each application. A blanket exclusion of public notice for all oil and gas pipelines serving oil and gas production facilities could result in the public not being provided formal notice in cases where it should occur and consequently, we did not make the change suggested by commenters.

Several commenters said that publication of the notice in the **Federal Register** should suffice and that there is no need to also publish in local newspapers. The commenter's suggestion is consistent with previous section 2882.3(b). We agree with the commenters in part. The final rule leaves it up to local BLM officials to determine whether it is more appropriate to publish in either the **Federal Register** or a local newspaper.

Several commenters said that the requirement to notify the Governor and local governments should not apply to oil field projects. They also objected that there is no time limit for the Governor or local governments to respond after receiving the notice. As discussed above, the formal notification requirement would ordinarily not apply to ''routine'' oil and gas field production grants and TUPs where environmental impacts would be minor. However, when formal notification is necessary, BLM will send copies of the published notice to the Governor and local or tribal governments, and heads of other affected Federal agencies. Although not a regulatory requirement, BLM will identify in the notification an appropriate review time and request that comments be provided within a reasonable period. As a matter of practice, BLM does not provide open-ended review and comment when we make these notifications.

Several commenters stated that we should revise proposed section 2884.17(c) by replacing the word ''refer'' with the word ''notice'' to be consistent with the 1990 amendments to the MLA. Final section 2884.20(c) is consistent with this suggestion.

Some commenters suggested that we revise proposed paragraphs (b) and (c) to include notification of Indian tribes with jurisdiction over lands affected by a right-of-way grant application. We added ''tribal government'' to the list of those we will notify in final section 2884.20(b)(2) to address this comment.

Section 2884.21 How Will BLM Process My Application?

Under this section BLM will notify you in writing when it receives your application and will identify your processing fee. BLM will process your completed application following the timeframes in the chart in paragraph (b) of this section.

This section was proposed as section 2884.18, which contained little more than cross-references to the applicable provisions of the part 2800 regulations.

This final rule replaces the cross-references with the provisions of the rule from the part 2800 regulations. Since this final section mirrors final section 2804.25 of this rule, please see the discussion of that section for changes to the rule and responses to comments.

Section 2884.22 Can BLM Ask Me for Additional Information?

This section was proposed as section 2884.19 and explains that BLM may ask you for additional information necessary to process your application. If we require additional information, we will follow the procedures in final section 2804.25(b) and therefore we cross reference that section here.

This section also explains that we may also ask other Federal agencies for additional information, terms and conditions, and advice on whether to issue the grant.

Section 2884.23 Under What Circumstances May BLM Deny My Application?

This section explains that BLM may deny your application if:

(A) The proposed use is inconsistent with the purpose for which BLM or other Federal agencies manage the lands described in the application;

(B) The proposed use would not be in the public interest;

(C) You are not qualified to hold a grant or TUP;

(D) Issuing the grant or TUP would be inconsistent with the Act, other laws, or these or other regulations;

(E) You do not have or cannot demonstrate the technical or financial capability to construct the pipeline or operate facilities within the right-of-way or TUP area; or

(F) You do not adequately comply with a deficiency notice or with any BLM requests for additional information needed to process the application.

You may appeal BLM's decision to deny your application under section 2881.10 of this part.

This section was proposed as section 2884.20 and mirrors the provisions in final section 2804.26. The only difference is that the MLA allows for TUPs, whereas the FLPMA regulations in part 2800 of this rule address short-term right-of-way authorizations. The provisions in this section replace a cross-reference in proposed section 2884.20. We made this change to minimize the need for applicants to refer back to the FLPMA regulations. Please see the discussion of section 2804.26 in this preamble for a discussion of responses to public comments.

Section 2884.24 What Fees Do I Owe If BLM Denies My Application or If I Withdraw My Application?

This section was proposed as section 2884.21 and explains that if BLM denies, or you withdraw, your application, you owe the processing fee, unless you have a Category 5 or 6 application. Then, the following conditions apply:

(A) If BLM denies your Category 5 or 6 application, you are liable for all actual costs that the United States incurred in processing it. The money you have not paid is due within 30 calendar days of receiving a notice for the amount due; and

(B) You may withdraw your application in writing before BLM issues a grant or TUP. If you withdraw your application before BLM issues a grant or TUP, you are liable for all actual processing costs the United States has incurred up to the time you withdraw the application and for the actual costs of terminating your application. Any money you have not paid is due within 30 calendar days after receiving a bill for the amount due. Processing fees in Categories 1 through 4 are not refundable. We replaced the cross reference in proposed 2884.21 with the text in this final rule to minimize the need to refer back to the FLPMA regulations.

Several commenters said that oil and gas lessees should not owe any money if BLM rejects their applications. We disagree. The Mineral Leasing Act at 30 U.S.C. 185(l) says that ''[t]he applicant for a right-of-way or permit shall reimburse the United States for administrative and other costs incurred in processing the application * * *.'' The plain meaning of the statute and the use of the word ''applicant'' rather than ''holder,'' which is used elsewhere in the section to indicate that an application has been approved, suggests that Congress intended that applicants should reimburse costs, whether or not BLM approved or rejected the application. We did not amend this section as a result of this comment.

Section 2884.25 What Activities May I Conduct on BLM Lands Covered By My Application for a Grant or TUP While BLM Is Processing My Application?

This section was proposed as section 2884.22 and explains the activities you may conduct before BLM makes a decision on your application. Under these regulations you may conduct casual use activities (see final section 2881.5 for a definition of ''casual use'') on BLM lands covered by the application, as may any other member of the public. No grant or TUP is required for casual use on BLM lands.

This section also explains that for any activities on BLM lands that are not casual use, such as surface disturbing surveys or data collection, you must obtain prior BLM approval. To conduct activities on lands administered by other Federal agencies, you must obtain any prior approval those agencies require.

We amended proposed section 2884.22 by making it clear that a grant or TUP is not required for activities on BLM lands that are casual use. This change is consistent with existing policy and regulation (see previous section 2882.1(d)). We also added language explaining that for activities on non-BLM lands administered by other Federal agencies, you must follow the rules and obtain any prior approvals from those agencies.

Section 2884.26 When Will BLM Issue a Grant or TUP When the Lands Are Managed By Two or More Federal Agencies?

This section was proposed as 2884.23. It explains the processes BLM must follow before we issue or renew right-of-way grants or TUPs.

This section explains that if the application involves lands managed by two or more Federal agencies, BLM will not issue or renew the grant or TUP until the heads of the agencies administering the lands involved have concurred. For example, if a pipeline crosses Bureau of Reclamation and U.S. Corps of Engineers lands, BLM would be the issuing agency. Likewise, if a pipeline crosses Forest Service and Department of Energy lands, BLM would be the issuing agency. BLM would also be the issuing agency if a pipeline crossed BLM lands and another Federal agency's lands. Where concurrence is not reached, the Secretary of the Interior, after consultation with these agencies, may issue or renew the grant or TUP, but not through lands within a Federal reservation where doing so would be inconsistent with the purposes of the reservation.

We deleted proposed paragraph (d) in the final rule because the statement made in that section is unnecessary.

Section 2884.27 What Additional Requirement Is Necessary for Grants or TUPs for Pipelines 24 or More Inches in Diameter?

This section explains that if an application is for a pipeline 24 inches or more in diameter, BLM will not issue or renew the grant or TUP until after we notify the appropriate committees of

Congress in accordance with 30 U.S.C. 185(w). On September 30, 2002, we published this provision as a stand-alone amendment to our regulations. Please see 67 FR 61274 for a discussion of that final rule. This paragraph is consistent with that final rule.

Subpart 2885—Terms and Conditions of MLA Grants and TUPs

This subpart contains information and policies about the terms and conditions of grants and TUPs. It also explains:

(A) When grants and TUPs are effective;

(B) What the terms and conditions of a grant or TUP are;

(C) How much it costs to hold a grant or TUP; and

(D) What happens if you default on rental or other payments.

Section 2885.10 When Is a Grant or TUP Effective?

This section explains that a grant or TUP is effective after both you and BLM sign it. You must accept its terms and conditions in writing and pay any necessary rent and monitoring fees.

After receiving and reviewing your application, BLM may send you an unsigned right-of-way grant or TUP for you to review. It will include terms, conditions, and stipulations that are discussed in section 2885.11. If you agree with the terms, conditions, and stipulations of the unsigned grant or TUP, you should sign and return it to BLM with any monitoring fee payment that may still be due for the application. If there has been no change in the terms, conditions, or stipulations, and all regulations, including section 2884.23, remain satisfied, BLM will then sign the grant or TUP and return it to you with a decision letter. If we deny your application, the decision letter will notify you of the reason(s) and how you can correct any deficiencies.

Your written acceptance of the grant or TUP constitutes an agreement between you and the United States that your right to use the Federal lands, as specified in the grant or TUP, is subject to the terms and conditions of the grant or TUP and applicable laws and regulations.

Proposed section 2885.10 cross-referenced section 2805.11 of the proposed rule (final section 2805.13). The final rule replaces the cross-reference with the actual provision that was cross-referenced. In the final rule we also added a cross-reference to the rent and monitoring fee provisions of the subpart. With the exception of these changes and some minor editorial changes, the rule remains as proposed. This section is based on final section 2805.13. Please see the discussion of section 2805.13 for an explanation of the other changes to that and this section.

Section 2885.11 What Terms and Conditions Must I Comply With?

This section explains the duration and the terms and conditions of use of grants and TUPs. Proposed section 2885.11 stated that the general provisions of proposed sections 2805.10, 2805.12, and 2805.13 of this chapter apply. In this final rule we eliminated the cross-references and replaced them with the actual provisions concerning the terms and conditions of grants. Grants or TUPs contain the following terms and conditions, as applicable:

(A) *Duration:* The term of a grant may not exceed 30 years. Grants that BLM issues for a term of one year or longer will terminate on December 31 of the final year of the grant. The year in which we issued the grant, even though it may be only a partial year, counts as the first full year of the grant. This is because the MLA does not allow grants for terms of greater than 30 years. For example, a grant issued for 30 years on June 12, 2004, would expire on December 31, 2033. Another example, a grant issued for ''two years'' on September 21, 2004, would expire on December 31, 2005.

The term of a TUP may not exceed 3 years. BLM frequently issues TUPs on an anniversary year basis. For example, if BLM issued a grant on September 1, 2003, and also issued an associated TUP for a three-year term, the TUP would expire on September 1, 2006.

BLM considers the following factors in establishing the term of a grant or TUP:

(1) The cost of the pipeline and related facilities you plan to construct, operate, maintain, or terminate. In the final rule we reworded this sentence by adding ''and related facilities you plan to construct, operate, maintain or terminate'' because we wanted to be clear that the cost includes the cost of any related facilities and other costs incurred over the life of the project, not just the cost of project construction;

(2) The pipeline or facility's useful life;

(3) The public purpose served; and

(4) Any potentially conflicting land uses.

Paragraph (a) of this section contains minor editorial changes to make it easier to understand. We added the provision stating that grants with a term of one year or longer terminate on December 31 to make this section consistent with the corresponding FLPMA regulation at section 2805.11. We did this so that grant expirations will coincide with rental periods that are paid through December 31 of the rental period. We also added language to final paragraph (a) explaining that the maximum term for a TUP is three years. This provision is consistent with existing policy. We mistakenly omitted it from the proposed rule;

(B) By accepting a grant or TUP, you agree to use the lands described in the grant or TUP for the purposes set forth in the grant or TUP. We reworded the final rule by removing the cross-reference to section 2805.10(c) and replaced it with the actual provisions from that section. We also included language stating that BLM may modify your proposed use or change the route or location of the facilities in your application. This provision was proposed as section 2885.11, which cross references proposed section 2805.10. This section states that by accepting a grant or TUP, you also agree to comply with, and be bound by, the terms and conditions set forth in paragraph (b) of this section.

Under this final rule, during construction, operation, maintenance, and termination of the project you must:

(1) To the extent practicable, comply with all existing and subsequently enacted, issued, or amended Federal laws and regulations and state laws and regulations applicable to the authorized use. We reworded this provision in the final rule by adding the phrase ''To the extent practicable,'' a phrase that has been in the Department's regulations since 1979. A slight variation of this phrase appears in section 28(v) of the MLA, 30 U.S.C. 185(v), which states that the Secretary ''shall take into consideration and to the extent practical comply with State standards for right-of-way construction, operation, and maintenance.'' It is worth noting that section 28(h)(2) states in part that the Secretary ''shall issue regulations * * * which shall include * * * requirements to insure that activities in connection with the right-of-way or permit will not violate applicable air and water quality standards nor related facility siting standards established by or pursuant to law'' (see 30 U.S.C. 185(h)(2)). This section also makes clear that a holder must comply with any changes to applicable law or regulation that occur during the term of a right-of-way grant. This is consistent with longstanding policy and previous section 2881.2(a);

(2) Rebuild and repair roads, fences, and established trails destroyed or damaged by constructing, operating, maintaining, or terminating the project;

(3) Build and maintain suitable crossings for existing roads and significant trails that intersect the project;

(4) Do everything reasonable to prevent and suppress fires on or in the immediate vicinity of the right-of-way or TUP area. We reworded this paragraph by removing the phrase ''on your own or at BLM's request'' because it was not necessary;

(5) Not discriminate against any employee or applicant for employment during any phase of the project because of race, creed, color, sex, or national origin. You must also require subcontractors to not discriminate. We added the phrase ''during any phase of the project'' to make it clear that the provision not to discriminate against any employee applied not only during the construction of the facility, but for the term of the grant;

(6) Pay the monitoring fees and rent;

(7) If BLM requires, obtain and/or certify that you have a surety bond or other acceptable security to cover any losses, damages, or injury to human health, the environment, and property incurred in connection with your use and occupancy of the right-of-way or TUP area, including terminating the grant or TUP, and to secure all obligations imposed by the grant or TUP and applicable laws and regulations. We added the phrase ''including terminating the grant or TUP'' to emphasize that the termination phase of a grant is a time when substantial surface disturbing activities may occur, necessitating use or modification of the bond. We also added the phrase ''and to secure all obligations imposed by the grant or TUP and applicable laws and regulations'' to make this section consistent with 30 U.S.C. 185(m) of the MLA. This section also explains that your bond must cover liability for damages or injuries resulting from releases or discharges of hazardous materials. We took out the phrase ''actual or threatened'' before ''releases or discharges of hazardous materials'' since we do not require a bond for liability for threatened releases, only actual releases. BLM may require a bond or increase or decrease the value of an existing bond or other acceptable security at any time during the term of the grant. We also added the phrase ''or other acceptable security'' to be consistent with language in previous regulations and 30 U.S.C. 185(m) of the MLA. It is not only surety bonds that may increase or decrease, but also any other acceptable security that was used to secure the obligations imposed by the grant or TUP;

(8) Assume full liability if third parties are injured or damages occur to property on or near the right-of-way or TUP area (see section 2886.13);

(9) Comply with project-specific terms, conditions, and stipulations, including requirements to:

(i) Restore, revegetate, and curtail erosion or any other rehabilitation measure BLM determines is necessary;

(ii) Ensure that activities in connection with the grant or TUP comply with air and water quality standards or related facility siting standards contained in applicable Federal or state law or regulations;

(iii) Control or prevent damage to scenic, aesthetic, cultural, and environmental values, including fish and wildlife habitat, and to public and private property and public health and safety. We added the phrase ''scenic, aesthetic, cultural, and'' to the final rule to make it consistent with final section 2805.12(i)(3) and existing policy and added ''private'' property to be consistent with 30 U.S.C. 185(h)(2)(C);

(iv) Protect the interests of individuals living in the general area who rely on the area for subsistence uses as that term is used in Title VIII of ANILCA (16 U.S.C. 3111 *et seq.*). In the final rule we replaced the term ''subsistence purposes'' with ''subsistence uses'' because that is the term ANILCA uses. We also added the cite to ANILCA; and

(v) Ensure that you construct, operate, maintain, and terminate the facilities on the lands in the right-of-way or TUP area in a manner consistent with the grant or TUP;

(10) Immediately notify all Federal, state, tribal, and local agencies of any release or discharge of hazardous materials reportable to such entity under applicable law. You must also notify BLM at the same time, and send BLM a copy of any written notification you delivered. We reworded this paragraph to make it easier to understand and removed the phrase ''actual or threatened release'' from the proposed rule. Several commenters pointed out that there is no requirement to report threatened releases;

(11) Not dispose of or store hazardous materials on your right-of-way or TUP area, except as provided by the terms, conditions, and stipulations of your grant or TUP. Any storage of hazardous waste on site must be in compliance with applicable Federal and state law. The proposed rule specified that you may not store hazardous materials on your right-of-way for more than 90 days, less if required by law. We received several comments related to crude oil storage that would be on lease for the life of an oil well and comments that some chemicals will be on lease for more than 90 days. After reviewing this clause, we amended the final rule because it would be difficult to enforce and monitor and a more effective means to address the issue is available. The final rule states that you may only store or dispose of hazardous materials in accordance with the terms, conditions, and stipulations of your grant or TUP;

(12) Certify your compliance with all requirements of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001 *et seq.,* when you receive, assign, renew, amend, or terminate your grant or TUP. The proposed rule required an annual certification from holders that they have complied with all provisions of the Emergency Planning and Community Right to Know Act. We amended the final rule to remove this annual certification because we did not want to impose unnecessary requirements on holders. We also added ''amend'' to the list of occasions you would need to certify that you are in compliance with the EPCRA;

(13) Control and remove any release or discharge of hazardous material on or near the right-of-way or TUP area arising in connection with your use and occupancy of the right-of-way or TUP area, whether or not the release or discharge is authorized under the grant or TUP. You must also remediate and restore lands and resources affected by the release or discharge to BLM's satisfaction and to the satisfaction of any other Federal, state, tribal, or local agency having jurisdiction over the land, resource, or hazardous material;

(14) Comply with all liability and indemnification provisions and stipulations in the grant or TUP;

(15) As BLM directs, provide diagrams or maps showing the location of any constructed facility. In the final rule we added this provision to specify that BLM may require holders to provide as-built surveys, maps, or diagrams of constructed facilities. This provision is consistent with existing policy and previous section 2881.2(b) which states that BLM grants ''shall contain such terms, conditions, and stipulations as may be prescribed by the authorized officer regarding extent, duration, survey, location, construction, operation, maintenance, use, and termination;''

(16) Construct, operate, and maintain the pipeline as a common carrier. This means that the pipeline owners and operators must accept, convey, transport, or purchase without discrimination all oil or gas delivered to the pipeline without regard to where the oil and gas was produced (*i.e.,* whether

on Federal or non-federal lands). Where natural gas not subject to state regulatory or conservation laws governing its purchase by pipeline companies is offered for sale, each pipeline company must purchase, without discrimination, any such natural gas produced in the vicinity of the pipeline. Common carrier provisions of this paragraph do not apply to natural gas pipelines operated by:

(A) A person subject to regulation under the Natural Gas Act (15 U.S.C. 717 *et seq.*); or

(B) A public utility subject to regulation by state or municipal agencies with the authority to set rates and charges for the sale of natural gas to consumers within the state or municipality.

We reworded proposed section 2885.11(b) by removing the phrase ''or a logical part of the system of which this pipeline right-of-way is a part'' from the description of pipeline because the language was not consistent with 30 U.S.C. 185(r)(1) of the MLA or with previous regulations. We removed a reference to ''joint owners'' for the same reason. We also added ''Where natural gas not subject to state regulatory or conservation laws governing its purchase by pipeline companies is offered for sale, each pipeline company must purchase, without discrimination, any such natural gas produced in the vicinity of the pipeline'' because it is in previous regulations and in 30 U.S.C. 185(r)(3)(B) of the MLA. We erroneously omitted it from the proposed rule;

(17) Within 30 calendar days after BLM requests it, file rate schedules and tariffs for oil and gas, or derivative products, transported by the pipeline as a common carrier with the agency BLM prescribes, and provide BLM proof that you made the required filing. This provision is in the final rule to resolve situations where a holder may not have allowed other companies to transport products in its pipelines at a reasonable cost. If the pipeline is an interstate pipeline, the operator would have to provide its rate schedule to the FERC. If FERC determined the operator was not operating the pipeline as a common carrier, BLM would then take corrective action, including issuing an immediate temporary suspension of the grant for not complying with the common carrier provisions of the grant. If the pipeline is an intrastate line, the operator would need to provide its rate schedules to the appropriate state agency, such as a state oil and gas commission, who would make the same determination as to reasonable costs;

(18) With certain exceptions (listed in the statute), not export domestically produced crude oil by pipeline without Presidential approval (30 U.S.C. 185(u) and (s) and 50 U.S.C. App. 2401);

(19) Not exceed the right-of-way width that is specified in the grant without BLM's prior written authorization. If you need a right-of-way wider than 50 feet plus the ground occupied by the pipeline and related facilities, see section 2885.14 of this subpart. We reworded this paragraph to make it clear that an MLA pipeline right-of-way may not always be 50-feet wide. BLM can issue a grant authorizing a right-of-way less than 50-feet wide if site specific conditions warrant, or if 50 feet is not necessary to construct the pipeline. Additionally, section 185(d) of the MLA states that a right-of-way ''shall not exceed fifty feet plus the ground occupied by the pipeline * * * unless the Secretary or agency head finds, and records the reason for his finding, that in his judgment a wider right-of-way is necessary for operation and maintenance after construction, or to protect the environment or public safety;''

(20) Not use the right-of-way or TUP area for any use other than that authorized by the grant or TUP. If you require other pipelines, looping lines, or other improvements not authorized by the grant or TUP, you must first secure BLM's written authorization;

(21) Not use or construct on the land in the right-of-way or TUP area until:

(i) BLM approves your detailed plan for construction, operation, and termination of the pipeline, including provisions for rehabilitation of the right-of-way or TUP area and environmental protection. We amended the proposed section 2885.11(b)(6) by removing the phrase ''If appropriate'' from this requirement for approval of a detailed plan prior to construction because all pipeline rights-of-way must have this detailed plan; and

(ii) You receive a Notice to Proceed for all or any part of the right-of-way. In certain situations BLM may waive this requirement in writing. We changed proposed section 2885.11(b)(6) to state that BLM may not issue a Notice to Proceed (NTP) for some MLA right-of-way grants. Your grant will specifically state if an NTP is required prior to construction. An NTP is typically issued as part of a preconstruction conference with BLM, the holder, and its contractor(s); and

(22) Comply with all other stipulations that BLM may require.

We received many comments regarding bonding for right-of-way grants. Several commenters suggested that the regulations set a $5 million maximum or an amount comparable to the foreseeable risk and hazards present as the bond amount. They said that this would make the bond provision consistent with the liability provisions of the rule. We did not change the final rule as a result of this comment. There is no limitation set by this rule on the maximum bond amount. We believe that the bond amount should be set on a case-by-case basis and the amount is dependent on the nature and risk of an authorized use. The $5 million limit referenced by this commenter seems to be referring to the maximum limit for strict liability found at proposed section 2807.12(f). In the final rule, we reduced the upper limit for strict liability to $2 million. Liability in excess of $2 million is possible under parts 2800 and 2880, but such liability will be determined by the ordinary rules of evidence.

Several commenters said that BLM must identify how we determine the amount of the bond. Commenters said that BLM should list those factors, which the agency considers when setting the amount of the bond. We did not change the final rule as a result of this comment. We believe it reasonable to establish the bond amount on a case-by-case basis. This decision will be part of the administrative record for the case. Among the factors that we will use to determine bond amounts are the expected costs to the agency to restore and reclaim disturbed areas and to repair damage to scenic, aesthetic, cultural, and environmental values and to protect public health and safety. Those costs can include both direct costs for things such as equipment and labor and indirect costs for administrative overhead costs.

Several commenters said that applicants should have the right to appeal the bond amount, especially since the BLM retains the right to increase an existing bond at any time during the term of the grant. BLM agrees with the commenter and the final rule contains a provision that provides for the appeal of any of the terms, conditions, and stipulations of a grant (see section 2881.10 of these regulations). If a new right-of-way grant has a bond requirement as one of the terms and conditions, the holder would be able to appeal that term and condition. If BLM added a bond requirement to an existing right-of-way grant, it would be accomplished by sending a new decision changing the terms and conditions of the grant. This decision is also appealable.

Several commenters said that there was ''no such thing as liability coverage for potential or threatened damages.'' They said that when damage occurs, then there is an event that causes

damage. BLM agrees and changed the rule in several locations to remove the phrase ''threatened release.''

Section 2885.12 What Rights Does a Grant or TUP Convey?

This section is new to the final rule. The proposed rule at section 2885.11 only cross-referenced similar provisions in proposed section 2805.12. This section states the provisions from that section instead. It states that a grant or TUP conveys only those rights which it expressly contains. BLM issues grants and TUPs subject to the valid existing rights of others, including the United States. The rights conveyed to a holder by a grant or TUP include the right to:

(A) Use the described lands to construct, operate, maintain, and terminate facilities within the right-of-way or TUP area for authorized purposes under the terms and conditions of the grant or TUP;

(B) Allow others to use the land as your agent in the exercise of the rights that the grant or TUP specifies;

(C) Do minor trimming, pruning, and removing of vegetation on the right-of-way or TUP areas to maintain the areas or any facility;

(D) Use common varieties of stone and soil which are necessarily removed during construction of the pipeline, without additional BLM authorization or payment, in constructing the pipeline within the authorized right-of-way or TUP area; and

(E) Assign the grant or TUP to another, provided that you obtain BLM's prior written approval.

We did not carry forward into this final rule the provisions in proposed section 2805.12(b), because BLM does not issue grants under the MLA that would authorize the holder to sublease or allow other parties to use the facility.

Section 2885.13 What Rights Does the United States Retain?

This section is new to the final rule. Proposed section 2885.11 only cross-referenced similar provisions in proposed section 2805.13. This section states the provisions instead. This section describes the rights that the United States retains and explains that the United States may exercise any rights the grant or TUP does not expressly convey to you. These include the United States' right to:

(A) Access the lands covered by the grant or TUP at any time and enter any facility you construct on the right-of-way or TUP area. BLM will give you reasonable notice before it enters any facility on the right-of-way or TUP area;

(B) Require common use of your right-of-way or TUP area, including subsurface and air space, and authorize use of the right-of-way or TUP area for compatible uses. You may not charge for the use of the lands made subject to such additional right-of-way grants;

(C) Retain ownership of the resources of the land covered by the grant or TUP, including timber and vegetative or mineral materials. You have no right to use these resources, except as noted in section 2885.12 of this subpart. In the final rule we replaced the phrase ''products of the land including living and non living resources'' with the phrase ''resources of the land covered by the grant or TUP, including timber and vegetative or mineral materials and any other living or non-living resources.'' This is consistent with proposed section 2805.13(c). The amended wording makes it clear that the United States retains control over the resources located on the right-of-way or TUP areas. Except as noted in section 2885.12, if the holder needs to remove timber, vegetative, or mineral materials from these areas during construction, it needs a Materials Act permit for that action;

(D) Determine whether or not your grant is renewable; and

(E) Change the terms and conditions of your grant or TUP as a result of changes in legislation, regulation, or as otherwise necessary to protect public health or safety or the environment.

We did not carry forward proposed section 2805.13(d) into this final section because reciprocal access roads do not apply to oil and gas pipelines.

Section 2885.14 What Happens If I Need a Right-of-Way Wider Than 50 Feet Plus the Ground Occupied By the Pipeline and Related Facilities?

This section explains that you may apply to BLM at any time for a right-of-way wider than 50 feet plus the ground occupied by the pipeline and related facilities. In your application you must show that the wider right-of-way is necessary to:

(A) Properly operate and maintain the pipeline after you have constructed it;

(B) Protect the environment; or

(C) Provide for public safety.

BLM will notify you in writing of its finding(s) and its decision on your application for a wider right-of-way. If the decision is adverse to you, you may appeal it under section 2881.10 of this part.

Section 2885.15 How Will BLM Charge Me Rent?

This section explains how BLM will charge rent for MLA right-of-way grants or TUPs. Please note that unlike FLPMA, the MLA does not provide for any reductions or waivers of rent.

BLM will charge rent beginning on the first day of the month following the effective date of the grant or TUP through the last day of the month when the grant or TUP terminates. *Example:* If a grant or TUP becomes effective on January 10 and terminates on September 16, the rental period would be February 1 through September 30, or 8 months. You would pay rent for 8/12 of the year.

BLM sets or adjusts the annual rental periods to coincide with the calendar year by prorating the first year's rent based on 12 months. For example, a 10-year grant issued August 29, 2004, would expire on December 31, 2013. Annual rent would be calculated using the linear rent schedule and total rent for the term of the grant would be calculated by multiplying the annual rent rate by 9 4/12. If you disagree with the rent that BLM charges, you may appeal the decision under section 2881.10 of this part.

Section 2885.16 When Do I Pay Rent?

This section explains that you must pay rent for the initial rental period before BLM issues you a grant or TUP. For example, a 30-year grant issued on July 20, 2004, with a ten-year rental payment plan, would expire on December 31, 2033. The initial rental period would be from August 1, 2004 through December 31, 2013 or 9 5/12 years. The rent for the initial rental period would be the annual rental rate (from the 2004 linear rent schedule) multiplied by 9 5/12. You make all other rental payments according to the payment plan described in section 2885.21. After the first rental payment, all rental payments are due on January 1 of the first year of each succeeding rental period for the term of your grant. The second rental payment period in this example would be from January 1, 2014 through December 31, 2023. The rent for the second rent payment period would be the annual rental rate (from the 2014 linear rent schedule) multiplied by 10. The third rental payment period would be from January 1, 2024 through December 31, 2033. The rent for the third rental payment period would be the annual rental rate (from the 2024 linear rent schedule) multiplied by 10.

In proposed sections 2885.11 and 2885.13 we cross-referenced, but did not repeat, the parallel rental provisions in part 2800 to make them applicable to the part 2880 regulations. We added this section to the final rule so it would stand alone. See the discussion in the preamble for section 2806.12 for

additional information on rental payments.

Section 2885.17 What Happens If I Pay the Rent Late?

Proposed section 2885.15 incorrectly cross-referenced proposed section 2806.12 rather than proposed section 2806.13. Instead of merely correcting the cross reference in this section, we repeat here the discussion of the late payment policy in final section 2806.13. Please see that section of the preamble for a complete discussion of the changes from the proposed rule.

This section explains that if BLM does not receive the rent payment within 15 calendar days after the rent was due, BLM will charge you a late payment of $25.00 or 10 percent of the rent you owe, whichever is greater, not to exceed $500 per authorization. If BLM does not receive your rent payment and late payment fee within 30 days after rent was due, BLM may collect other administrative fees as provided by statute, such as the Debt Collection Improvement Act of 1996. If BLM does not receive the rent, late payment fee, and any administrative fees within 90 calendar days after the rent was due, BLM may terminate your grant and you may not remove any facility or equipment without BLM's written permission. The rent due, late payment fee, and any administrative fees remain a debt that you owe to the United States.

If you pay the rent, late payment fees, and any administrative fees after BLM has terminated the grant, the grant is not automatically reinstated. You must file a new application with BLM. BLM will consider the history of your failure to timely pay rent in deciding whether to issue you a new grant. This is consistent with the proposed rule.

The most significant change to the rental provisions of this rule is adding a late payment fee. We asked for comments on this subject in the proposed rule at 64 FR 32112 (June 15, 1999). The procedures are the same for both FLPMA and MLA grants. Please see the preamble for final section 2806.13 and the discussion related to late payment fees and administrative fees for more information about the process.

You may appeal to the Interior Board of Land Appeals any adverse action BLM takes against your grant or TUP under section 2881.10 of this part.

We received several comments on late payment assessments. Please see the preamble discussion of section 2806.13 for a discussion of the comments.

Section 2885.18 When Must I Make Estimated Rent Payments to BLM?

This section explains that to assist us in processing your application for a right-of-way in a timely manner, BLM may estimate rent payments and require you to pay that amount when it issues the grant or TUP. The rent amount may change once BLM determines the actual rent of the grant or TUP. BLM will credit you for any rental overpayment, and you are liable for any underpayment. This section does not apply to rent payments made under the linear rent schedule in this part. This section is the same as section 2806.16 of this rule. It does not apply to rental determined from the linear schedule, only for rent determined by an appraisal or by some other means. See the preamble discussion in section 2806.16 for an explanation of why we have this rule.

Section 2885.19 What Is the Rent for a Linear Right-of-Way?

This section explains that, except as noted in paragraph (b) of this section, BLM will use the Per Acre Rent Schedule at section 2806.20(b) of this chapter to calculate the rent for MLA grants and TUPs and that the schedule is updated annually.

This section also explains that BLM may determine your rent using the methods described in section 2806.50 of this title, rather than by using the rent schedule cited in paragraph (a) of this section, if the rent determined by comparable commercial practices or an appraisal would be 10 or more times the rent from the schedule. This section gives BLM the discretion to deviate from the schedule only if certain conditions apply. Current policy constrains our use of alternate means to determine rent as provided under section 2806.50 of this title. BLM policy guidance, outlined in instruction memorandum WO–IM 2002–172, states that BLM, at this time, will only use the current schedule to calculate rent for all linear right-of-way uses. The current policy of not deviating from the linear schedule is in response to Congressional direction contained in the appropriations act for the Department of the Interior for FY 2001 (Pub. L. 106–291). Once you are on a rent schedule, BLM will not remove you from it unless the BLM State Director decides to remove you from paying rent under paragraph (b) of this section, or you file an application to amend your grant.

You may obtain the current linear right-of-way rent schedule from any BLM state or field office or by writing to: Director, BLM 1849 C St. NW., Mail Stop 1000 LS, Washington, DC 20240. BLM also posts the current linear schedule on BLM's National Home Page on the Internet at *http://www.blm.gov.*

Several commenters said that it was arbitrary and capricious for BLM to exclude the oil and gas industry from reductions in rent payments. We did not change the final rule as a result of this comment. The oil and gas industry is not excluded from hardship rental reductions for access roads under FLPMA (see section 2806.15). The MLA, however, does not permit us to reduce rents for oil and gas pipelines. This policy is not new and has been part of previous BLM regulations and policy (see previous section 2883.1–2).

Section 2885.20 How Will BLM Calculate My Rent for Linear Rights-of-Way the Schedule Covers?

This section explains that BLM calculates your rent for a linear right-of-way by multiplying the rent per acre for the appropriate category of use and county zone price from the current schedule by the number of acres in the right-of-way or TUP area that fall into those categories and the number of years in the rental period. For example: (rent per acre) X (number of acres) X (number of years in the rental period) = rent for a linear right-of-way. If BLM has not previously used the rent schedule to calculate your rent, we may do so after giving you reasonable written notice. BLM intends to give reasonable written notice to the holders of any existing grant that we put on the schedule when rent was previously determined by some other means. With the exception of minor editorial changes, this section is similar to proposed sections 2885.13 and 2806.16 and final section 2806.22.

Section 2885.21 How Must I Make Rent Payments for My Grant or TUP?

Under this section, you must make either annual payments or payment for more than 1 year, as follows:

(A) For TUPs you must make a one-time nonrefundable payment for the term of the TUP. For grants, you must make either nonrefundable annual payments or nonrefundable payments for more than 1 year. Any holder may make a one-time payment of the required rent in advance for the entire term of the grant. If you choose not to make a one-time payment, you must pay according to one of the following methods:

(1) If you are an individual and your annual rent is $100 or less, you must pay at 10-year intervals not to exceed the term of the grant. If your annual rent is greater than $100, you may pay

annually or at multi-year intervals that you may choose; or

(2) Everyone else must pay rent in advance at ten-year intervals not to exceed the term of the grant. For example, if you are a corporation and your annual rent is $110, you are required to pay rent at ten year intervals and the rent due would be $1,100;

(B) BLM considers the first partial calendar year in the rent payment period to be the first year of the rental payment term. BLM pro-rates the first year rental amount based on the number of months left in the calendar year after the effective date (issuance date) of the grant. For example, if BLM issued the grant in the example described above on September 10, 2003, and the annual rental for the grant is $110, the first year's rent would be prorated for the 3 months (rent begins the first day of the month following the effective date of the grant (see section 2885.15)) remaining in 2003, or $27.50. Therefore the total rental for the first ten years of this grant would be $1,017.50 ($27.50 for the first year + $110 per year for the next 9 years).

This section is based on final section 2806.23 of this rule.

Section 2885.22 How Will BLM Calculate Rent for Communication Uses Ancillary to a Linear Grant, TUP, or Other Use Authorization?

This section explains that when a communication use is ancillary to, and authorized by BLM under, a grant or TUP for a linear use, or some other type of authorization (e.g., a mineral lease or sundry notice), BLM will determine the rent using the linear rent schedule or rent scheme associated with the other authorization, and not the communication use rent schedule.

It is common for oil and gas companies to need communications facilities for internal two-way radio communications and for internal microwave relays to control valves and monitor large pipelines. Sometimes these facilities are located along the linear pipeline right-of-way area and sometimes they may be located on nearby mountain tops. In either case, these facilities may be authorized by an MLA pipeline right-of-way grant as long as they are for internal communications. In these cases we do not use the communication use schedule (see section 2806.30) to determine rent. This is because the communication use only supports the operation of the primary use (the pipeline), and rent for a pipeline is determined by the linear schedule. Instead, we add the acres for the ancillary communication site into the linear rental calculation for the pipeline. The holder cannot operate ancillary communication facilities for a commercial purpose, (e.g., containing tenants or customers). If a grant holder's communication facility is not authorized as part of a pipeline grant, TUP, or other authorization, BLM would process a communication use lease under part 2800 of this title and we would calculate rent for the facility under section 2806.30 of the FLPMA right-of-way regulations. We proposed this provision at section 2806.25 and include it in this part to cover these situations. On occasion, BLM authorizes internal communications uses for the holder of an oil and gas lease under the oil and gas lease itself if the communication facility is located inside the boundary of the oil and gas lease and the function of the facility is to serve the lease.

Section 2885.23 If I Hold a Grant or TUP, What Monitoring Fees Must I Pay?

This section is based on proposed section 2885.13 and final section 2805.16. This section explains that you must pay to BLM a fee for any costs the United States incurs in monitoring the following six activities: Construction, operation, maintenance, and termination of the pipeline and protection and rehabilitation of the affected Federal lands your grant or TUP covers. We replaced the phrases ''within grant areas'' and ''protecting and rehabilitating the affected area'' with ''of the pipeline'' and ''protection and rehabilitation of the affected Federal lands'' to make it clear what activities we are monitoring and where.

This final section explains that all holders must pay to BLM a fee for any costs the United States incurs in monitoring the construction, operation, maintenance, and termination of a pipeline and protection and rehabilitation of Federal land. This is consistent with section 28(l) of the Mineral Leasing Act which states, ''The applicant for a right-of-way or permit shall reimburse the United States for administrative and other costs incurred in processing the application, and the holder of a right-of-way or permit shall reimburse the United States for the costs incurred in monitoring the construction, operation, maintenance, and termination of any pipeline and related facilities on such right-of-way or permit area * * *.'' (30 U.S.C. 185(l)).

BLM bases the monitoring category on the estimated number of work hours necessary to monitor your grant or TUP just as we base the processing fee on the estimated number of hours to process the grant. See the preamble discussion at final section 2805.16 for a discussion of the rationale for changing the criteria for charging for monitoring. Our proposal at section 2885.13(b) would have placed a holder in the same category for monitoring purposes as the holder occupied for processing purposes. Alternatively, we noted that if we should establish monitoring fees separate from processing fees, we would establish monitoring categories based on the number of work hours involved, including field examinations (see 64 FR 32109).

The fee for monitoring Categories 1 through 4 are one-time fees and are not refundable. We added this language to the final rule to be consistent with previous section 2883.1–1(c), which made these application category fees non-refundable.

This section contains a chart that explains the fees for monitoring categories based on the estimated work hours involved. In the final rule we add the chart to illustrate the categories, work hours, and associated monitoring fee as of the effective date of the rule, similar to the chart in section 2805.16 and to make the sections consistent.

This section also explains that BLM annually updates Category 1 through 4 monitoring fees in the manner described at section 2884.12(c) of this part. BLM updates Category 5 monitoring fees as specified in the Master Agreement. The monitoring cost schedule is available from any BLM state or field office and on BLM's National Home Page on the Internet at *http://www.blm.gov.*

We received several comments on the monitoring fees in the proposed rule. These comments relate to both part 2800 and 2880. Please see the discussion of those comments in the preamble of final section 2805.16.

Section 2885.24 When Do I Pay Monitoring Fees?

This section explains that for Monitoring Categories 1 through 4, unless BLM otherwise directs, you must pay monitoring fees when you submit to BLM your written acceptance of the terms and conditions of the grant or TUP. If you have a Master Agreement (Monitoring Category 5) you must pay the monitoring fees as specified in the agreement. BLM will not issue your grant or TUP until it receives the required payment. Proposed section 2885.13(c) used the words ''BLM will not accept your written acceptance of the grant until you pay the fees.'' In the final rule we replaced this phrase with ''BLM will not issue your grant or TUP until it receives the required payment'' to be more clear.

If you have a Monitoring Category 6 application, BLM may periodically

estimate the costs of monitoring your use of the grant and will include this in the costs associated with processing fees described in section 2884.12 of this part. If BLM has underestimated the monitoring costs, we will notify you of the shortfall. If your payments exceed the actual costs that Federal employees incur for monitoring, BLM will reimburse you the difference or adjust the next payment to reflect the overpayment. Unless BLM gives you written authorization, you may not offset or deduct the overpayment from your payments. The financial plan for your Processing Category 6 application will include BLM's estimate of the actual processing and monitoring costs. Both fees are deposited into the same project account for your project. If our estimates were accurate, we will have spent all the processing fees by the time we are ready to issue the grant and you will be asked to deposit the monitoring fee estimate when you accept the terms and conditions of the grant or TUP. If there is processing money still available in the account when the grant is issued, we will apply the balance to the monitoring fee amount. At the end of the project, we will return any remaining balance in the account to the holder.

For Monitoring Categories 1 through 4 and 6, if you disagree with BLM's category determination, you may appeal the decision under section 2881.10 of this part.

This section was proposed as section 2885.13. We made minor word changes to the final rule that do not alter the meaning of the section, but make it consistent with wording in section 2805.17 of this title.

Subpart 2886—Operations On MLA Grants and TUPs

Subpart 2886 regulates operational activities on grants and TUPs. It explains:

(A) When you can start activities on your grant or TUP and who regulates your activities;

(B) The times you must contact BLM;

(C) Your liabilities under the grant or TUP;

(D) What happens with your grant or TUP if the lands in the grant change jurisdiction;

(E) The conditions under which BLM may suspend your activities or terminate a grant or TUP; and

(F) What happens to any facilities on a grant or TUP when it terminates.

Section 2886.10 When Can I Start Activities Under My Grant or TUP?

This section explains when you can start activities under a grant or TUP. When you can start depends on the terms of your grant or TUP. You can start activities when you receive the grant or TUP you and BLM signed, unless the grant or TUP requires that BLM provide a written Notice to Proceed. If your grant or TUP contains a Notice to Proceed requirement, you may not initiate construction, operation, maintenance, or termination on the right-of-way or TUP area until BLM issues you a Notice to Proceed.

Under this section, before you begin operating your pipeline or related facility authorized by a grant or TUP, you must certify in writing to BLM that the pipeline system:

(A) Has been constructed and tested according to the terms of the grant or TUP; and

(B) Is in compliance with all required plans, specifications, and Federal and state laws and regulations.

In the proposed rule at section 2886.10, the first sentence of this section cross-referenced proposed section 2807.10. In the final rule we took the revised language from final section 2807.10, expanded it to include TUPs, and put it in this section as paragraph (a), rather than cross-referencing it. We also restructured the remainder of the proposed section as paragraph (b), which is consistent with previous section 2883.3. With the exception of the substitution and minor editorial changes, this section remains as proposed. We received no substantive comments on this section.

Section 2886.11 Who Regulates Activities Within My Right-of-Way or TUP Area?

This section explains that after BLM issues the grant or TUP, the head of the agency having administrative jurisdiction over the Federal lands involved will regulate your grant or TUP activities in conformance with the Act, appropriate regulations, and the terms and conditions of the grant or TUP. It also explains that BLM and the other agency head may reach another agreement for administrative jurisdiction.

Section 28(c)(2) of the MLA, 30 U.S.C. 185(c)(2), provides that ''Each agency head shall administer and enforce the provisions of this section, appropriate regulations, and the terms and conditions of rights-of-way or permits insofar as they involve Federal lands under the agency head's jurisdiction.'' In the context of final section 2886.11, ''activities'' refers to construction and operational activities, and amendments, assignments, suspensions, terminations, and collecting rent and monitoring fees. Under this final rule, BLM is responsible for regulating these activities on lands under its jurisdiction.

For grants and TUPs involving lands under the jurisdiction of more than one agency (including agencies of the Department of the Interior other than BLM), the head of each agency will be responsible for regulating the grant or TUP on the lands under its jurisdiction, using its own regulations if such regulations exist. BLM and another agency may enter into an agreement that specifies that BLM may regulate some or all of the activities on the other agency's lands. The MLA at 30 U.S.C. 185(c)(2) allows for these agreements. Such agreements could be specific to individual grants or TUPs or they could be more general, covering all MLA grants and TUPs that include lands administered by the other agency. Under these regulations and 30 U.S.C. 185(c)(2), BLM is responsible for processing renewal applications for all grants involving its lands and those involving lands under the jurisdiction of two or more agencies, just as it is for processing applications for new grants or TUPs.

We received no substantive comments on this section. With the exception of editorial changes, this section remains as proposed.

Section 2886.12 When Must I Contact BLM During Operations?

This section explains that you must contact BLM:

(A) At the times specified in your grant or TUP;

(B) When your use requires a substantial deviation from the grant or TUP. You must obtain BLM's approval before you begin any activity that is a substantial deviation;

(C) When there is a change affecting your application, grant, or TUP, including, but not limited to, changes in:

(1) Mailing address;

(2) Partners;

(3) Financial conditions; or

(4) Business or corporate status; or

(D) When BLM requests it.

We proposed this section as section 2886.13, which cross-referenced proposed section 2807.11. In the final rule we took the revised language from final section 2807.11 and put it in this section, rather than cross-referencing it. We deleted proposed paragraph 2807.11(d) from the final rule because submitting the certificate of construction itself is a contact with BLM and therefore adding it to the list of times you must contact BLM is unnecessary. We also added references to TUPs, where appropriate. Please see the discussion of section 2807.11 for an

explanation of the other changes to this final section and responses to public comments.

Section 2886.13 If I Hold a Grant or TUP, for What Am I Liable?

This section explains your liabilities as a grant or TUP holder. You are liable to the United States for any damage or injury it incurs in connection with your use and occupancy of the right-of-way or TUP area. Similarly, you are liable to third parties for any damage or injury they incur in connection with your use and occupancy of the right-of-way or TUP area.

You are also strictly liable for any activity or facility associated with your right-of-way or TUP area which BLM determines presents a foreseeable hazard or risk of damage or injury to the United States. BLM will specify in the grant or TUP any activity or facility posing such hazard or risk, and the financial limitations on damages commensurate with such hazard or risk. BLM will not impose strict liability for damage or injury resulting primarily from an act of war or the negligence of the United States, except as otherwise provided by law. As used in this section, strict liability extends to costs incurred by the Federal Government to control or abate conditions, such as fire or oil spills, which threaten life, property, or the environment, even if the threat occurs to areas that are not under Federal jurisdiction. This liability is separate and apart from liability under other provisions of law.

This section explains that you are strictly liable to the United States for damage or injury up to $2 million for any one incident. This financial limitation does not apply to the release or discharge of hazardous substances on or near the grant or TUP area, or as otherwise provided by law. BLM will determine your liability under Parts 2800 and 2880 for any amount in excess of the $2 million strict liability limitation (as adjusted) through the ordinary rules of negligence. Please see the discussion in section 2807.12 of this preamble for a further discussion of the strict liability cap.

This section explains that the rules of subrogation apply in cases where a third party caused the damage or injury. This means that when a grant or TUP holder compensates the United States in strict liability for damage or injury caused by a third party, the grant or TUP holder steps into the place of the United States and has the right to pursue compensation from the third party for the damage or injury done to the United States. A similar provision appears at 30 U.S.C. 185(x)(7), calling for application of laws of the jurisdiction where the damages occurred.

If you cannot satisfy claims for injury or damage, any owners of an interest in a grant or TUP and all affiliates or subsidiaries of any holder of a grant or TUP, except for corporate stockholders, are jointly and severally liable to the United States. If BLM issues a grant or TUP to more than one holder, each is jointly and severally liable. Joint and several liability in this context means that each person is responsible for the full amount of liability if the other(s) cannot satisfy the liability. This provision is in previous regulations at sections 2883.1–4(g) and (i).

This section also explains that by accepting the grant or TUP, you agree to fully indemnify or hold the United States harmless for liability, damage, or claims arising in connection with your use and occupancy of right-of-way or TUP areas.

The provisions of this section do not limit or exclude other remedies. This provision is consistent with existing policy and previous section 2883.1–4(h).

In the proposed rule at section 2886.15, we cross-referenced proposed section 2807.12. In the final rule we took the revised language from final section 2807.12 and put it in this section, rather than cross-referencing it. We also made this section applicable to TUPs. The language in section 2807.12 does not include TUPs because final part 2800 does not provide for TUPs. The MLA does provide for TUPs, so it was necessary to add the references to them. Please see the discussion of final section 2807.12 for an explanation of the other changes to this final rule.

There were numerous public comments on the liability sections of the proposed rules. Three comments specifically related to the proposed MLA rule, saying that no company can agree to strict liability for facilities in the oil field which are required by BLM to be open to the public. Please see the discussion of final section 2807.12 for responses to these and the other liability provision comments.

Section 2886.14 As Grant or TUP Holders, What Liabilities Do State, Tribal, and Local Governments Have?

This section explains that if you are a state, tribal, or local government or its agency or instrumentality, you are liable to the fullest extent law allows at the time that BLM issues your grant or TUP. If you do not have the legal power to assume full liability, you must repair damages or make restitution to the fullest extent of your powers. Senate Report No. 93–207, in commenting on section 104(g) of S. 1081, a predecessor to section 28(x)(1) of the MLA, notes that governmental entities may not be legally able to assure protection of the United States because of limitations in state law or State Constitutions.

The section also explains that BLM may require you to provide a bond, insurance, or other acceptable security to:

(A) Protect the liability exposure of the United States to claims by third parties arising out of your use and occupancy of the right-of-way or TUP area;

(B) Cover any losses, damages, or injury to human health, the environment, and property incurred in connection with your use and occupancy of the right-of-way or TUP area; and

(C) Cover any damages or injuries resulting from the release or discharge of hazardous materials incurred in connection with your use and occupancy of the right-of-way or TUP area. We took out the phrase ''actual or threatened'' before ''release or discharge of hazardous materials'' since we do not require a bond for liability for threatened releases, only actual releases.

The section also explains that based on your record of compliance and changes in risk and conditions, BLM may require you to increase or decrease the amount of your security.

The provisions of this section do not limit or exclude other remedies.

This section was proposed as part of section 2886.15, which cross-references proposed section 2807.12, which in turn cross-references proposed section 2807.13. In the final rule we took the revised language from final section 2807.13 and put it in this section, rather than cross-referencing it, and also added references to TUPs.

Please see the discussion of section 2807.13 for an explanation of the other changes to this final rule and responses to public comments.

Section 2886.15 How Is Grant or TUP Administration Affected if the BLM Land My Grant or TUP Encumbers Is Transferred to Another Federal Agency or Out of Federal Ownership?

The section explains that if there is a proposal to transfer the BLM land your grant or TUP encumbers to another Federal agency, BLM may, after reasonable notice to you, transfer administration of your grant or TUP, for the lands BLM formerly administered, to another Federal agency, unless doing so would diminish your rights. If BLM determines that your rights would be diminished by such a transfer, BLM can still transfer the land, but retain

administration of your grant or TUP under existing terms and conditions.

It also explains that if there is a proposal to transfer the BLM land your grant or TUP encumbers out of Federal ownership, BLM may, after reasonable notice to you and in conformance with existing policies and procedures, do one of the following three things:

(A) Transfer the land subject to your grant or TUP. In this case, administration of your grant or TUP, for the lands BLM formerly administered, is transferred to the new owner of the land;

(B) Transfer the land, but BLM retains administration of your grant or TUP; or

(C) Reserve to the United States the land the grant or TUP encumbers, and BLM retains administration of your grant or TUP.

This section also explains that BLM or the new land owner may negotiate new grant or TUP terms and conditions with you.

This section was proposed as section 2886.16, which cross-referenced proposed section 2807.14 (now final section 2807.15). In the final rule we took the revised language from final section 2807.15 and put it in this section, rather than cross-referencing it. We removed the second sentence of the proposed section, which stated the section also applied to TUPs, and instead inserted references to TUPs at appropriate places in the text. We also added ''BLM'' and ''for the lands BLM formerly administered'' in several places to make clear that this section applies only to lands under BLM's jurisdiction. Because 30 U.S.C. 185(c)(2) provides that ''Each agency head shall administer and enforce the provisions of this section, appropriate regulations, and the terms and conditions of rights-of-way or permits insofar as they involve Federal lands under the agency head's jurisdiction,'' BLM believes that it can address only lands under its jurisdiction in this section.

When BLM-administered land encumbered by a grant or TUP is proposed for transfer out of Federal ownership, BLM will consider the comments and input of the grant or TUP holder in determining which of the three options discussed above we will take. Holder input is especially important when only part of the BLM-administered land in a grant or TUP is proposed for transfer, because BLM will want to avoid unnecessary disruption of the holder's operations, particularly when a major pipeline is involved. If significant disruption of the holder's operations would result from transfer of a portion of the BLM lands out of Federal ownership, reservation (non-transfer) of the lands included in the grant could be the most desirable option.

See the discussion of final section 2807.15 for an explanation of the other changes to the final rule and responses to public comments. Please also note that the discussion of considering extending the term of an existing grant to that of a perpetual grant before transferring the land does not apply to grants made under this part. The MLA limits grants BLM issues under this part to 30-year terms.

Section 2886.16 Under What Conditions May BLM Order an Immediate Temporary Suspension of My Activities?

We have restructured proposed sections 2886.17 and 2886.18 to create final sections 2886.16, 2886.17, and 2886.18. These sections contain the provisions on suspension or termination of grants and TUPs. We reorganized them to be more clear and to be as consistent as possible with the comparable provisions of part 2800.

Final section 2886.16 explains that, subject to section 2886.11, BLM can order an immediate temporary suspension of grant or TUP activities within the right-of-way or TUP area to protect public health or safety or the environment. In contrast to section 506 of FLPMA, 43 U.S.C. 1766, and final section 2807.16(a) of this rule, BLM's determination that you have violated the terms and conditions of your grant is not a necessary preliminary finding (see 30 U.S.C. 185(o)). BLM can require you to stop your activities before holding an administrative proceeding on the matter and may order immediate remedial action. We added ''subject to § 2886.11'' to paragraph (a) of this section to make it clear that the head of the agency having administrative jurisdiction over the Federal lands involved will regulate your grant or TUP unless another agreement is reached. Therefore, the other Federal agency will act under 30 U.S.C. 185(o) unless there is agreement that BLM will administer the grant. We made the same addition to sections 2886.17 and 2886.19 of this part.

BLM may issue the immediate temporary suspension order orally or in writing to you, your contractor, or subcontractor, or to any representative, agent, or employee representing you or conducting the activity. BLM may take this action whether or not any action is being or has been taken by other Federal or state agencies. When you receive the order, you must stop the activity immediately. BLM will, as soon as practical, confirm an oral order by sending or hand delivering to you or your agent at your address a written suspension order explaining the reasons for it.

You may file a written request for permission to resume activities at any time after BLM issues the order giving the facts supporting your request and the reason(s) you believe that BLM should lift the order. BLM must grant or deny your request within 5 business days after receiving it. If BLM does not respond within 5 business days, BLM has denied your request. You may appeal the denial under section 2881.10 of this part.

The immediate temporary suspension order is effective until you receive BLM's written notice to proceed with your activities. Any stay of BLM's order is addressed by final section 2881.10.

This final section replaces proposed section 2886.18(a). We also added final paragraph (c) to this section. It discusses how you may file a request to resume and how BLM will respond. The provisions of this paragraph are in previous sections 2883.5(e) and (f). We inadvertently omitted them from the proposed rule.

Several commenters said that the regulations should give industry the opportunity to ''correct the endangerment'' before suspending or terminating activities under the grant. This section provides that BLM can order an immediate temporary suspension of activities within the right-of-way or TUP area when it believes it is necessary ''to protect public health or safety or the environment.'' Section 185(o) of the MLA provides authority and direction for this section of the rule. It states:

> If the Secretary or agency head determines that an immediate temporary suspension of activities within a right-of-way or permit area is necessary to protect public health or safety or the environment, he may abate such activities prior to an administrative proceeding.

This provision of the MLA establishes the standard that BLM uses to determine whether to issue an immediate temporary suspension order, namely that such an order is necessary ''to protect public health or safety or the environment.'' This provision is consistent with the Administrative Procedure Act at 5 U.S.C. 558. In those situations involving the suspension or termination of a grant or TUP, final section 2886.18 states that BLM will provide ''a reasonable opportunity to correct the violation'' before taking further action.

Please see the discussion of final section 2807.16 for an explanation of the other changes to this final section.

Section 2886.17 Under What Conditions May BLM Suspend or Terminate My Grant or TUP?

This section explains that subject to section 2886.11, BLM may suspend or terminate your grant if you do not comply with applicable laws and regulations or any terms, conditions, or stipulations of the grant (such as rent payments), or if you abandon the right-of-way. Subject to section 2886.11, BLM may also suspend or terminate your TUP if you do not comply with applicable laws and regulations or any terms, conditions, or stipulations of the TUP, or if you abandon the TUP area.

This section also explains that a grant or TUP also terminates when:

(A) The grant or TUP contains a term or condition that has been met that requires the grant or TUP to terminate;

(B) BLM consents in writing to your request to terminate the grant or TUP; or

(C) It is required by law to terminate.

Your failure to use your right-of-way for its authorized purpose for any continuous 2-year period creates a presumption of abandonment. BLM will notify you in writing of this presumption. You may rebut the presumption of abandonment by proving that you used the right-of-way or that your failure to use the right-of-way was due to circumstances beyond your control, such as acts of God, war, or casualties not attributable to you.

You may appeal a decision under this section under section 2881.10 of this part.

This final section replaces proposed sections 2886.17(a) and (c). Proposed section 2886.17(a) erroneously mixed terminology pertaining to ''grants'' and ''temporary use permits'' which made the paragraph unclear and confusing. It also inadvertently omitted several provisions of previous sections 2883.6–1 and 2883.6–2. We added several provisions to the final rule to make it clearer and more consistent with the previous regulations and also to comply with the requirements of section 185(o) of the MLA.

We also redrafted final paragraphs (a) and (b) to separately address when BLM may suspend or terminate a grant or a TUP for non-compliance with applicable laws and regulations or any terms, conditions, or stipulations of the authorization, or for abandonment. These final paragraphs more accurately follow the previous rule and resolve the confusion created by proposed section 2886.17(a).

We added paragraph (c) to specify that your grant or TUP would also terminate when it contains a term or condition that has been met that requires it to terminate, when BLM consents in writing to your request to terminate it, or when it is required by law to terminate. We did this to complete the section and to be consistent with final section 2807.17. Please see the discussion of final section 2807.17 for an additional discussion of these provisions.

We also added final paragraph (d) to explain that your failure to use your right-of-way for its authorized purpose for any continuous 2-year period creates a presumption of abandonment. This provision is in previous section 2883.6–1(b) and section 185(o)(3) of the MLA. We added it to be consistent with the MLA and the previous rule.

Proposed section 2886.17(c) is now final section 2886.17(e). We reworded it to be consistent with final section 2807.17(d).

Several commenters suggested that the regulations define ''abandonment.'' The commenters said that facilities may be necessary for future enhanced oil recovery projects and that the grantee may have to wait until oil and gas prices go up. We did not add a definition of ''abandonment'' to the final rule. The MLA does not define the term or describe specific circumstances that would constitute abandonment (other than stating at 30 U.S.C. 185(o)(3) that ''Deliberate failure of the holder to use the right-of-way for the purpose for which it was granted or renewed for any continuous two-year period shall constitute a rebuttable presumption of abandonment of the right-of-way''). We believe that it is appropriate for BLM and grant and TUP holders to rely on the normal meaning of the term and the statutory language in interpreting and applying the rule.

Section 2886.18 How Will I Know That BLM Intends To Suspend or Terminate My Grant or TUP?

This section explains that when BLM determines that it will suspend or terminate your grant, it will send you a written notice of this determination. The determination will provide you a reasonable opportunity to correct the violation, start your use, or resume your use of the right-of-way, as appropriate. In the notice BLM will state the date by which you must correct the violation or start or resume use of the right-of-way. If you have not corrected the violation or started or resumed use of the right-of-way by the date specified in the notice, BLM will refer the matter to the Office of Hearings and Appeals (OHA). An administrative law judge (ALJ) in OHA will provide an appropriate administrative proceeding under 5 U.S.C. 554 and determine whether grounds for suspension or termination exist. BLM will suspend or terminate the grant if the ALJ determines that grounds exist for this action and that the suspension or termination is justified. Consistent with 30 U.S.C. 185(o), no administrative proceeding is required where the grant provides that it terminates on the occurrence of a fixed or agreed upon condition, event, or time.

When we determine that we will suspend or terminate your TUP, we will send you a written notice of our determination and provide you a reasonable opportunity to correct the violation or start or resume use of the TUP area. The notice will also provide you information on how to file a written request for reconsideration.

You may file a written request with the BLM office that issued the notice, asking for reconsideration of the determination there. BLM must receive this request within 10 business days after you receive the notice.

BLM will provide you with a written decision within 20 business days after receiving your request for reconsideration. The decision will include a finding of fact made by the next higher level of authority in BLM than the person who made the initial suspension or termination determination. The decision will also inform you of whether BLM has suspended or terminated your TUP or cancelled the notice made under paragraph (b) of this section. If the decision is adverse to you, you may appeal it under section 2881.10 of these regulations.

This section was proposed as sections 2886.17(b) and (c). These proposed paragraphs were not clear regarding which provisions applied to grants and which applied to TUPs. Therefore, in this final section we reworded the text and separated the provisions addressing grants (final section 2886.18(a)) from those addressing TUPs (final section 2886.18(b)).

In the final rule we moved proposed section 2886.18(b) to final sections 2886.18(a) and (a)(1), which are discussed below. We also moved proposed section 2886.17(b) to final sections 2886.18(b), (b)(1), and (b)(2), which are discussed above. Proposed section 2886.17(c) is now final section 2886.18(b)(3).

In addition to editorial changes, we made a number of changes and additions to improve the clarity and completeness of the process description and to make it more consistent with previous sections 2883.6–1(c), 2883.6–2(b), and (c), and the MLA.

In the first sentence of paragraph (a) we added the phrase ''under § 2886.17 of this subpart'' to indicate for which suspensions and terminations BLM will send a written notice. We also added the phrase ''and provide you a reasonable opportunity to correct the violation, start your use, or resume your use of the right-of-way, as appropriate'' and the sentence ''In the notice BLM will state the date by which you must correct the violation or start or resume use of the right-of-way.'' Section 28(o)(1) of the MLA, 30 U.S.C. 185(o)(1), states that ''Abandonment of a right-of-way or noncompliance with any provision of this section may be grounds for suspension or termination of the right-of-way if (A) after due notice to the holder of the right-of-way, (B) a reasonable opportunity to comply with this section, and * * *.'' We added the phrase and sentence to make the regulation consistent with the MLA and in response to comments (see discussion under section 2886.16 above).

We added the phrase ''If you have not corrected the violation or started or resumed use of the right-of-way by the date specified in the notice'' to the first sentence of final section 2886.18(a)(1) to make clear when BLM will refer the matter to OHA. We also added a new sentence to the end of this paragraph stating that ''No administrative proceeding is required where the grant by its terms provides that it terminates on the occurrence of a fixed or agreed upon condition, event, or time.'' This is provided for at 30 U.S.C. 185(o)(1) and we added the new sentence to be consistent with the Act.

In paragraph (b), we added the phrase ''and provide you a reasonable opportunity to correct the violation or start or resume use of the TUP area'' and the sentence ''The notice will also provide you information on how to file a written request for reconsideration.'' We added the phrase to be consistent with the MLA (see discussion regarding paragraph (a) above) and in response to comments (see discussion under section 2886.16 above). The sentence reflects longstanding BLM policy and practice and we added it to provide a more complete and accurate description of the process.

Section 2886.19 When My Grant or TUP Terminates, What Happens to Any Facilities on It?

In the proposed rule, this section cross-referenced proposed section 2807.18. In the final rule we took the revised language from that section (final section 2807.19) and put it in this section, rather than cross-referencing it. We also made this section applicable to TUPs. Please see the discussion of final section 2807.19 for an explanation of the other changes to this section.

Subpart 2887—Amending, Assigning, or Renewing MLA Grants and TUPs

Subpart 2887 contains provisions on amending, assigning, and renewing grants and TUPs.

Section 2887.10 When Must I Amend My Application, Seek An Amendment of My Grant or TUP, or Obtain a New Grant or TUP?

This section explains that you must amend your application or seek an amendment of your grant or TUP when there is a proposed substantial deviation in location or use. The requirements to amend an application, grant, or TUP are the same as those for a new application, including paying processing and monitoring fees and rent according to sections 2884.12, 2885.23, and 2885.19 of this part.

This section also explains that any activity not authorized by your grant or TUP may subject you to prosecution under applicable law and to trespass charges under subpart 2888 of this part.

Under this section if you hold a pipeline grant issued before November 16, 1973 (prior to the MLA amendment), and there is a proposed substantial deviation in location or use of the right-of-way, you must apply for a new right-of-way grant.

BLM may ratify or confirm a grant that was issued before November 16, 1973, if we can modify the grant to comply with the MLA and these regulations. BLM and you must jointly agree to any modification of a grant made under this paragraph. This provision is consistent with 30 U.S.C. 185(t).

This final rule is different from the proposal. In the proposed rule, paragraph (a) contained a cross-reference to proposed section 2807.19. This final rule replaces that cross-reference with final paragraphs (a) and (b) and contains references to TUPs. Proposed section 2807.19 (final section 2807.20) does not address TUPs. The MLA does provide for TUPs, however, so we added references to them to this section. Since this section is based on final section 2807.20, please see the discussion of that section for other changes to the final rule.

The last sentence of proposed paragraph (a) is now final paragraph (c). Proposed paragraphs (b) and (c) are now final paragraphs (d) and (e). We also changed the title of the section to more accurately reflect its contents. With the exception of other minor editorial changes, the remainder of this final rule is as it was proposed.

Section 2887.11 May I Assign My Grant or TUP?

This section explains that with BLM's approval, you may assign, in whole or in part, any right or interest in a grant or TUP. In order to assign a grant or TUP, the proposed assignee must file an application with BLM and satisfy the same procedures and standards as for a new grant or TUP, including paying processing fees.

The assignment application must also include:

(A) Documentation that the assignor agrees to the assignment; and

(B) A signed statement that the proposed assignee agrees to comply with and to be bound by the terms and conditions of the grant or TUP that is being assigned, and all applicable laws and regulations.

BLM will not recognize an assignment until we approve it in writing. BLM will approve the assignment if doing so is in the public interest. BLM may modify the grant or TUP or add bonding and other requirements, including terms and conditions, to the grant or TUP when approving the assignment. If BLM approves the assignment, the benefits and liabilities of the grant or TUP apply to the new grant or TUP holder.

The processing time and conditions for original applications, as described at section 2884.21 of this part, apply to processing assignment applications.

The previous rule provided for the assignment of TUPs (see previous 2881.1–2(e)). We inadvertently omitted reference to assigning TUPs in the proposed rule. Therefore, we added references to TUPs in the final rule.

We modified proposed paragraph (c)(2) by replacing the phrase ''A stipulation that * * *'' with ''A signed statement that * * *.'' We made this change so as not to confuse the signed statement with stipulations that we may attach to an approved grant or TUP.

We also changed proposed paragraph (d) to add provisions that ''BLM will approve the assignment if doing so is in the public interest'' and ''If BLM approves the assignment, the benefits and liabilities of the grant or TUP apply to the new grant or TUP holder.'' We added this first sentence to explain that BLM may deny an assignment application if it determines that approval of the assignment would not be in the public interest. Previous section 2882.3(e) provides that ''An application for a right-of-way grant or temporary use permit * * * may be denied if the authorized officer determines that the right-of-way or use

applied for would be inconsistent with the purpose to which the Federal lands involved have been committed, or would otherwise not be in the public interest.'' Previous section 2881.1–1(g) makes an assignee bound by the terms and conditions of the grant and the assignee must meet all of the requirements of the original grantee. Therefore, the public interest requirement in this section is consistent with previous regulations. We added the second sentence to make clear that any modifications to the grant or TUP during the assignment process (*e.g.*, modified or additional terms and conditions) apply to the assignee, a fact implicit in section 2887.11(c)(2).

In final paragraph (e) we replaced the cross-reference to section 2804.19(c) with a cross reference to section 2884.21, because we incorporated the customer service standard referenced into the final part 2880 rule, rather than by cross-reference to part 2800, as we proposed. Except for the changes discussed above and minor editorial changes, the final section remains as proposed.

We received many comments on various aspects of assignments that could apply to the 2800 regulations and these regulations. Please see the discussion of final section 2807.21 for descriptions of the comments on assignments and responses to them.

Section 2887.12 How Do I Renew My Grant?

This section explains that you must apply to BLM to renew your grant at least 120 calendar days before your grant expires. BLM will renew your grant if you are operating the pipeline and maintaining it in accordance with the grant, these regulations, and the Act. If your grant has expired or terminated, you must apply for a new grant under subpart 2884 of this part.

BLM may modify the terms and conditions of the grant at the time of renewal, and you must pay the processing fees in advance.

The time and conditions for processing applications for rights-of-way, as described at section 2884.21 of this part, apply to applications for renewals.

Under final paragraph (a) you must submit to BLM an application for renewal at least 120 calendar days prior to grant termination. We added this time requirement to the final rule because we require at least 120 calendar days to process an application for renewal and approve it before the grant expires. The same 120-day standard was proposed in section 2807.22(b) and is in final section 2807.22(a) and (b).

We also revised the title of the section from ''May I renew my grant?'' to ''How do I renew my grant?'' to more accurately describe its content.

Except for the changes discussed above and minor editorial changes, the final section remains as proposed.

Several commenters said that the renewal of an existing right-of-way should be a simple request in writing. Please see the discussion of final section 2807.22 for the response to this comment.

A few commenters asked if BLM can deny a grant renewal request if the current and continued use, operation, and maintenance of an existing facility is causing environmental effects that are inconsistent with a current land use and resource management plan. A few commenters also asked if modifications of the terms and conditions of a grant, at the time of renewal, could include provisions requiring the relocation of segments of the facility, if necessary, to comply with then-existing laws, regulations, and resource management plans. Final section 2887.12(a) states that ''BLM will renew the grant if the pipeline is being operated and maintained in accordance with the grant, these regulations, and the Act.'' Final section 2885.11(b) states that ''During construction, operation, maintenance and termination of the project you must: (1) To the extent practicable, comply with all existing and subsequently enacted, issued, or amended Federal laws and regulations * * * applicable to the authorized use.'' We may modify the terms and conditions of the grant at the time of renewal to require the grant holder to bring its operations and facilities into compliance with the laws and regulations mentioned in section 2885.11(b). The modification could include provisions requiring the relocation of segments of the facility, if necessary, to comply with then existing laws and regulations. If the holder does not accept such modified terms and conditions, BLM may deny the renewal application. Inconsistencies with current resource management plans are addressed at 43 CFR 1610.5–3.

One commenter stated that under existing regulations TAPS receives unique treatment since it is permitted to make its cost recovery payments 60 days after the close of each quarter, rather than in advance. The commenter said that to avoid confusion, the final regulations should make it explicit that the quarterly reimbursement schedule applies to renewal costs as well. The final rule states at paragraph (b) ''* * * you must pay the processing fees (see § 2884.12 of this part) in advance.'' Final section 2884.12(f) provides for payments for applications related to TAPS to be made within 60 days after the close of each quarter. We believe that the cross-reference to section 2884.12 of this part is sufficient to make clear that the payment provisions of section 2884.12(f) apply to renewal applications.

A few commenters asked what would happen if the grant holder did not request a renewal in time for the agency to fully process the application prior to the expiration date of the current authorization. The final rule states that you must apply to BLM to renew a grant at least 120 calendar days before the grant expires. BLM will not accept a renewal application if we receive it less than120 calendar days before the grant expires. In these circumstances, the grant holder should instead file an application for a new authorization under subpart 2884. If BLM is able to complete processing such an application for a new authorization before the original grant expires, BLM may, at its discretion, renew the original grant.

Subpart 2888—Trespass

This subpart contains provisions pertaining to trespass on Federal lands and:

(A) Defines trespass;

(B) Cross-references trespass provisions in the part 2800 regulations that are applicable to the part 2880 regulations; and

(C) Explains that other Federal agencies address trespass on non-BLM lands under their respective laws and regulations.

Section 2888.10 What Is Trespass?

This section explains that:

(A) Trespass is using, occupying, or developing the public lands or their resources without a required authorization or in a way that is beyond the scope and terms and conditions of your authorization. Trespass is a prohibited act;

(B) Trespass includes acts or omissions causing unnecessary or undue degradation to the public lands or their resources. In determining whether such degradation is occurring, BLM may consider the effects of the activity on resources and land uses outside the area of the activity;

(C) BLM will administer trespass actions for grants and TUPs as set forth in sections 2808.10(c) and 2808.11 of this chapter; and

(D) Other Federal agencies address trespass on non-BLM lands under their respective laws and regulations.

This proposed section included only cross-references to proposed subpart 2808 and part 2800 of the rule. In the final rule, we replace those general cross-references with an explanation of what trespass is, some additional information about trespass on BLM and other agency lands, and more specific cross-references to the final trespass rules in part 2800. We also added language to this section explaining that the rent exemption provisions of the part 2800 regulations do not apply to grants issued under this part. This section does not impose additional requirements to the rule as it was proposed, but is more specific and informative.

Section 2888.11 May I Receive a Grant If I Am or Have Been in Trespass?

This section is new to this part of the final rule. It was proposed as section 2808.12 and made applicable in the proposed rule to this part via a cross-reference.

This section explains that until you satisfy liability for a trespass, BLM will not process any applications you have pending for any activity on BLM-administered lands. A history of trespass will not necessarily disqualify you from receiving a grant. In order to correct a trespass, you must apply under the procedures described at subpart 2884. BLM will process your application as if it were a new use. Prior unauthorized use does not create a preference for receiving a grant.

Please see the preamble to section 2808.12 for a discussion of the changes to this section and for responses to public comment.

This final rule also corrects cross-references to this rule in existing regulations in sections 2812.1–3, 2920.6, 9239.7–1, and 9262.1.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. The Office of Management and Budget will make the final determination as to its significance under Executive Order 12866.

a. This rule will not have an annual economic effect of $100 million or more or adversely affect in a material way an economic sector, productivity, jobs, competition, the environment, public health or safety, other units of government, or communities. A cost-benefit and economic analysis has not been prepared.

Processing and monitoring fee increases. The rule could potentially increase processing and monitoring revenues to BLM and conversely, costs to applicants and grant holders, by an estimated maximum of $9.0 million each year. This number represents the largest impact possible under the revised rules. To arrive at the $9.0 million, we assume that all right-of-way actions would be assessed the maximum fixed processing fee and the maximum fixed monitoring fee. The following shows the maximum possible annual economic effect of increasing the right-of-way cost recovery processing and monitoring fees.

Assumptions

(1) The average number of FLPMA and MLA right-of-way applications processed over a four year period in FY 2001–2004 for amended, assigned, new, and renewed grants represents the demand for right-of-way services for a typical year and is appropriate for use in this calculation.

(2) The number of all types of right-of-way applications that BLM processed can be accurately derived from BLM's automated lands records data bases (LR 2000).

(3) The number of applications that BLM rejects each year is less than 1 percent and will not affect these calculations significantly.

(4) The regulations will not affect the processing and monitoring costs associated with the full reasonable (FLPMA) and full actual (MLA) cost categories because applicants currently pay these amounts under existing rules.

(5) To determine whether the rule has an economic effect of $100 million or more annually, it is appropriate to use the ''worst case'' scenario, that is, using the most expensive fixed fee application processing and monitoring categories to make the calculations (Processing Category 4 and Monitoring Category 4).

(6) The rate of inflation in the economic indicator used will not significantly increase over the next 5 years. It is not likely that there will be a period of deflation.

Calculations

The average number of FLPMA right-of-way applications for new or amended grants and assignments and renewals processed in FY 2001–2004 (2,855) multiplied by (the final rule's fees for FLPMA Processing Category 4 ($923) plus the final rule's fees for FLPMA Monitoring Category 4 ($923)):

($923 + $923) × (2,855) = $5,270,330

The average number of MLA right-of-way applications for new or amended grants and assignments and renewals processed in FY 2001–2004 (2,624) multiplied by the final rule's fees for MLA Processing Category 4 ($923) plus the final rule's fees for MLA Monitoring Category 4 ($923):

($923 + $923) × (2,624) = $4,843,904

The maximum total annual collection of FLPMA right-of-way cost recovery processing and monitoring fees for new or amended grants and assignments and renewals ($5,270,330) plus the maximum total annual collection of MLA right-of-way cost recovery processing and monitoring fees for new or amended grants and assignments and renewals ($4,843,904) equals the maximum total annual collection of right-of-way cost recovery processing and monitoring fees ($10,114,234).

$5,270,330 + $4,843,904 = $10,114,234 (Maximum total annual collection of FLPMA and MLA right-of-way cost recovery processing and monitoring fees).

Average FY 2001–2004 FLPMA and MLA processing and monitoring fees collected = $1,086,556.

$10,114,234 (Maximum total annual collection of FLPMA and MLA processing and monitoring fees) minus (−) $1,086,556 (Average of 2001–2004 FLPMA and MLA processing and monitoring fees collected) = $9,027,678) (or, rounded down to $9.0 million) (maximum annual impact of fee increases).

The final processing fees are generally the fees in the 1999 proposed rule adjusted for increases in the IPD-GDP between the date of the proposed rule and now. However, in the final rule we made four important additional adjustments in the fee schedule which affect the final amounts and number of categories for both the processing and monitoring schedules.

The first adjustment is that in the final rule we define each processing and monitoring category by only the estimated number of Federal work hours necessary to process or monitor the application/grant rather than a combination of criteria (number of hours, availability of data, number of field examinations, and need for land use plan amendment) which in the proposed rule were used to define all the categories (except the Master Agreement category). In doing so, it was necessary to determine a ''mean'' or average hour for each category, and then apply the appropriate hourly rate to the mean hour in each FLPMA or MLA category. This ensures that each category is cost-weighted the same.

The second adjustment establishes a new category (Category 1) for any right-of-way action that is estimated to take more than 1 hour, but eight hours or

less, to process or monitor. Under the final rule no fee is assessed for any action that takes 1 hour or less to process. We then adjusted new Category 2 to include actions that are estimated to take a maximum of 24 hours but greater than eight hours. New Categories 3 (> 24 hours ≤ 36 hours) and 4 (> 36 hours ≤ 50 hours) are the same as proposed Categories II and III.

The third adjustment recognizes that for categories 1 through 4, processing and monitoring fees under FLPMA are identical to the analogous category under the MLA. For example, a category 2 processing fee under FLPMA is identical to a category 2 processing fee under the MLA. A category 3 monitoring fee under FLPMA is identical to a category 3 monitoring fee under the MLA.

The preamble discussion of section 2804.14 explains in detail how the six ''reasonableness'' factors at section 304(b) of FLPMA apply to right-of-way projects under FLPMA. As explained there, factors such as public benefit and public service could potentially cause BLM to charge processing or monitoring fees for a FLPMA right-of-way at less than actual costs. We note, however, that we found in 1986 that for non-major projects, there is little opportunity for public benefits or public services because of the local nature of such projects (see the preamble to the proposed rule at 51 FR 26840, July 25, 1986). We note further that in practice any small benefit or service to the public provided by the processing of a fixed fee application or monitoring a fixed fee project was outweighed by the monetary value to the applicant of the right or privilege sought by the applicant.

Again in 1999, we noted: ''Actual costs, less management overhead, forms the amount to which BLM applies the reasonability factors listed in section 304(b) of FLPMA. For all but complex projects * * * the reasonability factors have little or no effect on actual costs'' (see 64 FR 32110 (June 15, 1999)).

Our decision to equate FLPMA and MLA fees for categories 1 through 4 was aided by a 1996 Solicitor's Opinion on cost recovery (M–36987), entitled ''BLM's Authority to Recover Costs of Minerals Document Processing.'' That opinion clarified that ''[a] factor such as 'the monetary value of the rights or privileges sought by the applicant' could, when that value is greater than BLM's processing costs, be weighed as an enhancing factor, offsetting a diminution due to another factor such as 'the public service provided' '' (see M–36987 at 36). Major categories 5 and 6 are more likely to reflect differences in FLPMA and MLA fees.

The fourth adjustment applies the mean per hour rate of $21.46 to the mean hour of each category. The basis for this $21.46 rate is data assembled for category 4 projects (category III in the proposed rule). Category 4 projects are those requiring more than 36 hours to process (and less than or equal to 50 hours). The mean hour for category 4 is 43 (which is equal to (50 − 36)/2 + 36). Multiplying $21.46 by 43 gives the fee for category 4 ($923). Multiplying $21.46 by the mean hour for categories 1 through 3 likewise gives the fee for these categories.

As stated earlier, BLM conducted field studies in 1982 and 1983 which measured the costs of processing right-of-way applications and monitoring grants (see also 64 FR 32107 (June 15, 1999)). Between November 12, 1982, and July 25, 1986, BLM field offices kept and reported actual time and cost on some 500 right-of-way projects in non-major categories (see 51 FR 26840 (July 25, 1986)). In 1986, the agency conducted an extensive field study of processing and monitoring costs, which generally verified the processing costs developed from the earlier studies (see 64 FR 32108).

When we set the MLA processing fees in 1985 (see 50 FR 1308, Jan. 10, 1985), we set fixed MLA processing and monitoring fees at our estimated actual cost, as required by section 28 of the MLA. The preamble to the rule proposing MLA cost recovery fees in 1983 makes plain that the fees were developed by a BLM task force consisting of employees with expertise in the processing and monitoring of right-of-way cases, budgeting, and cost accounting. The task force analyzed data from a representative sample of actual right-of-way cases and examined several demographic variables which might influence cost, including location and area of the right-of-way or temporary use area. Fees were based on the estimated work effort required to accomplish the processing actions, including personnel costs, fringe benefits, vehicle usage, and indirect costs (see 48 FR 48478, 48479 (Oct. 19, 1983) and 64 FR 32108 (June 15, 1999)).

In 1995, BLM program experts analyzed a cross section of our right-of-way cases. This analysis showed that the cost of processing right-of-way cases, including labor costs, had increased since 1986 at approximately the same rate as the Implicit Price Deflator—Gross Domestic Product (see 64 FR 32109 (June 15, 1999)).

To verify the appropriateness of the above fees, we offer the following brief analysis:

The $21.46 mean per hour rate for processing and monitoring fees would approximately equal the hourly wage in 2005 for an employee at the GS 9, Step 3 level.

These rates compare favorably with the 1987 processing fees which, if adjusted to a mean per hour rate, would average $11 per mean hour or an hourly wage earned by an employee in 1987 (when the existing rule was published) at the GS 9, Step 2 level (according to the 1987 General Schedule).

Most right-of-way actions are processed and monitored by employees who are at the GS 9 to GS 11 levels and who will earn between $20.02 (GS 9/1) and $31.48 (GS 11/10) per hour in 2005.

Under the final rule, FLPMA and MLA fees are identical for fixed fee categories. Because of the change in category definitions, we expect that 70 percent of the new FLPMA applications will be assessed either a Category 3 ($644) or Category 4 ($923) processing fee. Under the 1987 FLPMA processing fee schedule, 60 percent of the new applications were assessed a Category II ($300) fee. For MLA applications, we expect that 55 percent of the new applications will be assessed either a Category 3 ($644) or Category 4 ($923) processing fee. Under the 1987 MLA fee schedule, 63 percent of the applications were assessed a Category II ($275) fee. As a result, BLM expects to collect a minimum of $344 ($644 − $300 = $344) in increased processing fees per application for the majority of processing actions under the new cost recovery fee schedules. To put these figures in perspective, the 1995 IG audit found for 1993 that BLM was collecting, on average, $280 to process a typical right-of-way application, while its costs were $493 (or a deficit of $213 per application for processing fees). When adjusted for inflation (the change in IPD-GDP from 1993 to 2005 is 25 percent), the BLM must collect, on average, approximately $616 per application (an additional $336 above the current fee average identified by the IG) to process a typical right-of-way application. We believe that the adjustments made in the FLPMA and MLA processing fee schedules, as described above, will allow BLM to recover the appropriate costs associated with processing all right-of-way applications in 2005 and beyond.

Under the 1987 rules BLM determined the monitoring category based on the processing cost categories. For example, a Category I application for processing fees would automatically be considered a Category I application for monitoring fees. This technique for

charging monitoring fees has proven inadequate. BLM collected nearly $1.2 million in minor category processing and monitoring fees in FY 2004. However, less than $222,000 of the total fees (or an average $65 per grant) were for monitoring purposes. In most cases, the same employees which process the application, also monitor grant activities, so the hourly cost is the same. The primary variable between processing activities and monitoring activities, which could vary widely, is the number of hours required to accomplish each activity. For this reason, in the final rule, BLM will have the ability to determine monitoring categories separately from processing categories, and as a result, should have adequate resources to properly conduct these activities. The economic impact of this change will be minimal since increases in one fee category will tend to cancel out decreases in another. That is because we believe that it is just as likely that an application will fall into a higher category under the new rule as it is that they will fall into a lower category.

However, we estimate the total maximum economic impact from the new monitoring fees will be $4.8 million. This figure is calculated by multiplying the average number of FLPMA (2,855) and MLA (2,624) right-of-way actions for FY 2001, FY 2002, FY 2003 and FY 2004 (5,479 total applications) by the maximum monitoring fee in the final rule ($923) (5,479 multiplied by $923), or $5,057,117, less $221,910 (the total monitoring fees collected in FY 2004 for the fixed fee categories) or $4.8 million (5,057,117 minus $221,910 = $4,835,207 or $4.8 million).

Clarifications to communication site right-of-way policies. The revisions to the communication site right-of-way policies will have no direct economic effects. They clarify how BLM assesses rents for communication site rights-of-way, based on regulatory changes made in November 1995. Communication site rights-of-way fall within one of three major categories of communication uses on public lands:

(1) Broadcast, including television, FM radio, rebroadcast devices, and cable television;

(2) Non-broadcast, including commercial mobile radio service, cellular telephone service, private mobile communications, common carrier and microwave communications; and

(3) Other, including small, unobtrusive, low-power uses serving small numbers of customers.

Rents correlate to the population of the community served or to the community where the facility is located, or both. The communication site rent schedule became effective in late 1995. This final rule contains revisions that address the most frequently asked questions about applying the rent schedule to various situations and clarifies certain policies that were ambiguous. This final rule does not change the rent amounts except by the amount of the yearly change in the CPI-U, which is consistent with existing rules and policy.

REA-financed v. *Eligible for REA financing.* As mentioned earlier, the Omnibus Parks and Public Lands Management Act of 1996 amended section 504(g) of FLPMA. The effect of the amendment is to increase the number of rights-of-way that may qualify for an exemption from paying rent. Prior to 1996, Section 504(g) specified that the holder of a right-of-way pay the fair market value for the use authorized by the grant, but specifically exempted from rent rights-of-way for electric or telephone facilities ''financed'' under the Rural Electrification Act of 1936, as amended (REA). The 1996 amendment replaced the phrase ''financed pursuant to the Rural Electrification Act of 1936, as amended,'' with ''eligible for financing pursuant to the Rural Electrification Act of 1936, as amended, determined without regard to any application requirement under that Act.'' This change allows rights-of-way for electric or telephone facilities that are ''eligible for financing'' under the REA to receive an exemption from rent payments. The final rule is consistent with the statute.

The REA exemption is only for electric or telephone facilities that provide service to rural areas. BLM exempts rent for electric or telephone facilities when the Rural Utility Service (at the request of the applicant/holder) provides the necessary documentation that the facility is being financed with loans pursuant to the REA, or is eligible for financing under that statute. Loans are only provided for electric and telephone facilities that serve rural areas, as those terms are defined by REA.

Since the expanded REA exemption is new to BLM regulations and since the request for rent exemption must be initiated by the grant holder, it is impossible to predict with any certainty the actual economic impact of this rule change. However, the potential loss of rental receipts due to the REA exemption can be estimated as follows:

The average annual rent received in 2004 per right-of-way grant was $249 ($12,005,260 (total rental income) divided by 48,190 (total number of grants paying rent) = $249).

Of the 48,190 grants paying rent, 10,760 are grants for electric transmission, telephone, or fiber optic facilities which are not financed by REA loans, but which might be eligible for financing.

Currently, 7,278 electric and telephone facilities are not being assessed rent.

If all grants for electric and telephone facilities that now pay rent (10,760), become rent exempt, the loss of rental revenue would be approximately $2,679,240 ($249 (average annual rent per grant) X 10,760 (number of existing electric and telephone facilities now paying rent)).

In summary, $2.7 million of annual rental receipts could be lost if all currently authorized telephone and electric lines now paying rent were to become rent exempt. In a ''worst case'' scenario, where all current rental receipts of $12.0 million were to be lost, this rule will not have an annual economic effect of $100 million and the economic impact would not be significant, even when combined with the other changes the rule makes.

b. This rule will not create serious inconsistencies or otherwise interfere with other agencies' actions. BLM has worked closely with the Forest Service in assuring the maximum consistency possible between the policies of the two agencies with respect to managing communication site rights-of-way. BLM and the Forest Service have several working groups examining various aspects of their right-of-way programs, including ensuring consistency of regulations and policies to the extent possible. In fact, the Forest Service plans to publish cost recovery regulations similar to BLM's.

c. This rule will not materially alter the budgetary impact of entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This rule does increase processing and monitoring fees, but only in amounts necessary to ensure that the Federal government receives fees to pay for the reasonable or actual costs of processing applications and monitoring grants consistent with FLPMA and the MLA. The increases in processing and monitoring fees will not be retroactive, but they will apply to existing grant holders who apply for new authorizations under the regulations.

Under the final rule, Federal agencies and their instrumentalities are no longer automatically exempt from paying processing and monitoring costs. However, these agencies may still benefit from the ''reasonableness factors'' listed in section 304(b) of FLPMA. Hardship is one such factor. Removing the automatic exemption would not affect any agency's ability or eligibility to benefit from these factors.

d. This rule will not raise novel legal or policy issues. Section 304 of FLPMA allows the Secretary of the Interior to ''establish reasonable filing and service fees and reasonable charges, and commissions with respect to applications and other documents relating to the public lands * * *'' and to ''require a deposit of any payments intended to reimburse the United States for reasonable costs with respect to applications and other documents relating to such lands.'' The reasonable costs include the costs of special studies, environmental analyses, and the monitoring of construction, operation, maintenance, and termination of any authorized facility * * *'' Section 28(l) of the Mineral Leasing Act of 1920, as amended, requires applicants for oil and gas pipeline rights-of-way to reimburse the United States for the administrative and other costs, i.e., actual costs, for processing the application and for monitoring activities under their grants. BLM currently collects these fees.

Other regulatory revisions clarify existing right-of-way regulations in determining rents for communication site rights-of-way and implement a statutory change relating to rent exemptions for facilities that are eligible for REA financing. These regulations also add a provision requiring that grant holders who use hazardous materials in the operation of their grant provide bonding to cover liability for damages or injuries resulting from releases or discharges of hazardous materials. BLM has always had the authority to require this type of bonding and adding this provision makes explicit what has always been implicit in our regulations.

Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. The BLM has estimated that approximately 18 percent of all applicants and grantees (approximately 5 percent of MLA applicants and grantees and approximately 23 percent of FLPMA applicants and grantees) may qualify as small entities. Of these applicants and grantees which may qualify as small entities, we estimate that less than 5 percent will be adversely affected by the rule. Although the processing and monitoring fee changes vary widely in percentage terms, in absolute dollar amounts, they range from a minus $77 to a plus $723, with the largest increases occurring in monitoring fees for MLA applications. Processing and monitoring fees for fixed fee categories are one-time fees and when compared to the average cost of constructing, operating, and maintaining a right-of-way, are not significant.

BLM does not officially track right-of-way costs, but grant holders have estimated that pipeline facilities cost between $300,000 (12″ pipeline) to $1.5 million per mile (36″ pipeline); rocked logging roads cost between $40,000/mile for a ridge top road to $150,000/mile for a full bench road or an average of $70,000 /mile for a road through moderate terrain; electric distribution and transmission lines cost between $24,000/mile (24kV distribution line) to $1 million/mile (500kV transmission line); wind turbines average $1 million per installed megawatt; and cellular communication facilities can vary between $250,000 and $500,000. (These estimated costs come from informal contacts BLM made with several current grant holders in December 2003.) When compared to the cost of constructing a right-of-way, the fee increases this final rule makes are relatively small.

Applicants of most large utility projects will pay either reasonable or actual processing and monitoring costs under the final rule, as they currently do, and would not be significantly impacted by the final rule. Many other facilities such as oil and gas gathering pipelines, domestic water pipelines, buried telephone lines, and all-weather roads can be installed for less than $25,000 per mile. BLM can process most of these types of applications, depending upon the length and total surface disturbance, in less than 36 hours. This correlates to a fee of $644 under the final rule for both FLPMA and MLA applications. Under the current fee schedules, an applicant might only pay $300 (FLPMA) or $275 (MLA) for the same application, primarily due to the category definitions of the new fee schedules compared to the current fee schedules.

Small entities are more likely to apply for rights-of-way having the lowest fixed fees (Categories 1 through 3) than they are for Categories 4 through 6, which have the highest fees. The fee increases in Categories 1 through 3, as well as the differences between fee categories, are both relatively small. When compared to the overall cost of constructing rights-of-ways under this final rule, the increases in the fees will not significantly impact even small entities.

Based on a comparison with the size characteristics for each industry code from the Census of Business in 1997, we estimated the number of firms which are eligible for Small Business Administration (SBA) programs and likely to hold right-of-way grants. Based on these comparisons across industry codes, we estimate that about 5.3% of existing MLA grantees may be eligible for SBA programs and about 22.9% of FLPMA grantees may be eligible for SBA programs. Whether they choose to join the SBA programs is strictly an individual firm's decision as is whether or not a small business applies for a right-of-way grant under these regulations.

The proportion of grantees eligible for SBA programs shows that there is an opportunity for small businesses in BLM's right-of-way program. However, the burden of increased cost recovery fees will not have a significant economic impact on a substantial number of small entities or fall disproportionately on small businesses.

Moreover, any entity which believes that it might be adversely affected by the fee schedule may qualify for hardship consideration. A review of the right-of-way data base indicates that of the approximately 13,586 applications for grants, amended grants, assignments, and renewals in FY 2004, BLM exempted 271 applicants from processing and monitoring fees and granted reductions or waivers from processing and monitoring costs to 39 applicants for various reasons, including undue financial hardship (*see* existing 43 CFR 2808.5 and final section 2804.21).

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more. See the Executive Order 12866 discussion above.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. As discussed above, when compared to the cost of constructing a right-of-way, the fee increases this final rule makes are relatively small and therefore should not cause any major increase in costs or prices. In addition, any applicant that believes that the fee increases will cause them difficulty may benefit from the criteria set forth at section 304(b) of FLPMA, especially the hardship criteria. The rule will affect Federal agencies by eliminating the automatic exemption from cost recovery for Federal agencies. Federal agencies, however, are able to

benefit from the section 304(b) criteria as well. Currently, many Federal agencies fund BLM's processing of their applications for rights-of-way across Federal lands. The amount they pay results from lengthy negotiations, a process which does not always produce consistency across BLM organizational units. The final rule will help achieve consistency by assigning each Federal project to a cost recovery category. The category designation will enable other Federal agencies to determine their costs in advance and will also reduce the administrative paperwork involved in Federal transactions. The fee increases this rule makes are small when compared to costs of right-of-way operations on Federal lands (*see* the discussion above). Therefore, the fee increases should not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions.

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. The rule should result in no change in any of the above factors. See the discussions above for a discussion of the economic effects of the fee increases. In general, the fee increases are small in comparison with the overall costs of constructing, maintaining, operating, and terminating large projects located within right-of-way grants. With the possible exception of MLA grants for pipelines, the projects located on right-of-way grants support domestic, not foreign, activities and do not involve products and services which are exported. MLA pipelines may transport oil and gas and their related products destined for foreign markets, but the increase in fees, compared to the cost of, and profits from, running an oil and gas pipeline that would feed into a foreign market, is minimal.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. See the Executive Order 12866 discussion above.

b. This rule will not produce a Federal mandate on state, local, or tribal governments, in the aggregate, or the private sector of $100 million or greater in any year, *i.e.*, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The total maximum increases in cost recovery fees (processing and monitoring fees) are estimated to be approximately $9.0 million per year.

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. A right-of-way application is not private property. BLM has discretion under the governing statutes to issue a grant or not (see 30 U.S.C. 185(a) and 43 U.S.C. 1761(a)). Once a grant is issued, a holder's continued use of the land covered by the grant is conditioned upon compliance with various statutes, regulations, and terms and conditions. Consistent with FLPMA and the MLA, violation of the relevant statutes, regulations, or terms and conditions of the grant can result in termination of the grant before the end of the grant's term. The holder of a grant acknowledges this possibility in accepting a grant. Increased cost recovery fees (processing and monitoring fees) for right-of-way grants authorizing use of Federal lands do not have takings implications.

Executive Order 13132, Federalism

In accordance with Executive Order 13132, the rule does not have Federalism implications to warrant the preparation of a Federalism assessment. A Federalism assessment is not required because the rule 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. Under the final rule qualifying states continue to be exempt from paying processing and monitoring fees and the final rule does not otherwise affect states, the national government's relationship with them, or the distribution of power and responsibilities among the various levels of government.

Executive Order 12988, Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. For example, we have reviewed these regulations to eliminate drafting errors and ambiguity. They have been written to minimize litigation, provide clear legal standards for affected conduct rather than general standards, and promote simplification and burden reduction. Drafting the regulations in plain language and working closely with legal counsel assists in all of these areas.

Paperwork Reduction Act

This regulation requires an information collection under the Paperwork Reduction Act. The current rule is covered by OMB Approval Number 1004–0189, which expires on October 31, 2005.

National Environmental Policy Act and Endangered Species Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. The BLM prepared an environmental assessment and determined that the rule will not have a significant effect on the quality of the human environment because:

(a) The direct economic impacts resulting from increasing processing and monitoring fees are not significant and would not be substantial enough to cause applicants or grant holders to withdraw their applications or forfeit their grants; and

(b) The procedural and clarifying changes would have no meaningful impact of any kind on the physical or economic environment.

Any environmental effects of issuing right-of-way grants on public and Federal lands are analyzed on a case-by-case basis and in land use plans. BLM has issued a Finding of No Significant Impact. The Environmental Assessment is part of the Administrative Record for the rule.

We have examined this rule to determine whether it requires compliance under section 7 of the Endangered Species Act (ESA). The ESA requires agencies to consult or confer with the Fish and Wildlife Service or National Marine Fisheries Service (Service) on an action when there is ''discretionary Federal involvement or control'' over the action. 50 CFR 402.03. Formal consultation under section 7 of the ESA is required when an agency determines that a proposed action may affect listed species or critical habitat. If an agency determines that a proposed action is not likely to adversely affect listed species or critical habitat, the agency may request concurrence with this determination from the Service. If, however, an agency determines that a proposed action will have no effect on listed species or critical habitat, no further compliance under Section 7 is required.

We have determined that except for section 2801.6 of the final rule (dealing with certain, private pre-FLPMA rights-of-way) this rule governs discretionary Federal control over rights-of-way and is therefore subject to compliance with the ESA. We have further determined that the final rule will have no effect on listed or proposed species or on designated or proposed critical habitat under the ESA and therefore consultation under section 7 of the ESA is not required. Our determination is based on the fact that nothing in the final rule changes existing processes and procedures that ensure the protection of listed or proposed species or designated or proposed critical habitat. Existing processes and procedures have been in effect since BLM promulgated right-of-way regulations in 1979–80. Moreover, the promulgation of regulations is not an ongoing agency action in that once a rule is adopted, the Federal action is complete. See *Norton* v. *Southern Utah Wilderness Alliance,* 124 S. Ct. 2372 (2004). Therefore, any further compliance with the ESA will occur when an application for a right-of-way is filed with BLM.

The rule's provision relating to rights-of-way for reservoirs, ditches, and canals established by the Mining Act of July 26, 1866 is not subject to ESA compliance. Section 2801.6 of the final rule reflects long-standing law by providing that these rights-of-way are not subject to the rule. Rights-of-way under the 1866 Act are Congressional grants that are perpetual and do not require renewal; no authorization under FLPMA exists or is required in the future. Therefore, unless the holder of the right-of-way acts in a manner that exceeds the scope of, or is otherwise inconsistent with, the right-of-way granted (*e.g.*, by moving the existing ditch), no opportunity exists for BLM to exercise its discretion. And where there is no Federal discretion or control, section 7 of the ESA does not apply.

In March, 2004, the District Court for the District of Idaho ruled that BLM has discretion to impose conditions on the operation of water diversions authorized by the 1866 Act and that BLM's decision not to impose conditions—as evidenced by BLM's right-of-way regulations—constitute an action that triggers consultation under the ESA. *Western Watersheds Project, et al.* v. *Matejko, et al.*, No. CIV 01–0259–E–BLW (D. Idaho 2004). The United States has filed a protective notice of appeal of this ruling. As noted above, this final rule reflects well-established law and is consistent with BLM's historical practice related to 1866 Act rights-of-way.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, BLM evaluated possible effects on federally recognized Indian tribes and determined that there are no potential effects. The rule does not contain policies that have tribal implications. The BLM may only issue right-of-way grants across public lands that it manages or across Federal lands held by two or more Federal agencies. Indian tribes have jurisdiction over their own lands, subject to the Secretary's trust responsibility. To our knowledge, no Indian tribes are involved in any multi-agency grants.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This regulation is not a significant energy action and, accordingly, no Statement of Energy Effects is required. This rule is not likely to have a significant adverse effect on the nation's energy supply, distribution, or use. To the extent that the rule will have any effect, we anticipate it will be positive. The rule makes application and other procedures clearer, which should expedite application processing.

Authors

The principal authors of this final rule are Bil Weigand, Idaho State Office, and Rick Stamm, Washington Office, Mike DeKeyrel, Utah State Office, and Tom Hurshman, Montrose Field Office, assisted by Ian Senio of the Regulatory Affairs Group and Michael Hickey of the Office of the Solicitor.

List of Subjects

43 CFR Part 2800

Communications, Electric power, Highways and roads, Penalties, Public lands and rights-of-way, and Reporting and recordkeeping requirements.

43 CFR Part 2810

Highways and roads, Public lands rights-of-way, and Reporting and recordkeeping requirements.

43 CFR Part 2880

Administrative practice and procedures, Common carriers, Pipelines, Public lands rights-of-way, and Reporting and recordkeeping requirements.

43 CFR Part 2920

Penalties, Public lands, and Reporting and recordkeeping requirements.

43 CFR Part 9230

Penalties and Public lands.

43 CFR Part 9260

Continental shelf, Forests and forest products, Law enforcement, Penalties, Public lands, Range management, Recreation and recreation areas, and Wildlife.

Dated: November 4, 2004.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

Editorial Note: This document was received at the Office of the Federal Register on April 11, 2005.

■ For the reasons set out in the preamble and under the authorities cited below, amend Title 43, Subtitle B, Chapter II, Subchapter B, Parts 2800, 2810, 2880, and 2920, and Subchapter I, Parts 9230 and 9260 as follows:

■ 1. Revise part 2800 to read as follows:

PART 2800—RIGHTS-OF-WAY UNDER THE FEDERAL LAND POLICY MANAGEMENT ACT

Subpart 2801—General Information

Sec.

2801.2 What is the objective of BLM's right-of-way program?
2801.5 What acronyms and terms are used in the regulations in this part?
2801.6 Scope.
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Authority: 43 U.S.C. 1733, 1740, 1763, and 1764.

Subpart 2801—General information

§ 2801.2 What is the objective of BLM's right-of-way program?

It is BLM's objective to grant rights-of-way under the regulations in this part to any qualified individual, business, or government entity and to direct and control the use of rights-of-way on public lands in a manner that:

(a) Protects the natural resources associated with public lands and adjacent lands, whether private or administered by a government entity;

(b) Prevents unnecessary or undue degradation to public lands;

(c) Promotes the use of rights-of-way in common considering engineering and technological compatibility, national security, and land use plans; and

(d) Coordinates, to the fullest extent possible, all BLM actions under the regulations in this part with state and local governments, interested individuals, and appropriate quasi-public entities.

§ 2801.5 What acronyms and terms are used in the regulations in this part?

(a) *Acronyms.* As used in this part:

ALJ means Administrative Law Judge.

BLM means the Bureau of Land Management.

CERCLA means the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. 9601 *et seq.*).

EA means environmental assessment.

EIS means environmental impact statement.

IBLA means the Department of the Interior, Board of Land Appeals.

IPD–GDP means the Implicit Price Deflator, Gross Domestic Product, as published in the most recent edition of the Survey of Current Business of the Department of Commerce, Bureau of Economic Analysis.

NEPA means the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

RMA means the Ranally Metro Area Population Ranking as published in the most recent edition of the Rand McNally Commercial Atlas and Marketing Guide.

(b) *Terms.* As used in this part, the term:

Act means the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*).

Actual costs means the financial measure of resources the Federal government expends or uses in processing a right-of-way application or in monitoring the construction, operation, and termination of a facility authorized by a grant or permit. Actual costs includes both direct and indirect costs, exclusive of management overhead costs.

Base rent means the dollar amount required from a grant or lease holder on BLM managed lands based on the communication use with the highest value in the associated facility or facilities, as calculated according to the communication use rent schedule. If a facility manager's or facility owner's scheduled rent is equal to the highest rent charged a tenant in the facility or facilities, then the facility manager's or facility owner's use determines the dollar amount of the base rent. Otherwise, the facility owner's, facility manager's, customer's, or tenant's use with the highest value, and which is not otherwise excluded from rent, determines the base rent.

Casual use means activities ordinarily resulting in no or negligible disturbance of the public lands, resources, or improvements. *Examples of casual use include:* Surveying, marking routes, and collecting data to use to prepare grant applications.

Commercial purpose or activity refers to the circumstance where a holder attempts to produce a profit by allowing the use of its facilities by an additional party. BLM may assess an appropriate rent for such commercial activities. The holder's use may not otherwise be subject to rent charges under BLM's rental provisions.

Communication use rent schedule is a schedule of rents for the following types of communication uses, including related technologies, located in a facility associated with a particular grant or lease. All use categories include ancillary communications equipment, such as internal microwave or internal one-or two-way radio, that are directly related to operating, maintaining, and monitoring the primary uses listed below. The Federal Communications Commission (FCC) may or may not license the primary uses. The type of use and community served, identified on an FCC license, if one has been issued, do not supersede either the definitions in this subpart or the procedures in § 2806.30 of this part for calculating rent for communication facilities and uses located on public land:

(1) *Television broadcast* means a use that broadcasts UHF and VHF audio and video signals for general public reception. This category does not include low-power television (LPTV) or rebroadcast devices, such as translators, or transmitting devices, such as microwave relays serving broadcast translators;

(2) *AM and FM radio broadcast* means a use that broadcasts amplitude modulation (AM) or frequency modulation (FM) audio signals for general public reception. This category does not include low-power FM radio; rebroadcast devices, such as translators; or boosters or microwave relays serving broadcast translators;

(3) *Cable television* means a use that transmits video programming to multiple subscribers in a community over a wired or wireless network. This category does not include rebroadcast devices that retransmit television signals of one or more television broadcast stations, or personal or internal antenna systems, such as private systems serving hotels and residences;

(4) *Broadcast translator, low-power television, and low-power FM radio* means a use of translators, LPTV, or low-power FM radio (LPFM). Translators receive a television or FM radio broadcast signal and rebroadcast it on a different channel or frequency for local reception. In some cases the translator relays the true signal to an amplifier or another translator. LPTV and LPFM are broadcast translators that originate programming. This category also includes translators associated with public telecommunication services;

(5) *Commercial mobile radio service (CMRS)/facility manager* means commercial mobile radio uses that provide mobile communication service to individual customers. *Examples of CMRS include:* Community repeaters, trunked radio (specialized mobile radio), two-way radio voice dispatch, public switched network (telephone/data) interconnect service, microwave communications link equipment, and other two-way voice and paging services. ''Facility Managers'' are grant or lease holders that lease building, tower, and related facility space to a variety of tenants and customers as part of the holder's business enterprise, but do not own or operate communication equipment in the facility for their own uses;

(6) *Cellular telephone* means a system of mobile or fixed communication devices that use a combination of radio and telephone switching technology and provide public switched network services to fixed or mobile users, or both, within a defined geographic area. The system consists of one or more cell sites containing transmitting and receiving antennas, cellular base station radio, telephone equipment, or microwave communications link equipment. *Examples of cellular telephone include:* Personal Communication Service, Enhanced Specialized Mobile Radio, Improved Mobile Telephone Service, Air-to-Ground, Offshore Radio Telephone Service, Cell Site Extenders, and Local Multipoint Distribution Service;

(7) *Private mobile radio service (PMRS)* means uses supporting private mobile radio systems primarily for a single entity for mobile internal communications. PMRS service is not sold and is exclusively limited to the user in support of business, community activities, or other organizational communication needs. *Examples of PMRS include:* Private local radio dispatch, private paging services, and ancillary microwave communications equipment for controlling mobile facilities;

(8) *Microwave* means communication uses that:

(i) Provide long-line intrastate and interstate public telephone, television, and data transmissions; or

(ii) Support the primary business of pipeline and power companies, railroads, land resource management companies, or wireless internet service provider (ISP) companies; and

(9) *Other communication uses* means private communication uses, such as amateur radio, personal/private receive-only antennas, natural resource and environmental monitoring equipment, and other small, low-power devices used to monitor or control remote activities;

Customer means an occupant who is paying a facility manager, facility owner, or tenant for using all or any part

of the space in the facility, or for communication services, and is not selling communication services or broadcasting to others. We consider persons or entities benefitting from private or internal communication uses located in a holder's facility as customers for purposes of calculating rent. Customer uses are not included in calculating the amount of rent owed by a facility owner, facility manager, or tenant, except as noted in §§ 2806.34(b)(4) and 2806.42 of this part. *Examples of customers include:* Users of PMRS, users in the microwave category when the microwave use is limited to internal communications, and all users in the category of ''Other communication uses'' (*see* paragraph (a) of the definition of Communication Use Rent Schedule in this section).

Designated right-of-way corridor means a parcel of land with specific boundaries identified by law, Secretarial order, the land-use planning process, or other management decision, as being a preferred location for existing and future rights-of-way and facilities. The corridor may be suitable to accommodate more than one type of right-of-way use or facility or one or more right-of-way uses or facilities which are similar, identical, or compatible.

Discharge has the meaning found at 33 U.S.C. 1321(a)(2) of the Clean Water Act.

Facility means an improvement or structure, whether existing or planned, that is or would be owned and controlled by the grant or lease holder within a right-of-way. For purposes of communication site rights-of-way or uses, facility means the building, tower, and related incidental structures or improvements authorized under the terms of the grant or lease.

Facility manager means a person or entity that leases space in a facility to communication users and:

(1) Holds a communication use grant or lease;

(2) Owns a communications facility on lands covered by that grant or lease; and

(3) Does not own or operate communications equipment in the facility for personal or commercial purposes.

Facility owner means a person or entity that may or may not lease space in a facility to communication users and:

(1) Holds a communication use grant or lease;

(2) Owns a communications facility on lands covered by that grant or lease; and

(3) Owns and operates his or her own communications equipment in the facility for personal or commercial purposes.

Grant means any authorization or instrument (e.g., easement, lease, license, or permit) BLM issues under Title V of the Federal Land Policy and Management Act, 43 U.S.C. 1761 *et seq.,* and those authorizations and instruments BLM and its predecessors issued for like purposes before October 21, 1976, under then existing statutory authority. It does not include authorizations issued under the Mineral Leasing Act (30 U.S.C. 185).

Hazardous material means:

(1) Any substance or material defined as hazardous, a pollutant, or a contaminant under CERCLA at 42 U.S.C. 9601(14) and (33);

(2) Any regulated substance contained in or released from underground storage tanks, as defined by the Resource Conservation and Recovery Act at 42 U.S.C. 6991;

(3) Oil, as defined by the Clean Water Act at 33 U.S.C. 1321(a) and the Oil Pollution Act at 33 U.S.C. 2701(23); or

(4) Other substances applicable Federal, state, tribal, or local law define and regulate as ''hazardous.''

Holder means any entity with a BLM right-of-way authorization.

Management overhead costs means Federal expenditures associated with BLM's directorate, including all BLM State Directors and the entire Washington Office staff, except where a State Director or Washington Office staff member is required to perform work on a specific right-of-way case.

Monetary value of the rights and privileges you seek means the objective value of the right-of-way or what the right-of-way grant is worth in financial terms to the applicant.

Monitoring means those actions the Federal government performs to ensure compliance with the terms, conditions, and stipulations of a grant.

(1) For Monitoring Categories 1 through 4, the actions include inspecting construction, operation, maintenance, and termination of permanent or temporary facilities and protection and rehabilitation activities until the holder completes rehabilitation of the right-of-way and BLM approves it;

(2) For Monitoring Category 5 (Master Agreements), those actions agreed to in the Master Agreement; and

(3) For Monitoring Category 6, those actions agreed to between BLM and the applicant before BLM issues the grant.

Public lands means any land and interest in land owned by the United States within the several states and administered by the Secretary of the Interior through BLM without regard to how the United States acquired ownership, except lands:

(1) Located on the Outer Continental Shelf; and

(2) Held for the benefit of Indians, Aleuts, and Eskimos.

Reasonable costs has the meaning found at section 304(b) of the Act.

Release has the meaning found at 42 U.S.C. 9601(22) of CERCLA.

Right-of-way means the public lands BLM authorizes a holder to use or occupy under a grant.

Site means an area, such as a mountaintop, where a holder locates one or more communication or other right-of-way facilities.

Substantial deviation means a change in the authorized location or use which requires:

(1) Construction or use outside the boundaries of the right-of-way; or

(2) Any change from, or modification of, the authorized use. *Examples of substantial deviation include:* Adding equipment, overhead or underground lines, pipelines, structures, or other facilities not included in the original grant.

Tenant means an occupant who is paying a facility manager, facility owner, or other entity for occupying and using all or any part of a facility. A tenant operates communication equipment in the facility for profit by broadcasting to others or selling communication services. For purposes of calculating the amount of rent that BLM charges, a tenant's use does not include:

(1) Private mobile radio or internal microwave use that is not being sold; or

(2) A use in the category of ''Other Communication Uses'' (*see* paragraph (a) of the definition of Communication Use Rent Schedule in this section).

Third party means any person or entity other than BLM, the applicant, or the holder of a right-of-way authorization.

Tramway means a system for carrying passengers, logs, or other material using traveling carriages or cars suspended from an overhead cable or cables supported by a series of towers, hangers, tailhold anchors, guyline trees, etc.

Transportation and utility corridor means a parcel of land, without fixed limits or boundaries, that holders use as the location for one or more transportation or utility rights-of-way.

Zone means one of eight geographic groupings necessary for linear right-of-way rent assessment purposes, covering all lands in the contiguous United States.

§ 2801.6 Scope.

(a) *What do these regulations apply to?* The regulations in this part apply to:

(1) Grants for necessary transportation or other systems and facilities which are in the public interest and which require the use of public lands for the purposes identified in 43 U.S.C. 1761, and administering, amending, assigning, renewing, and terminating them;

(2) Grants to Federal departments or agencies for transporting by pipeline and related facilities oil, natural gas, synthetic liquid or gaseous fuels, and any refined products produced from them; and

(3) Grants issued on or before October 21, 1976, under then existing statutory authority, unless application of these regulations would diminish or reduce any rights conferred by the original grant or the statute under which it was issued. Where there would be a diminishment or reduction in any right, the grant or statute applies.

(b) *What don't these regulations apply to?* The regulations in this part do not apply to:

(1) Federal Aid Highways, for which Federal Highway Administration procedures apply;

(2) Roads constructed or used according to reciprocal and cost share road use agreement under subpart 2812 of this chapter;

(3) Lands within designated wilderness areas, although BLM may authorize some uses under parts 2920 and 6300 of this chapter;

(4) Grants to holders other than Federal departments or agencies for transporting by pipeline and related facilities oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced from them (see part 2880 of this chapter);

(5) Public highways constructed under the authority of Revised Statute (R.S.) 2477 (43 U.S.C. 932, repealed October 21, 1976);

(6) Reservoirs, canals, and ditches constructed under the authority of R.S. 2339 and R.S. 2340 (43 U.S.C. 661, repealed in part, October 21, 1976); or

(7)(i) Any project or portion of a project that, prior to October 24, 1992, was licensed under, or granted an exemption from, part I of the Federal Power Act (FPA) (16 U.S.C. 791a et seq.) which:

(A) Is located on lands subject to a reservation under section 24 (16 U.S.C. 818) of the FPA;

(B) Did not receive a grant under Title V of the Federal Land Policy and Management Act (FLPMA) before October 24, 1992; and

(C) Includes continued operation of such project (license renewal) under section 15 (16 U.S.C. 808) of the FPA;

(ii) Paragraph (b)(7)(i) of this section does not apply to any additional public lands the project uses that are not subject to the reservation in paragraph (b)(7)(i)(A) of this section.

§ 2801.8 Severability.

If a court holds any provisions of the regulations in this part or their applicability to any person or circumstances invalid, the remainder of these rules and their applicability to other people or circumstances will not be affected.

§ 2801.9 When do I need a grant?

(a) You must have a grant under this part when you plan to use public lands for systems or facilities over, under, on, or through public lands. These include, but are not limited to:

(1) Reservoirs, canals, ditches, flumes, laterals, pipelines, tunnels, and other systems which impound, store, transport, or distribute water;

(2) Pipelines and other systems for transporting or distributing liquids and gases, other than water and other than oil, natural gas, synthetic liquid or gaseous fuels, or any refined products from them, or for storage and terminal facilities used in connection with them;

(3) Pipelines, slurry and emulsion systems, and conveyor belts for transporting and distributing solid materials and facilities for storing such materials in connection with them;

(4) Systems for generating, transmitting, and distributing electricity;

(5) Systems for transmitting or receiving electronic signals and other means of communication;

(6) Transportation systems, such as roads, trails, highways, railroads, canals, tunnels, tramways, airways, and livestock driveways; and

(7) Such other necessary transportation or other systems or facilities which are in the public interest and which require rights-of-way.

(b) If you apply for a right-of-way grant for generating, transmitting, and distributing electricity, you must also comply with the applicable requirements of the Federal Energy Regulatory Commission under the Federal Power Act of 1935, 16 U.S.C. 791a *et seq.,* and 18 CFR chapter I.

(c) See part 2880 of this chapter for information about authorizations BLM issues under the Mineral Leasing Act for transporting oil and gas resources.

§ 2801.10 How do I appeal a BLM decision issued under the regulations in this part?

(a) You may appeal a BLM decision issued under the regulations in this part in accordance with part 4 of this title.

(b) All BLM decisions under this part remain in effect pending appeal unless the Secretary of the Interior rules otherwise, or as noted in this part. You may petition for a stay of a BLM decision under this part with the Office of Hearings and Appeals, Department of the Interior. Unless otherwise noted in this part, BLM will take no action on your application while your appeal is pending.

Subpart 2802—Lands Available for FLPMA Grants

§ 2802.10 What lands are available for grants?

(a) In its discretion, BLM may grant rights-of-way on any lands under its jurisdiction except when:

(1) A statute, regulation, or public land order specifically excludes rights-of-way;

(2) The lands are specifically segregated or withdrawn from right-of-way uses; or

(3) BLM identifies areas in its land use plans or in the analysis of an application as inappropriate for right-of-way uses.

(b) BLM may require common use of a right-of-way and may require, to the extent practical, location of new rights-of-way within existing or designated right-of-way corridors (*see* § 2802.11 of this subpart). Safety and other considerations may limit the extent to which you may share a right-of-way. BLM will designate right-of-way corridors through land use plan decisions.

(c) You should contact the BLM office nearest the lands you seek to use to:

(1) Determine whether or not the land you want to use is available for that use; and

(2) Begin discussions about any application you may need to file.

§ 2802.11 How does BLM designate corridors?

(a) BLM may determine the locations and boundaries of right-of-way corridors during the land-use planning process described in part 1600 of this chapter. During this process BLM coordinates with other Federal agencies, state, local, and tribal governments, and the public to identify resource-related issues, concerns, and needs. The process results in a resource management plan or plan amendment, which addresses to what extent you may use public lands and resources for specific purposes.

(b) When determining which lands may be suitable for right-of-way corridors, the factors BLM considers include, but are not limited to, the following:

(1) Federal, state, and local land use plans, and applicable Federal, state, local, and tribal laws;

(2) Environmental impacts on cultural resources and natural resources, including air, water, soil, fish, wildlife, and vegetation;

(3) Physical effects and constraints on corridor placement due to geology, hydrology, meteorology, soil, or land forms;

(4) Costs of construction, operation, and maintenance and costs of modifying or relocating existing facilities in a proposed right-of-way corridor (i.e., the economic efficiency of placing a right-of-way within a proposed corridor);

(5) Risks to national security;

(6) Potential health and safety hazards imposed on the public by facilities or activities located within the proposed right-of-way corridor;

(7) Social and economic impacts of the right-of-way corridor on public land users, adjacent landowners, and other groups or individuals;

(8) Transportation and utility corridor studies previously developed by user groups; and

(9) Engineering and technological compatibility of proposed and existing facilities.

(c) BLM may designate any transportation and utility corridor existing prior to October 21, 1976, as a transportation and utility corridor without further review.

(d) The resource management plan or plan amendment may also identify areas where BLM will not allow right-of-way corridors for environmental, safety, or other reasons.

Subpart 2803—Qualifications for Holding FLPMA Grants

§ 2803.10 Who may hold a grant?

To hold a grant under these regulations, you must be:

(a) An individual, association, corporation, partnership, or similar business entity, or a Federal agency or state, tribal, or local government;

(b) Technically and financially able to construct, operate, maintain, and terminate the use of the public lands you are applying for; and

(c) Of legal age and authorized to do business in the state where the right-of-way you seek is located.

§ 2803.11 Can another person act on my behalf?

Another person may act on your behalf if you have authorized the person to do so under the laws of the state where the right-of-way is or will be located.

§ 2803.12 What happens to my application or grant if I die?

(a) If an applicant or grant holder dies, any inheritable interest in an application or grant will be distributed under state law.

(b) If the distributee of a grant is not qualified to hold a grant under § 2803.10 of this subpart, BLM will recognize the distributee as grant holder and allow the distributee to hold its interest in the grant for up to two years. During that period, the distributee must either become qualified or divest itself of the interest.

Subpart 2804—Applying for FLPMA Grants

§ 2804.10 What should I do before I file my application?

(a) Before filing an application with BLM, we encourage you to make an appointment for a preapplication meeting with the appropriate personnel in the BLM field office having jurisdiction over the lands you seek to use. During the preapplication meeting, BLM can:

(1) Identify potential routing and other constraints;

(2) Determine whether or not the lands are located within a designated or existing right-of-way corridor;

(3) Tentatively schedule the processing of your proposed application; and

(4) Inform you of your financial obligations, such as processing and monitoring costs and rents.

(b) Subject to § 2804.13 of this subpart, BLM may share any information you provide under paragraph (a) of this section with Federal, state, tribal, and local government agencies to ensure that:

(1) These agencies are aware of any authorizations you may need from them; and

(2) We initiate effective coordinated planning as soon as possible.

§ 2804.11 Where do I file my grant application?

(a) You must file the grant application in the BLM field office having jurisdiction over the lands affected by your application.

(b) If your application affects more than one BLM administrative unit, you may file at any BLM office having jurisdiction over any part of the project. BLM will notify you where to direct subsequent communications.

§ 2804.12 What information must I submit in my application?

(a) File your application on Standard Form 299, available from any BLM office, and fill in the required information as completely as possible. Your completed application must include:

(1) A description of the project and the scope of the facilities;

(2) The estimated schedule for constructing, operating, maintaining, and terminating the project;

(3) The estimated life of the project and the proposed construction and reclamation techniques;

(4) A map of the project, showing its proposed location and existing facilities adjacent to the proposal;

(5) A statement of your financial and technical capability to construct, operate, maintain, and terminate the project;

(6) Any plans, contracts, agreements, or other information concerning your use of the right-of-way and its effect on competition; and

(7) A statement certifying that you are of legal age and authorized to do business in the state(s) where the right-of-way would be located, and that you have submitted correct information to the best of your knowledge.

(b) If you are a business entity, you must also submit the following information:

(1) Copies of the formal documents creating the entity, such as articles of incorporation, and including the corporate bylaws;

(2) Evidence that the party signing the application has the authority to bind the applicant;

(3) The name and address of each participant in the business;

(4) The name and address of each shareholder owning 3 percent or more of the shares, and the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote;

(5) The name and address of each affiliate of the business;

(6) The number of shares and the percentage of any class of voting stock owned by the business, directly or indirectly, in any affiliate controlled by the business;

(7) The number of shares and the percentage of any class of voting stock owned by an affiliate, directly or indirectly, in the business controlled by the affiliate; and

(8) If you have already provided the information in paragraphs (b)(1) through (7) of this section to BLM and the information remains accurate, you need only reference the BLM serial number under which you previously filed it.

(c) BLM may require you to submit additional information at any time while processing your application. See § 2884.11(c) of this chapter for the type of information we may require.

(d) If you are a Federal oil and gas lessee or operator and you need a right-of-way for access to your production facilities or oil and gas lease, you may include your right-of-way requirements with your Application for Permit to Drill or Sundry Notice required under parts 3160 through 3190 of this chapter.

(e) If you are filing with another Federal agency for a license, certificate of public convenience and necessity, or other authorization for a project involving a right-of-way on public lands, simultaneously file an application with BLM for a grant. Include a copy of the materials, or reference all the information, you filed with the other Federal agency.

§ 2804.13 Will BLM keep my information confidential?

BLM will keep confidential any information in your application that you mark as ''confidential'' or ''proprietary'' to the extent allowed by law.

§ 2804.14 What is the processing fee for a grant application?

(a) Unless you are exempt under § 2804.16 of this subpart, you must pay a fee to BLM for the reasonable costs of processing your application before the Federal Government incurs them. The fees for Processing Categories 1 through 4 (see paragraph (b) of this section) are one-time fees and are not refundable. The fees are categorized based on an estimate of the amount of time that BLM will expend to process your application and issue a decision granting or denying the application.

(b) There is no processing fee if BLM's work is estimated to take one hour or less. Processing fees are based on categories. These categories and fees for 2005 are:

2005 PROCESSING FEE SCHEDULE

Processing category	Federal work hours involved	Processing fee per application as of June 21, 2005. To be adjusted annually for changes in the IPD–GDP. See paragraph (c) of this section for update information
(1) Applications for new grants, assignments, renewals, and to existing grants assignments, renewals, and amendments to existing grants.	Estimated Federal work hours are >1 ≤ 8.	$97.
(2) Applications for new grants, assignments, renewals, and amendments to existing grants.	Estimated Federal work hours are > 8 ≤ 24.	$343.
(3) Applications for new grants, assignments, renewals, and amendments to existing grants.	Estimated Federal work hours are > 24 ≤ 36.	$644.
(4) Applications for new grants, assignments, renewals, and amendments to existing grants.	Estimated Federal work hours are > 36 ≤ 50.	$923.
(5) Master agreements	Varies	As specified in the agreement.
(6) Applications for new grants, assignments, renewals, and amendments to existing grants.	Estimated Federal work hours are > 50.	Full reasonable costs.

(c) BLM will revise paragraph (b) of this section to update the processing fees for Categories 1 through 4 in the schedule each calendar year, based on the previous year's change in the IPD–GDP, as measured second quarter to second quarter. BLM will round these changes to the nearest dollar. BLM will update Category 5 processing fees as specified in the Master Agreement. You also may obtain a copy of the current schedule from any BLM state or field office or by writing: Director, BLM, 1849 C St., NW., Mail Stop 1000LS, Washington, DC 20240. BLM also posts the current schedule on the BLM Homepage on the Internet at *http://www.blm.gov.*

(d) After an initial review of your application, BLM will notify you of the processing category into which your application fits. You must then submit the appropriate payment for that category before BLM begins processing your application. Your signature on a cost recovery Master Agreement constitutes your agreement with the processing category decision. If you disagree with the category that BLM has determined for your application, you may appeal the decision under § 2801.10 of this part. For Processing Categories 5 and 6 applications, *see* §§ 2804.17, 2804.18, and 2804.19 of this subpart. If you paid the processing fee and you appeal a Processing Category 1 through 4 or a Processing Category 6 determination, BLM will process your application while the appeal is pending. If IBLA finds in your favor, you will receive a refund or adjustment of your processing fee.

(e) In processing your application, BLM may determine at any time that the application requires preparing an EIS. If this occurs, BLM will send you a decision changing your processing category to Processing Category 6. You may appeal this decision under § 2801.10 of this part.

(f) To expedite processing of your application, you may notify BLM in writing that you are waiving paying reasonable costs and are electing to pay the full actual costs incurred by BLM in processing your application and monitoring your grant.

§ 2804.15 When does BLM reevaluate the processing and monitoring fees?

BLM reevaluates the processing and monitoring fees (*see* § 2805.16 of this part) for each category and the categories themselves within 5 years after they go into effect and at 10-year intervals after that. When reevaluating processing and monitoring fees, BLM considers all factors that affect the fees, including, but not limited to, any changes in:

(a) Technology;

(b) The procedures for processing applications and monitoring grants;

(c) Statutes and regulations relating to the right-of-way program; or

(d) The IPD–GDP.

§ 2804.16 Who is exempt from paying processing and monitoring fees?

You are exempt from paying processing and monitoring fees if:

(a) You are a state or local government, or an agency of such a government, and BLM issues the grant for governmental purposes benefitting the general public. If your principal source of revenue results from charges you levy on customers for services similar to those of a profit-making corporation or business, you are not exempt; or

(b) Your application under this subpart is associated with a cost-share

road or reciprocal right-of-way agreement.

§ 2804.17 What is a Master Agreement (Processing Category 5) and what information must I provide to BLM when I request one?

(a) A Master Agreement (Processing Category 5) is a written agreement covering processing and monitoring fees (*see* § 2805.16 of this part) negotiated between BLM and you that involves multiple BLM grant approvals for projects within a defined geographic area.

(b) Your request for a Master Agreement must:

(1) Describe the geographic area covered by the Agreement and the scope of the activity you plan;

(2) Include a preliminary work plan. This plan must state what work you must do and what work BLM must do to process your application. Both parties must periodically update the work plan, as specified in the Agreement, and mutually agree to the changes;

(3) Contain a preliminary cost estimate and a timetable for processing the application and completing the projects;

(4) State whether you want the Agreement to apply to future applications in the same geographic area that are not part of the same projects; and

(5) Contain any other relevant information that BLM needs to process the application.

§ 2804.18 What provisions do Master Agreements contain and what are their limitations?

(a) A Master Agreement:

(1) Specifies that you must comply with all applicable laws and regulations;

(2) Describes the work you will do and the work BLM will do to process the application;

(3) Describes the method of periodic billing, payment, and auditing;

(4) Describes the processes, studies, or evaluations you will pay for;

(5) Explains how BLM will monitor the grant and how BLM will recover monitoring costs;

(6) Contains provisions allowing for periodic review and updating, if required;

(7) Contains specific conditions for terminating the Agreement; and

(8) Contains any other provisions BLM considers necessary.

(b) BLM will not enter into any Agreement that is not in the public interest.

(c) If you sign a Master Agreement, you waive your right to request a reduction of processing and monitoring fees.

§ 2804.19 How will BLM process my Processing Category 6 application?

(a) For Processing Category 6 applications, you and BLM must enter into a written agreement that describes how BLM will process your application. The final agreement consists of a work plan and a financial plan.

(b) In processing your application, BLM will:

(1) Determine the issues subject to analysis under NEPA;

(2) Prepare a preliminary work plan;

(3) Develop a preliminary financial plan, which estimates the reasonable costs of processing your application and monitoring your project;

(4) Discuss with you:

(i) The preliminary plans and data;

(ii) The availability of funds and personnel;

(iii) Your options for the timing of processing and monitoring fee payments; and

(iv) Financial information you must submit; and

(5) Complete final scoping and develop final work and financial plans which reflect any work you have agreed to do. BLM will also present you with the final estimate of the reasonable costs you must reimburse BLM, including the cost for monitoring the project, using the factors in §§ 2804.20 and 2804.21 of this subpart.

(c) BLM retains the option to prepare any environmental documents related to your application. If BLM allows you to prepare any environmental documents and conduct any studies that BLM needs to process your application, you must do the work following BLM standards. For this purpose, you and BLM may enter into a written agreement. BLM will make the final determinations and conclusions arising from such work.

(d) BLM will periodically, as stated in the agreement, estimate processing costs for a specific work period and notify you of the amount due. You must pay the amount due before BLM will continue working on your application. If your payment exceeds the reasonable costs that BLM incurred for the work, BLM will either adjust the next billing to reflect the excess, or refund you the excess under 43 U.S.C. 1734. You may not deduct any amount from a payment without BLM's prior written approval.

§ 2804.20 How does BLM determine reasonable costs for Processing Category 6 or Monitoring Category 6 applications?

BLM will consider the factors in paragraph (a) of this section and § 2804.21 of this subpart to determine reasonable costs. Submit to the BLM field office having jurisdiction over the lands covered by your application a written analysis of those factors applicable to your project, unless you agree in writing to waive consideration of reasonable costs and elect to pay full actual costs (*see* § 2804.14(f) of this subpart). Submitting your analysis with the application will expedite its handling. BLM may require you to submit additional information in support of your position. While we consider your written analysis, BLM will not process your Category 6 application.

(a) *FLPMA factors.* If your application is for a Processing Category 6, or a Monitoring Category 6 project, the BLM State Director having jurisdiction over the lands you are applying to use will apply the following factors set forth at section 304(b) of FLPMA, 43 U.S.C. 1734(b), to determine the amount you owe. With your application, submit your analysis of how each of the following factors applies to your application:

(1) Actual costs to BLM (exclusive of management overhead costs) of processing your application and of monitoring construction, operation, maintenance, and termination of a facility authorized by the right-of-way grant;

(2) Monetary value of the rights or privileges you seek;

(3) BLM's ability to process an application with maximum efficiency and minimum expense, waste, and effort;

(4) Costs incurred for the benefit of the general public interest rather than for the exclusive benefit of the applicant. That is, the costs for studies and data collection that have value to the Federal Government or the general public apart from processing the application;

(5) Any tangible improvements, such as roads, trails, and recreation facilities, which provide significant public service and are expected in connection with constructing and operating the project; and

(6) Other factors relevant to the reasonableness of the costs (*see* § 2804.21 of this subpart).

(b) *Fee determination.* After considering your analysis and other information, BLM will notify you in writing of what you owe. If you disagree with BLM's determination, you may appeal it under § 2801.10 of this part.

§ 2804.21 What other factors will BLM consider in determining processing and monitoring fees?

(a) *Other factors.* If you include this information in your application, in arriving at your processing or

monitoring fee in any category, the BLM State Director will consider whether:

(1) Payment of actual costs would:

(i) Result in undue financial hardship to your small business, and you would receive little monetary value from your grant as compared to the costs of processing and monitoring; or

(ii) Create such undue financial hardship as to prevent your use and enjoyment of your right-of-way for a non-commercial purpose.

(2) The costs of processing the application and monitoring the issued grant grossly exceed the costs of constructing the project;

(3) You are a non-profit organization, corporation, or association which is not controlled by or a subsidiary of a profit-making enterprise; and

(i) The studies undertaken in connection with processing the application or monitoring the grant have a public benefit; or

(ii) The facility or project will provide a benefit or special service to the general public or to a program of the Secretary;

(4) You need a grant to prevent or mitigate damages to any lands or property or to mitigate hazards or danger to public health and safety resulting from an act of God, an act of war, or negligence of the United States;

(5) You have a grant and need to secure a new or amended grant in order to relocate an authorized facility to comply with public health and safety and environmental protection laws, regulations, and standards which were not in effect at the time BLM issued your original grant;

(6) You have a grant and need to secure a new grant to relocate facilities which you have to move because a Federal agency or federally-funded project needs the lands and the United States does not pay the costs associated with your relocation; or

(7) For whatever other reason, such as public benefits or public services provided, collecting processing and monitoring fees would be inconsistent with prudent and appropriate management of public lands and with your equitable interests or the equitable interests of the United States.

(b) *Fee determination.* With your written application, submit your analysis of how each of the factors, as applicable, in paragraph (a) of this section pertain to your application. BLM will notify you in writing of the BLM State Director's fee determination. You may appeal this decision under § 2801.10 of this part.

§ 2804.22 How will the availability of funds affect the timing of BLM's processing?

If BLM has insufficient funds to process your application, we will not process it until funds become available or you elect to pay full actual costs under § 2804.14(f) of this part.

§ 2804.23 What if there are two or more competing applications for the same facility or system?

(a) If there are two or more competing applications for the same facility or system and your application is in:

(1) *Processing Category 1 through 4.* You must reimburse BLM for processing costs as if the other application or applications had not been filed.

(2) *Processing Category 6.* You are responsible for processing costs identified in your application. If BLM cannot readily separate costs, such as costs associated with preparing environmental analyses, you and any competing applicants must pay an equal share or a proportion agreed to in writing among all applicants and BLM. If you agree to share costs that are common to your application and that of a competing applicant, and the competitor does not pay the agreed upon amount, you are liable for the entire amount due. The applicants must pay the entire processing fee in advance. BLM will not process your application until we receive the advance payments.

(b) *Who determines whether competition exists?* BLM determines whether the applications are compatible in a single right-of-way system or are competing applications for the same system.

(c) If BLM determines that competition exists, BLM will describe the procedures for a competitive bid through a bid announcement in a newspaper of general circulation in the area affected by the potential right-of-way and by a notice in the **Federal Register**.

§ 2804.24 Do I always have to submit an application for a grant using Standard Form 299?

You do not have to file an application using Standard Form 299 if:

(a) BLM determines that competition exists (*see* § 2804.23(c) of this subpart); or

(b) You are an oil and gas operator. You may include your right-of-way requirements for a FLPMA grant as part of your Application for Permit to Drill or Sundry Notice under the regulations in parts 3160 through 3190 of this chapter.

§ 2804.25 How will BLM process my application?

(a) BLM will notify you in writing when it receives your application and will identify your processing fee described at § 2804.14 of this subpart.

(b) BLM may require you to submit additional information necessary to process the application. This information may include a detailed construction, operation, rehabilitation, and environmental protection plan, *i.e.*, a ''Plan of Development,'' and any needed cultural resource surveys or inventories for threatened or endangered species. If BLM needs more information, we will identify this information in a written deficiency notice asking you to provide the additional information within a specified period of time. BLM will notify you of any other grant applications which involve all or part of the lands for which you applied.

(c) *Customer service standard.* BLM will process your completed application as follows:

Processing category	Processing time	Conditions
1–4	60 calendar days	If processing your application will take longer than 60 calendar days, BLM will notify you in writing of this fact prior to the 30th calendar day and inform you of when you can expect a final decision on your application.
5	As specified in the Master Agreement	BLM will process applications as specified in the Agreement.
6	Over 60 calendar days	BLM will notify you in writing within the initial 60-day processing period of the estimated processing time.

(d) Before issuing a grant, BLM will:

(1) Complete a NEPA analysis for the application or approve a NEPA analysis previously completed for the application, as required by 40 CFR parts 1500 through 1508;

(2) Determine whether or not your proposed use complies with applicable Federal and state laws;

(3) If your application is for a road, determine whether it is in the public interest to require you to grant the United States an equivalent authorization across lands that you own;

(4) Consult, as necessary, with other governmental entities;

(5) Hold public meetings if sufficient public interest exists to warrant their time and expense. BLM will publish a notice in the **Federal Register**, a newspaper of general circulation in the vicinity of the lands involved, or both, announcing in advance any public hearings or meetings; and

(6) Take any other action necessary to fully evaluate and decide whether to approve or deny your application.

§ 2804.26 Under what circumstances may BLM deny my application?

(a) BLM may deny your application if:

(1) The proposed use is inconsistent with the purpose for which BLM manages the public lands described in your application;

(2) The proposed use would not be in the public interest;

(3) You are not qualified to hold a grant;

(4) Issuing the grant would be inconsistent with the Act, other laws, or these or other regulations;

(5) You do not have or cannot demonstrate the technical or financial capability to construct the project or operate facilities within the right-of-way; or

(6) You do not adequately comply with a deficiency notice (*see* § 2804.25(b) of this subpart) or with any BLM requests for additional information needed to process the application.

(b) If BLM denies your application, you may appeal this decision under § 2801.10 of this part.

§ 2804.27 What fees do I owe if BLM denies my application or if I withdraw my application?

If BLM denies your application or you withdraw it, you owe the processing fee set forth at § 2804.14 of this subpart, unless you have a Processing Category 5 or 6 application. Then, the following conditions apply:

(a) If BLM denies your Processing Category 5 or 6 application, you are liable for all reasonable costs that the United States incurred in processing it. The money you have not paid is due within 30 calendar days after receiving a bill for the amount due.

(b) You may withdraw your application in writing before BLM issues a grant. If you do so, you are liable for all reasonable processing costs the United States has incurred up to the time you withdraw the application and for the reasonable costs of terminating your application. Any money you have not paid is due within 30 calendar days after receiving a bill for the amount due. Any money you paid that is not used to cover costs the United States incurred as a result of your application will be refunded to you.

§ 2804.28 What processing fees must I pay for a BLM grant application associated with Federal Energy Regulatory Commission (FERC) licenses or re-license applications under part I of the Federal Power Act (FPA)?

(a) You must reimburse BLM for the costs which the United States incurs in processing your grant application associated with a FERC project, other than those described at § 2801.6(b)(7) of this part. BLM also requires reimbursement for processing a grant application associated with a FERC project licensed before October 24, 1992, that involves the use of additional public lands outside the original area reserved under section 24 of the FPA.

(b) BLM will determine the amount you must pay by using the processing fee categories described at § 2804.14 of this subpart and bill you for the costs. FERC will address other costs associated with processing a FERC license or relicense (*see* 18 CFR chapter I).

§ 2804.29 What activities may I conduct on the lands covered by the proposed right-of-way while BLM is processing my application?

(a) You may conduct casual use activities on the BLM lands covered by the application, as may any other member of the public. BLM does not require a grant for casual use on BLM lands.

(b) For any activities on BLM lands that are not casual use, you must obtain prior BLM approval.

Subpart 2805—Terms and Conditions of Grants

§ 2805.10 How will I know whether BLM has approved or denied my application?

(a) BLM will send you a written response on your application. If we do not deny the application, we will send you an unsigned grant for your review and signature that:

(1) Includes any terms, conditions, and stipulations that BLM determines to be in the public interest. This includes modifying your proposed use or changing the route or location of the facilities;

(2) May include terms that prevent your use of the right-of-way until you have an approved Plan of Development and BLM has issued a Notice to Proceed; and

(3) Will impose a specific term for the grant. Each grant that BLM issues for 20 or more years will contain a provision requiring periodic review at the end of the twentieth year and subsequently at 10-year intervals. BLM may change the terms and conditions of the grant as a result of these reviews in accordance with § 2805.15(e) of this subpart.

(b) If you agree with the terms and conditions of the unsigned grant, you should sign and return it to BLM with any payment required under § 2805.16 of this subpart. BLM will sign the grant and return it to you with a final decision issuing the grant if the regulations in this part, including § 2804.26, remain satisfied. You may appeal this decision under § 2801.10 of this part.

(c) If BLM denies your application, we will send you a written decision that will:

(1) State the reasons for the denial (*see* § 2804.26 of this part);

(2) Identify any processing costs you must pay (*see* § 2804.14 of this part); and

(3) Notify you of your right to appeal this decision under § 2801.10 of this part.

§ 2805.11 What does a grant contain?

The grant states what your rights are on the lands subject to the grant and contains information about:

(a) *What lands you can use or occupy.* The lands may or may not correspond to those for which you applied. BLM will limit the grant to those lands which BLM determines:

(1) You will occupy with authorized facilities;

(2) Are necessary for constructing, operating, maintaining, and terminating the authorized facilities;

(3) Are necessary to protect the public health and safety;

(4) Will not unnecessarily damage the environment; and

(5) Will not result in unnecessary or undue degradation.

(b) *How long you can use the right-of-way.* Each grant will state the length of time that you are authorized to use the right-of-way.

(1) BLM will consider the following factors in establishing a reasonable term:

(i) The public purpose served;

(ii) Cost and useful life of the facility;

(iii) Time limitations imposed by licenses or permits required by other Federal agencies and state, tribal, or local governments; and

(iv) The time necessary to accomplish the purpose of the grant.

(2) All grants, except those issued for a term of less than one year and those issued in perpetuity, expire on December 31 of the final year of the grant.

(c) *How you can use the right-of-way.* You may only use the right-of-way for the specific use the grant authorizes.

§ 2805.12 What terms and conditions must I comply with?

By accepting a grant, you agree to comply with and be bound by the following terms and conditions. During construction, operation, maintenance, and termination of the project you must:

(a) To the extent practicable, comply with all existing and subsequently enacted, issued, or amended Federal laws and regulations and state laws and regulations applicable to the authorized use;

(b) Rebuild and repair roads, fences, and established trails destroyed or damaged by the project;

(c) Build and maintain suitable crossings for existing roads and significant trails that intersect the project;

(d) Do everything reasonable to prevent and suppress wildfires on or in the immediate vicinity of the right-of-way area;

(e) Not discriminate against any employee or applicant for employment during any phase of the project because of race, creed, color, sex, or national origin. You must also require subcontractors to not discriminate;

(f) Pay monitoring fees and rent described in § 2805.16 of this subpart and subpart 2806 of this part;

(g) If BLM requires, obtain, and/or certify that you have obtained, a surety bond or other acceptable security to cover any losses, damages, or injury to human health, the environment, and property in connection with your use and occupancy of the right-of-way, including terminating the grant, and to secure all obligations imposed by the grant and applicable laws and regulations. If you plan to use hazardous materials in the operation of your grant, you must provide a bond that covers liability for damages or injuries resulting from releases or discharges of hazardous materials. BLM may require a bond, an increase or decrease in the value of an existing bond, or other acceptable security at any time during the term of the grant;

(h) Assume full liability if third parties are injured or damages occur to property on or near the right-of-way (*see* § 2807.12 of this part);

(i) Comply with project-specific terms, conditions, and stipulations, including requirements to:

(1) Restore, revegetate, and curtail erosion or conduct any other rehabilitation measure BLM determines necessary;

(2) Ensure that activities in connection with the grant comply with air and water quality standards or related facility siting standards contained in applicable Federal or state law or regulations;

(3) Control or prevent damage to:

(i) Scenic, aesthetic, cultural, and environmental values, including fish and wildlife habitat;

(ii) Public and private property; and

(iii) Public health and safety;

(4) Protect the interests of individuals living in the general area who rely on the area for subsistence uses as that term is used in Title VIII of Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111 *et seq.*);

(5) Ensure that you construct, operate, maintain, and terminate the facilities on the lands in the right-of-way in a manner consistent with the grant;

(6) When the state standards are more stringent than Federal standards, comply with state standards for public health and safety, environmental protection, and siting, constructing, operating, and maintaining any facilities and improvements on the right-of-way; and

(7) Grant BLM an equivalent authorization for an access road across your land if BLM determines the reciprocal authorization is needed in the public interest and the authorization BLM issues to you is also for road access;

(j) Immediately notify all Federal, state, tribal, and local agencies of any release or discharge of hazardous material reportable to such entity under applicable law. You must also notify BLM at the same time, and send BLM a copy of any written notification you prepared;

(k) Not dispose of or store hazardous material on your right-of-way, except as provided by the terms, conditions, and stipulations of your grant;

(l) Certify your compliance with all requirements of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001 *et seq.*, when you receive, assign, renew, amend, or terminate your grant;

(m) Control and remove any release or discharge of hazardous material on or near the right-of-way arising in connection with your use and occupancy of the right-of-way, whether or not the release or discharge is authorized under the grant. You must also remediate and restore lands and resources affected by the release or discharge to BLM's satisfaction and to the satisfaction of any other Federal, state, tribal, or local agency having jurisdiction over the land, resource, or hazardous material;

(n) Comply with all liability and indemnification provisions and stipulations in the grant;

(o) As BLM directs, provide diagrams or maps showing the location of any constructed facility; and

(p) Comply with all other stipulations that BLM may require.

§ 2805.13 When is a grant effective?

A grant is effective after both you and BLM sign it. You must accept its terms and conditions in writing and pay any necessary rent and monitoring fees as set forth in subpart 2806 of this part and § 2805.16 of this subpart. Your written acceptance constitutes an agreement between you and BLM that your right to use the public lands, as specified in the grant, is subject to the terms and conditions of the grant and applicable laws and regulations.

§ 2805.14 What rights does a grant convey?

The grant conveys to you only those rights which it expressly contains. BLM issues it subject to the valid existing rights of others, including the United States. Rights which the grant conveys to you include the right to:

(a) Use the described lands to construct, operate, maintain, and terminate facilities within the right-of-way for authorized purposes under the terms and conditions of the grant;

(b) If your grant specifically authorizes, allow other parties to use your facility for the purposes specified in your grant and you may charge for such use. If your grant does not specifically authorize it, you may not let anyone else use your facility and you may not charge for its use unless BLM authorizes or requires it in writing;

(c) Allow others to use the land as your agent in the exercise of the rights that the grant specifies;

(d) Do minor trimming, pruning, and removing of vegetation to maintain the right-of-way or facility;

(e) Use common varieties of stone and soil which are necessarily removed during construction of the project, without additional BLM authorization or payment, in constructing the project within the authorized right-of-way; and

(f) Assign the grant to another, provided that you obtain BLM's prior written approval.

§ 2805.15 What rights does the United States retain?

The United States retains and may exercise any rights the grant does not expressly convey to you. These include BLM's right to:

(a) Access the lands covered by the grant at any time and enter any facility

you construct on the right-of-way. BLM will give you reasonable notice before it enters any facility on the right-of-way;

(b) Require common use of your right-of-way, including subsurface and air space, and authorize use of the right-of-way for compatible uses. You may not charge for the use of the lands made subject to such additional right-of-way grants;

(c) Retain ownership of the resources of the land, including timber and vegetative or mineral materials and any other living or non-living resources. You have no right to use these resources, except as noted in § 2805.14(e) of this subpart;

(d) Determine whether or not your grant is renewable; and

(e) Change the terms and conditions of your grant as a result of changes in legislation, regulation, or as otherwise necessary to protect public health or safety or the environment.

§ 2805.16 If I hold a grant, what monitoring fees must I pay?

(a) *Monitoring fees.* You must pay a fee to BLM for the reasonable costs the Federal government incurs in monitoring the construction, operation, maintenance, and termination of the project and protection and rehabilitation of the public lands your grant covers. BLM categorizes the monitoring fees based on the estimated number of work hours necessary to monitor your grant. Monitoring Category 1 through 4 fees are one-time fees and are not refundable. The work hours and fees for 2005 are as follows:

2005 MONITORING FEE SCHEDULE

Monitoring category	Federal work hours involved	Monitoring fee as of June 21, 2005. To be adjusted annually for changes in the IPD–GDP. See paragraph (b) of this section for update information
(1) Applications for new grants, assignments, renewals, and amendments to existing grants.	Estimated Federal work hours are > 1 ≤ 8.	$97.
(2) Applications for new grants, assignments, renewals, and amendments to existing grants.	Estimated Federal work hours are > 8 ≤ 24.	$343.
(3) Applications for new grants, assignments, renewals, and amendments to existing grants.	Estimated Federal work hours are > 24 ≤ 36.	$644.
(4) Applications for new grants, assignments, renewals, and amendments to existing grants.	Estimated Federal work hours > 36 ≤ 50.	$923.
(5) Master Agreements	Varies	As specified in the Agreement.
(6) Applications for new grants, assignments, renewals, and amendments to existing grants.	Estimated Federal work hours are > 50.	Full reasonable costs.

(b) *Updating the schedule.* BLM will revise paragraph (a) of this section annually to update Category 1 through 4 monitoring fees in the manner described at § 2804.14(c) of this part. BLM will update Category 5 monitoring fees as specified in the Master Agreement. The monitoring cost schedule is available from any BLM state or field office or by writing: Director, Bureau of Land Management, 1849 C St., NW., Mail Stop 1000LS, Washington, DC 20240. BLM also posts the current schedule on the BLM Homepage on the Internet at *http://www.blm.gov*.

§ 2805.17 When do I pay monitoring fees?

(a) *Monitoring Categories 1 through 4.* Unless BLM otherwise directs, you must pay monitoring fees when you submit to BLM your written acceptance of the terms and conditions of the grant.

(b) *Monitoring Category 5.* You must pay monitoring fees as specified in the Master Agreement. BLM will not issue your grant until it receives the required payment.

(c) *Monitoring Category 6.* BLM may periodically estimate the costs of monitoring your use of the grant. BLM will include this fee in the costs associated with processing fees described at § 2804.14 of this part. If BLM has underestimated the monitoring costs, we will notify you of the shortfall. If your payments exceed the reasonable costs that Federal employees incurred for monitoring, BLM will either reimburse you the difference, or adjust the next billing to reflect the overpayment. Unless BLM gives you written authorization, you may not offset or deduct the overpayment from your payments.

(d) *Monitoring Categories 1–4 and 6.* If you disagree with the category BLM has determined for your grant, you may appeal the decision under § 2801.10 of this part.

Subpart 2806—Rents

General Provisions

§ 2806.10 What rent must I pay for my grant?

(a) You must pay in advance a rent BLM establishes based on sound business management principles and, as far as practical and feasible, using comparable commercial practices. Rent does not include processing or monitoring fees and rent is not offset by such fees. BLM may exempt, waive, or reduce rent for a grant under §§ 2806.14 and 2806.15 of this subpart.

(b) If BLM issued your grant on or before October 21, 1976, under then existing statutory authority, upon request, BLM will conduct an informal hearing before a proposed rent increase becomes effective. This applies to rent increases due to a BLM-initiated change in the rent or from initially being put on a rent schedule. You are not entitled to a hearing on annual adjustments once you are on a rent schedule.

§ 2806.11 How will BLM charge me rent?

(a) BLM will charge rent beginning on the first day of the month following the effective date of the grant through the last day of the month when the grant terminates. *Example:* If a grant became effective on January 10 and terminated on September 16, the rental period would be February 1 through September 30, or 8 months.

(b) BLM will set or adjust the annual billing periods to coincide with the calendar year by prorating the rent based on 12 months.

(c) If you disagree with the rent that BLM charges, you may appeal the decision under § 2801.10 of this part.

§ 2806.12 When do I pay rent?

(a) You must pay rent for the initial rental period before BLM issues you a grant.

(b) You make all other rental payments for linear rights-of-way

according to the payment plan described in § 2806.23 of this subpart.

(c) After the first rental payment, all rent is due on January 1 of the first year of each succeeding rental period for the term of your grant.

§ 2806.13 What happens if I pay the rent late?

(a) If BLM does not receive the rent payment within 15 calendar days after the rent was due under § 2806.12 of this subpart, BLM will charge you a late payment fee of $25.00 or 10 percent of the rent you owe, whichever is greater, not to exceed $500 per authorization.

(b) If BLM does not receive your rent payment and late payment fee within 30 calendar days after rent was due, BLM may collect other administrative fees provided by statute.

(c) If BLM does not receive your rent, late payment fee, and any administrative fees within 90 calendar days after the rent was due, BLM may terminate your grant under § 2807.17 of this part and you may not remove any facility or equipment without BLM's written permission (*see* § 2807.19 of this part). The rent due, late payment fees, and any administrative fees remain a debt that you owe to the United States.

(d) If you pay the rent, late payment fee, and any administrative fees after BLM has terminated the grant, BLM does not automatically reinstate the grant. You must file a new application with BLM. BLM will consider the history of your failure to timely pay rent in deciding whether to issue you a new grant.

(e) You may appeal any adverse decision BLM takes against your grant under § 2801.10 of this part.

§ 2806.14 Under what circumstances am I exempt from paying rent?

You do not have to pay rent for your use if:

(a) BLM issues the grant under a statute which does not allow BLM to charge rent;

(b) You are a Federal, state, or local government or its agent or instrumentality, unless you are:

(1) Using the facility, system, space, or any part of the right-of-way area for commercial purposes; or

(2) A municipal utility or cooperative whose principal source of revenue is customer charges;

(c) You have been granted an exemption under a statute providing for such; or

(d) Electric or telephone facilities constructed on the right-of-way were financed in whole or in part, or eligible for financing, under the Rural Electrification Act of 1936, as amended (REA) (7 U.S.C. 901 *et seq.*), or are extensions of such facilities. You do not need to have sought financing from the Rural Utilities Service to qualify for this exemption. BLM may require you to document the facility's eligibility for REA financing. For communication site facilities, adding or including non-eligible facilities as, for example, by tenants or customers, on the right-of-way will subject the holder to rent in accordance with §§ 2806.30 through 2806.44 of this subpart.

§ 2806.15 Under what circumstances may BLM waive or reduce my rent?

(a) BLM may waive or reduce your rent payment, even to zero in appropriate circumstances. BLM may require you to submit information to support a finding that your grant qualifies for a waiver or a reduction of rent.

(b) BLM may waive or reduce your rent if you show BLM that:

(1) You are a non-profit organization, corporation, or association which is not controlled by, or is not a subsidiary of, a profit making corporation or business enterprise and the facility or project will provide a benefit or special service to the general public or to a program of the Secretary;

(2) You provide without charge, or at reduced rates, a valuable benefit to the public at large or to the programs of the Secretary of the Interior;

(3) You hold a valid Federal authorization in connection with your grant and the United States is already receiving compensation for this authorization. This paragraph does not apply to oil and gas leases issued under part 3100 of this chapter; or

(4) Your grant involves a cost share road or a reciprocal right-of-way agreement not subject to subpart 2812 of this chapter. In these cases, BLM will determine the rent based on the proportion of use.

(c) The BLM State Director may waive or reduce your rent payment if the BLM State Director determines that paying the full rent will cause you undue hardship and it is in the public interest to waive or reduce your rent. In your request for a waiver or rental reduction you must include a suggested alternative rental payment plan or timeframe within which you anticipate resuming full rental payments. BLM may also require you to submit specific financial and technical data or other information that corrects or modifies the statement of financial capability required by § 2804.12(a)(5) of this part.

§ 2806.16 When must I make estimated rent payments to BLM?

To expedite the processing of your grant application, BLM may estimate rent payments and collect that amount before it issues the grant. The amount may change once BLM determines the actual rent of the right-of-way. BLM will credit any rental overpayment, and you are liable for any underpayment. This section does not apply to rent payments made under a rent schedule in this part.

Linear Rights-of-Way

§ 2806.20 What is the rent for a linear right-of-way?

(a) Except as noted in paragraph (c) of this section, BLM will use the Per Acre Rent Schedule found at paragraph (b) of this section to calculate rent for linear rights-of-way. The Per Acre Rent Schedule is updated annually in accordance with § 2806.21 of this subpart.

(b) The Per Acre Rent Schedule for calendar year 2005 is as follows:

2005 PER ACRE RENT SCHEDULE

County zone number and per acre zone price	Per acre rent for oil and gas and other energy related pipeline, and all roads, ditches, and canals. To be adjusted annually for changes in the IPD–GDP. See § 2806.21 for update information	Per acre rent for electric transmission and distributionlines, telephone lines, non-related pipelines, and other linear rights-of-way. To be adjusted annually for changes in the IPD–GDP. See § 2806.21 for update information
Zone 1 $50	$3.89	$3.40
Zone 2 $100	7.76	6.79
Zone 3 $200	15.58	13.61

2005 PER ACRE RENT SCHEDULE—Continued

County zone number and per acre zone price	Per acre rent for oil and gas and other energy related pipeline, and all roads, ditches, and canals. To be adjusted annually for changes in the IPD–GDP. See § 2806.21 for update information	Per acre rent for electric transmission and distributionlines, telephone lines, non-related pipelines, and other linear rights-of-way. To be adjusted annually for changes in the IPD–GDP. See § 2806.21 for update information
Zone 4 $300	23.31	20.43
Zone 5 $400	31.14	27.23
Zone 6 $500	38.89	34.03
Zone 7 $600	46.66	40.86
Zone 8 $1,000	77.78	68.05

(c) BLM may use an alternate means to compute your rent if the rent determined by comparable commercial practices or an appraisal would be 10 or more times the rent from the schedule.

(d) Once you are on a rent schedule, BLM will not remove you from it unless:

(1) The BLM State Director decides to remove you from the schedule under paragraph (c) of this section; or

(2) You file an application to amend your grant.

(e) You may obtain the current linear right-of-way rent schedule from any BLM state or field office or by writing: Director, BLM, 1849 C St., NW., Mail Stop 1000 LS, Washington, DC 20240. BLM also posts the most current rent schedule on the BLM Homepage on the Internet at *http://www.blm.gov.*

§ 2806.21 When and how does the linear rent schedule change?

BLM will revise § 2806.20(b) to update the rent schedule each calendar year based on the previous year's change in the IPD–GDP, as measured second quarter to second quarter.

§ 2806.22 How will BLM calculate my rent for linear rights-of-way the schedule covers?

(a) BLM calculates your rent by multiplying the rent per acre for the appropriate category of use and county zone price from the current schedule by the number of acres in the right-of-way area that fall in those categories and multiplying the result by the number of years in the rental period.

(b) If BLM has not previously used the rent schedule to calculate your rent, we may do so after giving you reasonable written notice.

§ 2806.23 How must I make rental payments for a linear grant?

(a) For linear grants, except those issued in perpetuity, you must make either nonrefundable annual payments or a nonrefundable payment for more than 1 year, as follows:

(1) *One-time payments.* You may pay in advance the required rent amount for the entire term of the grant.

(2) If you choose not to make a one-time payment, you must pay according to one of the following methods, as applicable:

(i) *Payments by individuals.* If your annual rent is $100 or less, you must pay at 10-year intervals not to exceed the term of the grant. If your annual rent is greater than $100, you may pay annually or at multi-year intervals that you may choose.

(ii) *Payments by all others.* You must pay rent at 10-year intervals not to exceed the term of the grant.

(b) BLM considers the first partial calendar year in the rent payment period to be the first year of the rental payment term. BLM prorates the first year rental amount based on the number of months left in the calendar year after the effective date of the grant.

(c) *Perpetual grants.* For linear grants issued in perpetuity, you must make a one-time rental payment before BLM will issue the grant, except individuals may choose to make rental payments as provided in paragraph (a)(2)(i) of this section. BLM determines the one-time payment as follows:

(1) BLM will calculate rent for grants issued in perpetuity by multiplying the annual rent by 100; or

(2) You may request from BLM a rent determination based on the prevailing price established by general practice in the vicinity of the right-of-way. You must:

(i) Prepare a report, at your expense, that explains how you estimated the rent;

(ii) Complete it to Federal appraisal standards; and

(iii) Submit it for consideration and approval by the BLM State Director with jurisdiction over the lands in the grant. If the BLM State Director does not approve the rent estimated in your report, you may appeal the decision under § 2801.10 of this part.

Communication Site Rights-of-Way

§ 2806.30 What are the rents for communication site rights-of-way?

(a) *Rent schedule.* (1) BLM uses the rent schedule for communication uses found in paragraph (b) of this section to calculate the rent for communication site rights-of-way. The schedule is based on nine population strata (the population served), as depicted in the most recent version of the Ranally Metro Area Population Ranking, and the type of communication use or uses for which BLM normally grants communication site rights-of-way. These uses are listed as part of the definition of ''communication use rent schedule,'' set out at § 2801.5(b) of this part. You may obtain a copy of the current schedule from any BLM state or field office or by writing: Director, BLM, 1849 C St., NW., Mail Stop 1000 LS, Washington, DC 20240. BLM also posts the current communication use rent schedule on the BLM Home Page on the Internet at *http://www.blm.gov.*

(2) BLM will revise paragraph (b) of this section annually to update the schedule based on two sources: the U.S. Department of Labor Consumer Price Index for All Urban Consumers, U.S. City Average (CPI–U), as of July of each year (difference in CPI–U from July of one year to July of the following year), and the RMA population rankings.

(3) BLM will limit the annual adjustment based on the Consumer Price Index to no more than 5 percent. At least every 10 years BLM will review the rent schedule to ensure that the schedule reflects fair market value.

(b) The annual rent schedule for communication uses for calendar year 2005 is as follows:

COMMUNICATION USE RENT SCHEDULE ANNUAL FEES

[Calendar year 2005]

Population	Television broadcast	Am/FM radio broadcast [1]	Cable television	Broadcast translator/ LPTV/LPFM	CMRS/facility manager	Cellular telephone	Private mobile radio service	Microwave	Other communication uses
5,000,000 plus	$55,861.13	$42,206.21	(2)	(2)	$14,896.30	$14,896.30	$12,413.59	$12,413.59	$93.10
2,500,000 to 4,999,999	37,240.76	26,068.54	(2)	(2)	12,413.59	12,413.59	7,448.15	9,930.88	93.10
1,000,000 to 2,499,999	22,344.46	17,379.01	(2)	(2)	9,930.88	9,930.88	7,448.15	8,689.51	93.10
500,000 to 999,999	17,379.01	12,413.59	(2)	(2)	6,206.79	7,448.15	4,965.43	6,827.47	93.10
300,000 to 499,999	14,896.30	9,930.88	(2)	(2)	4,965.43	6,206.79	3,103.39	3,103.39	93.10
100,000 to 299,999	7,448.15	4,965.43	2,979.25	2,979.25	3,724.08	4,965.43	2,482.72	2,482.72	93.10
50,000 to 99,999	3,724.08	2,482.72	1,489.63	1,489.63	1,489.63	3,724.08	1,241.36	1,862.03	93.10
25,000 to 49,999	1,862.03	1,489.63	1,241.36	620.68	1,241.36	3,103.39	744.81	1,862.03	93.10
Less Than 25,000	1,489.63	1,117.22	744.81	124.14	744.81	3,103.39	434.47	1,862.03	93.10

[1] Rent for AM Radio is 70% of the FM Scheduled Rent.
[2] Fee to be determined by appraisal or other methods.

(c) *Uses not covered by the schedule.* The communication use rent schedule does not apply to:

(1) Communication site uses, facilities, and devices located entirely within the exterior boundaries of an oil and gas lease, and directly supporting the operations of the oil and gas lease (see parts 3160 through 3190 of this chapter);

(2) Communication facilities and uses ancillary to and authorized under a linear grant, such as a railroad grant or an oil and gas pipeline grant;

(3) Communication uses not listed on the schedule, such as telephone lines, fiber optic cables, and new technologies;

(4) Grants for which BLM determines the rent by competitive bidding; or

(5) Communication facilities and uses for which the BLM State Director concurs that:

(i) The expected annual rent, as BLM estimates from market data, exceeds the rent from the rent schedule by five times; or

(ii) The communication site serves a population of one million or more and the expected annual rent for the communication use or uses is more than $10,000 above the rent from the rent schedule.

§ 2806.31 How will BLM calculate rent for a right-of-way for communication uses in the schedule?

(a) *Basic rule.* BLM calculates rents for:

(1) Single-use facilities by applying the rent from the communication use rent schedule (*see* § 2806.30 of this subpart) for the type of use and the population strata served; and

(2) Multiple-use facilities, whose authorizations provide for subleasing, by setting the rent of the highest value use in the facility or facilities as the base rent (taken from the rent schedule) and adding to it 25 percent of the rent from the rent schedule for all tenant uses in the facility or facilities, if a tenant use is not used as the base rent (rent = base rent + 25 percent of all rent due to additional tenant uses in the facility or facilities) (see also §§ 2806.32 and 2806.34 of this subpart).

(b) *Exclusions.* When calculating rent, BLM will exclude customer uses, except as provided for at §§ 2806.34(b)(4) and 2806.42 of this subpart. BLM will also exclude those uses exempted from rent by § 2806.14 of this subpart, and any uses whose rent has been waived or reduced to zero as described in § 2806.15 of this subpart.

(c) *Annual statement.* By October 15 of each year, you, as a grant or lease holder, must submit to BLM a certified statement listing any tenants and customers in your facility or facilities and the category of use for each tenant or customer as of September 30 of the same year. BLM may require you to submit any additional information needed to calculate your rent. BLM will determine the rent based on the certified statement provided. We require only facility owners or facility managers to hold a grant or lease (unless you are an occupant in a federally-owned facility as described in § 2806.42 of this subpart), and will charge you rent for your grant or lease based on the total number of communication uses within the right-of-way and the type of uses and population strata the facility or site serves.

§ 2806.32 How does BLM determine the population strata served?

(a) BLM determines the population strata served as follows:

(1) If the site or facility is within a designated RMA, BLM will use the population strata of the RMA;

(2) If the site or facility is within a designated RMA, and it serves two or more RMAs, BLM will use the population strata of the RMA having the greatest population;

(3) If the site or facility is outside an RMA, and it serves one or more RMAs, BLM will use the population strata of the RMA served having the greatest population;

(4) If the site or facility is outside an RMA and the site does not serve an RMA, BLM will use the population strata of the community it serves having the greatest population, as identified in the current edition of the Rand McNally Road Atlas;

(5) If the site or facility is outside an RMA, and it serves a community of less than 25,000, BLM will use the lowest population strata shown on the rent schedule.

(b)(1) BLM considers all facilities (and all uses within the same facility) located at one site to serve the same RMA or community. However, BLM may make case-by-case exceptions in determining the population served at a particular site by uses not located within the same facility and not authorized under the same grant or lease. BLM has the sole responsibility to make this determination. For example, when a site has a mix of high-power and low-power uses that are authorized by separate grants or leases, and only the high-power uses are capable of serving an RMA or community with the greatest population, BLM may separately determine the population strata served by the low-power uses (if not collocated in the same facility with the high-power uses), and calculate their rent as described in § 2806.30 of this subpart.

(2) For purposes of rent calculation, all uses within the same facility and/or authorized under the same grant or lease must serve the same population strata.

(3) For purposes of rent calculation, BLM will not modify the population rankings published in the Rand McNally Commercial Atlas and Marketing Guide or the population of the community served.

§ 2806.33 How will BLM calculate the rent for a grant or lease authorizing a single use communication facility?

BLM calculates the rent for a grant or lease authorizing a single-use communication facility from the communication use rent schedule (*see* § 2806.30 of this subpart), based on your authorized single use and the population strata it serves (*see* § 2806.32 of this subpart).

§ 2806.34 How will BLM calculate the rent for a grant or lease authorizing a multiple-use communication facility?

(a) *Basic rule.* BLM first determines the population strata the communication facility serves according to § 2806.32 of this subpart and then calculates the rent assessed to facility owners and facility managers for a grant or lease for a communication facility that authorizes subleasing with tenants, customers, or both, as follows:

(1) *Using the communication use rent schedule.* BLM will determine the rent of the highest value use in the facility or facilities as the base rent, and add to it 25 percent of the rent from the rent schedule (*see* § 2806.30 of this subpart) for each tenant use in the facility or facilities;

(2) If the highest value use is not the use of the facility owner or facility manager, BLM will consider the owner's or manager's use like any tenant or customer use in calculating the rent (*see* § 2806.35(b) for facility owners and § 2806.39(a) for facility managers);

(3) If a tenant use is the highest value use, BLM will exclude the rent for that tenant's use when calculating the additional 25 percent amount under paragraph (a)(1) of this section for tenant uses;

(4) If a holder has multiple uses authorized under the same grant or lease, such as a TV and a FM radio station, BLM will calculate the rent as in paragraph (a)(1) of this section. In this case, the TV rent would be the highest value use and BLM would charge the FM portion according to the rent schedule as if it were a tenant use.

(b) *Special applications.* The following provisions apply when

calculating rents for communication uses exempted from rent under § 2806.14 of this subpart or communication uses whose rent has been waived or reduced to zero under § 2806.15 of this subpart:

(1) BLM will exclude exempted uses or uses whose rent has been waived or reduced to zero (*see* §§ 2806.14 and 2806.15 of this subpart) of either a facility owner or a facility manager in calculating rents. BLM will exclude similar uses (*see* §§ 2806.14 and 2806.15 of this subpart) of a customer or tenant if they choose to hold their own grant or lease (*see* § 2806.36 of this subpart) or are occupants in a Federal facility (*see* § 2806.42(a) of this subpart);

(2) BLM will charge rent to a facility owner whose own use is either exempted from rent or whose rent has been waived or reduced to zero (*see* §§ 2806.14 and 2806.15 of this subpart), but who has tenants in the facility, in an amount equal to the rent of the highest value tenant use plus 25 percent of the rent from the rent schedule for each of the remaining tenant uses subject to rent;

(3) BLM will not charge rent to a facility owner, facility manager, or tenant (when holding a grant or lease) when all of the following occur:

(i) BLM exempts from rent, waives, or reduces to zero the rent for the holder's use (*see* §§ 2806.14 and 2806.15 of this subpart);

(ii) Rent from all other uses in the facility is exempted, waived, or reduced to zero, or BLM considers such uses as customer uses; and

(iii) The holder is not operating the facility for commercial purposes (*see* § 2801.5(b) of this part) with respect to such other uses in the facility; and

(4) If a holder, whose own use is exempted from rent or whose rent has been waived or reduced to zero, is conducting a commercial activity with customers or tenants whose uses are also exempted from rent or whose rent has been waived or reduced to zero (*see* §§ 2806.14 and 2806.15 of this subpart), BLM will charge rent, notwithstanding section 2806.31(b), based on the highest value use within the facility. This paragraph does not apply to facilities exempt from rent under § 2806.14(d) of this subpart except when the facility also includes non-eligible facilities.

§ 2806.35 How will BLM calculate rent for private mobile radio service (PMRS), internal microwave, and ''other'' category uses?

If an entity engaged in a PMRS, internal microwave, or ''other'' use is:

(a) Using space in a facility owned by either a facility owner or facility manager, BLM will consider the entity to be a customer and not include these uses in the rent calculation for the facility; or

(b) The facility owner, BLM will follow the provisions in § 2806.31 of this subpart to calculate rent for a lease involving these uses. However, we include the rent from the rent schedule for a PMRS, internal microwave, or other use in the rental calculation only if the value of that use is equal to or greater than the value of any other use in the facility. BLM excludes these uses in the 25 percent calculation (*see* § 2806.31(a) of this subpart) when their value does not exceed the highest value in the facility.

§ 2806.36 If I am a tenant or customer in a facility, must I have my own grant or lease and if so, how will this affect my rent?

(a) You may have your own authorization, but BLM does not require a separate grant or lease for tenants and customers using a facility authorized by a BLM grant or lease that contains a subleasing provision. BLM charges the facility owner or facility manager rent based on the highest value use within the facility (including any tenant or customer use authorized by a separate grant or lease) and 25 percent of the rent from the rent schedule for each of the other uses subject to rent (including any tenant or customer use a separate grant or lease authorizes and the facility owner's use if it is not the highest value use).

(b) If you own a building, equipment shelter, or tower on public lands for communication purposes, you must have an authorization under this part, even if you are also a tenant or customer in someone else's facility.

(c) BLM will charge tenants and customers who hold their own grant or lease in a facility, as grant or lease holders, the full annual rent for their use based on the BLM communication use rent schedule. BLM will also include such tenant or customer use in calculating the rent the facility owner or facility manager must pay.

§ 2806.37 How will BLM calculate rent for a grant or lease involving an entity with a single use (holder or tenant) having equipment or occupying space in multiple BLM-authorized facilities to support that single use?

BLM will include the single use in calculating rent for each grant or lease authorizing that use. For example, a television station locates its antenna on a tower authorized by grant or lease ''A'' and locates its related broadcast equipment in a building authorized by grant or lease ''B.'' The statement listing tenants and customers for each facility (*see* § 2806.31(c) of this subpart) must include the television use because each facility is benefitting economically from having the television broadcast equipment located there, even though the combined equipment is supporting only one single end use.

§ 2806.38 Can I combine multiple grants or leases for facilities located on one site into a single grant or lease?

If you hold authorizations for two or more facilities on the same site, you can combine all those uses under one grant or lease, with BLM's approval. The highest value use in all the combined facilities determines the base rent. BLM then charges for each remaining use in the combined facilities at 25 percent of the rent from the rent schedule. These uses include those uses we previously calculated as base rents when BLM authorized each of the facilities on an individual basis.

§ 2806.39 How will BLM calculate rent for a lease for a facility manager's use?

(a) BLM will follow the provisions in § 2806.31 of this subpart to calculate rent for a lease involving a facility manager's use. However, we include the rent from the rent schedule for a facility manager's use in the rental calculation only if the value of that use is equal to or greater than the value of any other use in the facility. BLM excludes the facility manager's use in the 25 percent calculation (*see* § 2806.31(a) of this subpart) when its value does not exceed the highest value in the facility.

(b) If you are a facility owner and you terminate your use within the facility, but want to retain the lease for other purposes, BLM will continue to charge you for your authorized use until BLM amends the lease to change your use to facility manager or to some other communication use.

§ 2806.40 How will BLM calculate rent for a grant or lease for ancillary communication uses associated with communication uses on the rent schedule?

If the ancillary communication equipment is used solely in direct support of the primary use (*see* the definition of communication use rent schedule in § 2801.5 of this part), BLM will calculate and charge rent only for the primary use.

§ 2806.41 How will BLM calculate rent for communication facilities ancillary to a linear grant or other use authorization?

When a communication facility is ancillary to, and authorized by BLM under, a grant for a linear use, or some other type of use authorization (e.g., a mineral lease or sundry notice), BLM will determine the rent using the linear

rent schedule (*see* § 2806.20 of this subpart) or rent scheme associated with the other authorization, and not the communication use rent schedule.

§ 2806.42 How will BLM calculate rent for a grant or lease authorizing a communication use within a federally-owned communication facility?

(a) If you are an occupant of a federally-owned communication facility, you must have your own grant or lease and pay rent in accordance with these regulations.

(b) If a Federal agency holds a grant or lease and agrees to operate the facility as a facility owner under § 2806.31 of this subpart, occupants do not need a separate BLM grant or lease and BLM will calculate and charge rent to the Federal facility owner under §§ 2806.30 through 2806.44 of this subpart.

§ 2806.43 How does BLM calculate rent for passive reflectors and local exchange networks?

(a) BLM calculates rent for passive reflectors and local exchange networks by using the same rent schedules for passive reflectors and local exchange networks as the Forest Service uses for the region in which the facilities are located. You may obtain the pertinent schedules from the Forest Service or from any BLM state or field office in the region in question. For passive reflectors and local exchange networks not covered by a Forest Service regional schedule, BLM uses the provisions in § 2806.50 of this subpart to determine rent. See Forest Service regulations at 36 CFR chapter II.

(b) For the purposes of this subpart, the term:

(1) *Passive reflector* includes various types of nonpowered reflector devices used to bend or ricochet electronic signals between active relay stations or between an active relay station and a terminal. A passive reflector commonly serves a microwave communication system. The reflector requires point-to-point line-of-sight with the connecting relay stations, but does not require electric power; and

(2) *Local exchange network* means radio service which provides basic telephone service, primarily to rural communities.

§ 2806.44 How will BLM calculate rent for a facility owner's or facility manager's grant or lease which authorizes communication uses subject to the communication use rent schedule and communication uses whose rent BLM determines by other means?

(a) BLM establishes the rent for each of the uses in the facility that are not covered by the communication use rent schedule using § 2806.50 of this subpart.

(b) BLM establishes the rent for each of the uses in the facility that are covered by the rent schedule using §§ 2806.30 and 2806.31 of this subpart.

(c) BLM determines the facility owner or facility manager's rent by identifying the highest rent in the facility of those established under paragraphs (a) and (b) of this section, and adding to it 25 percent of the rent of all other uses subject to rent.

Other Rights-of-Way

§ 2806.50 How will BLM determine the rent for a grant when neither the linear rent schedule at § 2806.20 nor the communication use rent schedule at § 2806.30 applies?

When neither the linear nor the communication use rent schedule is appropriate, BLM determines your rent through a process based on comparable commercial practices, appraisals, competitive bid, or other reasonable methods. BLM will notify you in writing of the rent determination. If you disagree with the rent determination, you may appeal BLM's final determination under § 2801.10 of this part.

Subpart 2807—Grant Administration and Operation

§ 2807.10 When can I start activities under my grant?

When you can start depends on the terms of your grant. You can start activities when you receive the grant you and BLM signed, unless the grant includes a requirement for BLM to provide a written Notice to Proceed. If your grant contains a Notice to Proceed requirement, you may not initiate construction, operation, maintenance, or termination until BLM issues you a Notice to Proceed.

§ 2807.11 When must I contact BLM during operations?

You must contact BLM:

(a) At the times specified in your grant;

(b) When your use requires a substantial deviation from the grant. You must obtain BLM's approval before you begin any activity that is a substantial deviation;

(c) When there is a change affecting your application or grant, including, but not limited to, changes in:

(1) Mailing address;

(2) Partners;

(3) Financial conditions; or

(4) Business or corporate status;

(d) When you submit a certification of construction, if the terms of your grant require it. A certification of construction is a document you submit to BLM after you have finished constructing a facility, but before you begin operating it, verifying that you have constructed and tested the facility to ensure that it complies with the terms of the grant and with applicable Federal and state laws and regulations; or

(e) When BLM requests it. You must update information or confirm that information you submitted before is accurate.

§ 2807.12 If I hold a grant, for what am I liable?

(a) If you hold a grant, you are liable to the United States and to third parties for any damage or injury they incur in connection with your use and occupancy of the right-of-way.

(b) You are strictly liable for any activity or facility associated with your right-of-way area which BLM determines presents a foreseeable hazard or risk of damage or injury to the United States. BLM will specify in the grant any activity or facility posing such hazard or risk, and the financial limitations on damages commensurate with such hazard or risk.

(1) BLM will not impose strict liability for damage or injury resulting primarily from an act of war, an act of God, or the negligence of the United States, except as otherwise provided by law.

(2) As used in this section, strict liability extends to costs incurred by the Federal government to control or abate conditions, such as fire or oil spills, which threaten life, property, or the environment, even if the threat occurs to areas that are not under Federal jurisdiction. This liability is separate and apart from liability under other provisions of law.

(3) You are strictly liable to the United States for damage or injury up to $2 million for any one incident. BLM will update this amount annually to adjust for changes in the Consumer Price Index for All Urban Consumers, U.S. City Average (CPI–U) as of July of each year (difference in CPI–U from July of one year to July of the following year), rounded to the nearest $1,000. This financial limitation does not apply to the release or discharge of hazardous substances on or near the grant, or where liability is otherwise not subject to this financial limitation under applicable law.

(4) BLM will determine your liability for any amount in excess of the $2 million strict liability limitation (as adjusted) through the ordinary rules of negligence.

(5) The rules of subrogation apply in cases where a third party caused the damage or injury.

(c) If you cannot satisfy claims for injury or damage, all owners of any interests in, and all affiliates or subsidiaries of any holder of, a grant, except for corporate stockholders, are jointly and severally liable to the United States.

(d) If BLM issues a grant to more than one person, each is jointly and severally liable.

(e) By accepting the grant, you agree to fully indemnify or hold the United States harmless for liability, damage, or claims arising in connection with your use and occupancy of the right-of-way area.

(f) We address liability of state, tribal, and local governments in § 2807.13 of this subpart.

(g) The provisions of this section do not limit or exclude other remedies.

§ 2807.13 As grant holders, what liabilities do state, tribal, and local governments have?

(a) If you are a state, tribal, or local government or its agency or instrumentality, you are liable to the fullest extent law allows at the time that BLM issues your grant. If you do not have the legal power to assume full liability, you must repair damages or make restitution to the fullest extent of your powers.

(b) BLM may require you to provide a bond, insurance, or other acceptable security to:

(1) Protect the liability exposure of the United States to claims by third parties arising out of your use and occupancy of the right-of-way;

(2) Cover any losses, damages, or injury to human health, the environment, and property incurred in connection with your use and occupancy of the right-of-way; and

(3) Cover any damages or injuries resulting from the release or discharge of hazardous materials incurred in connection with your use and occupancy of the right-of-way.

(c) Based on your record of compliance and changes in risk and conditions, BLM may require you to increase or decrease the amount of your bond, insurance, or security.

(d) The provisions of this section do not limit or exclude other remedies.

§ 2807.14 How will BLM notify me if someone else wants a grant for land subject to my grant or near or adjacent to it?

BLM will notify you in writing when it receives a grant application for land subject to your grant or near or adjacent to it. BLM will consider your written recommendations as to how the proposed use affects the integrity of, or your ability to operate, your facilities. The notice will contain a time period within which you must respond. The notice may also notify you of additional opportunities to comment.

§ 2807.15 How is grant administration affected if the land my grant encumbers is transferred to another Federal agency or out of Federal ownership?

(a) If there is a proposal to transfer the land your grant encumbers to another Federal agency, BLM may, after reasonable notice to you, transfer administration of your grant for the lands BLM formerly administered to another Federal agency, unless doing so would diminish your rights. If BLM determines your rights would be diminished by such a transfer, BLM can still transfer the land, but retain administration of your grant under existing terms and conditions.

(b) If there is a proposal to transfer the land your grant encumbers out of Federal ownership, BLM may, after reasonable notice to you and in conformance with existing policies and procedures:

(1) Transfer the land subject to your grant. In this case, administration of your grant for the lands BLM formerly administered is transferred to the new owner of the land;

(2) Transfer the land, but BLM retains administration of your grant; or

(3) Reserve to the United States the land your grant encumbers, and BLM retains administration of your grant.

(c) BLM or, if BLM no longer administers the land, the new land owner may negotiate new grant terms and conditions with you. This may include increasing the term of your grant, should you request it, to a perpetual grant under § 2806.23(c) of this part or providing for an easement.

§ 2807.16 Under what conditions may BLM order an immediate temporary suspension of my activities?

(a) If BLM determines that you have violated one or more of the terms, conditions, or stipulations of your grant, we can order an immediate temporary suspension of activities within the right-of-way area to protect public health or safety or the environment. BLM can require you to stop your activities before holding an administrative proceeding on the matter.

(b) BLM may issue the immediate temporary suspension order orally or in writing to you, your contractor or subcontractor, or to any representative, agent, or employee representing you or conducting the activity. When you receive the order, you must stop the activity immediately. BLM will, as soon as practical, confirm an oral order by sending or hand delivering to you or your agent at your address a written suspension order explaining the reasons for it.

(c) You may file a written request for permission to resume activities at any time after BLM issues the order. In the request, give the facts supporting your request and the reasons you believe that BLM should lift the order. BLM must grant or deny your request within 5 business days after receiving it. If BLM does not respond within 5 business days, BLM has denied your request. You may appeal the denial under § 2801.10 of this part.

(d) The immediate temporary suspension order is effective until you receive BLM's written notice to proceed with your activities.

§ 2807.17 Under what conditions may BLM suspend or terminate my grant?

(a) BLM may suspend or terminate your grant if you do not comply with applicable laws and regulations or any terms, conditions, or stipulations of the grant (such as rent payments), or if you abandon the right-of-way.

(b) A grant also terminates when:

(1) The grant contains a term or condition that has been met that requires the grant to terminate;

(2) BLM consents in writing to your request to terminate the grant; or

(3) It is required by law to terminate.

(c) Your failure to use your right-of-way for its authorized purpose for any continuous 5-year period creates a presumption of abandonment. BLM will notify you in writing of this presumption. You may rebut the presumption of abandonment by proving that you used the right-of-way or that your failure to use the right-of-way was due to circumstances beyond your control, such as acts of God, war, or casualties not attributable to you.

(d) You may appeal a decision under this section under § 2801.10 of this part.

§ 2807.18 How will I know that BLM intends to suspend or terminate my grant?

(a) Before BLM suspends or terminates your grant under § 2807.17(a) of this subpart, it will send you a written notice stating that it intends to suspend or terminate your grant and giving the grounds for such action. The notice will give you a reasonable opportunity to correct any noncompliance or start or resume use of the right-of-way, as appropriate.

(b) To suspend or terminate a grant issued as an easement, BLM must give you written notice and refer the matter to the Office of Hearings and Appeals for a hearing before an ALJ under 5 U.S.C. 554. No hearing is required if the grant provided by its terms for

termination on the occurrence of a fixed or agreed upon condition, event, or time. If the ALJ determines that grounds for suspension or termination exist and such action is justified, BLM will suspend or terminate the grant.

§ 2807.19 When my grant terminates, what happens to any facilities on it?

(a) After your grant terminates, you must remove any facilities within the right-of-way within a reasonable time, as determined by BLM, unless BLM instructs you otherwise in writing, or termination is due to non-payment of rent (*see* § 2806.13(c) of this part).

(b) After removing the facilities, you must remediate and restore the right-of-way area to a condition satisfactory to BLM, including the removal and clean up of any hazardous materials.

(c) If you do not remove all facilities within a reasonable period as determined by BLM, BLM may declare them to be the property of the United States. However, you are still liable for the costs of removing them and for remediating and restoring the right-of-way area.

§ 2807.20 When must I amend my application, seek an amendment of my grant, or obtain a new grant?

(a) You must amend your application or seek an amendment of your grant when there is a proposed substantial deviation in location or use.

(b) The requirements to amend an application or grant are the same as those for a new application, including paying processing and monitoring fees and rent according to §§ 2804.14, 2805.16, and 2806.10 of this part.

(c) Any activity not authorized by your grant may subject you to prosecution under applicable law and to trespass charges under subpart 2808 of this part.

(d) If your grant was issued prior to October 21, 1976, and there is a proposed substantial deviation in the location or use or terms and conditions of your right-of-way grant, you must apply for a new grant consistent with the remainder of this section. BLM may respond to your request in one of the following ways:

(1) If BLM approves your application, BLM will terminate your old grant and you will receive a new grant under 43 U.S.C. 1761 *et seq.* and the regulations in this part. BLM may include the same terms and conditions in the new grant as were in the original grant as to annual rent, duration, and nature of interest if BLM determines, based on current land use plans and other management decisions, that it is in the public interest to do so; or

(2) Alternatively, BLM may keep the old grant in effect and issue a new grant for the new use or location, or terms and conditions.

(e) You must apply for a new grant to allow realignment of your railroad and appurtenant communication facilities. BLM must issue a decision within 6 months after it receives your complete application. BLM may include the same terms and conditions in the new grant as were in the original grant as to annual rent, duration, and nature of interest if:

(1) These terms are in the public interest;

(2) The lands are of approximately equal value; and

(3) The lands involved are not within an incorporated community.

§ 2807.21 May I assign my grant?

(a) With BLM's approval, you may assign, in whole or in part, any right or interest in a grant.

(b) In order to assign a grant, the proposed assignee must file an application and satisfy the same procedures and standards as for a new grant, including paying processing fees (*see* subpart 2804 of this part).

(c) The assignment application must also include:

(1) Documentation that the assignor agrees to the assignment; and

(2) A signed statement that the proposed assignee agrees to comply with and be bound by the terms and conditions of the grant that is being assigned and all applicable laws and regulations.

(d) BLM will not recognize an assignment until it approves it in writing. BLM will approve the assignment if doing so is in the public interest. BLM may modify the grant or add bonding and other requirements, including additional terms and conditions, to the grant when approving the assignment. BLM may decrease rents if the new holder qualifies for an exemption (*see* § 2806.14 of this part), or waiver or reduction (*see* § 2806.15 of this part) and the previous holder did not. Similarly, BLM may increase rents if the previous holder qualified for an exemption or waiver or reduction and the new holder does not. If BLM approves the assignment, the benefits and liabilities of the grant apply to the new grant holder.

(e) The processing time and conditions described at § 2804.25(c) of this part apply to assignment applications.

§ 2807.22 How do I renew my grant?

(a) If your grant specifies that it is renewable, and you choose to renew it, you must apply to BLM to renew the grant at least 120 calendar days before your grant expires. BLM will renew the grant if you are complying with the terms, conditions, and stipulations of the grant and applicable laws and regulations.

(b) If your grant does not address whether it is renewable, you may apply to BLM to renew the grant. You must send BLM your application at least 120 calendar days before your grant expires. In your application you must show that you are complying with the terms, conditions, and stipulations of the grant and applicable laws and regulations. BLM has the discretion to renew the grant if doing so is in the public interest.

(c) Submit your application under paragraph (a) or (b) of this section and include the same information necessary for a new application (*see* subpart 2804 of this part). You must reimburse BLM in advance for the administrative costs of processing the renewal in accordance with § 2804.14 of this part.

(d) BLM will review your application and determine the applicable terms and conditions of any renewed grant.

(e) BLM will not renew grants issued before October 21, 1976. If you hold such a grant and would like to continue to use the right-of-way beyond your grant's expiration date, you must apply to BLM for a new FLPMA grant (*see* subpart 2804 of this part). You must send BLM your application at least 120 calendar days before your grant expires.

(f) If BLM denies your application, you may appeal the decision under § 2801.10 of this part.

Subpart 2808—Trespass

§ 2808.10 What is trespass?

(a) Trespass is using, occupying, or developing the public lands or their resources without a required authorization or in a way that is beyond the scope and terms and conditions of your authorization. Trespass is a prohibited act.

(b) Trespass includes acts or omissions causing unnecessary or undue degradation to the public lands or their resources. In determining whether such degradation is occurring, BLM may consider the effects of the activity on resources and land uses outside the area of the activity.

(c) There are two kinds of trespass, willful and non-willful.

(1) *Willful trespass* is voluntary or conscious trespass and includes trespass committed with criminal or malicious intent. It includes a consistent pattern of actions taken with knowledge, even if those actions are taken in the belief that the conduct is reasonable or legal.

(2) *Non-willful trespass* is trespass committed by mistake or inadvertence.

§ 2808.11 What will BLM do if it determines that I am in trespass?

(a) BLM will notify you in writing of the trespass and explain your liability. Your liability includes:

(1) Reimbursing the United States for all costs incurred in investigating and terminating the trespass;

(2) Paying the rental for the lands, as provided for in subpart 2806 of this part, for the current and past years of trespass, or, where applicable, the cumulative value of the current use fee, amortization fee, and maintenance fee for unauthorized use of any BLM-administered road; and

(3) Rehabilitating and restoring any damaged lands or resources. If you do not rehabilitate and restore the lands and resources within the time set by BLM in the notice, you will be liable for the costs the United States incurs in rehabilitating and restoring the lands and resources.

(b) In addition to amounts you owe under paragraph (a) of this section, BLM may assess penalties as follows:

(1) For willful or repeated non-willful trespass, the penalty is two times the rent. For roads, the penalty is two times the charges for road use, amortization, and maintenance which have accrued since the trespass began.

(2) For non-willful trespass not resolved within 30 calendar days after receiving the written notice under paragraph (a) of this section, the penalty is an amount equal to the rent. To resolve the trespass you must meet one of the conditions identified in 43 CFR 9239.7–1. For roads, the penalty is an amount equal to the charges for road use, amortization, and maintenance which have accrued since the trespass began.

(c) The penalty will not be less than the fee for a Processing Category 2 application (*see* § 2804.14 of this part) for non-willful trespass or less than three times this amount for willful or repeated non-willful trespass. You must pay whichever is the higher of:

(1) The amount computed in paragraph (b) of this section; or

(2) The minimum penalty amount in paragraph (c) of this section.

(d) In addition to civil penalties under paragraph (b) of this section, you may be tried before a United States magistrate judge and fined no more than $1,000 or imprisoned for no more than 12 months, or both, for a knowing and willful trespass, as provided at 43 CFR 9262.1 and 43 U.S.C. 1733(a).

(e) Until you comply with the requirements of 43 CFR 9239.7–1, BLM will not process any of your applications for any activities on BLM lands.

(f) You may appeal a trespass decision under § 2801.10 of this part.

(g) Nothing in this section limits your liability under any other Federal or state law.

§ 2808.12 May I receive a grant if I am or have been in trespass?

Until you satisfy your liability for a trespass, BLM will not process any applications you have pending for any activity on BLM-administered lands. A history of trespass will not necessarily disqualify you from receiving a grant. In order to correct a trespass, you must apply under the procedures described at subpart 2804 of this part. BLM will process your application as if it were a new use. Prior unauthorized use does not create a preference for receiving a grant.

Subpart 2809—Grants for Federal Agencies

§ 2809.10 Do the regulations in this part apply to Federal agencies?

The regulations in this part apply to Federal agencies to the extent possible, except that:

(a) BLM may suspend or terminate a Federal agency's grant only if:

(1) The terms and conditions of the Federal agency's grant allow it; or

(2) The agency head holding the grant consents to it; and

(b) Federal agencies are generally not required to pay rent for a grant (*see* § 2806.14 of this part).

PART 2810—TRAMROADS AND LOGGING ROADS

■ 2. Revise the authority citation for part 2810 to read as follows:

Authority: 43 U.S.C. 1181e, 1732, 1733, and 1740.

■ 3. Revise § 2812.1–3 to read as follows:

§ 2812.1–3 Unauthorized use, occupancy, or development.

Any use, occupancy, or development of the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands (O&C) lands (as is defined in 43 CFR 2812.0–5(e)), for tramroads without an authorization pursuant to this subpart, or which is beyond the scope and specific limitations of such an authorization, or that cause unnecessary or undue degradation, is prohibited and shall constitute a trespass as defined in § 2808.10 of this chapter. Anyone determined by the authorized officer to be in violation of this section shall be notified of such trespass in writing and shall be liable to the United States for all costs and payments determined in the same manner as set forth in subpart 2808 of this chapter.

■ 4. Revise part 2880 to read as follows:

PART 2880—RIGHTS-OF-WAY UNDER THE MINERAL LEASING ACT

Subpart 2881—General Information

Sec.

2881.2 What is the objective of BLM's right-of-way program?
2881.5 What acronyms and terms are used in the regulations in this part?
2881.7 Scope.
2881.9 Severability.
2881.10 How do I appeal a BLM decision issued under the regulations in this part?
2881.11 When do I need a grant from BLM for an oil and gas pipeline?
2881.12 When do I need a TUP for an oil and gas pipeline?

Subpart 2882—Lands Available for MLA Grants and TUPs

2882.10 What lands are available for grants or TUPs?

Subpart 2883—Qualifications for Holding MLA Grants and TUPs

2883.10 Who may hold a grant or TUP?
2883.11 Who may not hold a grant or TUP?
2883.12 How do I prove I am qualified to hold a grant or TUP?
2883.13 What happens if BLM issues me a grant or TUP and later determines that I am not qualified to hold it?
2883.14 What happens to my application, grant, or TUP if I die?

Subpart 2884—Applying For MLA Grants or TUPs

2884.10 What should I do before I file my application?
2884.11 What information must I submit in my application?
2884.12 What is the processing fee for a grant or TUP application?
2884.13 Who is exempt from paying processing and monitoring fees?
2884.14 When does BLM reevaluate the processing and monitoring fees?
2884.15 What is a Master Agreement (Processing Category 5) and what information must I provide to BLM when I request one?
2884.16 What provisions do Master Agreements contain and what are their limitations?
2884.17 How will BLM process my Processing Category 6 application?
2884.18 What if there are two or more competing applications for the same pipeline?
2884.19 Where do I file my application for a grant or TUP?
2884.20 What are the public notification requirements for my application?
2884.21 How will BLM process my application?
2884.22 Can BLM ask me for additional information?
2884.23 Under what circumstances may BLM deny my application?

2884.24 What fees do I owe if BLM denies my application or if I withdraw my application?
2884.25 What activities may I conduct on BLM lands covered by my application for a grant or TUP while BLM is processing my application?
2884.26 When will BLM issue the grant or TUP when the lands are managed by two or more Federal agencies?
2884.27 What additional requirement is necessary for grants or TUPs for pipelines 24 or more inches in diameter?

Subpart 2885—Terms and Conditions of MLA Grants and TUPs

2885.10 When is a grant or TUP effective?
2885.11 What terms and conditions must I comply with?
2885.12 What rights does a grant or TUP convey?
2885.13 What rights does the United States retain?
2885.14 What happens if I need a right-of-way wider than 50 feet plus the ground occupied by the pipeline and related facilities?
2885.15 How will BLM charge me rent?
2885.16 When do I pay rent?
2885.17 What happens if I pay the rent late?
2885.18 When must I make estimated rent payments to BLM?
2885.19 What is the rent for a linear right-of-way?
2885.20 How will BLM calculate my rent for linear rights-of-way the schedule covers?
2885.21 How must I make rent payments for my grant or TUP?
2885.22 How will BLM calculate rent for communication uses ancillary to a linear grant, TUP, or other use authorization?
2885.23 If I hold a grant or TUP, what monitoring fees must I pay?
2885.24 When do I pay monitoring fees?

Subpart 2886—Operations on MLA Grants and TUPs

2886.10 When can I start activities under my grant or TUP?
2886.11 Who regulates activities within my right-of-way or TUP area?
2886.12 When must I contact BLM during operations?
2886.13 If I hold a grant or TUP, for what am I liable?
2886.14 As grant or TUP holders, what liabilities do state, tribal, and local governments have?
2886.15 How is grant or TUP administration affected if the BLM land my grant or TUP encumbers is transferred to another Federal agency or out of Federal ownership?
2886.16 Under what conditions may BLM order an immediate temporary suspension of my activities?
2886.17 Under what conditions may BLM suspend or terminate my grant or TUP?
2886.18 How will I know that BLM intends to suspend or terminate my grant or TUP?
2886.19 When my grant or TUP terminates, what happens to any facilities on it?

Subpart 2887—Amending, Assigning, or Renewing MLA Grants and TUPs

2887.10 When must I amend my application, seek an amendment of my grant or TUP, or obtain a new grant or TUP?
2887.11 May I assign my grant or TUP?
2887.12 How do I renew my grant?

Subpart 2888—Trespass

2888.10 What is trespass?
2888.11 May I receive a grant if I am or have been in trespass?

Authority: 30 U.S.C. 185 and 189.

Subpart 2881—General Information

§ 2881.2 What is the objective of BLM's right-of-way program?

It is BLM's objective to grant rights-of-way under the regulations in this part to any qualified individual, business, or government entity and to direct and control the use of rights-of-way on public lands in a manner that:

(a) Protects the natural resources associated with Federal lands and adjacent lands, whether private or administered by a government entity;

(b) Prevents unnecessary or undue degradation to public lands;

(c) Promotes the use of rights-of-way in common considering engineering and technological compatibility, national security, and land use plans; and

(d) Coordinates, to the fullest extent possible, all BLM actions under the regulations in this part with state and local governments, interested individuals, and appropriate quasi-public entities.

§ 2881.5 What acronyms and terms are used in the regulations in this part?

(a) *Acronyms.* Unless an acronym is listed in this section, the acronyms listed in part 2800 of this chapter apply to this part. As used in this part:

MLA means the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185).

TAPS means the Trans-Alaska Oil Pipeline System.

TUP means a temporary use permit.

(b) *Terms.* Unless a term is defined in this part, the defined terms in part 2800 of this chapter apply to this part. As used in this part, the term:

Act means section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185).

Actual costs means the financial measure of resources the Federal government expends or uses in processing a right-of-way application or in monitoring the construction, operation, and termination of a facility authorized by a grant or permit. Actual costs include both direct and indirect costs, exclusive of management overhead costs.

Casual use means activities ordinarily resulting in no or negligible disturbance of the public lands, resources, or improvements. Examples of casual use include: Surveying, marking routes, and collecting data to prepare applications for grants or TUPs.

Facility means an improvement or structure, whether existing or planned, that is, or would be, owned and controlled by the grant or TUP holder within the right-of-way or TUP area.

Federal lands means all lands owned by the United States, except lands:

(1) In the National Park System;

(2) Held in trust for an Indian or Indian tribe; or

(3) On the Outer Continental Shelf.

Grant means any authorization or instrument BLM issues under section 28 of the Mineral Leasing Act, 30 U.S.C. 185, authorizing a nonpossessory, nonexclusive right to use Federal lands to construct, operate, maintain, or terminate a pipeline. The term includes those authorizations and instruments BLM and its predecessors issued for like purposes before November 16, 1973, under then existing statutory authority. It does not include authorizations issued under FLPMA (43 U.S.C. 1761 *et seq.*).

Monitoring means those actions, subject to § 2886.11 of this part, that the Federal government performs to ensure compliance with the terms, conditions, and stipulations of a grant or TUP.

(1) For Monitoring Categories 1 through 4, the actions include inspecting construction, operation, maintenance, and termination of permanent or temporary facilities and protection and rehabilitation activities until the holder completes rehabilitation of the right-of-way or TUP area and BLM approves it;

(2) For Monitoring Category 5 (Master Agreements), those actions agreed to in the Master Agreement; and

(3) For Monitoring Category 6, those actions agreed to between BLM and the applicant before BLM issues the grant or TUP.

Oil or gas means oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced from them.

Pipeline means a line crossing Federal lands for transportation of oil or gas. The term includes feeder lines, trunk lines, and related facilities, but does not include a lessee's or lease operator's production facilities located on its oil and gas lease.

Pipeline system means all facilities, whether or not located on Federal lands, used by a grant holder in connection with the construction, operation, maintenance, or termination of a pipeline.

Production facilities means a lessee's or lease operator's pipes and equipment used on its oil and gas lease to aid in extracting, processing, and storing oil or gas. The term includes:

(1) Storage tanks and processing equipment;

(2) Gathering lines upstream from such tanks and equipment, or in the case of gas, upstream from the point of delivery; and

(3) Pipes and equipment, such as water and gas injection lines, used in the production process for purposes other than carrying oil and gas downstream from the wellhead.

Related facilities means those structures, devices, improvements, and sites, located on Federal lands, which may or may not be connected or contiguous to the pipeline, the substantially continuous use of which is necessary for the operation or maintenance of a pipeline, such as:

(1) Supporting structures;

(2) Airstrips;

(3) Roads;

(4) Campsites;

(5) Pump stations, including associated heliports, structures, yards, and fences;

(6) Valves and other control devices;

(7) Surge and storage tanks;

(8) Bridges;

(9) Monitoring and communication devices and structures housing them;

(10) Terminals, including structures, yards, docks, fences, and storage tank facilities;

(11) Retaining walls, berms, dikes, ditches, cuts and fills; and

(12) Structures and areas for storing supplies and equipment.

Right-of-way means the Federal lands BLM authorizes a holder to use or occupy under a grant.

Substantial deviation means a change in the authorized location or use which requires:

(1) Construction or use outside the boundaries of the right-of-way or TUP area; or

(2) Any change from, or modification of, the authorized use. Examples of substantial deviation include: Adding equipment, overhead or underground lines, pipelines, structures, or other facilities not included in the original grant or TUP.

Temporary use permit or TUP means a document BLM issues under 30 U.S.C. 185 that is a revocable, nonpossessory privilege to use specified Federal lands in the vicinity of and in connection with a right-of-way, to construct, operate, maintain, or terminate a pipeline or to protect the environment or public safety. A TUP does not convey any interest in land.

Third party means any person or entity other than BLM, the applicant, or the holder of a right-of-way authorization.

§ 2881.7 Scope.

(a) *What do these regulations apply to?* The regulations in this part apply to:

(1) Issuing grants and TUPs for pipelines to transport oil or gas, and administering, amending, assigning, renewing, and terminating them;

(2) All grants and permits BLM and its predecessors previously issued under section 28 of the Act; and

(3) Pipeline systems, or parts thereof, within a Federal oil and gas lease owned by:

(i) A party who is not the lessee or lease operator; or

(ii) The lessee or lease operator which are downstream from a custody transfer metering device.

(b) *What don't these regulations apply to?* The regulations in this part do not apply to:

(1) Production facilities on an oil and gas lease which operate for the benefit of the lease. The lease authorizes these production facilities;

(2) Pipelines crossing Federal lands under the jurisdiction of a single Federal department or agency other than BLM, including bureaus and agencies within the Department of the Interior;

(3) Authorizations BLM issues to Federal agencies for oil or gas transportation under § 2801.6 of this chapter; or

(4) Authorizations BLM issues under Title V of the Federal Land Policy and Management Act of 1976 (*see* part 2800 of this chapter).

(c) Notwithstanding the definition of ''grant'' in section 2881.5 of this subpart, the regulations in this part apply, consistent with 43 U.S.C. 1652(c), to any authorization issued by the Secretary of the Interior or his or her delegate under 43 U.S.C. 1652(b) for the Trans-Alaska Oil Pipeline System.

§ 2881.9 Severability.

If a court holds any provisions of the regulations in this part or their applicability to any person or circumstances invalid, the remainder of these rules and their applicability to other people or circumstances will not be affected.

§ 2881.10 How do I appeal a BLM decision issued under the regulations in this part?

(a) You may appeal a BLM decision issued under the regulations in this part in accordance with part 4 of this title.

(b) All BLM decisions under this part remain in effect pending appeal unless the Secretary of the Interior rules otherwise, or as noted in this part. You may petition for a stay of a BLM decision under this part with the Office of Hearings and Appeals, Department of the Interior. Unless otherwise noted in this part, BLM will take no action on your application while your appeal is pending.

§ 2881.11 When do I need a grant from BLM for an oil and gas pipeline?

You must have a BLM grant under 30 U.S.C. 185 for an oil or gas pipeline or related facility to cross Federal lands under:

(a) BLM's jurisdiction; or

(b) The jurisdiction of two or more Federal agencies.

§ 2881.12 When do I need a TUP for an oil and gas pipeline?

You must obtain a TUP from BLM when you require temporary use of more land than your grant authorizes in order to construct, operate, maintain, or terminate your pipeline, or to protect the environment or public safety.

Subpart 2882—Lands Available for MLA Grants and TUPs

§ 2882.10 What lands are available for grants or TUPs?

(a) For lands BLM exclusively manages, we use the same criteria to determine whether lands are available for grants or TUPs as we do to determine whether lands are available for FLPMA grants (*see* subpart 2802 of this chapter).

(b) BLM may require common use of a right-of-way and may restrict new grants to existing right-of-way corridors where safety and other considerations allow. Generally, BLM land use plans designate right-of-way corridors.

(c) Where a proposed oil or gas right-of-way involves lands managed by two or more Federal agencies, *see* § 2884.26 of this part.

Subpart 2883—Qualifications for Holding MLA Grants and TUPs

§ 2883.10 Who may hold a grant or TUP?

To hold a grant or TUP under these regulations, you must be:

(a)(1) A United States citizen, an association of such citizens, or a corporation, partnership, association, or similar business entity organized under the laws of the United States, or of any state therein; or

(2) A state or local government; and

(b) Financially and technically able to construct, operate, maintain, and terminate the proposed facilities.

§ 2883.11 Who may not hold a grant or TUP?

Aliens may not acquire or hold any direct or indirect interest in grants or TUPs, except that they may own or control stock in corporations holding grants or TUPs if the laws of their country do not deny similar or like privileges to citizens of the United States.

§ 2883.12 How do I prove I am qualified to hold a grant or TUP?

(a) If you are a private individual, BLM requires no proof of citizenship with your application;

(b) If you are a partnership, corporation, association, or other business entity, submit the following information, as applicable, in your application:

(1) Copies of the formal documents creating the business entity, such as articles of incorporation, and including the corporate bylaws;

(2) Evidence that the party signing the application has the authority to bind the applicant;

(3) The name, address, and citizenship of each participant (*e.g.*, partner, associate, or other) in the business entity;

(4) The name, address, and citizenship of each shareholder owning 3 percent or more of each class of shares, and the number and percentage of any class of voting shares of the business entity which such shareholder is authorized to vote;

(5) The name and address of each affiliate of the business entity;

(6) The number of shares and the percentage of any class of voting stock owned by the business entity, directly or indirectly, in any affiliate controlled by the business entity; and

(7) The number of shares and the percentage of any class of voting stock owned by an affiliate, directly or indirectly, in the business entity controlled by the affiliate.

(c) If you have already supplied this information to BLM and the information remains accurate, you only need to reference the existing or previous BLM serial number under which it is filed.

§ 2883.13 What happens if BLM issues me a grant or TUP and later determines that I am not qualified to hold it?

If BLM issues you a grant or TUP, and later determines that you are not qualified to hold it, BLM will terminate your grant or TUP under 30 U.S.C. 185(o). You may appeal this decision under § 2881.10 of this part.

§ 2883.14 What happens to my application, grant, or TUP if I die?

(a) If an applicant or grant or TUP holder dies, any inheritable interest in the application, grant, or TUP will be distributed under state law.

(b) If the distributee of a grant or TUP is not qualified to hold a grant or TUP under § 2883.10 of this subpart, BLM will recognize the distributee as grant or TUP holder and allow the distributee to hold its interest in the grant or TUP for up to two years. During that period, the distributee must either become qualified or divest itself of the interest.

Subpart 2884—Applying for MLA Grants or TUPs

§ 2884.10 What should I do before I file my application?

(a) When you determine that a proposed oil and gas pipeline system would cross Federal lands under BLM jurisdiction, or under the jurisdiction of two or more Federal agencies, you should notify BLM.

(b) Before filing an application with BLM, we encourage you to make an appointment for a preapplication meeting with the appropriate personnel in the BLM field office nearest the lands you seek to use. During the preapplication meeting BLM can:

(1) Identify potential routing and other constraints;

(2) Determine whether or not the lands are located within a designated or existing right-of-way corridor;

(3) Tentatively schedule the processing of your proposed application;

(4) Provide you information about qualifications for holding grants and TUPs, and inform you of your financial obligations, such as processing and monitoring costs and rents; and

(5) Identify any work which will require obtaining one or more TUPs.

(c) BLM may share this information with Federal, state, tribal, and local government agencies to ensure that these agencies are aware of any authorizations you may need from them.

(d) BLM will keep confidential any information in your application that you mark as ''confidential'' or ''proprietary'' to the extent allowed by law.

§ 2884.11 What information must I submit in my application?

(a) File your application on Form SF–299 or as part of an Application for Permit to Drill or Reenter (BLM Form 3160–3) or Sundry Notice and Report on Wells (BLM Form 3160–5), available from any BLM office. Provide a complete description of the project, including:

(1) The exact diameters of the pipes and locations of the pipelines;

(2) Proposed construction and reclamation techniques; and

(3) The estimated life of the facility.

(b) File with BLM copies of any applications you file with other Federal agencies, such as the Federal Energy Regulatory Commission (*see* 18 CFR chapter I), for licenses, certificates, or other authorities involving the right-of-way.

(c) BLM may ask you to submit additional information beyond that required in the form to assist us in processing your application. This information may include:

(1) A list of any Federal and state approvals required for the proposal;

(2) A description of alternative route(s) and mode(s) you considered when developing the proposal;

(3) Copies of, or reference to, all similar applications or grants you have submitted, currently hold, or have held in the past;

(4) A statement of the need and economic feasibility of the proposed project;

(5) The estimated schedule for constructing, operating, maintaining, and terminating the project (a Plan of Development);

(6) A map of the project, showing its proposed location and showing existing facilities adjacent to the proposal;

(7) A statement certifying that you are of legal age and authorized to do business in the state(s) where the right-of-way would be located, and that you have submitted correct information to the best of your knowledge;

(8) A statement of the environmental, social, and economic effects of the proposal;

(9) A statement of your financial and technical capability to construct, operate, maintain, and terminate the project;

(10) Proof that you are a United States citizen; and

(11) Any other information BLM considers necessary to process your application.

(d) Before BLM reviews your application for a grant, grant amendment, or grant renewal, you must submit the following information and material to ensure that the facilities will be constructed, operated, and maintained as common carriers under 30 U.S.C. 185(r):

(1) Conditions for, and agreements among, owners or operators to add pumping facilities and looping, or otherwise to increase the pipeline or terminal's throughput capacity in response to actual or anticipated increases in demand;

(2) Conditions for adding or abandoning intake, offtake, or storage points or facilities; and

(3) Minimum shipment or purchase tenders.

(e) If conditions or information affecting your application change, promptly notify BLM and submit to BLM in writing the necessary changes to your application. BLM may deny your application if you fail to do so.

§ 2884.12 What is the processing fee for a grant or TUP application?

(a) You must pay a fee with the application to cover the costs to the Federal Government of processing your application before the Federal Government incurs them. The fees for Processing Categories 1 through 4 (see paragraph (b) of this section) are one-time fees and are not refundable. The fees are categorized based on an estimate of the amount of time that the Federal Government will expend to process your application and issue a decision granting or denying the application.

(b) There is no processing fee if work is estimated to take one hour or less. Processing fees are based on categories. These categories and fees for 2005 are:

2005 PROCESSING FEE SCHEDULE

Processing category	Federal work hours involved	Processing fee per application as of June 21, 2005. To be adjusted annually for changes in the IPD–GDP. See paragraph (c) of this section for update information
(1) Applications for new grants or TUPs, assignments, renewals, and amendments to existing grants or TUPs.	Estimated Federal work hours are >1 ≤8.	$97.
(2) Applications for new grants or TUPs, assignments, renewals, and amendments to existing grants or TUPs.	Estimated Federal work hours are >8 ≤24.	$343.
(3) Applications for new grants or TUPs, assignments, renewals, and amendments to existing grants or TUPs.	Estimated Federal work hours are >24 ≤36.	$644.
(4) Applications for new grants or TUPs, assignments, renewals, and amendments to existing grants or TUPs.	Estimated Federal work hours are >36 ≤50.	$923.
(5) Master Agreements.	Varies	As specified in the Agreement.
(6) Applications for new grants or TUPs, assignments, renewals, and amendments to existing grants or TUPs.	Estimated Federal work hours are >50.	Actual costs (*see* § 2884.17 of this part).

(c) BLM will revise paragraph (b) of this section to update the processing fees for Categories 1 through 4 in the schedule each calendar year, based on the previous year's change in the IPD–GDP, as measured second quarter to second quarter. BLM will round these changes to the nearest dollar. BLM will update Category 5 processing fees as specified in the Master Agreement. You also may obtain a copy of the current schedule from any BLM state or field office or by writing: Director, BLM, 1849 C St., NW., Mail Stop 1000LS, Washington, DC 20240. BLM also posts the current schedule on the BLM Homepage on the Internet at *http://www.blm.gov.*

(d) After an initial review of your application, BLM will notify you of the processing category into which your application fits. You must then submit the appropriate payment for that category before BLM begins processing your application. Your signature on a cost recovery Master Agreement constitutes your agreement with the processing category decision. If you disagree with the category that BLM has determined for your application, you may appeal the decision under § 2881.10 of this part. If you paid the processing fee and you appeal a Processing Category 1 through 4 or a Processing Category 6 determination to IBLA, BLM will process your application while the appeal is pending. If IBLA finds in your favor, you will receive a refund or adjustment of your processing fee.

(e) In processing your application, BLM may determine at any time that the application requires preparing an EIS. If this occurs, BLM will send you a decision changing your processing category to Processing Category 6. You may appeal the decision under § 2881.10 of this part.

(f) If you hold an authorization relating to TAPS, BLM will send you a written statement seeking reimbursement of actual costs within 60 calendar days after the close of each quarter. Quarters end on the last day of March, June, September, and December. In processing applications and administering authorizations relating to TAPS, the Department of the Interior will avoid unnecessary employment of personnel and needless expenditure of funds.

§ 2884.13 Who is exempt from paying processing and monitoring fees?

You are exempt from paying processing and monitoring fees if you are a state or local government or an agency of such a government and BLM issues the grant for governmental purposes benefitting the general public. If your principal source of revenue results from charges you levy on customers for services similar to those of a profit-making corporation or business, you are not exempt.

§ 2884.14 When does BLM reevaluate the processing and monitoring fees?

BLM reevaluates the processing and monitoring fees (*see* § 2885.23 of this part) for each category and the categories themselves within 5 years after they go into effect and at 10-year intervals after that. When reevaluating processing and monitoring fees, BLM considers all factors that affect the fees, including, but not limited to, any changes in:

(a) Technology;

(b) The procedures for processing applications and monitoring grants;

(c) Statutes and regulations relating to the right-of-way program; or

(d) The IPD–GDP.

§ 2884.15 What is a Master Agreement (Processing Category 5) and what information must I provide to BLM when I request one?

(a) A Master Agreement (Processing Category 5) is a written agreement covering processing and monitoring fees (*see* § 2885.23 of this part) negotiated between BLM and you that involves multiple BLM grant or TUP approvals for projects within a defined geographic area.

(b) Your request for a Master Agreement must:

(1) Describe the geographic area covered by the Agreement and the scope of the activity you plan;

(2) Include a preliminary work plan. This plan must state what work you

must do and what work BLM must do to process your application. Both parties must periodically update the work plan, as specified in the Agreement, and mutually agree to the changes;

(3) Contain a preliminary cost estimate and a timetable for processing the application and completing the project;

(4) State whether you want the Agreement to apply to future applications in the same geographic area that are not part of the same project(s); and

(5) Contain any other relevant information that BLM needs to process the application.

§ 2884.16 What provisions do Master Agreements contain and what are their limitations?

(a) A Master Agreement:

(1) Specifies that you must comply with all applicable laws and regulations;

(2) Describes the work you will do and the work BLM will do to process the application;

(3) Describes the method of periodic billing, payment, and auditing;

(4) Describes the processes, studies, or evaluations you will pay for;

(5) Explains how BLM will monitor the grant and how BLM will recover monitoring costs;

(6) Contains provisions allowing for periodic review and updating, if required;

(7) Contains specific conditions for terminating the Agreement; and

(8) Contains any other provisions BLM considers necessary.

(b) BLM will not enter into any Agreement that is not in the public interest.

§ 2884.17 How will BLM process my Processing Category 6 application?

(a) For Processing Category 6 applications, you and BLM must enter into a written agreement that describes how BLM will process your application. The final agreement consists of a work plan and a financial plan.

(b) In processing your application, BLM will:

(1) Determine the issues subject to analysis under NEPA;

(2) Prepare a preliminary work plan;

(3) Develop a preliminary financial plan, which estimates the actual costs of processing your application and monitoring your project;

(4) Discuss with you:

(i) The preliminary plans and data;

(ii) The availability of funds and personnel;

(iii) Your options for the timing of processing and monitoring fee payments; and

(iv) Financial information you must submit; and

(5) Complete final scoping and develop final work and financial plans which reflect any work you have agreed to do. BLM will also present you with the final estimate of the costs you must reimburse the United States, including the cost for monitoring the project.

(c) BLM retains the option to prepare any environmental documents related to your application. If BLM allows you to prepare any environmental documents and conduct any studies that BLM needs to process your application, you must do the work following BLM standards. For this purpose, you and BLM may enter into a written agreement. BLM will make the final determinations and conclusions arising from such work.

(d) BLM will periodically, as stated in the agreement, estimate processing costs for a specific work period and notify you of the amount due. You must pay the amount due before BLM will continue working on your application. If your payment exceeds the costs that the United States incurred for the work, BLM will either adjust the next billing to reflect the excess, or refund you the excess under 43 U.S.C. 1734. You may not deduct any amount from a payment without BLM's prior written approval.

§ 2884.18 What if there are two or more competing applications for the same pipeline?

(a) If there are two or more competing applications for the same pipeline and your application is in:

(1) *Processing Categories 1 through 4.* You must reimburse BLM for processing costs as if the other application or applications had not been filed.

(2) *Processing Category 6.* You are responsible for processing costs identified in your application. If BLM cannot readily separate costs, such as costs associated with preparing environmental analyses, you and any competing applicants must pay an equal share or a proportion agreed to in writing among all applicants and BLM. If you agree to share costs that are common to your application and that of a competing applicant, and the competitor does not pay the agreed upon amount, you are liable for the entire amount due. The applicants must pay the entire processing fee in advance. BLM will not process the application until we receive the advance payments.

(b) *Who determines whether competition exists?* BLM determines whether the applications are compatible in a single right-of-way or are competing applications to build the same pipeline.

(c) If BLM determines that competition exists, BLM will describe the procedures for a competitive bid through a bid announcement in a newspaper of general circulation in the area affected by the potential right-of-way and by a notice in the **Federal Register**.

§ 2884.19 Where do I file my application for a grant or TUP?

(a) If BLM has exclusive jurisdiction over the lands involved, file your application with the BLM Field Office having jurisdiction over the lands described in the application.

(b) If another Federal agency has exclusive jurisdiction over the land involved, file your application with that agency and refer to its regulations for its requirements.

(c) If there are no BLM-administered lands involved, but the lands are under the jurisdiction of two or more Federal agencies, you may file your application at the BLM office in the vicinity of the pipeline. BLM will notify you where to direct future communications about the pipeline.

(d) If two or more Federal agencies, including BLM, have jurisdiction over the lands in the application, file it at any BLM office having jurisdiction over a portion of the Federal lands. BLM will notify you where to direct future communications about the pipeline.

§ 2884.20 What are the public notification requirements for my application?

(a) When BLM receives your application, it will publish a notice in the **Federal Register** or a newspaper of general circulation in the vicinity of the lands involved. If BLM determines the pipeline(s) will have only minor environmental impacts, it is not required to publish this notice. The notice will, at a minimum, contain:

(1) A description of the pipeline system; and

(2) A statement of where the application and related documents are available for review.

(b) BLM will send copies of the published notice for review and comment to the:

(1) Governor of each state within which the pipeline system would be located;

(2) Head of each local or tribal government or jurisdiction within which the pipeline system would be located; and

(3) Heads of other Federal agencies whose jurisdiction includes lands within which the pipeline system would be located.

(c) If your application involves a pipeline that is 24 inches or more in

diameter, BLM will also send notice of the application to the appropriate committees of Congress in accordance with 30 U.S.C. 185(w).

(d) BLM may hold public hearings or meetings on your application if we determine there is sufficient interest to warrant the time and expense of such hearings or meetings. BLM will publish a notice of any such hearings or meetings in advance in the **Federal Register** or in a newspaper of general circulation in the vicinity of the lands involved.

§ 2884.21 How will BLM process my application?

(a) BLM will notify you in writing when it receives your application and will identify your processing fee described at § 2884.12 of this subpart.

(b) *Customer service standard.* BLM will process your completed application as follows:

Processing category	Processing time	Conditions
1–4	60 calendar days	If processing your application will take longer than 60 calendar days, BLM will notify you in writing of this fact prior to the 30th calendar day and inform you of when you can expect a final decision on your application.
5	As specified in the Master Agreement	BLM will process applications as specified in the Agreement.
6	Over 60 calendar days	BLM will notify you in writing within the initial 60 day processing period of the estimated processing time.

(c) Before issuing a grant or TUP, BLM will:

(1) Complete a NEPA analysis for the application or approve a NEPA analysis previously completed for the application, as required by 40 CFR parts 1500 through 1508;

(2) Determine whether or not your proposed use complies with applicable Federal and state laws, regulations, and local ordinances;

(3) Consult, as necessary, with other governmental entities;

(4) Hold public meetings, if sufficient public interest exists to warrant their time and expense. BLM will publish a notice in the **Federal Register**, a newspaper of general circulation in the vicinity of the lands involved, or both, announcing in advance any public hearings or meetings; and

(5) Take any other action necessary to fully evaluate and decide whether to approve or deny your application.

§ 2884.22 Can BLM ask me for additional information?

(a) If we ask for additional information we will follow the procedures in § 2804.25(b) of this chapter.

(b) BLM may also ask other Federal agencies for additional information, for terms and conditions or stipulations which the grant or TUP should contain, and for advice as to whether or not to issue the grant or TUP.

§ 2884.23 Under what circumstances may BLM deny my application?

(a) BLM may deny your application if:

(1) The proposed use is inconsistent with the purpose for which BLM or other Federal agencies manage the lands described in your application;

(2) The proposed use would not be in the public interest;

(3) You are not qualified to hold a grant or TUP;

(4) Issuing the grant or TUP would be inconsistent with the Act, other laws, or these or other regulations;

(5) You do not have or cannot demonstrate the technical or financial capability to construct the pipeline or operate facilities within the right-of-way or TUP area; or

(6) You do not adequately comply with a deficiency notice (see § 2804.25(b) of this chapter) or with any BLM requests for additional information needed to process the application.

(b) If BLM denies your application, you may appeal the decision under § 2881.10 of this part.

§ 2884.24 What fees do I owe if BLM denies my application or if I withdraw my application?

If BLM denies your application, or you withdraw it, you owe the processing fee set forth at § 2884.12(b) of this subpart, unless you have a Processing Category 5 or 6 application. Then, the following conditions apply:

(a) If BLM denies your Processing Category 5 or 6 application, you are liable for all actual costs that the United States incurred in processing it. The money you have not paid is due within 30 calendar days after receiving a bill for the amount due; and

(b) You may withdraw your application in writing before BLM issues a grant or TUP. If you do so, you are liable for all actual processing costs the United States has incurred up to the time you withdraw the application and for the actual costs of terminating your application. Any money you have not paid is due within 30 calendar days after receiving a bill for the amount due.

§ 2884.25 What activities may I conduct on BLM lands covered by my application for a grant or TUP while BLM is processing my application?

(a) You may conduct casual use activities on BLM lands covered by the application, as may any other member of the public. BLM does not require a grant or TUP for casual use on BLM lands.

(b) For any activities on BLM lands that are not casual use, you must obtain prior BLM approval. To conduct activities on lands administered by other Federal agencies, you must obtain any prior approval those agencies require.

§ 2884.26 When will BLM issue a grant or TUP when the lands are managed by two or more Federal agencies?

If the application involves lands managed by two or more Federal agencies, BLM will not issue or renew the grant or TUP until the heads of the agencies administering the lands involved have concurred. Where concurrence is not reached, the Secretary of the Interior, after consultation with these agencies, may issue or renew the grant or TUP, but not through lands within a Federal reservation where doing so would be inconsistent with the purposes of the reservation.

§ 2884.27 What additional requirement is necessary for grants or TUPs for pipelines 24 or more inches in diameter?

If an application is for a grant or TUP for a pipeline 24 inches or more in diameter, BLM will not issue or renew the grant or TUP until after we notify the appropriate committees of Congress in accordance with 30 U.S.C. 185(w).

Subpart 2885—Terms and Conditions of MLA Grants and TUPs

§ 2885.10 When is a grant or TUP effective?

A grant or TUP is effective after both you and BLM sign it. You must accept its terms and conditions in writing and pay any necessary rent and monitoring fees as set out in §§ 2885.19 and 2885.23

of this subpart. Your written acceptance constitutes an agreement between you and the United States that your right to use the Federal lands, as specified in the grant or TUP, is subject to the terms and conditions of the grant or TUP and applicable laws and regulations.

§ 2885.11 What terms and conditions must I comply with?

(a) *Duration.* All grants with a term of one year or longer will terminate on December 31 of the final year of the grant. The term of a grant may not exceed 30 years. The term of a TUP may not exceed 3 years. BLM will consider the following factors in establishing a reasonable term:

(1) The cost of the pipeline and related facilities you plan to construct, operate, maintain, or terminate;

(2) The pipeline's or related facility's useful life;

(3) The public purpose served; and

(4) Any potentially conflicting land uses; and

(b) *Terms and conditions of use.* BLM may modify your proposed use or change the route or location of the facilities in your application. By accepting a grant or TUP, you agree to use the lands described in the grant or TUP for the purposes set forth in the grant or TUP. You also agree to comply with, and be bound by, the following terms and conditions. During construction, operation, maintenance, and termination of the project you must:

(1) To the extent practicable, comply with all existing and subsequently enacted, issued, or amended Federal laws and regulations, and state laws and regulations applicable to the authorized use;

(2) Rebuild and repair roads, fences, and established trails destroyed or damaged by constructing, operating, maintaining, or terminating the project;

(3) Build and maintain suitable crossings for existing roads and significant trails that intersect the project;

(4) Do everything reasonable to prevent and suppress fires on or in the immediate vicinity of the right-of-way or TUP area;

(5) Not discriminate against any employee or applicant for employment during any phase of the project because of race, creed, color, sex, or national origin. You must also require subcontractors to not discriminate;

(6) Pay the rent and monitoring fees described in §§ 2885.19 and 2885.23 of this subpart;

(7) If BLM requires, obtain and/or certify that you have obtained a surety bond or other acceptable security to cover any losses, damages, or injury to human health, the environment, and property incurred in connection with your use and occupancy of the right-of-way or TUP area, including terminating the grant or TUP, and to secure all obligations imposed by the grant or TUP and applicable laws and regulations. Your bond must cover liability for damages or injuries resulting from releases or discharges of hazardous materials. BLM may require a bond, an increase or decrease in the value of an existing bond, or other acceptable security at any time during the term of the grant or TUP. This bond is in addition to any individual lease, statewide, or nationwide oil and gas bonds you may have;

(8) Assume full liability if third parties are injured or damages occur to property on or near the right-of-way or TUP area (*see* § 2886.13 of this part);

(9) Comply with project-specific terms, conditions, and stipulations, including requirements to:

(i) Restore, revegetate, and curtail erosion or any other rehabilitation measure BLM determines is necessary;

(ii) Ensure that activities in connection with the grant or TUP comply with air and water quality standards or related facility siting standards contained in applicable Federal or state law or regulations;

(iii) Control or prevent damage to scenic, aesthetic, cultural, and environmental values, including fish and wildlife habitat, and to public and private property and public health and safety;

(iv) Protect the interests of individuals living in the general area who rely on the area for subsistence uses as that term is used in Title VIII of ANILCA (16 U.S.C. 3111 *et seq.*); and

(v) Ensure that you construct, operate, maintain, and terminate the facilities on the lands in the right-of-way or TUP area in a manner consistent with the grant or TUP;

(10) Immediately notify all Federal, state, tribal, and local agencies of any release or discharge of hazardous material reportable to such entity under applicable law. You must also notify BLM at the same time, and send BLM a copy of any written notification you prepared;

(11) Not dispose of or store hazardous material on your right-of-way or TUP area, except as provided by the terms, conditions, and stipulation of your grant or TUP;

(12) Certify that your compliance with all requirements of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001 *et seq.*, when you receive, assign, renew, amend, or terminate your grant or TUP;

(13) Control and remove any release or discharge of hazardous material on or near the right-of-way or TUP area arising in connection with your use and occupancy of the right-of-way or TUP area, whether or not the release or discharge is authorized under the grant or TUP. You must also remediate and restore lands and resources affected by the release or discharge to BLM's satisfaction and to the satisfaction of any other Federal, state, tribal, or local agency having jurisdiction over the land, resource, or hazardous material;

(14) Comply with all liability and indemnification provisions and stipulations in the grant or TUP;

(15) As BLM directs, provide diagrams or maps showing the location of any constructed facility;

(16) Construct, operate, and maintain the pipeline as a common carrier. This means that the pipeline owners and operators must accept, convey, transport, or purchase without discrimination all oil or gas delivered to the pipeline without regard to where the oil and gas was produced (*i.e.*, whether on Federal or non-federal lands). Where natural gas not subject to state regulatory or conservation laws governing its purchase by pipeline companies is offered for sale, each pipeline company must purchase, without discrimination, any such natural gas produced in the vicinity of the pipeline. Common carrier provisions of this paragraph do not apply to natural gas pipelines operated by a:

(i) Person subject to regulation under the Natural Gas Act (15 U.S.C. 717 *et seq.*); or

(ii) Public utility subject to regulation by state or municipal agencies with the authority to set rates and charges for the sale of natural gas to consumers within the state or municipality.

(17) Within 30 calendar days after BLM requests it, file rate schedules and tariffs for oil and gas, or derivative products, transported by the pipeline as a common carrier with the agency BLM prescribes, and provide BLM proof that you made the required filing;

(18) With certain exceptions (listed in the statute), not export domestically produced crude oil by pipeline without Presidential approval (*see* 30 U.S.C. 185(u) and (s) and 50 U.S.C. App. 2401);

(19) Not exceed the right-of-way width that is specified in the grant without BLM's prior written authorization. If you need a right-of-way wider than 50 feet plus the ground occupied by the pipeline and related facilities, *see* § 2885.14 of this subpart;

(20) Not use the right-of-way or TUP area for any use other than that authorized by the grant or TUP. If you

require other pipelines, looping lines, or other improvements not authorized by the grant or TUP, you must first secure BLM's written authorization;

(21) Not use or construct on the land in the right-of-way or TUP area until:

(i) BLM approves your detailed plan for construction, operation, and termination of the pipeline, including provisions for rehabilitation of the right-of-way or TUP area and environmental protection; and

(ii) You receive a Notice to Proceed for all or any part of the right-of-way or TUP area. In certain situations BLM may waive this requirement in writing; and

(22) Comply with all other stipulations that BLM may require.

§ 2885.12 What rights does a grant or TUP convey?

The grant or TUP conveys to you only those rights which it expressly contains. BLM issues it subject to the valid existing rights of others, including the United States. Rights which the grant or TUP conveys to you include the right to:

(a) Use the described lands to construct, operate, maintain, and terminate facilities within the right-of-way or TUP area for authorized purposes under the terms and conditions of the grant or TUP;

(b) Allow others to use the land as your agent in the exercise of the rights that the grant or TUP specifies;

(c) Do minor trimming, pruning, and removing of vegetation to maintain the right-of-way or TUP area or facility;

(d) Use common varieties of stone and soil which are necessarily removed during construction of the pipeline, without additional BLM authorization or payment, in constructing the pipeline within the authorized right-of-way or TUP area; and

(e) Assign the grant or TUP to another, provided that you obtain BLM's prior written approval.

§ 2885.13 What rights does the United States retain?

The United States retains and may exercise any rights the grant or TUP does not expressly convey to you. These include the United States' right to:

(a) Access the lands covered by the grant or TUP at any time and enter any facility you construct on the right-of-way or TUP area. BLM will give you reasonable notice before it enters any facility on the right-of-way or TUP area;

(b) Require common use of your right-of-way or TUP area, including subsurface and air space, and authorize use of the right-of-way or TUP area for compatible uses. You may not charge for the use of the lands made subject to such additional right-of-way grants;

(c) Retain ownership of the resources of the land covered by the grant or TUP, including timber and vegetative or mineral materials and any other living or non-living resources. You have no right to use these resources, except as noted in § 2885.12 of this subpart;

(d) Determine whether or not your grant is renewable; and

(e) Change the terms and conditions of your grant or TUP as a result of changes in legislation, regulation, or as otherwise necessary to protect public health or safety or the environment.

§ 2885.14 What happens if I need a right-of-way wider than 50 feet plus the ground occupied by the pipeline and related facilities?

(a) You may apply to BLM at any time for a right-of-way wider than 50 feet plus the ground occupied by the pipeline and related facilities. In your application you must show that the wider right-of-way is necessary to:

(1) Properly operate and maintain the pipeline after you have constructed it;

(2) Protect the environment; or

(3) Provide for public safety.

(b) BLM will notify you in writing of its finding(s) and its decision on your application for a wider right-of-way. If the decision is adverse to you, you may appeal it under § 2881.10 of this part.

§ 2885.15 How will BLM charge me rent?

(a) BLM will charge rent beginning on the first day of the month following the effective date of the grant or TUP through the last day of the month when the grant or TUP terminates. *Example:* If a grant or TUP becomes effective on January 10 and terminates on September 16, the rental period would be February 1 through September 30, or 8 months.

(b) There are no reductions or waivers of rent for grants or TUPs.

(c) BLM will set or adjust the annual billing periods to coincide with the calendar year by prorating the rent based on 12 months.

(d) If you disagree with the rent that BLM charges, you may appeal the decision under § 2881.10 of this part.

§ 2885.16 When do I pay rent?

(a) You must pay rent for the initial rental period before BLM issues you a grant or TUP.

(b) You make all other rental payments according to the payment plan described in § 2885.21 of this subpart.

(c) After the first rental payment, all rent is due on January 1 of the first year of each succeeding rental period for the term of your grant.

§ 2885.17 What happens if I pay the rent late?

(a) If BLM does not receive the rent payment within 15 calendar days after the rent was due under § 2885.16 of this subpart, BLM will charge you a late payment fee of $25.00 or 10 percent of the rent you owe, whichever is greater, not to exceed $500 per authorization.

(b) If BLM does not receive your rent payment and late payment fee within 30 calendar days after rent was due, BLM may collect other administrative fees provided by statute.

(c) If BLM does not receive your rent, late payment fee, and any administrative fees within 90 calendar days after the rent was due, BLM may terminate your grant under § 2886.17 of this part and you may not remove any facility or equipment without BLM's written permission. The rent due, late payment fees, and any administrative fees remain a debt that you owe to the United States.

(d) If you pay the rent, late payment fees, and any administrative fees after BLM has terminated the grant, BLM does not automatically reinstate the grant. You must file a new application with BLM. BLM will consider the history of your failure to timely pay rent in deciding whether to issue you a new grant.

(e) You may appeal any adverse decision BLM takes against your grant or TUP under § 2881.10 of this part.

§ 2885.18 When must I make estimated rent payments to BLM?

To expedite the processing of your application for a grant or TUP, BLM may estimate rent payments and require you to pay that amount when it issues the grant or TUP. The rent amount may change once BLM determines the actual rent of the grant or TUP. BLM will credit you any rental overpayment, and you are liable for any underpayment. This section does not apply to rent payments made under the rent schedule in this part.

§ 2885.19 What is the rent for a linear right-of-way?

(a) Except as noted in paragraph (b) of this section, BLM will use the Per Acre Rent Schedule at § 2806.20(b) of this chapter to calculate the rent. The Per Acre Rent Schedule is updated annually in accordance with § 2806.21 of this chapter.

(b) BLM may determine your rent using the methods described in § 2806.50 of this chapter, rather than by using the rent schedule cited in paragraph (a) of this section if the rent determined by comparable commercial practices or an appraisal would be 10 or more times the rent from the schedule.

(c) Once you are on a rent schedule, BLM will not remove you from it, unless:

(1) The BLM State Director decides to remove you from the schedule under paragraph (b) of this section; or

(2) You file an application to amend your grant.

(d) You may obtain the current linear right-of-way rent schedule from any BLM state or field office or by writing: Director, BLM, 1849 C St., NW., Mail Stop 1000 LS, Washington, DC 20240. BLM also posts the current rent schedule on the BLM Homepage on the Internet at *http://www.blm.gov*.

§ 2885.20 How will BLM calculate my rent for linear rights-of-way the schedule covers?

(a) BLM calculates your rent by multiplying the rent per acre for the appropriate category of use and county zone price from the current schedule by the number of acres in the right-of-way or TUP area that fall in those categories and multiplying the result by the number of years in the rental period.

(b) If BLM has not previously used the rent schedule to calculate your rent, we may do so after giving you reasonable written notice.

§ 2885.21 How must I make rent payments for my grant or TUP?

(a) For TUPs you must make a one-time nonrefundable payment for the term of the TUP. For grants, you must make either nonrefundable annual payments or nonrefundable payments for more than 1 year, as follows:

(1) *One-time payments.* You may pay in advance the required rent amount for the entire term of the grant.

(2) If you choose not to make a one-time payment, you must pay according to one of the following methods, as applicable:

(i) *Payments by individuals.* If your annual rent is $100 or less, you must pay at 10-year intervals not to exceed the term of the grant. If your annual rent is greater than $100, you may pay annually or at multi-year intervals that you may choose.

(ii) *Payments by all others.* You must pay rent in advance at ten-year intervals not to exceed the term of the grant.

(b) BLM considers the first partial calendar year in the rent payment period to be the first year of the rental payment term. BLM prorates the first year rental amount based on the number of months left in the calendar year after the effective date of the grant.

§ 2885.22 How will BLM calculate rent for communication uses ancillary to a linear grant, TUP, or other use authorization?

When a communication use is ancillary to, and authorized by BLM under, a grant or TUP for a linear use, or some other type of authorization (*e.g.*, a mineral lease or sundry notice), BLM will determine the rent using the linear rent schedule (*see* § 2885.19 of this subpart) or rent scheme associated with the other authorization, and not the communication use rent schedule (*see* § 2806.30 of this chapter).

§ 2885.23 If I hold a grant or TUP, what monitoring fees must I pay?

(a) *Monitoring fees.* Subject to § 2886.11 of this part, you must pay a fee to BLM for any costs the Federal Government incurs in monitoring the construction, operation, maintenance, and termination of the pipeline and protection and rehabilitation of the affected Federal lands your grant or TUP covers. BLM categorizes the monitoring fees based on the estimated number of work hours necessary to monitor your grant or TUP. Category 1 through 4 monitoring fees are one-time fees and are not refundable. The work hours and fees for 2005 are as follows:

2005 MONITORING FEE SCHEDULE

Monitoring category	Federal work hours involved	Monitoring fee as of June 21, 2005. To be adjusted annually for changes in the IPD–GDP. See paragraph (b) of this section for update information
(1) Applications for new grants and TUPs, assignments, renewals, and amendments to existing grants and TUPs.	Estimated Federal work hours are > 1 ≤ 8.	$97.
(2) Applications for new grants and TUPs, assignments, renewals, and amendments to existing grants and TUPs.	Estimated Federal work hours are > 8 ≤ 24.	$343.
(3) Applications for new grants and TUPs, assignments, renewals, and amendments to existing grants and TUPs.	Estimated Federal work hours are > 24 ≤ 36.	$644.
(4) Applications for new grants and TUPs, assignments, renewals, and amendments to existing grants and TUPS.	Estimated Federal work hours are > 36 ≤ 50.	$923.
(5) Master Agreements	Varies	As specified in the Agreement.
(6) Applications for new grants and TUPs, assignments, renewals, and amendments to existing grants and TUPs.	Estimated Federal work hours > 50.	Actual costs.

(b) *Updating the schedule.* BLM will revise paragraph (a) of this section annually to update Category 1 through 4 monitoring fees in the manner described at § 2884.12(c) of this part. BLM will update Category 5 monitoring fees as specified in the Master Agreement. The monitoring cost schedule is available from any BLM state or field office or by writing: Director, Bureau of Land Management, 1849 C St., NW., Mail Stop 1000LS, Washington, DC 20240. BLM also posts the current schedule on the BLM Homepage on the Internet at *http://www.blm.gov*.

§ 2885.24 When do I pay monitoring fees?

(a) *Monitoring Categories 1 through 4.* Unless BLM otherwise directs, you must pay monitoring fees when you submit to BLM your written acceptance of the terms and conditions of the grant or TUP.

(b) *Monitoring Category 5.* You must pay the monitoring fees as specified in the Master Agreement. BLM will not issue your grant or TUP until it receives the required payment.

(c) *Monitoring Category 6.* BLM may periodically estimate the costs of monitoring your use of the grant or TUP. BLM will include this fee in the costs associated with processing fees described at § 2884.12 of this part. If BLM has underestimated the monitoring costs, we will notify you of the shortfall. If your payments exceed the actual costs that Federal employees incurred for monitoring, BLM will either reimburse you the difference, or adjust the next billing to reflect the overpayment. Unless BLM gives you written authorization, you may not offset or deduct the overpayment from your payments.

(d) *Monitoring Categories 1–4 and 6.* If you disagree with the category BLM has determined for your application,

you may appeal the decision under § 2881.10 of this part.

Subpart 2886—Operations on MLA Grants and TUPs

§ 2886.10 When can I start activities under my grant or TUP?

(a) When you can start depends on the terms of your grant or TUP. You can start activities when you receive the grant or TUP you and BLM signed, unless the grant or TUP includes a requirement for BLM to provide a written Notice to Proceed. If your grant or TUP contains a Notice to Proceed requirement, you may not initiate construction, operation, maintenance, or termination until BLM issues you a Notice to Proceed.

(b) Before you begin operating your pipeline or related facility authorized by a grant or TUP, you must certify in writing to BLM that the pipeline system:

(1) Has been constructed and tested according to the terms of the grant or TUP; and

(2) Is in compliance with all required plans, specifications, and Federal and state laws and regulations.

§ 2886.11 Who regulates activities within my right-of-way or TUP area?

After BLM has issued the grant or TUP, the head of the agency having administrative jurisdiction over the Federal lands involved will regulate your grant or TUP activities in conformance with the Act, appropriate regulations, and the terms and conditions of the grant or TUP. BLM and the other agency head may reach another agreement under 30 U.S.C. 185(c).

§ 2886.12 When must I contact BLM during operations?

You must contact BLM:

(a) At the times specified in your grant or TUP;

(b) When your use requires a substantial deviation from the grant or TUP. You must obtain BLM's approval before you begin any activity that is a substantial deviation;

(c) When there is a change affecting your application, grant, or TUP including, but not limited to changes in:

(1) Mailing address;

(2) Partners;

(3) Financial conditions; or

(4) Business or corporate status; and

(d) When BLM requests it, such as to update information or confirm that information you submitted before is accurate.

§ 2886.13 If I hold a grant or TUP, for what am I liable?

(a) If you hold a grant or TUP, you are liable to the United States and to third parties for any damage or injury they incur in connection with your use and occupancy of the right-of-way or TUP area.

(b) You are strictly liable for any activity or facility associated with your right-of-way or TUP area which BLM determines presents a foreseeable hazard or risk of damage or injury to the United States. BLM will specify in the grant or TUP any activity or facility posing such hazard or risk, and the financial limitations on damages commensurate with such hazard or risk.

(1) BLM will not impose strict liability for damage or injury resulting primarily from an act of war or the negligence of the United States, except as otherwise provided by law.

(2) As used in this section, strict liability extends to costs incurred by the Federal government to control or abate conditions, such as fire or oil spills, which threaten life, property, or the environment, even if the threat occurs to areas that are not under Federal jurisdiction. This liability is separate and apart from liability under other provisions of law.

(3) You are strictly liable to the United States for damage or injury up to $2 million for any one incident. BLM will update this amount annually to adjust for changes in the Consumer Price Index for All Urban Consumers, U.S. City Average (CPI–U) as of July of each year (difference in CPI–U from July of one year to July of the following year), rounded to the nearest $1,000. This financial limitation does not apply to the release or discharge of hazardous substances on or near the grant or TUP area, or where liability is otherwise not subject to this financial limitation under applicable law.

(4) BLM will determine your liability for any amount in excess of the $2 million strict liability limitation (as adjusted) through the ordinary rules of negligence.

(5) The rules of subrogation apply in cases where a third party caused the damage or injury.

(c) If you cannot satisfy claims for injury or damage, all owners of any interests in, and all affiliates or subsidiaries of any holder of, a grant or TUP, except for corporate stockholders, are jointly and severally liable to the United States.

(d) If BLM issues a grant or TUP to more than one holder, each is jointly and severally liable.

(e) By accepting the grant or TUP, you agree to fully indemnify or hold the United States harmless for liability, damage, or claims arising in connection with your use and occupancy of the right-of-way or TUP area.

(f) We address liability of state, tribal, and local governments in § 2886.14 of this subpart.

(g) The provisions of this section do not limit or exclude other remedies.

§ 2886.14 As grant or TUP holders, what liabilities do state, tribal, and local governments have?

(a) If you are a state, tribal, or local government or its agency or instrumentality, you are liable to the fullest extent law allows at the time that BLM issues your grant or TUP. If you do not have the legal power to assume full liability, you must repair damages or make restitution to the fullest extent of your powers.

(b) BLM may require you to provide a bond, insurance, or other acceptable security to:

(1) Protect the liability exposure of the United States to claims by third parties arising out of your use and occupancy of the right-of-way or TUP area;

(2) Cover any losses, damages, or injury to human health, the environment, and property incurred in connection with your use and occupancy of the right-of-way or TUP area; and

(3) Cover any damages or injuries resulting from the release or discharge of hazardous materials incurred in connection with your use and occupancy of the right-of-way or TUP area.

(c) Based on your record of compliance and changes in risk and conditions, BLM may require you to increase or decrease the amount of your bond, insurance, or security.

(d) The provisions of this section do not limit or exclude other remedies.

§ 2886.15 How is grant or TUP administration affected if the BLM land my grant or TUP encumbers is transferred to another Federal agency or out of Federal ownership?

(a) If there is a proposal to transfer the BLM land your grant or TUP encumbers to another Federal agency, BLM may, after reasonable notice to you, transfer administration of your grant or TUP, for the lands BLM formerly administered, to another Federal agency, unless doing so would diminish your rights. If BLM determines your rights would be diminished by such a transfer, BLM can still transfer the land, but retain administration of your grant or TUP under existing terms and conditions.

(b) If there is a proposal to transfer the BLM land your grant or TUP encumbers out of Federal ownership, BLM may, after reasonable notice to you and in conformance with existing policies and procedures:

(1) Transfer the land subject to your grant or TUP. In this case, administration of your grant or TUP, for the lands BLM formerly administered, is transferred to the new owner of the land;

(2) Transfer the land, but BLM retains administration of your grant or TUP; or

(3) Reserve to the United States the land your grant or TUP encumbers, and BLM retains administration of your grant or TUP.

(c) BLM or, if BLM no longer administers the land, the new land owner may negotiate new grant or TUP terms and conditions with you.

§ 2886.16 Under what conditions may BLM order an immediate temporary suspension of my activities?

(a) Subject to § 2886.11, BLM can order an immediate temporary suspension of grant or TUP activities within the right-of-way or TUP area to protect public health or safety or the environment. BLM can require you to stop your activities before holding an administrative proceeding on the matter and may order immediate remedial action.

(b) BLM may issue the immediate temporary suspension order orally or in writing to you, your contractor or subcontractor, or to any representative, agent, or employee representing you or conducting the activity. BLM may take this action whether or not any action is being or has been taken by other Federal or state agencies. When you receive the order, you must stop the activity immediately. BLM will, as soon as practical, confirm an oral order by sending or hand delivering to you or your agent at your address a written suspension order explaining the reasons for it.

(c) You may file a written request for permission to resume activities at any time after BLM issues the order. In the request, give the facts supporting your request and the reasons you believe that BLM should lift the order. BLM must grant or deny your request within 5 business days after receiving it. If BLM does not respond within 5 business days, BLM has denied your request. You may appeal the denial under § 2881.10 of this part.

(d) The immediate temporary suspension order is effective until you receive BLM's written notice to proceed with your activities.

§ 2886.17 Under what conditions may BLM suspend or terminate my grant or TUP?

(a) Subject to § 2886.11, BLM may suspend or terminate your grant if you do not comply with applicable laws and regulations or any terms, conditions, or stipulations of the grant, or if you abandon the right-of-way.

(b) Subject to § 2886.11, BLM may suspend or terminate your TUP if you do not comply with applicable laws and regulations or any terms, conditions, or stipulations of the TUP, or if you abandon the TUP area.

(c) A grant or TUP also terminates when:

(1) The grant or TUP contains a term or condition that has been met that requires the grant or TUP to terminate;

(2) BLM consents in writing to your request to terminate the grant or TUP; or

(3) It is required by law to terminate.

(d) Your failure to use your right-of-way for its authorized purpose for any continuous 2-year period creates a presumption of abandonment. BLM will notify you in writing of this presumption. You may rebut the presumption of abandonment by proving that you used the right-of-way or that your failure to use the right-of-way was due to circumstances beyond your control, such as acts of God, war, or casualties not attributable to you.

(e) You may appeal a decision under this section under § 2881.10 of this part.

§ 2886.18 How will I know that BLM intends to suspend or terminate my grant or TUP?

(a) *Grants.* When BLM determines that it will suspend or terminate your grant under § 2886.17 of this subpart, it will send you a written notice of this determination. The determination will provide you a reasonable opportunity to correct the violation, start your use, or resume your use of the right-of-way, as appropriate. In the notice BLM will state the date by which you must correct the violation or start or resume use of the right-of-way.

(1) If you have not corrected the violation or started or resumed use of the right-of-way by the date specified in the notice, BLM will refer the matter to the Office of Hearings and Appeals. An ALJ in the Office of Hearings and Appeals will provide an appropriate administrative proceeding under 5 U.S.C. 554 and determine whether grounds for suspension or termination exist. No administrative proceeding is required where the grant by its terms provides that it terminates on the occurrence of a fixed or agreed upon condition, event, or time.

(2) BLM will suspend or terminate the grant if the ALJ determines that grounds exist for suspension or termination and the suspension or termination is justified.

(b) *TUPs.* When BLM determines that it will suspend or terminate your TUP, it will send you a written notice and provide you a reasonable opportunity to correct the violation or start or resume use of the TUP area. The notice will also provide you information on how to file a written request for reconsideration.

(1) You may file a written request with the BLM office that issued the notice, asking for reconsideration of the determination to suspend or terminate your TUP. BLM must receive this request within 10 business days after you receive the notice.

(2) BLM will provide you with a written decision within 20 business days after receiving your request for reconsideration. The decision will include a finding of fact made by the next higher level of authority than that who made the suspension or termination determination. The decision will also inform you whether BLM suspended or terminated your TUP or cancelled the notice made under paragraph (b) of this section.

(3) If the decision is adverse to you, you may appeal it under § 2881.10 of this part.

§ 2886.19 When my grant or TUP terminates, what happens to any facilities on it?

(a) Subject to § 2886.11, after your grant or TUP terminates, you must remove any facilities within the right-of-way or TUP area within a reasonable time, as determined by BLM, unless BLM instructs you otherwise in writing, or termination is due to non-payment of rent (*see* § 2885.17(c) of this part).

(b) After removing the facilities, you must remediate and restore the right-of-way or TUP area to a condition satisfactory to BLM, including the removal and clean-up of any hazardous materials.

(c) If you do not remove all facilities within a reasonable period, as determined by BLM, BLM may declare them to be the property of the United States. However, you are still liable for the costs of removing them and for remediating and restoring the right-of-way or TUP area.

Subpart 2887—Amending, Assigning, or Renewing MLA Grants and TUPs

§ 2887.10 When must I amend my application, seek an amendment of my grant or TUP, or obtain a new grant or TUP?

(a) You must amend your application or seek an amendment of your grant or TUP when there is a proposed substantial deviation in location or use.

(b) The requirements to amend an application or a grant or TUP are the same as those for a new application, including paying processing and monitoring fees and rent according to

§§ 2884.12, 2885.23, 2885.19, and 2886.11 of this part.

(c) Any activity not authorized by your grant or TUP may subject you to prosecution under applicable law and to trespass charges under subpart 2888 of this part.

(d) Notwithstanding paragraph (a) of this section, if you hold a pipeline grant issued before November 16, 1973, and there is a proposed substantial deviation in location or use of the right-of-way, you must apply for a new grant.

(e) BLM may ratify or confirm a grant that was issued before November 16, 1973, if we can modify the grant to comply with the Act and these regulations. BLM and you must jointly agree to any modification of a grant made under this paragraph.

§ 2887.11 May I assign my grant or TUP?

(a) With BLM's approval, you may assign, in whole or in part, any right or interest in a grant or TUP.

(b) In order to assign a grant or TUP, the proposed assignee, subject to § 2886.11 of this part, must file an application and satisfy the same procedures and standards as for a new grant or TUP, including paying processing fees (*see* § 2884.12 of this part).

(c) The assignment application must also include:

(1) Documentation that the assignor agrees to the assignment; and

(2) A signed statement that the proposed assignee agrees to comply with and to be bound by the terms and conditions of the grant or TUP that is being assigned, and all applicable laws and regulations.

(d) BLM will not recognize an assignment until we approve it in writing. BLM will approve the assignment if doing so is in the public interest. BLM may modify the grant or TUP or add bonding and other requirements, including terms and conditions, to the grant or TUP when approving the assignment. If BLM approves the assignment, the benefits and liabilities of the grant or TUP apply to the new grant or TUP holder.

(e) The processing time and conditions described at § 2884.21 of this part apply to assignment applications.

§ 2887.12 How do I renew my grant?

(a) You must apply to BLM to renew the grant at least 120 calendar days before your grant expires. BLM will renew the grant if the pipeline is being operated and maintained in accordance with the grant, these regulations, and the Act. If your grant has expired or terminated, you must apply for a new grant under subpart 2884 of this part.

(b) BLM may modify the terms and conditions of the grant at the time of renewal, and you must pay the processing fees (*see* § 2884.12 of this part) in advance.

(c) The time and conditions for processing applications for rights-of-way, as described at § 2884.21 of this part, apply to applications for renewals.

Subpart 2888—Trespass

§ 2888.10 What is trespass?

(a) Trespass is using, occupying, or developing the public lands or their resources without a required authorization or in a way that is beyond the scope and terms and conditions of your authorization. Trespass is a prohibited act.

(b) Trespass includes acts or omissions causing unnecessary or undue degradation to the public lands or their resources. In determining whether such degradation is occurring, BLM may consider the effects of the activity on resources and land uses outside the area of the activity.

(c) BLM will administer trespass actions for grants and TUPs as set forth in §§ 2808.10(c), and 2808.11 of this chapter, except that the rental exemption provisions of part 2800 do not apply to grants issued under this part.

(d) Other Federal agencies will address trespass on non-BLM lands under their respective laws and regulations.

§ 2888.11 May I receive a grant if I am or have been in trespass?

Until you satisfy your liability for a trespass, BLM will not process any applications you have pending for any activity on BLM-administered lands. A history of trespass will not necessarily disqualify you from receiving a grant. In order to correct a trespass, you must apply under the procedures described at subpart 2884 of this part. BLM will process your application as if it were a new use. Prior unauthorized use does not create a preference for receiving a grant.

PART 2920—LEASES, PERMITS, AND EASEMENTS

■ 5. The authority citation for part 2920 continues to read as follows:

Authority: 43 U.S.C. 1740.

■ 6. Amend § 2920.6 by revising the second sentence of paragraph (b) and the third sentence of paragraph (c) as follows:

§ 2920.6 Reimbursement of costs.

* * * * *

(b) * * * The reimbursement of costs shall be in accordance with the provisions of §§ 2804.14 and 2805.16 of this chapter, except that any permit whose total rental is less than $250 shall be exempt from reimbursement of costs requirements.

(c) * * * This payment shall be determined in accordance with the provisions of §§ 2804.14 and 2805.16 of this chapter.

* * * * *

PART 9230—TRESPASS

■ 7. Revise the authority citation for part 9230 to read as follows:

Authority: R.S. 2478 and 43 U.S.C. 1740.

■ 8. Amend § 9239.7–1 by revising the introductory paragraph to read as follows:

§ 9239.7–1 Public lands.

The filing of an application under part 2800, 2810, or 2880, of this chapter does not authorize the applicant to use or occupy the public lands for right-of-way purposes, except as provided by the definition of ''Casual use'' in § 2801.5(b) and by §§ 2804.29 and 2884.25 of this chapter, until written authorization has been issued by the authorized officer. Any unauthorized occupancy or use of public lands or improvements for right-of-way purposes constitutes a trespass against the United States for which the trespasser is liable for costs, damages, and penalties as provided in subpart 2808 and §§ 2812.1–3 and 2888.10 of this chapter. No new permit, license, authorization, or grant of any kind shall be issued to a trespasser until:

* * * * *

PART 9260—LAW ENFORCEMENT—CRIMINAL

■ 9. Revise the authority citation for part 9260 to read as follows:

Authority: 16 U.S.C. 4601–6a, 16 U.S.C. 670h, 16 U.S.C. 1246(i), 16 U.S.C. 1336, 43 U.S.C. 315a, 43 U.S.C. 1733(a), 43 U.S.C. 1740, and Executive Order 11644, 37 FR 2877, 3 CFR, 1971–1975 Comp., p. 666.

■ 10. Revise § 9262.1 to read as follows:

9262.1 Penalties for unauthorized use, occupancy, or development of public lands.

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) any person who knowingly and willfully violates the provisions of §§ 2808.10(a), 2812.1–3, 2888.10, or 2920.1–2(a) of this chapter, by using public lands without the requisite authorization, may be tried before a United States magistrate and fined no more than $1,000 or

imprisoned for no more than 12 months, or both.

[FR Doc. 05–7501 Filed 4–21–05; 8:45 am]

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Friday,
April 22, 2005

Part III

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing Reconsideration; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[Docket No. OAR–2002–0054; FRL–7902–5]

RIN 2060–AM94

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of reconsideration of final rule; request for public comment; notice of public hearing.

SUMMARY: On May 16, 2003, EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for new and existing sources at brick and structural clay products (BSCP) manufacturing facilities (the final rule). Subsequently, the Administrator received a petition for reconsideration of the final rule. The EPA is announcing our reconsideration of and requesting public comment on one issue arising from the final rule. Specifically, we are requesting comment on our decision to base the maximum achievable control technology (MACT) requirements for certain tunnel kilns on dry limestone adsorption technology. We plan to issue a final decision on this issue as expeditiously as possible. We are seeking comment only on this issue. We will not respond to any comments addressing any other issue or any other provisions of the final rule or any other rule.

DATES: *Comments.* Comments must be received on or before June 21, 2005.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by May 9, 2005, a public hearing will be held on May 23, 2005. For additional information on the public hearing and requesting to speak, see the **SUPPLEMENTARY INFORMATION** section of this preamble.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2002–0054 (Legacy Docket ID No. A–99–30), 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, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-docket@epa.gov.*
- Fax: (202) 566–1741.
- Mail: Air Docket, EPA, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- Hand Delivery: Air Docket, EPA, Room B108, 1301 Constitution Avenue, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2002–0054 (Legacy Docket ID No. A–99–30). The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov 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. We request that interested parties who would like information they previously submitted to EPA to be considered as part of this reconsideration action identify the relevant information by docket entry numbers and page numbers.

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

Public Hearing. If a public hearing is held, it will be held on May 23, 2005 at the EPA facility, Research Triangle Park, North Carolina, or at an alternate site nearby.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Johnson, Combustion Group, Emission Standards Division (MC–C439–01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5025; fax number: (919) 541–5450; e-mail address: *johnson.mary@epa.gov.* For questions about the public hearing, contact Ms. Eloise Shepherd, Combustion Group, Emission Standards Division (MC-C439–01), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5578, or electronic mail at *shepherd.eloise@epa.gov.*

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

I. General Information
  A. What is the source of authority for the reconsideration action?
  B. What entities are potentially affected by the reconsideration action?
  C. How do I submit CBI?
  D. How do I obtain a copy of this action?
II. Background
III. Today's Action
IV. Discussion of the Issue
V. Statutory and Executive Order Reviews
  A. Executive Order 12866: Regulatory Planning and Review
  B. Paperwork Reduction Act
  C. Regulatory Flexibility Act
  D. Unfunded Mandates Reform Act
  E. Executive Order 13132: Federalism

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act

I. General Information

A. What Is the Source of Authority for the Reconsideration Action?

The statutory authority for this action is provided by sections 112 and 307(d)(7)(B) of the Clean Air Act (CAA) as amended (42 U.S.C. 7412 and 7607(d)(7)(B)). This action is also subject to section 307(d) of the CAA (42 U.S.C. 7607(d)).

B. What Entities Are Potentially Affected by the Reconsideration Action?

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

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

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

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

C. How Do I Submit CBI?

Do not submit this information to EPA through EDOCKET, regulations.gov, or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

D. How Do I Obtain a Copy of This Action? Worldwide Web (WWW)

In addition to being available in the dockets, an electronic copy of today's action also will be available on the WWW. Following the Administrator's signature, a copy of this action will be posted at www.epa.gov/ttn/oarpg on EPA's Technology Transfer Network (TTN) policy and guidance page. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

II. Background

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

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standards are set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory for which the Administrator has emissions information (where there are 30 or more sources in a category or subcategory, as in the case of each BSCP subcategory).

In developing MACT standards, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost of achieving the emissions reductions, any health and environmental impacts, and energy requirements.

We proposed NESHAP for major sources manufacturing BSCP on July 22, 2002 (67 FR 47894), and we published the final BSCP rule on May 16, 2003 (68 FR 26690). The preamble for the proposed rule described the rationale for the proposed rule, solicited public comments, and offered an opportunity for a public hearing. A public hearing regarding the proposed BSCP rule was held on August 21, 2002, during which 21 presentations were made. Following the public hearing, we met with representatives of industry and environmental groups. We received a total of 80 public comment letters on the proposed BSCP rule. Comments were

submitted by industry trade associations, BSCP manufacturing companies, State regulatory agencies and their representatives, and environmental groups. We summarized the major public comments on the proposed rule and our responses to those comments in the preamble to the final rule and in a separate, supporting ''response to comments'' document.

Following promulgation of the BSCP rule, the Administrator received a petition for reconsideration (dated July 15, 2003) filed by EarthJustice on behalf of Sierra Club pursuant to section 307(d)(7)(B) of the CAA. The petition requested reconsideration of three aspects of the final rule. We also received a letter (dated October 10, 2003) from counsel for the Brick Industry Association (BIA), commenting on the Sierra Club's petition for reconsideration. On April 19, 2004, EPA issued a letter to the Sierra Club's counsel granting its petition for reconsideration with respect to one issue and indicating that the Agency would conduct rulemaking to respond to the petition. Today's action initiates the rulemaking by requesting comment on one issue raised in the Sierra Club's petition for reconsideration.

In addition to the petition for reconsideration, three petitions for judicial review of the final NESHAP for BSCP manufacturing and clay ceramics manufacturing (40 CFR part 63, subparts JJJJJ and KKKKK, published together on May 16, 2003) were filed with the U.S. Court of Appeals for the District of Columbia Circuit by the Sierra Club, BIA, and two clay ceramics manufacturers (Monarch Ceramic Tile, Incorporated and American Marazzi Tile, Incorporated).[1] On September 29, 2003, EPA filed a motion with the Court asking the Court to stay proceedings in the litigation and defer establishing a briefing schedule to enable EPA to act on Sierra Club's petition for reconsideration prior to briefing. In an order dated January 21, 2004, the Court granted EPA's motion, holding the case in abeyance for 90 days without prejudice to a later motion to extend the abeyance period. In a motion filed on April 20, 2004, EPA indicated its intent to reconsider one issue arising from the final BSCP rule and asked the Court to extend the abeyance period pending EPA's completion of its reconsideration proceeding. The EPA explained that it is in the interest of all of the parties to the litigation and of the Court for EPA to complete its reconsideration proceeding prior to briefing, because issues raised by Sierra Club and BIA relating to BSCP sources will either be moot following completion of the reconsideration proceeding, or will be subject to judicial review on a new record based on EPA's action at the conclusion of the reconsideration proceeding.[2] On July 29, 2004, the Court issued an order holding the case in abeyance for nine months from the date of the order without prejudice to a later motion to extend the abeyance period.

III. Today's Action

The Sierra Club's petition for reconsideration sought reconsideration of three issues relating to EPA's promulgation of final MACT floor standards based on dry limestone adsorber (DLA) technology. Noting that EPA had proposed MACT floor standards based on three different technologies, dry lime injection fabric filters (DIFF), dry lime scrubber fabric filters (DLS/FF) and wet scrubbers (WS), the Sierra Club argued that EPA had provided no opportunity to comment on either the final DLA-based floors or the final floor approach. Pursuant to section 307(d)(7)(B) of the CAA[3], we granted the Sierra Club's petition for reconsideration with respect to one issue—namely, the Sierra Club's claim that ''EPA's decision to consider only DLA-controlled kilns was unlawful and arbitrary and capricious.''[4]

This narrow reconsideration issue involves the Sierra Club's claim that the MACT floors (and MACT standards based on the floors) at promulgation were set using a different control technology than those proposed and that EPA did not provide adequate opportunity for public comment on the revised MACT floors. Because we changed the proposed MACT floors and standards in response to comments received on the proposed rule, we are now providing an opportunity for public comment on the DLA-based floors and standards reflected in the final rule. Without prejudging the information that will be provided in response to this action, we note that to date, the Sierra Club has not provided information which persuades us that our decision to base the MACT floors on DLA technology is erroneous or inappropriate. However, in order to ensure a full opportunity for comment, we have decided to grant reconsideration on this issue. Stakeholders who would like for us to reconsider comments they submitted to us previously on this issue should identify the relevant docket entry numbers and page numbers of their comments to facilitate expeditious review during the reconsideration process. We plan to take final action on the issue for which we have decided to grant reconsideration as expeditiously as possible.

The compliance date for the final BSCP rule has not changed as of today's action. If we decide to amend the final rule as a result of the reconsideration process, we will reevaluate the compliance date as early as possible.

IV. Discussion of the Issue

Brick and structural clay products are fired in either tunnel (continuous) kilns or periodic (batch) kilns. Kilns are predominantly fired with natural gas, although other fuels, including sawdust, are also used. Most of the sawdust-fired kilns duct some or all of the kiln exhaust to rotary sawdust dryers prior to release to the atmosphere. Consequently, some sawdust-fired kilns have two process streams, including a process stream that exhausts directly to the atmosphere or to an air pollution control device (APCD), and a process stream in which the kiln exhaust is ducted to a sawdust dryer where it is used to dry sawdust before being emitted to the atmosphere.

The proposed rule focused on those process streams from existing large

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

[2] Sierra Club and BIA opposed an indefinite stay. On May 10, 2004, EPA again asked the Court go grant its request for an indefinite stay, but in the alternative, EPA asked the Court to hold the case in abeyance for nine months from the date of the Court's order granting EPA's motion, with leave for EPA to file a motion requesting a further extension of the abeyance period or to govern further proceedings before the nine-month period expires.

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

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

tunnel kilns that exhausted directly to the atmosphere or to an APCD. Any process stream from existing large tunnel kilns that was ducted to a sawdust dryer prior to July 22, 2002 was not subject to the requirements of the proposed rule. Large tunnel kilns are those with a design capacity that is equal to or greater than 9.07 Mg/hr (10 tons per hour (tph)) of fired product.

The MACT floors for the kiln exhaust from those certain tunnel kilns in the proposed rule were based on the use of DIFF, DLS/FF, or WS. Another technology, DLA, which is the most prevalent APCD used to control emissions from existing brick kilns, was not proposed as a MACT floor technology because at the time of the proposal, we had concerns about the ability to effectively monitor DLA performance and questions about the effectiveness of DLA, particularly with respect to particulate matter (PM) control. In the preamble to the proposed rule, we stated: ''* * * We have several concerns about the long-term effectiveness of the DLA control technology and the degree to which we can assure continuous compliance for DLA-controlled kilns. First, long-term test data that demonstrate performance over the life of the sorbent are not available. This is important for these systems because the sorbent (limestone) is not continuously replaced with new sorbent, and we expect the performance of the systems to decrease as the sorbent is re-used and the ability of the sorbent to adsorb HF and HCl decreases. Second, representatives of DLA manufacturers and facilities that operate DLA have stated that not all limestone can effectively be used as a sorbent in a DLA. Because of these two issues, we have been unable to identify any type of parameter monitoring that could be used to assure continuous compliance. If parameter monitoring cannot be used, some type of CEMS would be required to assure continuous compliance with HF and HCl emission limits if DLA were considered as MACT control. The only potential option that we have identified for assuring continuous compliance is the installation and continuous operation of Fourier transform infrared spectroscopy (FTIR) monitoring systems. The costs associated with FTIR systems are considerable. Finally, DLA do not provide a mechanism for PM (and, therefore, metal HAP) removal and may actually create PM in some instances. For all of these reasons, we believe that DLA or equivalent controls would not represent an appropriate level of MACT control for BSCP kilns * * *.'' (67 FR 47894, 47908, July 22, 2002)

In response to the proposed rule, we received numerous comments from industry representatives (including the BIA), kiln manufacturers, and air pollution control device vendors on issues related to the application and performance of the APCD discussed in the preamble. As discussed in this preamble, and in the preamble to the final rule, many commenters reported technical obstacles and disadvantages of the DIFF, DLS/FF, and WS technologies for BSCP kilns and provided information to address our concerns about DLA technology.

Several commenters argued that DIFF, DLS/FF, and WS technologies are not proven or commercially available for BSCP kilns. Commenters pointed out that, with the exception of one facility, full-scale WS have never been used on BSCP kilns, although some short-term pilot tests of WS have been conducted. The commenters pointed out that injection systems (such as DIFF and DLS/FF) and wet control devices need a certain minimum airflow to operate properly, and different products may require different airflows, some of which could be outside of the range within which the APCD operates properly. In addition, commenters pointed out that during kiln slowdowns, the APCD may not be able to operate at all because of reduced kiln airflow.

Several commenters expressed concerns about waste disposal. Commenters stated that DIFF and DLS/FF systems produce large amounts of solid waste that are difficult and expensive to dispose of. Commenters stated that WS would not be viable options for many BSCP plants because of wastewater treatment issues (*e.g.,* limited or no sewer access, wastewater treatment costs).

Commenters also raised concerns about retrofitting existing BSCP kilns with DIFF, DLS/FF, and WS technologies. Commenters pointed out that brick color, the primary factor in brick sales, is affected by kiln airflow. Thus, retrofitting with an APCD that changes the kiln airflow would change the color of the brick produced using a particular recipe in an individual tunnel kiln. The colors produced by the unique firing characteristics of the kiln may not be able to be reproduced.

The commenters also charged that we did not account for other retrofitting problems associated with installing DIFF, DLS/FF, or WS on older kilns, and the costs associated with these problems. Commenters also described how attempts at retrofitting kilns with these APCD resulted in significant amounts of kiln downtime and permanent reductions in kiln production capacities. As stated by the commenters, none of the retrofits have been entirely successful in terms of reducing emissions while not disrupting the production process, and several have had dramatic negative impacts on the production process (68 FR 26695, May 16, 2003).

Numerous commenters recommended that EPA allow use of DLA. The commenters described the operating benefits of DLA, including ease of operation, low operating cost, little down time, and the ability to handle kiln fluctuations with changing throughputs. Most importantly, the commenters asserted, DLA do not impact kiln operation. The commenters pointed out that DLA do not require a minimum airflow like DIFF, DLS/FF, or WS technologies. One commenter pointed out that once a DLA is designed for maximum airflow, any fluctuations below this maximum only create more contact time between the kiln exhaust gases and the limestone, which would likely increase the effectiveness of the DLA and would not impact the operation of the kiln. Commenters also disagreed with our statements at proposal that: DLA generate PM emissions; long-term test data that demonstrate DLA performance over the life of the sorbent are not available; DLA limestone is not continuously replaced; and the performance of DLA decreases as the sorbent is re-used because the ability of the sorbent to adsorb hydrogen fluoride (HF) and hydrogen chloride (HCl) decreases.

As a result of these public comments, we realized that we had limited information on the DLA technology at proposal and that we did not fully understand the limitations of applying the technologies (DIFF, DLS/FF, and WS) that were the focus of our MACT floors analysis at proposal. In our response to these comments at promulgation, we disagreed with commenters that the use of DIFF was not proven in the brick industry. The DIFF and DLS/FF systems are a proven control technology for new kilns with a given minimum airflow rate. However, we noted that retrofitting existing kilns with DIFF or DLS/FF systems is not feasible in many cases. We recognized that WS may not be practical or low-cost for most facilities, but maintained that they could be a legitimate option for some facilities (*e.g.,* facilities with sewer access). We acknowledged that retrofitting existing BSCP kilns with certain APCD (particularly those that affect kiln airflow) could alter time-honored recipes for brick color, thereby

changing the product. With respect to the effectiveness of DLA as PM controls, we acknowledged the ability of DLA to provide some control of PM emissions, although test data that quantify a PM control efficiency are not available. We also acknowledged, with respect to our concerns at proposal regarding DLA sorbent replacement and the associated long-term effectiveness of DLA, that spent limestone is replaced or regenerated in such a manner that performance would not be adversely impacted, and, therefore, DLA performance would remain consistent over time.

In light of the public comments received regarding the technical features and limitations of DIFF, DLS/FF, WS, and DLA technologies, we came to new conclusions regarding the effective application of these devices. As we stated in the preamble to the final rule, section 112(d)(3) of the CAA does not allow us to consider cost in determining MACT floors. However, we concluded that DLA are the only currently available technology that can be used to retrofit existing tunnel kilns without potentially significant impacts on the production process. Consequently, the final BSCP rule allows existing large tunnel kilns (and existing large tunnel kilns first exhausting to a sawdust dryer after July 22, 2002) to use the DLA technology.

In addition, we concluded that, because of the retrofit concerns, it is not technologically and economically feasible for an existing small tunnel kiln that would otherwise meet the criteria for reconstruction in 40 CFR 63.2 and whose design capacity is increased such that it becomes a large tunnel kiln to meet the relevant standards (*i.e.,* new source MACT) by retrofitting with a DIFF, DLS/FF, or WS. We also concluded that it is not technologically and economically feasible for an existing large DLA-controlled tunnel kiln that would otherwise meet the criteria for reconstruction in 40 CFR 63.2 to meet the relevant (*i.e.,* new source MACT) standards by retrofitting with a DIFF, DLS/FF, or WS. Accordingly, we added regulatory language in 40 CFR 63.8390(i) to provide that an existing small tunnel kiln that is rebuilt such that it becomes a large kiln and an existing large DLA-controlled tunnel kiln that is rebuilt do not meet the definition of reconstruction in 40 CFR 63.2 and are not subject to the same requirements as new and reconstructed large tunnel kilns. However, we noted that it is technologically and economically feasible for both types of kilns described in 40 CFR 63.8390(i) to retrofit with a DLA (or to continue operating an existing DLA) and the final rule requires that such kilns meet emission limits that correspond to the level of control provided by a DLA.

For the final rule, we maintained that DIFF, DLS/FF, and WS are appropriate technologies for new large tunnel kilns and for reconstructed large tunnel kilns that were equipped with DIFF, DLS/FF, or WS prior to reconstruction. However, we concluded that DLA are the only APCD that have been demonstrated on small tunnel kilns (which have smaller airflows than large tunnel kilns), and, therefore, we based the final requirements for new and reconstructed small tunnel kilns on the level of control that can be achieved by a DLA. Our floor approach at promulgation is described at 69 FR 26690, 26699–26701 (May 16, 2003).

The Sierra Club contends that EPA's decision to consider only DLA control technology for the MACT floors at promulgation was ''unlawful and arbitrary and capricious'' given the statutory requirement that MACT floors for existing sources reflect the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory for which the Administrator has emissions information. The Sierra Club argues that DLA-equipped kilns are not the best performers because kilns equipped with other control technologies achieve better emission levels. The Sierra Club asserts that EPA's argument that DLA are the only currently available technology that can be used to retrofit existing large kilns without potentially significant impacts on the production process is not relevant under the statute. The Sierra Club believes that the CAA requires us to base floors on the emission level achieved by the best performing large kilns for which we have emissions information, regardless of what control equipment these best performing kilns are using. The Sierra Club further claims EPA's argument that DLA are the only available technology that can reliably be used to retrofit exiting large kilns ''depends largely on claims about the *cost* of using other technologies,'' and the Sierra Club states that we may not consider cost to exclude technologies from our MACT floor determinations. Finally, the Sierra Club contends that our arguments regarding the technical difficulties associated with DIFF, DLS/FF, and WS are refuted and unsupported by the rulemaking record and have not been explained, given that some brick producers are currently using these technologies, and, therefore, must have found a way to overcome technical problems such as minimum airflow requirements or changes in brick colors.

The arguments presented in the petition for reconsideration have not persuaded us that our MACT floor determination for the final BSCP rule was erroneous or inappropriate. We believe we correctly identified the MACT floors and set reasonable MACT standards in the final rule. Nevertheless, given that we changed the floor determination between proposal and promulgation in response to comments received on the proposal, and that the Sierra Club has raised concerns about the final BSCP rule's floors and the lack of opportunity to comment on the final rule's floors, in today's notice of reconsideration we are requesting public comments on our decision to base the MACT floors on the use of DLA for the final BSCP rule. We acknowledged in the preamble for the final rule that we are not allowed under CAA section 112 to consider cost when determining MACT floors, and we disagree with the Sierra Club's suggestion that claims about retrofitting kilns are tantamount to claims about the cost of various air pollution control technologies. However, we are seeking additional comments on technical issues related to the performance of DLA as compared to DIFF, DLS/FF, and WS. We request comments on the ability to retrofit existing kilns with DLA, DIFF, DLS/FF, and WS, and whether this should be a consideration when selecting MACT control options. Furthermore, we would like to receive additional information regarding whether there have been technical difficulties associated with DIFF, DLS/FF, WS, and DLA and additional information on how DIFF, DLS/FF, WS, and DLA have performed at plants operating these technologies (*e.g.,* information on airflow limitations, product quality and consistency, typical downtime of the APCD, and whether there have been operating problems or unforeseen problems during retrofit). Finally, we would also like to receive additional information on the successful application of DIFF, DLS/FF, WS, and DLA to existing kilns.

V. Statutory and Executive Order Reviews

On May 16, 2003, we published final NESHAP for BSCP manufacturing pursuant to section 112 of the CAA. In today's action, we are proposing no changes to the final rule, but are seeking additional comments on one aspect of the rule finalized in the May 16, 2003 **Federal Register** action (68 FR 26690). We believe the rationale provided with

the final BSCP rule is still applicable and sufficient, but we are open to comments received in response to today's action.

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

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

B. Paperwork Reduction Act

This action does not impose any new information collection burden. We are not proposing any new paperwork (*e.g.*, monitoring, reporting, recordkeeping) as part of today's action. With this action, we are seeking additional comments on one aspect of the final BSCP rule (68 FR 26690, May 16, 2003). However, OMB has previously approved the information collection requirements contained in the final rule (40 CFR part 63, subpart JJJJJ) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0508 (EPA ICR number 2022.02) for the BSCP rule. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

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

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

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this action. This action seeks comment on one aspect of the final BSCP rule without proposing any changes to the rule. Therefore, the EPA has determined that this action will not have a significant economic impact on a substantial number of small entities in the BSCP manufacturing source category.

For purposes of assessing the impact of today's action on small entities, small entities are defined as: (1) A small business according to Small Business Administration (SBA) size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Small Business Administration size standards for BSCP manufacturing, by NAICS code, are shown in Table 1 of this preamble.

TABLE 1.—SMALL BUSINESS SIZE STANDARDS FOR BSCP MANUFACTURING

NAICS code	Size standard, number of employees
327121	500
327122	500
327123	500
327125	750
327993	750

A discussion of the small business economic impacts associated with the final rule can be found at 69 FR 26718, 26719, May 16, 2003.

D. Unfunded Mandates Reform Act

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

small governments on compliance with the regulatory requirements.

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

E. Executive Order 13132: Federalism

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

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

Today's action does not have federalism implications. It does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Because we are proposing no changes to the final rule, today's action will not increase regulatory burden to the extent that it would result in substantial direct effects on the States. Thus, the requirements of Executive Order 13132 do not apply to today's action.

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

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

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

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

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the rule. Today's action is not subject to Executive Order 13045 because it is not economically significant as defined by Executive Order 12866, and the final BSCP rule, which today's action does not change, is based on technology performance and not on health or safety risks.

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

Executive Order 13211 (66 FR 28355, May 22, 2001) provides that agencies shall prepare and submit to the Administrator of the Office of Information and Regulatory Affairs, OMB, a Statement of Energy Effects for certain actions identified as ''significant energy actions.'' Section 4(b) of Executive Order 13211 defines ''significant energy actions'' as ''any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.'' Today's action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order

12866 nor is it likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

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

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

List of Subjects in 40 CFR Part 63

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

Dated: April 18, 2005.

Stephen L. Johnson,

Acting Administrator.

[FR Doc. 05–8125 Filed 4–21–05; 8:45 am]

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Federal Register

Friday,
April 22, 2005

Part IV

Federal Trade Commission

16 CFR Part 312

Children's Online Privacy Protection Rule; Request for Comments; Final Rule and Proposed Rule

FEDERAL TRADE COMMISSION

16 CFR Part 312

Children's Online Privacy Protection Rule

AGENCY: Federal Trade Commission.

ACTION: Final rule amendment.

SUMMARY: The Federal Trade Commission (''the Commission'') issues a final amendment to the Children's Online Privacy Protection Rule (''the Rule''), to extend the sliding scale mechanism which allows Web site operators to use e-mail, coupled with additional steps, to obtain verifiable parental consent for the collection of personal information from children for internal use by the Web site operator, until the conclusion of the Commission's proceeding to undertake a comprehensive review of the Rule. As explained in a separate document being published elsewhere in this issue of the **Federal Register**, the Commission is requesting additional comment on the sliding scale mechanism.

DATES: Effective April 21, 2005.

ADDRESSES: Requests for copies of the amended Rule and the Statement of Basis and Purpose should be sent to: Public Reference Branch, Federal Trade Commission, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Karen Muoio, (202) 326–2491, or Rona Kelner, (202) 326–2752, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Mail Drop NJ–3212, Washington, DC 20580.

Statement of Basis and Purpose

I. Introduction

As part of the effort to protect children's online privacy, Congress enacted the Children's Online Privacy Protection Act of 1998 (''COPPA''), 15 U.S.C. 6501–6508, to prohibit unfair or deceptive acts or practices in connection with the collection, use, or disclosure of personally identifiable information from children on the Internet. On October 20, 1999, the Commission issued its final Rule implementing COPPA, which became effective on April 21, 2000.[1] The Rule imposes certain requirements on operators of Web sites or online services directed to children under 13 years of age, and on operators of other Web sites or online services that have actual knowledge that they are collecting information from a child under 13 years of age. Among other things, the Rule requires that Web site operators obtain verifiable parental consent prior to collecting, using, or disclosing personal information from children under 13 years of age.

The Rule provides that ''[a]ny method to obtain verifiable parental consent must be reasonably calculated, in light of available technology, to ensure that the person providing consent is the child's parent.''[2] Prior to issuing the Rule, the Commission studied extensively the state of available parental consent technologies.[3] In July 1999, the Commission held a workshop on parental consent, which revealed that more reliable electronic methods of verification were not widely available and affordable.[4] In making its initial determination to adopt the sliding scale mechanism in 1999, the Commission balanced the costs imposed by the method of obtaining parental consent and the risks associated with the intended uses of information.[5] Because of the limited availability and affordability of the more reliable methods of obtaining consent—including electronic methods of verification—the Commission found that these methods should only be required when obtaining consent for uses of information that posed the greatest risks to children.[6] Accordingly, the Commission implemented the sliding scale, noting that it would ''provide[] operators with cost-effective options until more reliable electronic methods became available and affordable, while providing parents with the means to protect their children.''[7]

Therefore, the Rule sets forth a sliding scale approach to obtaining verifiable parental consent. If the Web site operator is collecting personal information for its internal use only, the Rule allows verifiable parental consent to be obtained through the use of an e-mail message to the parent, coupled with additional steps to provide assurances that the person providing the consent is, in fact, the parent. Such additional steps include: sending a delayed confirmatory e-mail to the parent after receiving consent or obtaining a postal address or telephone number from the parent and confirming the parent's consent by letter or telephone call.[8]

In contrast, for uses of personal information that involve disclosing the information to the public or third parties, the Rule requires that Web site operators use more reliable methods of obtaining verifiable parental consent. These methods include: using a print-and-send form that can be faxed or mailed back to the Web site operator; requiring a parent to use a credit card in connection with a transaction; having a parent call a toll-free telephone number staffed by trained personnel; using a digital certificate that uses public key technology; and using e-mail accompanied by a PIN or password obtained through one of the above methods.[9] As noted in the Rule's Statement of Basis and Purpose, ''the record shows that disclosures to third parties are among the most sensitive and potentially risky uses of children's personal information.''[10]

At the time it issued the Rule, the Commission anticipated that the sliding scale was necessary only in the short term because more reliable methods of obtaining verifiable parental consent would soon be widely available and affordable.[11] Accordingly, the sliding scale was originally set to expire on April 21, 2002, two years after the Rule went into effect.[12] However, when public comment revealed that the expected progress in available technology had not occurred, the Commission in 2002 extended the sliding scale for an additional three years until April 21, 2005.[13]

With the sliding scale mechanism scheduled to sunset this year, the Commission again undertook a review of the sliding scale. On January 14, 2005, the Commission published a Notice of Proposed Rulemaking and Request for Public Comment in the **Federal Register** proposing to make the sliding scale mechanism for obtaining parental consent a permanent feature of the Rule.[14] The Commission noted that the expected progress in available technology still does not appear to have transpired. The Commission requested public comment on the proposed amendment. It also posed several questions regarding: (1) The current and anticipated availability and affordability of more secure electronic mechanisms or infomediaries for obtaining parental

[1] 64 FR 59888 (1999).

[2] 16 CFR 312.5(b)(1).

[3] *See, e.g.*, public comments received on the initial 1999 rulemaking, available on the FTC's Web site at *http://www.ftc.gov/privacy/comments/index.html*.

[4] *See* press release announcing workshop and transcript of workshop, available on the FTC's Web site at *http://www.ftc.gov/opa/1999/06/kidswork.htm* and *http://www.ftc.gov/privacy/chonlpritranscript.pdf*.

[5] 64 FR 59901, 59902 (1999).

[6] *Id.*

[7] *Id.* at 59902.

[8] *Id.*

[9] 16 CFR 312.5(b)(2).

[10] 64 FR 59899 (1999).

[11] 64 FR 59902 (1999).

[12] 16 CFR 312.5(b)(2).

[13] 67 FR 18818 (2002).

[14] 70 FR 2580 (2005).

consent; (2) the effect of the sliding scale mechanism on the incentive to develop and deploy more secure electronic mechanisms; (3) the effect of the sliding scale on operators' incentives to disclose children's personal information to third parties or the public; and (4) any evidence the sliding scale is being misused or not working effectively.

The public comment period closed on February 14, 2005. The Commission received a total of 91 comments.[15] Those submitting comments included: FTC-approved COPPA safe harbor programs; companies operating Web sites or Internet-related businesses; marketing, advertising, media, Internet-related, and other trade groups; privacy-related organizations; credit unions; educational organizations; and consumers.

The comments evidence public interest in the effectiveness of and need for the sliding scale. The Commission therefore has decided it would be beneficial to accept additional comments during the regulatory review comment period and to extend the sliding scale until it completes its review of the full Rule.

II. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (''IRFA'') with a proposed rule and a Final Regulatory Flexibility Analysis (''FRFA''), if any, with the final rule, unless the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities.[16]

The Commission hereby certifies that the final Rule amendment will not have a significant impact on a substantial number of small business entities. The final Rule amendment extends a sliding scale mechanism that is already in place. The final Rule amendment does not alter the *status quo*, and postpones the potential economic impact, if any, of the expiration of the sliding scale mechanism. Thus, the economic impact of the amendment to the Rule is expected to be comparatively minimal.

Accordingly, this document serves as notice to the Small Business Administration of the agency's certification of no effect. Nonetheless, the Commission has decided to publish a Final Regulatory Flexibility Analysis with this final Rule amendment. Therefore, the Commission has prepared the following analysis:

A. Need for and Objectives of the Rule Amendment

The Rule's sliding scale mechanism for obtaining parental consent is scheduled to expire on April 21, 2005. At the time it issued the final Rule, the Commission anticipated that the sliding scale was necessary only in the short term because more reliable electronic methods of obtaining verifiable parental consent would soon be widely available at a reasonable cost. The existing record indicates that there is public interest in the effectiveness of and need for the sliding scale. Therefore, the Commission is amending the Rule to extend the sliding scale mechanism for obtaining verifiable parental consent to solicit additional data, if any are available, in the larger context of the Rule's overall effectiveness.

B. Significant Issues Raised by Public Comment, Summary of the Agency's Assessment of These Issues, and Changes, if Any, Made in Response to Such Comments

The Commission received few comments in response to its IRFA. These commenters noted that the amendment to make permanent the sliding scale mechanism for obtaining verifiable parental consent would be beneficial to small businesses.[17] The sliding scale allows commercial operators of Web sites and online services who collect personal information from children for internal uses only to obtain verifiable parental consent through the use of e-mail, coupled with additional steps, instead of having to use the more reliable (and more costly) methods required when information will be disclosed to third parties or the public. Commenters noted that small businesses benefit by having this cost-effective option.[18] Commenters also noted that allowing the sliding scale to sunset after companies have made investments to implement this mechanism would pose financial burdens and have negative consequences that would especially harm small businesses.[19] The Commission agrees that continuing the use of the sliding scale mechanism may be beneficial to small businesses.

C. Description and Estimate of Number of Small Entities Subject to the Rule Amendment or Explanation of Why No Estimate Is Available

As described above, the Rule amendment applies to any commercial operator of a Web site or online service, including operators who are small entities, who collects personal information from children for internal uses only. The Commission is unable to ascertain a precise estimate of the number of small entities that are affected by the amendment and received no specific comments to the IRFA that allow it to estimate the number of small entities that will be affected.

D. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule Amendment, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Rule Amendment and the Type of Professional Skills That Will Be Necessary To Comply

The Rule does not directly impose any ''reporting'' or ''recordkeeping'' requirements within the meaning of the Paperwork Reduction Act, but does require that operators make certain third-party disclosures to the public, *i.e.*, provide parents with notice of their information practices. The final Rule amendment to extend the sliding scale mechanism for obtaining parental consent does not impose any additional reporting or recordkeeping requirements. The Rule does contain certain compliance requirements, including the requirement to obtain verifiable parental consent to collect personal information from children. This obligation does not require operators to file reports or maintain records within the meaning of the Paperwork Reduction Act, although the Commission recognizes that there are potential compliance costs associated with this requirement. For example, an employee may be needed to review parental responses to the operator's requests for consent. The Commission has not previously determined the estimated costs of complying with this obligation in terms of burden hours, and did not receive any quantitative data in this rulemaking to determine what these costs might be. Importantly, however, the final Rule amendment does not impose any additional compliance costs, as it is merely extending a sliding scale mechanism that has been in place since the Rule went into effect. If anything, the final Rule amendment may reduce costs of complying because it allows qualified Web site operators, including small entities, to obtain

[15] A list of the commenters and their comments appear on the FTC's Web site at *http://www.ftc.gov/os/publiccomments.htm*.

[16] 5 U.S.C. 603–605.

[17] Children's Advertising Review Unit (''CARU'') at 2; Mattel, Inc. at 1; Motion Picture Association of America (''MPAA'') at 3–4; Software and Information Industry Association (''SIIA'') at 3.

[18] CARU at 2; IT Law Group at 1; Mattel at 1.

[19] IT Law Group at 1; MPAA at 3–4; SIIA at 3.

parental consent through lower-cost e-mail-based means.

E. Steps the Agency Has Taken To Minimize Any Significant Economic Impact on Small Entities, Consistent With the Stated Objectives of the Applicable Statutes, Including the Factual, Policy, and Legal Reasons for Selecting the Alternative(s) Finally Adopted, and Why Each of the Significant Alternatives, If Any, Was Rejected

The Commission has determined that the Rule amendment, which maintains the *status quo*, will not have a significant economic impact on small entities. If anything, the final Rule amendment benefits small entities in that it continues to permit qualified Web site operators, including small entities, to obtain parental consent through lower-cost e-mail-based means. One alternative to the final Rule amendment that was considered and rejected was allowing the sliding scale mechanism to sunset as scheduled on April 21, 2005. This alternative likely would be more burdensome for small entities. If the sliding scale were to expire on April 21, 2005, small businesses currently using this mechanism would have to revise their parental consent procedures to adopt one of the more costly means of obtaining parental consent—such as using a print and send form, processing a credit card transaction, or using a toll-free telephone number staffed by trained personnel—or cease their online offerings to children altogether. Accordingly, the Commission has determined that extending the sliding scale pending further review is appropriate.

Therefore, to the extent that small entities are affected by the Rule amendment, the Commission believes the public comments support its determination that the adoption of the Rule amendment will not impose more significant or costly compliance requirements on Web site operators than the Rule would otherwise impose if it were not amended. By adopting a final Rule amendment that extends currently effective compliance options, the Commission is preserving the *status quo* for all Web site operators, including any small entities, until the Commission completes its review of the full Rule. Thus, the change, if any, in the economic impact of the Rule resulting from the final Rule amendment, will be less than if the Commission did not amend the Rule and the more burdensome requirements of the Rule as originally promulgated were allowed to take effect. Accordingly, for these reasons, the Commission certifies under the Regulatory Flexibility Act that the final Rule amendment will not have a significant economic impact on a substantial number of small entities.[20] This notice also serves as the required certification and statement of the Commission's determination to the Small Business Administration.

III. Paperwork Reduction Act

This final Rule amendment does not change any information collection requirements that have previously been reviewed and approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act, as amended.[21]

[20] 5 U.S.C. 605.

[21] 44 U.S.C. 3501–3520.

Final Rule

List of Subjects in 16 CFR Part 312

Children, Communications, Consumer protection, Electronic mail, E-mail, Internet, Online service, Privacy, Record retention, Safety, Science and technology, Trade practices, Web site, Youth.

■ Accordingly, the Federal Trade Commission amends 16 CFR part 312 as follows:

PART 312—CHILDREN'S ONLINE PRIVACY PROTECTION RULE

■ 1. Revise the authority citation for part 312 to read as follows:

Authority: 15 U.S.C. 6501–6508.

■ 2. Amend § 312.5 by revising the second sentence of paragraph (b)(2) to read as follows:

§ 312.5 Parental consent.

* * * * *

(b) * * *

(2) * * * *Provided that:* Until the Commission otherwise determines, methods to obtain verifiable parental consent for uses of information other than the ''disclosures'' defined by § 312.2 may also include use of e-mail coupled with additional steps to provide assurances that the person providing the consent is the parent. * * *

* * * * *

By direction of the Commission, Commissioner Leibowitz not participating.

Donald S. Clark,

Secretary.

[FR Doc. 05–8159 Filed 4–21–05; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 312

RIN 3084–AB00

Children's Online Privacy Protection Rule: Request for Comments

AGENCY: Federal Trade Commission.

ACTION: Request for public comment.

SUMMARY: As required by law, the Federal Trade Commission (the ''FTC'' or ''Commission'') requests public comment on its implementation of the Children's Online Privacy Protection Act (''COPPA'' or ''the Act''), 15 U.S.C. 6501–6508, through the Children's Online Privacy Protection Rule (''COPPA Rule'' or ''the Rule''). The COPPA Rule imposes certain requirements on operators of Web sites or online services directed to children under 13 years of age and other Web sites or online services that have actual knowledge that they are collecting personal information from a child under 13 years of age. The Commission requests comment on the costs and benefits of the Rule as well as on whether it should be retained, eliminated, or modified. The Commission also requests comment concerning the Rule's effect on: practices relating to the collection and disclosure of information relating to children; children's ability to obtain access to information of their choice online; and the availability of Web sites directed to children. At the end of the FTC's review, the agency will submit a report to Congress assessing the implementation of the Rule. All interested persons are hereby given notice of the opportunity to submit written data, views, and arguments concerning the Rule. As explained in a separate document being published elsewhere in this issue of the **Federal Register**, the Commission is also issuing a final amendment to the Rule to extend the sliding scale mechanism, which allows Web site operators to use e-mail with additional verification steps to obtain verifiable parental consent for the collection of personal information from children for internal use by the Web site operator, until the conclusion of this broader review.

DATES: Comments must be received by June 27, 2005.

ADDRESSES: Comments should refer to ''COPPA Rule Review 2005, Project No. P054505'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 159–H (Annex C), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c).[1]

Comments filed in electronic form should be submitted by clicking on the following Web link: *https://secure.commentworks.com/ftccopparulereview/* and following the instructions on the Web-based form. To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at the *https://secure.commentworks.com/ftccopparulereview/* Web link. You may also visit *http://www.regulations.gov* to read this request for public comment and may file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov/privacy/privacyinitiatives/childrens_lr.html.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Karen Muoio, (202) 326–2491, or Rona Kelner, (202) 326–2752, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Mail Drop NJ–3212, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

On October 21, 1998, Congress issued COPPA, which prohibits certain unfair or deceptive acts or practices in connection with the collection, use, or disclosure of personal information from children on the Internet.[2] Pursuant to COPPA's requirements, the Commission issued its final Rule implementing COPPA on October 20, 1999.[3] Effective as of April 21, 2000, the Rule imposes certain requirements on operators of Web sites or online services directed to children under 13 years of age, and on operators of other Web sites or online services that have actual knowledge that they are collecting personal information online from a child under 13 years of age (collectively, ''operators'').[4]

Among other things, the Rule requires that operators provide notice to parents and obtain verifiable parental consent prior to collecting, using, or disclosing personal information from children under 13 years of age. The Rule also requires operators to keep secure the information they collect from children and prohibits them from conditioning children's participation in activities on the collection of more personal information than is reasonably necessary to participate in such activity. Further, the Rule provides a safe harbor for operators following Commission-approved self-regulatory guidelines, and instructions on how to get such guidelines approved.

When the Commission issued the Rule in 1999, it adopted a sliding scale approach to parental consent.[5] Under such an approach, the measures required for parental consent depend on how a Web site operator uses children's information. The Commission adopted this approach because of the concern that it was not feasible to require more technologically advanced methods of consent for internal uses of information. To reflect that technology may change, this approach was scheduled to sunset in 2002. In 2002, after a public comment process, the Commission extended it until April 21, 2005.[6] In January 2005, the Commission sought public comment concerning whether to make the sliding scale approach permanent.[7] The Commission has concluded that further evaluation of the sliding scale in the broader context of the Commission's

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

[2] 15 U.S.C. 6501–6508.

[3] 64 FR 59888 (1999).

[4] 16 CFR part 312.

[5] The Commission adopted the sliding scale as part of the Rule in 1999 after receiving public comments and conducting a July 1999 public workshop on consent methods. These comments and a transcript of the workshop are located at *http://www.ftc.gov/privacy/comments/ index.html* and *http://www.ftc.gov/privacy/chonlpritranscript.pdf*, respectively.

[6] 67 FR 18818 (2002).

[7] 70 FR 2580 (2005).

Rule review would be appropriate.[8] Therefore, in a separate document being published elsewhere in this issue of the **Federal Register**, the Commission is also issuing a final amendment to the Rule to extend the sliding scale mechanism pending further review.[9]

II. Rule Review

The Children's Online Privacy Protection Act and Section 312.11 of the Rule require that the Commission initiate a review no later than April 21, 2005, to evaluate the Rule's implementation. The Act and Section 312.11 of the Rule mandate that this review specifically consider the Rule's effect on: (1) Practices relating to the collection and disclosure of information relating to children; (2) children's ability to obtain access to information of their choice online; and (3) the availability of Web sites directed to children. The Act and Section 312.11 also require that the Commission report to Congress on the results of this review.

The Commission also reviews each of its rules at least once every ten years to determine whether they should be retained, eliminated, or modified in light of changes in the marketplace or technology. The FTC has not conducted a regulatory review of the Rule since it became effective in 2000. The Commission therefore has determined to pose its standard regulatory review questions at this time to determine whether the Rule should be retained, eliminated, or modified. The Commission also has determined that it would be beneficial to seek comments—in addition to those already received—on the effectiveness of and need for the sliding scale approach to obtaining verifiable parental consent.

The Commission's experience in administering the Rule has raised four additional issues on which public comment would be especially useful. First, the Commission has been made aware of concerns about the factors used to determine whether a Web site is directed at children. Currently, such factors include the subject matter of the site, visual or audio content, age of models, language used, target audience of advertising or promotional materials, and empirical evidence regarding audience composition or intended audience. The Commission therefore seeks comment on whether the factors should be clarified or supplemented.

Second, the Commission requests comment on an issue that has arisen in the context of determining whether a general audience Web site operator has actual knowledge of a child's age. Some operators in the past have collected age information and refused to allow children to participate while informing them that they must be 13 or older to participate. The operators then have allowed children to ''back-button,'' or return to the entry screen, and enter an older age. The Final Rule's Statement of Basis and Purpose discusses the meaning of ''actual knowledge'' and, since the inception of the Rule, the Commission has published additional business guidance on the term.[10] The Commission seeks comment on whether the term ''actual knowledge'' is sufficiently clear and whether Web site operators are encouraging children to back-button and change their age.

Third, the Commission specifically invites comment on the use of credit cards as a means of obtaining verifiable parental consent. Currently the Rule allows operators to obtain verifiable parental consent through the use of a credit card in connection with a transaction. It appears that some companies are now marketing debit cards to children, who may be able to use these cards to circumvent the parental consent requirement. In addition, some operators may be failing to conduct an actual transaction with the credit card, which provides some extra assurance that the person providing consent is the parent. Instead, the operators may be using methods that merely verify that a given credit card number is valid.

Fourth, the Commission seeks comment on the COPPA safe harbor program. The Rule's safe harbor provision allows industry groups and other entities to seek Commission approval of self-regulatory guidelines that implement substantially similar requirements to the Rule that provide the same or greater protections for children. Operators are deemed to be in compliance with the Rule if they comply with a safe harbor program's guidelines. Four safe harbor programs have been approved by the Commission—CARU, TRUSTe, ESRB, and Privo—and the Commission is interested in feedback on the effectiveness of these types of programs.

The Commission therefore seeks public comments relating to the subjects specifically noted in the Act and Section 312.11 of the Rule. It also seeks public comments concerning the costs and benefits of the Rule, including whether any modifications to the Rule are needed in light of changes in technology or in the marketplace. Furthermore, it seeks public comment on four practical issues that have arisen in the course of Rule enforcement. Public comments will assist the Commission in determining whether the Rule needs to be changed and in preparing a report to Congress on the effect of the Rule's implementation.

III. Request for Comments

The Commission invites members of the public to comment on any issues or concerns they believe are relevant or appropriate to the Commission's review of the COPPA Rule, including written data, views, facts, and arguments addressing the Rule. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received by June 27, 2005. The Commission is particularly interested in comments addressing the following questions:

A. General Questions for Comment

(1) Are children's online privacy and safety at greater, lesser, or the same risk as existed before COPPA and the Rule? Please explain.

(2) Is there a continuing need for the Rule as currently promulgated? Why or why not?

(a) Since the Rule was issued, have changes in technology, industry, or economic conditions affected the need for or effectiveness of the Rule?

(b) Does the Rule include any provisions, not mandated by the Act, that are unnecessary? If so, which ones are unnecessary and why?

(c) What are the aggregate costs and benefits of the Rule?

(d) Have the costs or benefits of the Rule dissipated over time?

(e) Does the Rule contain provisions, not mandated by the Act, whose costs outweigh their benefits?

(3) What effect, if any, has the Rule had on children, parents, or other consumers?

(a) Has the Rule benefitted children, parents, or other consumers? If so, how?

(b) Has the Rule imposed any costs on children, parents, or other consumers? If so, what are these costs?

(c) What changes, if any, should be made to the Rule to increase its benefits, consistent with the Act's requirements? What costs would these changes impose?

[8] All comments received in response to the January 2005 Notice of Proposed Rulemaking and Request for Comment are located at *http://www.ftc.gov/os/publiccomments.htm.*

[9] For purposes of this review, the Commission will continue to consider all comments submitted in response to its January 2005 Notice of Proposed Rulemaking and Request for Comment; accordingly, previous commenters need not resubmit their comments.

[10] *The Children's Online Privacy Protection Rule: Not Just for Kids' Sites,* available online at *http://www.ftc.gov/bcp/conline /pubs/alerts/coppabizalrt.htm.*

(4) What impact, if any, has the Rule had on operators?

(a) Has the Rule provided benefits to operators? If so, what are these benefits?

(b) Has the Rule imposed costs, including costs of compliance, on operators? If so, what are these costs?

(c) How many hours does it take initially for an operator to come into compliance with the Rule? How many hours are spent each year for an operator to remain in compliance with the Rule? How much does it cost to comply with the Rule?

(d) What changes, if any, should be made to the Rule to reduce the costs imposed on operators, consistent with the Act's requirements? How would those changes affect the Rule's benefits?

(e) Are there regulatory alternatives to the Rule that might impose fewer costs yet still meet with the Act's and the Rule's objective of protecting children's online privacy and safety?

(5) How many small businesses are subject to the Rule? What costs (types and amounts) do small businesses incur in complying with the Rule? How has the Rule otherwise affected operators that are small businesses? Have the costs or benefits of the Rule changed over time with respect to small businesses? What regulatory alternatives, if any, would decrease the Rule's burden on small businesses, consistent with the Act's requirements?

(6) Does the Rule overlap or conflict with other federal, state, or local government laws or regulations? If so, what are these laws and regulations? How does the Rule overlap or conflict with them? How should these overlaps and conflicts be resolved, consistent with the Act's requirements?

(a) To what extent have state attorneys general or other federal agencies brought actions under the Rule?

(b) Are there any unnecessary regulatory burdens created by overlapping jurisdiction? If so, what can be done to ease the burdens, consistent with the Act's requirements?

(c) Are there any gaps where no federal, state, or local government law or regulation has addressed a problematic practice relating to children's online privacy?

(7) Has the Rule affected practices relating to the collection and disclosure of information relating to children online? If so, how?

(8) Has the Rule affected children's ability to obtain access to information of their choice online? If so, how?

(9) Has the Rule affected the availability of Web sites or online services directed to children? If so, how?

(a) Has the number or type of Web sites or online services directed to children changed since the Rule became effective? If so, how? Did the Rule cause these changes?

(b) Approximately how many new Web sites and online services are created each year that are directed to children?

B. Definitions

(10) Do the definitions set forth in Section 312.2 of the Rule accomplish COPPA's goal of protecting children's online privacy and safety?

(11) Are the definitions in Section 312.2 clear and appropriate? If not, how can they be improved, consistent with the Act's requirements?

(12) Does Section 312.2 correctly articulate the factors to consider in determining whether a Web site or online service is directed to children? If not, what additional factors should be considered? Do any of the current factors need to be clarified? If so, how? Please note that any suggested modifications to this Section must be consistent with the Act's requirements.

(13) The Final Rule's Statement of Basis and Purpose, 64 FR 59888 (Nov. 3, 1999), and subsequent business guidance by the Commission have discussed when an operator or online service will be deemed to have ''actual knowledge'' that it has collected information from a child. Is the term ''actual knowledge'' sufficiently clear? If not, how can the term be clarified further, consistent with the Act's requirements? In addition, does the situation where children intentionally submit an incorrect age older than 12 on general audience Web sites continue to raise Rule enforcement issues? If so, how can this situation be addressed, consistent with the Act's requirements?

(14) Are there additional definitions that should be added to the Rule? If so, what terms should be defined and how should they be defined, consistent with the Act's requirements?

C. Notice

(15) Section 312.4 of the Rule requires operators to provide notice of their information practices both online and directly to parents. These notices must inform parents about what information operators collect from children, how operators use such information, and their disclosure practices for such information.

(a) Has the notice requirement been effective in protecting children's online privacy and safety? If so, how?

(b) Do the benefits of the notice requirement outweigh its costs? Please explain.

(c) What changes, if any, should be made to the notice requirement, including modifying the information required to be disclosed, consistent with the Act's requirements? What are the costs and benefits of these changes?

D. Verifiable Parental Consent

(16) Section 312.5 of the Rule requires operators to obtain verifiable parental consent before any collection, use, and/or disclosure of personal information from children, including any material change to practices to which the parent previously consented.

(a) Has the consent requirement been effective in protecting children's online privacy and safety? If so, how?

(b) Do the benefits of the consent requirements outweigh their costs to operators? Please explain.

(c) What changes, if any, should be made to the consent requirement, consistent with the Act's requirements? What are the costs and benefits of these changes?

(d) Is the use of a credit card in combination with a transaction a reasonable means of verifying whether the person providing consent is the child's parent? Is the use of a credit card without a transaction a reasonable means of verifying whether the person providing consent is the child's parent? What about the use of a credit card without a transaction but with an additional step, such as verification of a mailing address or the use of a PIN number, to verify that a parent is providing consent? Please explain. Does the availability of credit or debit cards to children under 13 years of age affect your analysis? If so, how?

(e) Section 312.5(c) sets forth five exceptions to the verifiable parental consent requirement. Do the benefits of the Rule's exceptions to prior parental consent outweigh their costs?

(17) Section 312.5 of the Rule currently permits operators that collect children's personal information online for only internal uses to obtain verifiable parental consent via an e-mail plus additional steps to ensure that the person providing consent is, in fact, the child's parent (the so-called ''sliding scale'' approach).[11]

(a) Are secure electronic mechanisms now widely available to facilitate verifiable parental consent at a reasonable cost? Please include comments on the following:

(i) Digital signature technology;

[11] The questions posed in this subpart duplicate the questions asked in the January 2005 Notice of Proposed Rulemaking and Request for Comment, 70 FR 2580. The Commission will reconsider all comments previously submitted in response to that request, so no resubmission is necessary.

(ii) Digital certificate technology;
(iii) Other digital credentialing technology;
(iv) P3P technology; and
(v) Other secure electronic technologies.

(b) Are infomediary services now widely available to facilitate verifiable parental consent at a reasonable cost?

(c) When are secure electronic mechanisms and/or infomediary services for obtaining verifiable parental consent anticipated to become available at a reasonable cost? To what extent would the Commission's decision to eliminate, make permanent, or extend the sliding scale mechanism affect the incentive to develop and deploy these means of obtaining verifiable parental consent?

(d) What effect would eliminating the sliding scale have on the information collection and use practices of Web site operators? For example, would the elimination of the sliding scale mechanism encourage Web site operators to collect children's personal information for uses other than the operators' own internal use because the cost of obtaining parental consent would be the same for internal as well as external uses?

(e) Is there any evidence that the sliding scale mechanism is being misused, or is not working effectively?

(f) Should the sliding scale mechanism be extended? If so, why and for how long?

(g) Should the sliding scale mechanism be eliminated? If so, why?

(h) Should the sliding scale mechanism be made permanent? If so, why?

E. Right of Parent To Review Personal Information Provided by a Child

(18) Section 312.6 of the Rule requires operators to give parents, upon their request: (1) A description of the specific types of personal information collected from children; (2) the opportunity for the parent to refuse to permit the further use or collection of personal information from the child and direct the deletion of the information; and (3) a means of reviewing any personal information collected from the child.

(a) Have these requirements been effective in protecting children's online privacy and safety? If so, how?

(b) Do the benefits of these requirements outweigh their costs?

(c) What changes, if any, should be made to these requirements, consistent with the Act's requirements? What are the costs and benefits of these changes?

F. Prohibition Against Conditioning a Child's Participation on Collection of Personal Information

(19) Section 312.7 of the Rule prohibits operators from conditioning a child's participation in an activity on disclosing more personal information than is reasonably necessary to participate in such activity.

(a) Has the prohibition been effective in protecting children's online privacy and safety? If so, how?

(b) Do the benefits of the prohibition outweigh its costs? Please explain.

(c) What changes, if any, should be made to the prohibition, consistent with the Act's requirements? What are the costs and benefits of these changes?

G. Confidentiality, Security, and Integrity of Personal Information Collected From a Child

(20) Section 312.8 of the Rule requires operators to establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from a child.

(a) Has this requirement been effective in protecting children's online privacy and safety? If so, how?

(b) Do the benefits to consumers of this requirement outweigh its costs?

(c) What changes, if any, should be made to this requirement, consistent with the Act's requirements? What are the costs and benefits of these changes?

(d) Is the requirement that operators establish and maintain ''reasonable procedures'' to protect children's information sufficiently clear? If not, how could it be clarified, consistent with the Act's requirements?

H. Safe Harbors

(21) Section 312.10 of the Rule provides that an operator will be deemed in compliance with the Rule's requirements if the operator complies with Commission-approved self-regulatory guidelines.

(a) Has the safe harbor approach been effective in protecting children's online privacy and safety? If so, how?

(b) Do the benefits of the safe harbor approach outweigh its costs?

(c) What changes, if any, should be made to the safe harbor approach, consistent with the Act's requirements? What are the costs and benefits of these changes?

IV. Communications by Outside Parties to Commissioners or Their Advisors

Written communications and summaries of transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record.[12]

List of Subjects in 16 CFR Part 312

Children, Communications, Consumer protection, Electronic mail, E-mail, Internet, Online service, Privacy, Record retention, Safety, Science and technology, Trade practices, Web site, Youth.

Authority: 15 U.S.C. 6501–6508.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05–8160 Filed 4–21–05; 8:45 am]

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[12] *See* 16 CFR 1.26(b)(5).

Federal Register

Friday,
April 22, 2005

Part V

Department of Labor

Employment and Training Administration

Workforce Investment Act—Demonstration Grants; Solicitation for Grant Applications—Preparing Youth Offenders To Enter High Growth and High Demand Industries; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act—Demonstration Grants; Solicitation for Grant Applications—Preparing Youth Offenders To Enter High Growth and High Demand Industries

Announcement Type: New. Solicitation for Grant Applications.

Funding Opportunity Number: SGA/DFA PY–04–09.

Catalog of Federal Domestic Assistance (CFDA) Number: 17.261.

Key Dates: The closing date for receipt of applications under this announcement is May 23, 2005. Applications must be received not later than 5 p.m. (Eastern Daylight Time). Application and submission information is explained in detail in Section IV of this SGA.

Summary: The Employment and Training Administration (ETA), U.S. Department of Labor (DOL), announces the availability of approximately $15 million in Responsible Reintegration of Youthful Offender grant funds to address the specific workforce challenges of youth offenders and to utilize strategies that prepare them for new and increasing job opportunities in high-growth/high-demand and economically vital industries and sectors of the American economy. Projects funded under this competition will be consistent with both the President's High Growth Job Training Initiative and DOL's Youth Vision.

Grant funds awarded under this competition can be used to implement a variety of approaches to helping youth offenders enter high-growth/high-demand industries, including occupational training provided by organizations that grant industry-recognized credentials; on-the-job training, apprenticeships, internships, and other work-based learning opportunities; job placement efforts; reading and math remediation to assist youth offenders succeed in education and training programs; efforts to help youth offenders already employed upgrade to skilled positions; and efforts to help youth offenders enter community colleges and four-year colleges.

Each application must reflect a strategic partnership between the public workforce system, business representatives from high-growth/high-demand industries, the education and training community, and the juvenile justice system. Partnerships with the child welfare agency and with faith-based and community organizations are also encouraged. It is anticipated that individual awards will average $1 million for the first year of operation to serve 200 youth per site.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

1. Background and Purpose

The White House Task Force for Disadvantaged Youth identifies young people in the juvenile justice system as one of the neediest youth populations in the country. The Task Force notes that illiteracy and school failure are serious and widespread among youth in detention, correctional, or shelter facilities, with such youth typically scoring between grades 5 and 7 in reading and between grades 5 and 9 in math. An American Bar Association Report notes that an estimated 36 percent of juvenile offenders have learning disabilities and that an additional 13 percent have mental retardation. The report notes that the percentage of youth in juvenile correctional facilities who were previously identified and served in special education programs prior to their incarceration is at least three to five times the percentage of the public school population identified as disabled.

Court-involved youth are predominantly male and disproportionately minority youth. In 2000, minority youth made up about 32 percent of the U.S. population, but 58 percent of youth in juvenile facilities. African American youth under age 18 make up 15 percent of the youth population, but 26 percent of all juvenile arrests and 44 percent of the detained population.

Multiple risk factors and events converge in the lives of young people that put them at high-risk for coming into contact with the justice system. The Department of Justice (DOJ) collects data on youth offenders and adjudicated youth both through research studies and reports from the State corrections departments. One study by DOJ's Office of Juvenile Justice and Delinquency Prevention (OJJDP) that surveyed administrators at public and private detention centers and training schools found that 75 percent of the offenders come from families affected by problems such as divorce and separation, 52 percent showed signs of depression, and 51 percent appeared to have been abused by a parent or adult. Mental illness is also especially high among youth offenders. Studies estimate that 80 percent of youth in the juvenile justice system have a diagnosable mental health disorder and many also suffer from co-occurring substance abuse disorders.

These combined risk factors make it very difficult for youth offenders to compete in the labor market, especially for jobs that can lead to a career. This grant announcement combines two DOL priorities—the President's High Growth Job Training Initiative and the Youth Vision—in order to assist youth offenders to move into jobs and careers in high-growth/high-demand industries. We hope through this SGA to develop demonstration sites across the country showing that strategic partnerships can be formed between business, community colleges, the workforce investment system, and the juvenile justice system to help youth offenders enter such careers.

2. DOL's Youth Vision

The White House Taskforce on Disadvantaged Youth notes that despite the billions of Federal, State, local, and private dollars spent on needy youth and their families, many out-of-school, at-risk youth are currently being left behind in our economy because of a lack of program focus and emphasis on outcomes. Well-designed and coordinated programs offer youth who have become disconnected from mainstream institutions and systems additional opportunities to successfully transition to adult roles and responsibilities.

DOL's Youth Vision has been developed in response to the White House Task Force Report on Disadvantaged Youth. Developed in collaboration with our partners at the Departments of Education, Health and Human Services, and Justice, this new strategic vision aims to more effectively and efficiently serve out-of-school and at-risk youth through the workforce investment system by focusing on four major areas:

- Improving alternative education services to youth;
- Meeting the demands of business, especially in high-growth industries and occupations;
- Serving the neediest youth; and
- Improving program performance.

In order to accomplish these goals, collaboration across youth-serving agencies at the state and local levels is expected.

3. The President's High Growth Job Training Initiative

The President's High Growth Job Training Initiative is a strategic effort to prepare workers for new and increasing job opportunities in high-growth/high-demand and economically vital

industries and sectors of the American economy. The initiative is designed to provide national leadership for a demand-driven workforce system by identifying high-growth/high-demand industries, evaluating their skills needs, and funding demonstration projects that provide workforce solutions to ensure individuals can gain the skills needed to get good jobs in these rapidly expanding or transforming industries.

The foundation of this initiative is partnerships between the publicly-funded workforce investment system, business and industry representatives, and education and training providers, such as community colleges. The purpose of these partnerships is to develop innovative solutions or replicate models that address a particular industry's workforce issues. These solutions demonstrate how a demand-driven workforce system can more efficiently serve the workforce needs of business, while effectively helping workers find good jobs with good wages and promising career paths.

The High Growth Job Training Initiative engages each partner in its area of strength. Industry representatives and employers define workforce challenges facing the industry and identify the competencies and skills required for the industry's workforce. Community colleges and other education and training providers assist in developing competency models and training curricula and train new and incumbent workers. The publicly-funded workforce investment system accesses human capital (youth, unemployed, underemployed, and dislocated workers), assists with training programs, and places trained workers in jobs.

4. Areas of ETA Emphasis for This SGA

ETA has developed five areas of emphasis for youth offender projects funded through this SGA: (1) Helping youth offenders enter high growth/high demand industries; (2) helping youth offenders improve reading and math skills to attain their high school diploma or GED and to enter post-secondary education and training; (3) building strategic partnerships; (4) leveraging resources; and (5) achieving high-performance outcomes.

• *Helping Youth Offenders Enter Into High Growth/High Demand Industries.* This SGA places great emphasis on ensuring that high growth/high demand industries, as illustrated by the President's High Growth Job Training Initiative, are targeted to allow youth offenders access to new, emerging, and better job opportunities, with promising career ladders. Guiding youth offenders into high-growth industries requires that applicants and their partners work to identify the workforce needs in high-growth/high-demand and economically critical industries based on their State and local economies and to fully understand the workforce challenges facing these industries and the necessary preparation required to succeed in those occupations. This information may be obtained through a variety of sources including current State and local labor market information as well as formal communication with business and industry representatives in order to obtain up-to-date, primary source information on issues that pertain to workforce development.

• *Helping Youth Offenders Improve Reading and Math Skills To Attain Their High School Diploma or GED and To Enter Post-Secondary Education and Training.* This SGA also places great emphasis on improving the basic education skills of youth offenders; helping them receive high school diplomas or GEDs; and assisting them to enter post-secondary education and training. We are particularly interested in youth receiving high school diplomas. We encourage grantees to boost the reading and math skills of youth and to help youth make up lost high school credits. We also encourage grantees to coordinate with local public schools to help youth offenders return to regular high schools if appropriate or to be referred to quality alternative schools that provide high school diplomas, certifiable credentials, and opportunities for post-secondary educational placement. We encourage coordination with local community colleges and four-year colleges to assist youth with the transition to post-secondary education. We encourage grantees to develop mentoring for youth and to use work-based learning opportunities. In all cases, this emphasis on reading and math remediation should lead to post-secondary education and training.

• *Building Strategic Partnerships.* ETA believes that strategic partnerships between the public workforce system, business and industry representatives, the juvenile justice system, and education and training providers such as community colleges, need to be in place in order to ensure that youth offenders gain the necessary skills and competencies for jobs and career pathways in high-growth/high-demand industries. We also believe that additional partnerships with the child welfare agency and faith-based and community organizations also could enhance this effort.

In order to maximize success, each partner needs to be engaged in its area of strength and have a clearly defined role in the partnership. For example, industry representatives define workforce challenges facing the industry, identify competencies and skills required, and may provide work-based opportunities for participants. Community colleges and other education and training providers assist in developing competency models and curricula for training new and incumbent workers. The juvenile justice system makes referrals to the program, while faith and community-based organizations provide mentoring and case management to provide encouragement, tutoring, and assistance to help participants achieve their goals. The workforce investment system may assist with the assessments of youth, develop individual service strategies and training programs, and place trained youth into jobs. This example does not preclude other partner roles and responsibilities in the design and implementation of a youth offender project.

• *Leveraging Resources.* Youth offender investments should leverage funds and resources from key entities in the strategic partnership. Leveraging resources in the context of strategic partnerships accomplishes three goals: (1) Allowing for the pursuit of resources driven by strategy; (2) increasing stakeholder investment in the project at all levels, including design and implementation phases; and (3) broadening the impact of the project itself.

Consistent with the new youth vision, this SGA provides the opportunity for strong collaboration between State and local youth-serving agencies. Businesses, faith-based and community organizations, and foundations often invest resources to support workforce development. In addition, other government programs may provide resources, including WIA funds reserved for Statewide activities, local WIA formula youth funds, State juvenile justice funds, Federal No Child Left Behind education funds, Chaffee, Runaway and Homeless funds and State education funds. ETA encourages applicants and their partners to be entrepreneurial as they seek out, utilize, and sustain these resources, whether in-kind or cash contributions, when creating effective, innovative projects for youth offenders.

Applicants will be rated in part on their ability to demonstrate commitments of leveraged non-Federal resources. These leveraged non-Federal resources can be either cash or in-kind.

In addition, 5 bonus points will be provided for applicants that leverage 20 percent in cash of the total amount requested for the grant from State or Federal resources. Applicants must describe in detail how such leveraged funds will be used and demonstrate how these funds will contribute to the goals of the project.

• *High Performance Outcomes.* DOL expects that 200 youth offenders will be served during the first year of operation at each site awarded a grant under this SGA. The outcomes for this initiative will include placement in employment, post-secondary education, and advanced training, attainment of a degree or certificate (both of which are part of the new common measures for youth employment and training programs), and reduced recidivism.

5. Examples of Projects That Could Be Funded Under This Solicitation

Types of projects that could be funded under this SGA include, but are not limited to, the following examples. Please note that these are only examples, and we welcome applicants to propose alternative approaches. All proposals will be judged on their own merits.

Example 1: The local Workforce Investment Board, the education and training community, juvenile court, and representatives of local high-growth industries set up a comprehensive system for assisting all youth returning home from correctional facilities to enter careers in high-growth industries. The local high-growth employers identify the skills and competency needs of their high-growth industries as the focus of the effort. The juvenile court agrees to refer all youth returning to the local area from correctional facilities, as well as youth who have previously been released from correctional facilities or who have been sentenced to probation rather than confinement. The child welfare agency refers foster youth who have been involved in the juvenile justice system. The community college and industry representatives design and implement a set of apprenticeship, on-the-job training, and internship opportunities for youth offenders in the high-growth industries identified, as well as implement an educational component to improve the math and reading skills of youth offenders and to assist them in working towards acquiring an associate's and/or bachelor's degree from a community college or four-year college. The workforce investment system implements the assessments for the participants, provides the supportive services, and after training, is involved in job placements in those identified high-growth industries. Faith-based and community organizations agree to provide mentors, case management, and other support services to youth offenders. Any of the above agencies or organizations could be the lead agency for the project.

Example 2: The State agencies that oversee workforce development, community colleges, and juvenile justice coordinate with industry representatives to identify occupations in high-growth industries that could be taught at State juvenile correctional facilities and to implement instructional courses in these occupations in one or more juvenile correctional facilities in the State. The new instructional courses emphasize project-based learning. The State Workforce Agency then coordinates with local Workforce Investment Boards and local employers to develop apprenticeships, on-the-job training, internships, and job placements for youth offenders from these correctional facilities when they are released. Faith-based and community organizations agree to provide mentors and case management for the youth.

Example 3: A consortium of Workforce Investment Boards serving a common labor market coordinate with the community colleges that serve the broader area, the juvenile courts that serve the area, and industry representatives to set up a regional approach to assisting youth returning from correctional facilities to enter high-growth/high-demand industries. The consortium identifies two or three high-growth industries to be the focus of the effort. The juvenile courts agree to refer to this new effort all youth returning to the local area from correctional facilities. The child welfare agencies refer foster youth who have been involved in the juvenile justice system. The Workforce Investment Boards and the industry representatives design a set of apprenticeship, on-the-job training, and internship opportunities, and conduct job placement for youth offenders in the identified high-growth industries. The community colleges implement an educational component to improve the math and reading skills of youth offenders and to assist youth offenders to enter a community college or four-year college. The Workforce Investment Boards, industry representatives, and local community colleges also develop a training program to help employed youth offenders upgrade their skills and move to skilled positions in high-growth industries. Faith-based and community organizations agree to provide mentors and case management for youth offenders. Any of the above agencies or organizations could be the lead agency for the project.

II. Award Information

1. Award Amount

ETA expects to award grants for 15 projects at an average grant amount of $1 million. Applicants may submit proposals within the range of $800,000 to $1.2 million.

2. Period of Performance

The initial period of grant performance will be for one year of operation. Depending on the availability of funds and satisfactory progress, additional years of funding may be available for these grants. In addition, ETA may elect to exercise its option to award no-cost extensions to these grants for an additional period based on the satisfactory progress of the program in placing participants in jobs, education, and training, and reducing the recidivism of participants.

III. Eligibility Information

1. Eligible Applicants

Applicants may be public, private for-profit, and private non-profit organizations, including faith-based and community organizations. The applicant will be the lead agency representing a partnership of the public workforce system, business and industry representatives from high-growth/high-demand industries, the education and training community, and the juvenile justice system.

Applicants must demonstrate the existence of a partnership that includes at least one entity from each of four categories: (1) The publicly-funded workforce investment system, which may include the State Workforce Board, State Workforce Agency, local Workforce Investment Board, or a consortium of neighboring local Workforce Investment Boards; (2) the education and training community, which may include the State agencies overseeing secondary and post-secondary schools, local school districts, local community and technical colleges, four year colleges and universities, or other training entities; (3) employers and industry representatives in high-growth/high-demand industries; and (4) the juvenile justice system, which may include the State juvenile justice agency or the local family or juvenile court system. Collaborations also are encouraged with other entities, including child welfare and foster care agencies, faith-based and community organizations, substance abuse treatment providers, and social service agencies.

2. Grantee Resources

There are no matching requirements for these grants. Applicants will be rated in part on their ability to demonstrate commitments of leveraged non-Federal resources.

3. Other Eligibility Requirements

Beneficiary Eligibility. Individuals aged 16 to 21 who have been involved in the juvenile justice system may be served by these grants. This includes youth currently being held in correctional facilities or detention centers, youth who have been released from correctional facilities or detention centers, and youth who have been sentenced in juvenile court to probation or alternative sentences.

Veterans Priority. This program is subject to the provisions of the ''Jobs for Veterans Act,'' Pub. L. 107–288, 38 U.S.C. 4215), which provides priority of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services in any job training program directly funded, in whole or in part, by DOL. To obtain priority of service, a veteran must meet the program's eligibility requirements. ETA Training and Employment Guidance Letter (TEGL) No. 5–03 (Sept. 16, 2003) at *http://www.doleta.gov/Seniors/other_docs/TEN5_03_VETS.pdf* provides general guidance on the scope of the veterans priority statute and its effect on current employment and training programs.

IV. Application and Submission Information

1. Address To Request Application Package

This SGA contains all of the information and forms needed to apply for grant funding.

2. Content and Form of Application Submission

Applicants must submit an original signed application and three hard copies to DOL. The proposal must consist of two separate and distinct parts. Applications that fail to adhere to the instructions in this section will be considered non-responsive and will not be considered.

Part 1 of the proposal is the Cost Proposal and must include the following two items:

- The Standard Form (SF) 424, ''Application for Federal Assistance'' (Appendix A) (also available at *http://www.whitehouse.gov/omb/grants/sf424.pdf*). The SF 424 must clearly identify the applicant and be signed by an individual with authority to enter into a grant agreement. Applicants are required to have a Dun and Bradstreet (DUNS) number which is a nine-digit identification number that uniquely identifies business entities. To obtain a DUNS number, access the Web site at *http://www.dunandbradstreet.com* or call 1–866–705–5711. Applicants must supply their DUNS number in item #5 of the new SF 424 issued by OMB (rev. 9–2003).
- The Budget Information Form SF 424A (Appendix B) (also available at *http://www.whitehouse.gov/omb/grants/sf424a.pdf*). In preparing the SF 424A, the applicant must provide a concise narrative explanation for each line item to support the request and should discuss precisely how the administrative costs support the project goals. The applicant must also provide a detailed back-up budget that includes the number of staff to be hired by job title.

Part 2 of the application is the Technical Proposal, which demonstrates the applicant's capabilities to plan and implement the grant project in accordance with the provisions of this SGA. The guidelines for the content of the Technical Proposal are provided in Section V(1)(A–D) of this SGA; emphasis should be placed on the areas listed in Section I(4) of this SGA. The Technical Proposal is limited to fifteen double-spaced, single-sided pages with twelve point text font and one-inch margins. In addition, the applicant must provide letters of support from the partnering agencies, a list of proposed staff positions to be funded by the grant, a time line outlining project activities, and a two-page Executive Summary. These additional materials do not count against the fifteen page limit for the Technical Proposal. The additional materials may not exceed fifteen pages in addition to the Technical Proposal.

3. Submissions Dates, Times, and Address

The closing date for receipt of applications under this announcement is May 23, 2005. Applications must be received at the address below not later than 5 p.m. (Eastern Daylight Time). Applications sent by e-mail, telegram, or facsimile (fax) will not be accepted. Applications that do not meet the conditions set forth in this notice will not be considered. No exceptions to the mailing and delivery requirements set forth in this notice will be granted.

Mailed applications must be addressed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: James Stockton, Reference SGA/DFA–PY 04–09, 200 Constitution Avenue, NW., Room S–4220, Washington, DC 20210. Applicants are advised that mail delivery in the Washington area may be delayed due to mail decontamination procedures. Hand delivered applications will be received at the above address. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified closing date.

Applicants may apply online at *http://www.grants.gov*. For applicants submitting electronic applications via Grants.gov, it is strongly recommended that you immediately initiate and complete the ''Get Started'' steps to register with Grants.gov at *http://www.grants.gov/GetStarted*. Registration will probably take multiple days to complete which should be factored into plans for electronic application submission in order to avoid facing unexpected delays that could result in the rejection of your application. It is recommended that applicants experiencing problems with electronic transmission submit their application by overnight mail until the electronic issues are resolved.

Late Applications: Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made and it (a) was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (*e.g.*, an application required to be received by the 20th of the month must be postmarked by the 15th of that month) or (b) was sent by U.S. Postal Service Express Mail or Online to addressee not later than 5 p.m. at the place of mailing or electronic submission one working day prior to the date specified for receipt of applications. It is highly recommended that online submissions be completed one working day prior to the date specified for receipt of applications to ensure that the applicant still has the option to submit by U.S. Postal Service Express Mail in the event of any electronic submission problems. ''Post marked'' means a printed, stamped or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service. Therefore, applicants should request the postal clerk to place a legible hand cancellation ''bull's eye'' postmark on both the receipt and the package. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness.

4. Intergovernmental Review

This funding opportunity is not subject to Executive Order (EO) 12372, ''Intergovernmental Review of Federal Programs.''

5. Funding Restrictions

All proposal costs must be necessary and reasonable in accordance with Federal guidelines. Determinations of allowable costs will be made in accordance with the applicable Federal cost principles, as identified in OMB Circulars A–122, A–87, A–21 or at 48 CFR part 31 (See 29 CFR 95.27, 97.22). Disallowed costs are those charges to a grant that the grantor agency or its

representative determines not to be allowed in accordance with the applicable Federal Cost Principles or other conditions contained in the grant. Applicants will not be entitled to reimbursement of pre-award costs.

The government is prohibited from providing direct support to religious activity.[1] *See* 29 CFR part 2, subpart D. Provisions relating to the use of indirect support, such as through vouchers, are found at 29 CFR 2.33(c) and 20 CFR 667.266. These grants may not be used to directly support religious instruction, worship, prayer, proselytizing, or other inherently religious practices. Neutral, secular criteria that neither favor nor disfavor religion must be employed in the selection of grant and sub-grant recipients. In addition, under DOL regulations implementing the nondiscrimination provisions of WIA, a recipient may not use direct Federal assistance to train a participant in religious activities, and a recipient may not employ participants to construct, operate, or maintain any part of any facility that is used or to be used for religious instruction or as a place for religious worship, except as provided in 29 CFR 37.6(f). Under WIA, ''no individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any such program or activity because of race, color, religion, sex (except as otherwise permitted under Title IX of the Education Amendments of 1972), national origin, age, disability, or political affiliation or belief.''

6. Other Submission Requirements

Applications may be withdrawn by written notice or telegram, including mailgram, received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the application.

V. Application Review Information

1. Criteria for Review

This section identifies and describes the criteria that will be used to evaluate the proposals submitted in response to this solicitation. These criteria and point values are:

Criterion	Points
A. Need for the Project	15
B. Project Design and Service Strategy	40
C. Linkages to Key Partners and Leveraged Resources	30
D. Program Management and Organization Capacity	15
** Bonus: Leveraged State or Federal Cash Resources	5
Total Possible Points	105

A. Need for the Project (15 Points)

The points for need will be assigned based on a combination of the number of youth involved in delinquency cases in the area to be served by your proposed project and the justification that you make in your application for the need for the project. Ten points under this criterion will be assigned by the number of youth in delinquency cases based on a scale that uses data provided voluntarily by juvenile courts across the country to the National Juvenile Court Data Archive (NJCDA), a project maintained by the *National Center for Juvenile Justice* (NCJJ) with funds provided by OJJDP. These Juvenile Court Statistics include State and county-level caseload statistics describing the annual delinquency, status offense, and dependency cases handled by juvenile courts. These county-level statistics are available on the OJJDP Web site under *Easy Access to State and County Juvenile Court Case Counts* at *http://ojjdp.ncjrs.org/ojstatbb/ezaco/asp/overview.asp*. We will be using the data on petitioned delinquency cases.

If you are from Louisiana, Oregon, or Wisconsin, please provide the number of petitioned delinquency cases in the county or counties that will be serving for the latest year available as the national base does not include these statistics for these three States. If you are applying from any other State, you do not need to provide in your application the statistics for the area that you will be serving as we can access that information from the national data base as long as you indicate in the Needs Section of your application the county or counties that you will be serving or whether you will be serving a state-wide area. If you are from Connecticut, indicate the venue district that you will be serving.

The remaining five points under this criterion will be based on the justification that you provide in your application for the need for this project in the area that you will be serving. Discuss the extent of juvenile delinquency in the area that you will be serving, the extent of youth gang problems, and other information relevant to establishing the need for your project.

B. Project Design and Service Strategy (40 Points)

Applicants are requested to describe how they plan to effectively prepare and place youth offenders in high-growth/high-demand industries. Describe how credible labor market information was used to focus on selected industries. Show evidence that the industry(s) selected is high-growth or in demand in the area to be served by the grant. Describe how the training curricula and competency models proposed will upgrade the basic and occupational skills of participants.

Describe how the juvenile justice system will refer youth to the program. Discuss the role of youth correctional facilities in referring youth to the program. Describe how coordination will be maintained between juvenile probation officers and the education and employment components of the program. If some youth are assigned to this project as part of an alternative sentence, describe how coordination will be maintained between the juvenile court and the education and employment components of the program.

Identify what assessment tools and/or methods will be used to determine the skills and aptitudes of participants. Describe the specific strategies and methods that will be used for measuring skills acquisition during the training process. Describe the service process that will be used in the project including the sequence of services (*i.e.*, assessments, training, etc.) in the overall process, how the specific services for participants are determined, and which partner will provide the services. In addition, identify the supportive services, if applicable, that will be provided to participants and describe how such services will facilitate participation. Identify what supportive services will be provided pre- and post-employment/placement, as well as during and post-training. Describe the rationale for the services that are necessary for participants to attain, retain or advance in the job. Indicate what services will be provided by project partners or other sources other than the grant.

DOL expects that each project site will serve 200 youth offenders each year and that outcomes will include placement in employment, post-secondary education, and advanced

[1] The term ''direct'' support is used to describe funds or other support that are provided ''directly'' by a governmental entity or an intermediate organization with the same duties as a governmental entity, as opposed to funds that an organization receives ''indirectly'' as the result of the genuine and independent private choice of a beneficiary within the meaning of the Establishment Clause of the U.S. Constitution.

training, attainment of a degree or certificate (both of which are part of the new common measures for youth employment and training programs), and reduced recidivism. Discuss how your project will be able to attain these outcomes, taking into consideration that youth entering this program may have low basic skills levels and may require extensive remediation and skills training. Also provide numerical goals for each of these outcome measures. Please be realistic in setting these numerical goals. Your discussion of outcome goals should include the methods proposed to collect and validate outcome data in a timely and accurate manner.

Describe the job placement strategies that you will use in your program. Discuss the extent to which the high-growth/high-demand industry representatives will assist in the job placement. Discuss the role of the local workforce investment system and One-Stop Centers in your job placement efforts.

Scoring on this criterion will be based on how well the service plan/project design provides solutions to the workforce challenges of the youth offender population to be served while addressing the needs of high-growth/high-demand employers for a skilled workforce.

Important factors include:

- The existence of a work plan that is responsive to the applicant's statement of need and target population, and that includes specific goals, objectives, activities, implementation strategies, and a timeline;
- Local labor market information and other evidence that support the credibility of the high-growth/high-demand industry(s) identified;
- The demonstrated link between the proposed project and the workforce challenges identified for youth offender workers and employers;
- The existence of a sound strategy for coordinating with the local juvenile justice system and youth correctional facilities for referring youth into the program;
- A sound strategy for coordinating with juvenile probation officers in this project;
- Links with the child welfare agency, faith-based and community organizations, and other social service agencies;
- Participant characteristics including their literacy and basic and occupational skill needs;
- An effective set of job placement strategies;
- The industry and occupation, in which participants are to be placed, retained, or advanced relative to target skills and wage goals;
- Documented skill shortages for industry or occupations targeted;
- Evidence that the training curricula is developed, if applicable, to meet identified skills and competencies required by high-growth employers;
- The length of the project for participants;
- The ability of the applicant to achieve the stated outcomes within the time frame of the grant;
- The appropriateness of the outcomes with respect to the requested level of funding; and
- The extent to which the project will be of significant and practical use to the public workforce investment system.

C. Linkages to Key Partners and Leveraged Resources (30 Points)

Applicants must demonstrate the existence of a partnership that includes at least one entity from each of four categories: (1) The publicly-funded Workforce Investment System, which may include the State Workforce Board, State Workforce Agency, local Workforce Investment Board, or a consortium of neighboring local Workforce Investment Boards; (2) the education and training community, which may include the State agencies overseeing secondary and post-secondary schools, local school districts, local community and technical colleges, four year colleges and universities, or other training entities; (3) employers and industry representatives in high-growth/high-demand industries; and (4) the juvenile justice system, which may include the State juvenile justice agency or the local family or juvenile court system. Collaborations also are encouraged with other entities, including child welfare and foster care agencies, faith-based and community organizations, substance abuse treatment providers, and social service agencies. DOL encourages, and will be looking for, applications that go beyond the minimum level of partnerships and demonstrate broader, substantive, and sustainable partnerships. The applicant must identify the partners and explain the meaningful role each partner plays in the project as well as how resources will be leveraged among the partners.

Scoring on this criterion will be based on the comprehensiveness of the partnership, the degree to which each partner plays a committed role, and the amount and quality of non-Federal leveraged resources.

Important factors include:

- The number of partners involved, the nature of their in-kind or monetary contribution, their knowledge and experience concerning the proposed grant activities, and their ability to impact the success of the project;
- The overall completeness of the partnership, including its ability to manage all aspects and stages of the project and to coordinate individual activities with the partnership as a whole;
- Evidence that key partners have expressed a clear commitment to the project and understand their areas of responsibility. Examples include a letter of commitment or an MOU;
- Evidence of a plan for interaction between partners at each stage of the project, from planning to execution;
- Evidence that the partnership has the capacity to achieve the outcomes of the proposed project; and
- The amount and quality of the non-Federal leveraged resources, including an itemized description of each cash or in-kind contribution and a description of how each contribution will be used to further the goals of the project. By quality of the non-Federal leveraged resources, we mean whether the proposed leveraging represents a dedication of resources to this specific project as opposed to simply representing a use of resources that would have occurred even in the absence of this project.

Bonus: Leveraging of State and Federal Cash Resources. Applicants who plan to leverage 20 percent of the requested grant amount in State or Federal Cash Resources for the proposed project will receive 5 bonus points. By cash resources, we mean State or Federal resources that are dedicated specifically to this project, and that in effect increase the budgeted amount available for your project to spend. Applicants must describe in detail how such funds will be used, the source of funds, and how these funds will contribute to the goals of the project.

D. Program Management and Organization Capacity (15 Points)

Applicants must demonstrate that they have the capability of providing the services proposed. The applicant must also include a description of organizational capacity and the organization's track record in projects similar to that described in the application and/or related activities of the primary actors in the partnership. Applicants must identify a project manager, discuss the proposed staffing pattern and the qualifications and experience of key staff members, provide detailed descriptions of the roles of the participating partners, and give evidence of the utilization of data

systems to track outcomes. Scoring on this factor will be based on evidence of the following:

- The time commitment of the proposed staff is sufficient to assure proper direction, management, and timely completion of the project;
- The roles and contribution of staff, consultants, and collaborative organizations are clearly defined and linked to specific objects and tasks;
- The background, experience, and other qualifications of the staff are sufficient to carry out their designated roles; and
- The applicant organization has significant capacity to accomplish the goals and outcomes of the project, including appropriate systems to track outcome data.

2. Review and Selection Process

A technical review panel will make careful evaluation of applications against the criteria set forth in V.1. These criteria are based on the policy goals, priorities, and emphases set forth in this SGA. The ranked scores will serve as a primary basis for selection of applications for funding, in conjunction with other factors such as urban, rural, and geographic balance, the availability of funds, and which applications are most advantageous to DOL. The panel results are advisory in nature and not binding on the Grant Officer. The Grant Officer may consider any information that comes to his attention. DOL may elect to award the grant(s) with or without discussions with the applicants. Should a grant be awarded without discussions, the award will be based on the applicant's signature on the SF 424, which constitutes a binding offer.

VI. Award Administration Information

1. Award Notices

DOL will notify selected and non-selected applicants by mail. All award notifications will be posted on the ETA Homepage at *http://www.doleta.gov*.

2. Administrative and National Policy Requirements

All grantees, including faith-based organizations, will be subject to all applicable Federal laws, including provisions of appropriation laws, regulations, and the applicable OMB Circulars. The grant(s) awarded under this SGA must comply with all provisions of this SGA and will be subject to the following administrative standards and provisions, as applicable to the particular grantee:

a. 20 CFR part 667.220 Administrative Costs.

b. OMB Circulars, A–122 Cost Principles, A–21 Cost Principles, A–87 Cost Principles, 48 CFR part 31 Cost Principles.

c. 29 CFR part 2, subpart D—Equal Treatment in Department of Labor Programs for Religious Organizations, Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries;

d. 29 CFR part 30—Equal Employment Opportunity in Apprenticeship and Training;

e. 29 CFR part 31—Nondiscrimination in Federally Assisted Programs of the Department of Labor—Effectuation of Title VI of the Civil Rights Act of 1964;

f. 29 CFR part 32—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance;

g. 29 CFR part 33—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Labor;

h. 29 CFR part 35—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the Department of Labor;

i. 29 CFR part 36—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance;

j. 29 CFR part 37—Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998 (WIA).

k. 29 CFR part 93—Lobbying;

l. 29 CFR part 95—Grants and Agreements with Non-Profit Organizations, Commercial Organizations, International Organizations, Foreign Governments, and Others;

m. 29 CFR part 96—Audit Requirements for Grants, Contracts and Other Agreements;

n. 29 CFR part 97—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;

o. 29 CFR part 98—Government-wide Debarment and Suspension (Non-Procurement) and Governmentwide Requirements for Drug-Free Workplace; and

p. 29 CFR part 99—Audits of States, Local Governments, and Non-Profit Organizations.

Note: Except as specifically provided in this SGA, DOL/ETA's acceptance of a proposal and an award of Federal funds to sponsor any programs(s) does not provide a waiver of any grant requirements and/or procedures. For example, the OMB circulars require that an entity's procurement procedures must require that all procurement transactions must be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the DOL/ETA's award does not provide the justification or basis to sole-source the procurement, *i.e.*, avoid competition.

3. Reporting

The grantee is required to provide the reports and documents listed below:

Quarterly Financial Reports. A Quarterly Financial Status Report, SF 269, is required until such time as all funds have been expended or the grant period has expired. Quarterly reports are due thirty days after the end of each calendar year quarter. Grantees must use ETA's On-Line Electronic Reporting System.

Quarterly Progress Reports. The grantee must submit a quarterly progress report to the designated Federal Project Officer within thirty days after the end of each quarter. Two copies are to be submitted providing a detailed account of activities undertaken during that quarter. DOL may require additional data elements to be collected and reported on either a regular basis or special request basis. Grantees must agree to meet DOL reporting requirements. The quarterly progress report should be in narrative form and should include:

1. In-depth information on accomplishments, including project success stories, upcoming grant activities, promising approaches and processes, and progress in achieving performance outcomes;
2. Challenges, barriers, or concerns regarding project progress;
3. Lessons learned in the areas of project administration and management, project implementation, partnership relationships and other related areas.

MIS Data. Grantees will be required to submit updated MIS data on enrollment, services provided, placements, outcomes, and follow-up status. DOL will coordinate with sites after grant award to implement an MIS system for this project.

VII. Agency Contacts

Any questions regarding this SGA should be directed to B. Jai Johnson, Grants Management Specialist, Division of Federal Assistance, at (202)-693–3296; fax: (202) 693–2879. This is not a toll-free number. You must specifically address your fax to the attention of B. Jai Johnson and should include SGA/DFA PY 04–09, a contact name, fax and phone number.

FOR FURTHER INFORMATION CONTACT: Please contact James Stockton, Grants Management Specialist, Division of Federal Assistance, on (202) 693–3335. This is not a toll-free number. This

announcement is also being made available on the ETA Web site at *http://www.doleta.gov/sga/sga.cfm* and *http://www.grants.gov.*

VIII. Other Information

Resources for the Applicant

DOL maintains a number of web-based resources that may be of assistance to applicants. The webpage for the ETA's Business Relations Group (*http://www.doleta.gov/BRG*) is a valuable source of background on the President's High-Growth Job Training Initiative. America's Service Locator (*http://www.servicelocator.org*) provides a directory of our nation's One-Stop Career Centers. Applicants are encouraged to review ''Understanding the Department of Labor Solicitation for Grant Applications and How to Write an Effective Proposal'' (*http://www/dol.gov/cfbci/sgabrochure.htlm*). ''Questions and Answers'' regarding this SGA will be posted and updated on the Web (*www.doleta.gov/usworkforce*).

Signed at Washington, DC, this 20th day of April, 2005.

James W. Stockton,

Grants Officer.

Attachments:

Appendix A: SF 424—Application Form

Appendix B: OMB Survey N. 1890–0014: Survey on Ensuring Equal Opportunity for Applicants

Appendix C: SF 424A—Budget Information Form

BILLING CODE 4510–30–P

APPLICATION FOR FEDERAL ASSISTANCE

Version 7/03

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ **Construction** ☐ **Non-Construction**	Pre-application ☐ **Construction** ☐ **Non-Construction**	**3. DATE RECEIVED BY STATE**	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:		**Organizational Unit:** Department:	
Organizational DUNS:		Division:	
Address: Street:		**Name and telephone number of person to be contacted on matters involving this application (give area code)** Prefix:	First Name:
City:		Middle Name	
County:		Last Name	
State:	Zip Code	Suffix:	
Country:		Email:	
6. EMPLOYER IDENTIFICATION NUMBER *(EIN):* ☐☐-☐☐☐☐☐☐☐		Phone Number (give area code)	Fax Number (give area code)
8. TYPE OF APPLICATION: ☐ **New** ☐ **Continuation** ☐ **Revision** If Revision, enter appropriate letter(s) in box(es) (See back of form for description of letters.) ☐ ☐ Other (specify)		**7. TYPE OF APPLICANT:** (See back of form for Application Types) Other (specify)	
		9. NAME OF FEDERAL AGENCY:	
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐ TITLE (Name of Program):		**11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:**	
12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.):*			
13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date:	Ending Date:	a. Applicant	b. Project
15. ESTIMATED FUNDING:		**16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?**	
a. Federal	$ .00	a. Yes. ☐ THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE:	
b. Applicant	$ .00		
c. State	$ .00		
d. Local	$ .00	b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372	
e. Other	$ .00	☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW	
f. Program Income	$ .00	**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?**	
g. TOTAL	$ .00	☐ Yes If "Yes" attach an explanation.	☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Authorized Representative		
Prefix	First Name	Middle Name
Last Name		Suffix
b. Title		c. Telephone Number (give area code)
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (Rev.9-2003)
Prescribed by OMB Circular A-102

SURVEY ON ENSURING EQUAL OPPORTUNITY FOR APPLICANTS

OMB No. 1890-0014 Exp. 1/31/2006

Purpose: The Federal government is committed to ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for Federal funding. In order for us to better understand the population of applicants for Federal funds, we are asking nonprofit private organizations (not including private universities) to fill out this survey.

Upon receipt, the survey will be separated from the application. Information provided on the survey will not be considered in any way in making funding decisions and will not be included in the Federal grants database. While your help in this data collection process is greatly appreciated, completion of this survey is voluntary.

Instructions for Submitting the Survey: If you are applying using a hard copy application, please place the completed survey in an envelope labeled "Applicant Survey." Seal the envelope and include it along with your application package. If you are applying electronically, please submit this survey along with your application.

Applicant's (Organization) Name: _____

Applicant's DUNS Number: _____

Grant Name: _____ **CFDA Number:** _____

1. Does the applicant have 501(c)(3) status?

   ☐ Yes ☐ No

2. How many full-time equivalent employees does the applicant have? *(Check only one box).*

   ☐ 3 or Fewer ☐ 15-50
   ☐ 4-5 ☐ 51-100
   ☐ 6-14 ☐ over 100

3. What is the size of the applicant's annual budget? *(Check only one box.)*

   ☐ Less Than $150,000
   ☐ $150,000 - $299,999
   ☐ $300,000 - $499,999
   ☐ $500,000 - $999,999
   ☐ $1,000,000 - $4,999,999
   ☐ $5,000,000 or more

4. Is the applicant a faith-based/religious organization?

   ☐ Yes ☐ No

5. Is the applicant a non-religious community-based organization?

   ☐ Yes ☐ No

6. Is the applicant an intermediary that will manage the grant on behalf of other organizations?

   ☐ Yes ☐ No

7. Has the applicant ever received a government grant or contract (Federal, State, or local)?

   ☐ Yes ☐ No

8. Is the applicant a local affiliate of a national organization?

   ☐ Yes ☐ No

Survey Instructions on Ensuring Equal Opportunity for Applicants

Provide the applicant's (organization) name and DUNS number and the grant name and CFDA number.

1. 501(c)(3) status is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

2. For example, two part-time employees who each work half-time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

3. Annual budget means the amount of money your organization spends each year on all of its activities.

4. Self-identify.

5. An organization is considered a community-based organization if its headquarters/service location shares the same zip code as the clients you serve.

6. An "intermediary" is an organization that enables a group of small organizations to receive and manage government funds by administering the grant on their behalf.

7. Self-explanatory.

8. Self-explanatory.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1890-0014. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 2202-4651.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, SW, ROB-3, Room 3671, Washington, D.C. 20202-4725

OMB No. 1890-0014 Exp. 1/31/2006

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$ 0.00
2.						0.00
3.						0.00
4.						0.00
5. Totals		$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$ 0.00
b. Fringe Benefits					0.00
c. Travel					0.00
d. Equipment					0.00
e. Supplies					0.00
f. Contractual					0.00
g. Construction					0.00
h. Other					0.00
i. Total Direct Charges *(sum of 6a-6h)*	0.00	0.00	0.00	0.00	0.00
j. Indirect Charges					0.00
k. TOTALS *(sum of 6i and 6j)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00
7. Program Income	$	$	$	$	$ 0.00

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Standard Form 424A (Rev. 7-97)
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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$ 0.00
9.				0.00
10.				0.00
11.				0.00
12. TOTAL *(sum of lines 8-11)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ 0.00	$	$	$	$
14. Non-Federal	0.00				
15. TOTAL *(sum of lines 13 and 14)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION F - OTHER BUDGET INFORMATION

21. Direct Charges:	22. Indirect Charges:

23. Remarks:

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[FR Doc. 05–8184 Filed 4–21–05; 8:45 am]

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Federal Register

Friday,
April 22, 2005

Part VI

The President

Proclamation 7889—National Physical Fitness and Sports Month, 2005

Federal Register
Vol. 70, No. 77
Friday, April 22, 2005

Presidential Documents

Title 3—

The President

Proclamation 7889 of April 20, 2005

National Physical Fitness and Sports Month, 2005

By the President of the United States of America

A Proclamation

Physical fitness is vital to a healthy lifestyle. During National Physical Fitness and Sports Month, we highlight the importance of integrating exercise into our daily routines and encourage all our citizens to live more active lives.

Physical fitness benefits both the body and the mind. Regular exercise, along with healthy eating habits, helps prevent serious health problems, improves productivity, and promotes better sleep and relaxation. Maintaining an active lifestyle reduces the risk of chronic diseases such as obesity, diabetes, asthma, heart disease, and certain cancers. Americans can improve their health and well-being by dedicating a small part of each day to physical activity.

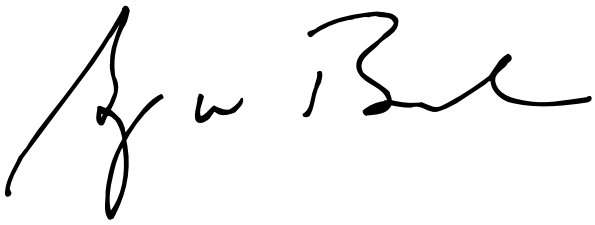
As children grow, athletic activities teach them important life lessons and help prepare them for the opportunities ahead. Sports are a way for young Americans to meet new friends, discover the value of teamwork, discipline, and patience, and learn to win and lose with respect for others. From baseball to mountain biking to swimming, sports and physical activities can be a great chance to get outdoors and enjoy memorable experiences with family and friends.

Through the President's Council on Physical Fitness and Sports, my Administration is promoting the incorporation of physical activity into daily life and the importance of a healthy lifestyle. The Council's website, www.fitness.gov, provides information on steps individuals can take to live better and more productive lives. Programs like ''The President's Challenge'' help individuals set fitness goals and work hard to achieve them.

I urge all Americans to set aside time to improve their health through physical fitness and sports, and I encourage individuals to help motivate their family and friends to get out and exercise. By contributing to a culture of health and well-being in America, citizens help demonstrate the strength and character of our great country.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 2005 as National Physical Fitness and Sports Month. I call upon the people of the United States to make daily physical activity a priority in their lives and to recognize the numerous benefits of an active lifestyle. I also call on all Americans to celebrate this month with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of April, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and twenty-ninth.



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LIST OF PUBLIC LAWS

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S. 256/P.L. 109–8

Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Apr. 20, 2005; 119 Stat. 23)

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