
# Federal Register

6–16–05 Thursday
Vol. 70 No. 115 June 16, 2005

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3. The important elements of typical Federal Register documents.

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

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

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

RESERVATIONS: (202) 741-6008

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**Reader Aids**

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

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## CFR PARTS AFFECTED IN THIS ISSUE

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

# Rules and Regulations

Federal Register
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Thursday, June 16, 2005



## DEPARTMENT OF AGRICULTURE

### Office of the Chief Financial Officer

### 7 CFR Part 3052

### Audits of States, Local Governments, and Non-Profit Organizations

**AGENCY:** Office of the Chief Financial Officer, USDA.

**ACTION:** Direct final rule.

**SUMMARY:** The United States Department of Agriculture (USDA) is amending 7 CFR part 3052 to implement the Office of Management and Budget (OMB) revisions to Circular No. A–133. These amendments increase the threshold for audit from $300,000 to $500,000; increase the threshold for cognizant agency for audit from $25 million to $50 million; make related technical changes to facilitate the determination of cognizant agency for audit; and provide for Federal agency reassignment of oversight agency for audit.

**DATES:** This rule will be effective August 15, 2005, unless written adverse comments within the scope of this rulemaking or written notice of intent to submit them are received by August 30, 2005. If USDA receives adverse comments, the **Federal Register** will report on the rule's nullification.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: matthew.faulkner@usda.gov.* Include Regulatory Information Number (RIN) number 0505–AA12 in the subject line of the message.
- *Fax:* (202) 690–1529.
- *Mail:* OCFO/CTGP Room 3425A–S, Stop 9010, 1400 Independence Avenue, SW., Washington, DC 20250–9020.
- *Hand Delivery/Courier:* OCFO/CTGP Room 3425A–S, Stop 9010, 1400 Independence Avenue, SW., Washington, DC 20250–9010.

*Instructions:* All submissions received must include the agency name and docket number or RIN for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

- *Docket:* For access to the docket to read background documents or comments received, contact Matthew Faulkner at *matthew.faulkner@usda.gov* or at: OCFO/CTGP Room 3425A–S, Stop 9010, Room 1400 Independence Avenue, SW., Washington, DC 20250–9020.

**FOR FURTHER INFORMATION CONTACT:** Matthew Faulkner, Office of the Chief Financial Officer, Credit, Travel and Grants Policy Division, United States Department of Agriculture, (202) 720-1307, *matthew.faulkner@usda.gov.*

**SUPPLEMENTARY INFORMATION:** Previously, USDA promulgated 7 CFR part 3052 to implement OMB Circular No. A–133, "Audits of States, Local Governments, and Non-Profit Organizations." The Office of Management and Budget (OMB) has published the aforementioned final revisions (68 FR 38401, June 27, 2003). Through this rulemaking, USDA is amending its implementing regulations at part 3052 to conform to the revised circular.

OMB made the following changes in the final revision to Circular No. A–133, "Audits of States, Local Governments, and Non-Profit Organizations." The revisions (1) increase the threshold for audit from $300,000 to $500,000; (2) increase the threshold for cognizant agency for audit from $25 million to $50 million; and (3) make related technical changes to facilitate the determination of cognizant agency for audit and provide for Federal agency reassignment of oversight agency for audit. There are not additional substantive changes. For a discussion of the rationale and public comments regarding the OMB revisions, please see the published final OMB notices in the June 27, 2003, **Federal Register** (68 FR 38401).

Through this Direct Final Rule, USDA is implementing these changes verbatim.

### Impact Analysis

*Executive Order 12866*

Executive Order 12866 requires that a regulatory impact analysis be prepared for "significant regulatory actions." This order defines a significant regulatory action as any rule that affects the national economy by at least $100 million or has other specified effects.

USDA does not believe that the rule will be a significant regulatory action.

*Executive Order 12988*

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The provisions of this proposed rule neither preempt State laws nor involve administrative appeals. These amendments are effective retroactively to January 1, 2004.

*Executive Order 13132*

It has been determined that this rule does not have sufficient federalism implications to warrant a Federalism Assessment. The provisions contained in this rulemaking will not affect States or their political subdivisions substantially. They also will not impact the distribution of power and responsibilities among the various levels of government substantially.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires an analysis to be prepared for each rule with a significant economic impact on a substantial number of small entities. The analysis should describe the rule's impact on small entities and identify any significant alternatives to the rule that would minimize the economic impact on such entities. Section 605 of the Regulatory Flexibility Act allows USDA to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have such an impact.

USDA certifies that this rule would not have the aforementioned impact. The final rule will have a positive impact on small businesses because of the assistance these entities receive from other agencies. It also will ease the administrative requirements for USDA to offer financial assistance.

*Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires agencies to prepare several analyses before proposing any rule that may result in annual expenditures of at least $100 million annually by State, local and Indian tribal governments, or the private sector. USDA certifies that this rule will not result in expenditures of this magnitude.

*Paperwork Reduction Act of 1995*

This rule will not impose additional reporting or record keeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

**List of Subjects in 7 CFR Part 3052**

Accounting, Grant programs, Intergovernmental relations, Nonprofit organizations, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, part 3052 of Chapter XXX of Title 7 of the Code of Federal Regulations is amended as follows:

## PART 3052—AUDITS OF STATES, LOCAL GOVERNMENTS, AND NON-PROFITORGANIZATIONS

■ 1. The authority citation for part 3052 continues to read as follows:

**Authority:** 5 U.S.C. 301.

■ 2. Amend § 3052.105 by revising the definition of "Oversight agency for audit" to read as follows:

**§ 3052.105 Definitions.**

* * * * *

*Oversight agency for audit* means the Federal awarding agency that provides the predominant amount of direct funding to a recipient not assigned a cognizant agency for audit. When there is no direct funding, the Federal agency with the predominant indirect funding shall assume the oversight responsibilities. The duties of the oversight agency for audit are described in § 3052.400(b). A Federal agency with oversight for an auditee may reassign oversight to another Federal agency, which provides substantial funding and agrees to be the oversight agency for audit. Within 30 days after any reassignment, both the old and the new oversight agency for audit shall notify the auditee, and, if known, the auditor of the reassignment.

* * * * *

■ 3. Amend § 3052.400 by revising paragraph (a) to read as follows:

**§ 3052.400 Responsibilities.**

(a) *Cognizant agency for audit responsibilities.* Recipients expending more than $50 million in a year in Federal awards shall have a cognizant agency for audit. The designated cognizant agency for audit shall be the Federal awarding agency that provides the predominant amount of direct funding to a recipient unless OMB makes a specific cognizant agency for audit assignment. The determination of the predominant amount of direct funding shall be based upon direct Federal awards expended in the recipient's fiscal years ending in 2004, 2009, 2014, and every fifth year thereafter. For example, audit cognizance for periods ending in 2006 through 2010 will be determined based on Federal awards expended in 2004. (However, for 2001 through 2005, the cognizant agency for audit is determined based on the predominant amount of direct Federal awards expended in the recipient's fiscal year ending in 2000.) Notwithstanding the manner in which audit cognizance is determined, a Federal awarding agency with cognizance for an auditee may reassign cognizance to another Federal awarding agency which provides substantial direct funding and agrees to be the cognizant agency for audit. Within 30 days after any reassignment, both the old and the new cognizant agency for audit shall notify the auditee, and, if known, the auditor of the reassignment. The cognizant agency for audit shall:

(1) Provide technical audit advice and liaison to auditees and auditors.

(2) Consider auditee requests for extensions to the report submission due date required by § 3052.320(a). The cognizant agency for audit may grant extensions for good cause.

(3) Obtain or conduct quality control reviews of selected audits made by non-Federal auditors, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any direct reporting by the auditee or its auditor of irregularities or illegal acts, as required by GAGAS or laws and regulations.

(5) Advise the auditor and, where appropriate, the auditee of any deficiencies found in the audits when the deficiencies require corrective action by the auditor. When advised of deficiencies, the auditee shall work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency for audit shall notify the auditor, the auditee, and applicable Federal awarding agencies and pass-through entities of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance by auditors shall be referred to appropriate State licensing agencies and professional bodies for disciplinary action.

(6) Coordinate, to the extent practical, audits or reviews made by or for Federal agencies that are in addition to the audits made pursuant to this part, so that the additional audits or reviews build upon audits performed in accordance with this part.

(7) Coordinate a management decision for audit findings that affect the Federal programs of more than one agency.

(8) Coordinate the audit work and reporting responsibilities among auditors to achieve the most cost-effective audit.

(9) For biennial audits permitted under § 3052.220, consider auditee requests to qualify as a low-risk auditee under § 3052.530(a).

* * * * *

**§§ 3052.200, 3052.230, 3052.400 [Amended]**

■ 4. In addition to the amendments set forth above, in 7 CFR part 3052 remove the term "$300,000" and add, in its place, the term "$500,000" in the following places:

(a) Section 3052.200(a), (b), and (d);

(b) Section 3052.230(b)(2); and

(c) Section 3052.400 (d)(4).

Dated: May 9, 2005.

**Patricia E. Healy,**

*Acting Chief Financial Officer.*

Dated: May 11, 2005.

**Mike Johanns,**

*Secretary, United States Department of Agriculture.*

[FR Doc. 05–11840 Filed 6–15–05; 8:45 am]

BILLING CODE 3410–90–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 95

**[Docket No. 30448; Amdt. No. 455]**

### IFR Altitudes; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or

direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

**EFFECTIVE DATE:** 0901 UTC, July 7, 2005.

**FOR FURTHER INFORMATION CONTACT:** Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

### The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

### Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC, on June 6, 2005.

**James J. Ballough,**

*Director, Flight Standards Service.*

### Adoption of the Amendent

■ Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, July 7, 2005.

### PART 95—[AMENDED]

■ 1. The authority citation for part 95 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 455 effective date July 07, 2005]

| From | To | MEA |
|---|---|---|
| **§ 95.1001 Direct Routes—U.S. COLOR ROUTES** | | |
| **§ 95.515 Green Federal Airway G15 Is Amended To Read in Part** | | |
| Anvik, AK NDB/DME | Takotna River, AK NDB | *9000 |
| *6000—MOCA<br>*7000—GNSS MEA | | |
| **§ 95.10 Amber Federal Airway A1 Is Amended To Read in Part** | | |
| Ocean Cape AK, NDB | Capem AK, INT | 6000 |
| 2000—MOCA | | |
| Capem, AK INT | Corva AK, INT | 6000 |
| 4400—MOCA | | |
| Corva, AK INT | Egger, AK NT | 2000 |
| Egger AK, INT | Orca Bay, AK NDB | 5000 |
| Orca Bay, AK NDB | Campbell Lake, AK NDB | 9000 |
| 8000—MOCA | | |
| **§ 95.1115 Amber Federal Airway A15 Is Amended To Read in Part** | | |
| Nichols, AK NDB | Sumner Strait, AK NDB | *7000 |
| *5100—MOCA<br>*6000—GNSS MEA. | | |
| **§ 95.6 Blue Federal Airway B25 Is Amended To Read in Part** | | |
| Orca Bay NDB | *Shope, AK FIX | 4900 |

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 455 effective date July 07, 2005]

| From | To | MEA |
|---|---|---|
| *6600—MCA Shope, AK FIX, N BND | | |

**§ 95.5000 Ground-Based High Altitude RNAV Routes**

| From/To 889R | Total distance | Changeover Point | | Track angle | MEA | MAA |
|---|---|---|---|---|---|---|
| | | Distance | From | | | |
| Nowel, AK | 79.77 | 10.0 | Nowel ... | 110T/290 TO COP | 18000 | 45000 |
| Arise, AK | | | | 292T/112 TO Arise | | |
| Arise, AK | 70.65 | | | 111T/291 TO Konks | 18000 | 45000 |
| Konks, AK | | | | 293T/113 TO Konks | | |
| Konks, AK | 116.24 | 40.0 | Konks ... | 111T/291 TO COP | 18000 | 45000 |
| Laire, AK | | | | 294T/114 TO Laire | | |

| From | To | MEA |
|---|---|---|
| **§ 95.6001 Victor Routes—U.S.** | | |
| **§ 95.6036 VOR Federal Airway V36 Is Amended To Read in Part** | | |
| Buffalo, NY VOR/DME | *Dalee, NY FIX | 3500 |
| *8000–MRA | | |
| **§ 95.6208 VOR Federal Airway V208 Is Amended by Adding** | | |
| Ventura, CA VOR/DME | Weezl, CA FIX | 5000 |
| Weezl, CA FIX | Santa Catalina, CA VORTAC | 4000 |
| **§ 95.6308 Alaska VOR Federal Airway V308 Is Amended To Read in Part** | | |
| Fishh, AK FIX | Sparrevohn, AK VOR/DME | *8000 |
| *6000—MOCA | | |
| *6000—GNSS MEA | | |
| **§ 95.6317 Alaska VOR Federal Airway V317 Is Amended To Read in Part** | | |
| Csper, AK FIX | *Hapit, AK FIX | **15000 |
| *15000—MRA | | |
| **4100—MOCA | | |
| **5000—GNSS MEA | | |
| Hoods, AK FIX | Sisters Island, AK VORTAC | *7000 |
| *5500—MOCA | | |
| *6000—GNSS MEA | | |
| Sisters Island, AK VORTAC | Csper, AK FIX | *7000 |
| *5000—MOCA | | |
| *5000—GNSS MEA | | |
| Gesti, AK DME FIX | Level Island, AK VOR/DME | 7000 |
| 5000—MOCA | | |
| 5000—GNSS MEA | | |
| Level Island, AK VOR/DME | Hoods, AK FIX | *9000 |
| *5900—MOCA | | |
| *7000—GNSS MEA | | |
| **§ 95.6319 Alaska VOR Federal Airway V319 Is Amended To Read in Part** | | |
| Arsen, AK FIX | Fanci, AK FIX | *4000 |
| *2000—MOCA | | |
| *2000—GNSS MEA | | |
| Torte, AK FIX | *Veill, AK FIX | **12000 |
| *10000—MCA VEILL, AK FIX E BND | | |
| **10000—MOCA | | |
| **10000—GNSS MEA | | |
| **§ 95.6350 Alaska VOR Federal Airway V350 Is Amended To Read in Part** | | |
| Dahls, AK FIX | Emmonak, AK VOR/DME | *3600 |
| *3000—MOCA | | |
| *3000—GNSS MEA | | |
| **§ 95.6453 Alaska VOR Federal Airway V453 Is Amended To Read in Part** | | |
| Bethel, AK VORTAC | Unalakleet, AK VOR/DME | *9000 |

| From | To | MEA |
|---|---|---|
| *4900—MOCA<br>*6000—GNSS MEA<br>Educe, AK FIX | Bethel, AK VORTAC<br>S BND<br>N BND | <br><br>*7000<br>*4000 |
| *2500—MOCA<br>*3000—GNSS MEA | | |

**§ 95.6510 Alaska VOR Federal Airway V510 Is Amended To Read in Part**

| | | |
|---|---|---|
| Anvik, AK NDB/DME | Abear, DME FIX.<br>E BND<br>W BND | <br>10000<br>9000 |
| *6200—MOCA<br>*7000 GNSS MEA<br>Abear, AK FIX | Mc Grath, AK VORTAC | *10000 |
| *6200—MOCA<br>*7000—GPS MEA | | |

**§ 95.6617 Alaska VOR Federal Airway V617 Is Amended To Read in Part**

| | | |
|---|---|---|
| Homer, AK VOR/DME<br>*8600—MOCA<br>*9000—GNSS MEA | Johnstone Point, AK VOR/DME | *12000 |

| From | To | MEA | MAA |
|---|---|---|---|
| **§ 95.7001 Jet Routes**<br>**§ 95.7094 Jet Route J94 Is Amended To Read in Part** | | | |
| Manteca, CA VORTAC<br>Kirck, CA FIX | Kirck, CA FIX<br>Mustang, NV VORTAC | 19000<br>19000 | 45000<br>45000 |
| **§ 95.7133 Jet Route J133 Is Amended To Read in Part** | | | |
| Sitka, AK NDB<br>Orca Bay, AK NDB | Orca Bay NDB<br>Johnstone Point VOR/DME | 18000<br>18000 | 45000<br>45000 |
| **§ 95.7711 Jet Route J711 Is Amended To Delete** | | | |
| Sitka, AK NDB<br>Laire, AK FIX | Laire, AK FIX<br>Hinchinbrook, AK NDB | 18000<br>18000 | 45000<br>45000 |

[FR Doc. 05–11668 Filed 6–15–05; 8:45 am]
BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 97

**[Docket No. 30447; Amdt. No. 3124]**

## Standard Instrument Approach Procedures, Weather Takeoff Minimums; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and/or Weather Takeoff Minimums for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective June 16, 2005. The compliance date for each SIAP and/or Weather Takeoff Minimums is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of June 16, 2005.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination*—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

*For Purchase*—Individual SIAP and Weather Takeoff Minimums copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription*—Copies of all SIAPs and Weather Takeoff Minimums mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Donald P. Pate, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This amendment to title 14 of the Code of Federal Regulations, part 97 (14 CFR part 97), establishes, amends, suspends, or revokes SIAPs and/or Weather Takeoff Minimums. The complete regulatory description of each SIAP and/or Weather Takeoff Minimums is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, 8260–5 and 8260–15A. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs and/or Weather Takeoff Minimums, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs and/or Weather Takeoff Minimums but refer to their depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP and/or Weather Takeoff Minimums contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs and/or Weather Takeoff Minimums. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

**The Rule**

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and/or Weather Takeoff Minimums as contained in the transmittal. Some SIAP and/or Weather Takeoff Minimums amendments may have been previously issued by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP, and/or Weather Takeoff Minimums amendments may require making them effective in less than 30 days. For the remaining SIAPs and/or Weather Takeoff Minimums, an effective date at least 30 days after publication is provided.

Further, the SIAPs and/or Weather Takeoff Minimums contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and/or Weather Takeoff Minimums, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and/or Weather Takeoff Minimums and safety in air commerce, I find that notice and public procedure before adopting these SIAPs and/or Weather Takeoff Minimums are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs and/or Weather Takeoff Minimums effective in less than 30 days.

**Conclusion**

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on June 3, 2005.

**James J. Ballough,**

*Director, Flight Standards Service.*

**Adoption of the Amendment**

■ Accordingly, pursuant to the authority delegated to me, under title 14, Code of Federal Regulations, part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and Weather Takeoff Minimums effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

*Effective 7 Jul 2005*

Anchorage, AK, Ted Stevens Anchorage Intl, RNAV (GPS) RWY 7R, Amdt 2
Anchorage, AK, Ted Stevens Anchorage Intl, RNAV (GPS) RWY 7L, Amdt 1
Anchorage, AK, Ted Stevens Anchorage Intl, RNAV (GPS) RWY 14, Amdt 1
Anchorage, AK, Ted Stevens Anchorage Intl, ILS OR LOC/DME RWY 7R, Orig; ILS RWY 7R (CAT II); ILS RWY 7R (CAT III)
Anchorage, AK, Ted Stevens Anchorage Intl, ILS OR LOC/DME RWY 7L, Orig
Anchorage, AK, Ted Stevens Anchorage Intl, ILS RWY 14, Amdt 4
Anchorage, AK, Ted Stevens Anchorage Intl, NDB RWY 7R, Amdt 7
Anchorage, AK, Ted Stevens Anchorage Intl, VOR RWY 7R, Amdt 13
Anchorage, AK, Ted Stevens Anchorage Intl, ILS RWY 6L, Orig-A, CANCELLED
Anchorage, AK, Ted Stevens Anchorage Intl, ILS RWY 6R, Amdt 11C, CANCELLED
Anchorage, AK, Ted Stevens Anchorage Intl, MLS RWY 6L, Orig-B, CANCELLED
Cordova, AK, Merle K (Mudhole) Smith, Takeoff Minimums and Textual DP, Amdt 6
Tanana, AK, Ralph M. Calhoun Memorial, RNAV (GPS) RWY 7, Orig
Tanana, AK, Ralph M. Calhoun Memorial, GPS RWY 6, Orig, CANCELLED
Tuscaloosa, AL, Tuscaloosa Regional, NDB RWY 4, Amdt 10C, CANCELLED
Little Rock, AR, Adams Field, NDB RWY 4L, Amdt 19, CANCELLED
Little Rock, AR, Adams Field, NDB RWY 22R, Amdt 7A, CANCELLED
Mena, AR, Mena Intermountain Muni, ILS OR LOC RWY 27, Orig
Mena, AR, Mena Intermountain Muni, NDB RWY 27, Orig
Mena, AR, Mena Intermountain Muni, NDB–B, Amdt 8, CANCELLED
Mena, AR, Mena Intermountain Muni, Takeoff Minimums and Textual DP, Amdt 5
Paragould, AR, Kirk Field, NDB RWY 4, Amdt 1, CANCELLED

Texarkana, AR, Texarkana Regional-Webb Field, NDB RWY 22, Amdt 12A, CANCELLED
West Memphis AR, West Memphis Muni, NDB RWY 17, Amdt 10A, CANCELLED
Flagstaff, AZ, Flagstaff Pulliam, NDB/DME RWY 21, Amdt 1A, CANCELLED
Arcata-Eureka, CA, Arcata, NDB OR GPS–A, Amdt 7, CANCELLED
Bakersfield, CA, Meadows Field, NDB RWY 30R, Amdt 7, CANCELLED
Big Bear City, CA, Big Bear City, RNAV (GPS) RWY 26, Orig
Big Bear City, CA, Big Bear City, GPS RWY 26, Orig, CANCELLED
Burbank, CA, Bob Hope, NDB RWY 8, Amdt 2C, CANCELLED
Monterey, CA, Monterey Peninsula, NDB RWY 10R, Amdt 12B, CANCELLED
Ontario, CA, Ontario Intl, NDB RWY 26L, Amdt 3A, CANCELLED
San Diego, CA, San Diego Intl-Lindbergh Field, NDB RWY 9, Amdt 19C, CANCELLED
San Diego, CA, San Diego Intl-Lindbergh Field, NDB RWY 27, Amdt 1D, CANCELLED
San Francisco, CA, San Francisco Intl, LDA PRM RWY 28R, SIMULTANEOUS CLOSE PARALLEL Orig-B
San Francisco, CA, San Francisco Intl, ILS PRM RWY 28L, SIMULTANEOUS CLOSE PARALLEL Orig-B
Denver, CO, Denver Intl, ILS OR LOC RWY 8, Amdt 4
Denver, CO, Denver Intl, ILS OR LOC RWY 17L, Amdt 3
Hayden, CO, Yampa Valley, ILS OR LOC/DME Y RWY 10, Amdt 2
Hartford, CT, Hartford-Brainard, NDB RWY 2, Amdt 2B, CANCELLED
Georgetown, DE, Sussex County, RNAV (GPS) RWY 4, Amdt 1
Georgetown, DE, Sussex County, RNAV (GPS) RWY 22, Amdt 1
Wilmington, DE, New Castle County, NDB RWY 1, Amdt 18A, CANCELLED
Washington, DC, Washington Dulles Intl, NDB RWY 1R, Amdt 17A, CANCELLED
Washington, DC, Ronald Reagan Washington National, NDB OR GPS RWY 1, Amdt 11, CANCELLED
Daytona Beach, FL, Daytona Beach Intl, NDB RWY 7L, Amdt 26A, CANCELLED
Fort Lauderdale, FL, Fort Lauderdale-Hollywood Intl, RNAV (GPS) RWY 9R, Amdt 1
Gainesville, FL, Gainesville Rgnl, RNAV (GPS) RWY 11, Amdt 1
Gainesville, FL, Gainesville Rgnl, RNAV (GPS) RWY 29, Amdt 1
Jacksonville, FL, Jacksonville Intl, NDB RWY 31, Orig-C, CANCELLED
Orlando, FL, Executive, VOR/DME RWY 7, Amdt 1B
Orlando, FL, Orlando Intl, RNAV (GPS) RWY 36L, Amdt 1
Pensacola, FL, Pensacola Regional, RNAV (GPS) RWY 8, Amdt 1
Pensacola, FL, Pensacola Regional, RNAV (GPS) RWY 26, Amdt 1
Pensacola, FL, Pensacola Regional, LOC/DME RWY 26, Orig
Sarasota (Bradenton), FL, Sarasota/Bradenton Intl, NDB RWY 32, Amdt 6C, CANCELLED
Tampa, FL, Tampa Intl, NDB OR GPS RWY 18L, Amdt 32A, CANCELLED
Vero Beach, FL, Vero Beach Muni, NDB RWY 11R, Amdt 3, CANCELLED
Vero Beach, FL, Vero Beach Muni, NDB RWY 29L, Amdt 1, CANCELLED
West Palm Beach, FL, Palm Beach Intl, NDB RWY 9L, Amdt 20, CANCELLED
West Palm Beach, FL, Palm Beach Intl, RNAV (GPS) RWY 9L, Amdt 1
West Palm Beach, FL, Palm Beach Intl, RNAV (GPS) RWY 13, Amdt 1
West Palm Beach, FL, Palm Beach Intl, RNAV (GPS) RWY 27R, Amdt 1
Augusta, GA, Augusta Regional At Bush Field, NDB RWY 17, Amdt 16, CANCELLED
Augusta, GA, Augusta Regional At Bush Field, NDB RWY 35, Amdt 29, CANCELLED
Brunswick, GA, Brunswick Golden Isles, NDB RWY 7, Amdt 10A, CANCELLED
Eastman, GA, Heart Of Georgia Regional, ILS OR LOC RWY 2, Orig
Macon, GA, Middle Georgia Regional, NDB RWY 5, Amdt 21, CANCELLED
Honolulu, HI, Honolulu Intl, NDB RWY 8L, Amdt 19B, CANCELLED
Ames, IA, Ames Muni, NDB RWY 1, Amdt 2, CANCELLED
Burlington, IA, Burlington Regional, NDB RWY 36, Amdt 8C, CANCELLED
Des Moines, IA, Des Moines Intl, NDB RWY 31, Amdt 20, CANCELLED
Fort Dodge, IA, Fort Dodge Regional Airport, NDB RWY 6, Amdt 6A, CANCELLED
Marshalltown, IA, Marshalltown Muni, NDB RWY 12, Amdt 8, CANCELLED
Mason City, IA, Mason City Muni, NDB RWY 35, Amdt 5A, CANCELLED
Belleville, IL, Scott AFB/Mid America, NDB RWY 32R, Orig-C, CANCELLED
Cahokia/St Louis, IL, St Louis Downtown, NDB RWY 30L, Amdt 1, CANCELLED
Chicago, IL, Chicago Midway, NDB RWY 4R, Amdt 12C, CANCELLED
Chicago, IL, Chicago Midway, NDB OR GPS RWY 31C, Amdt 14C, CANCELLED
Chicago/Waukegan, IL, Waukegan Regional, RNAV (GPS) RWY 5, Orig
Chicago/Waukegan, IL, Waukegan Regional, RNAV (GPS) RWY 23, Orig
Chicago/Waukegan, IL, Waukegan Regional, NDB RWY 23, Amdt 3
Chicago/Waukegan, IL, Waukegan Regional, VOR/DME RNAV RWY 5, Amdt 3
Decatur, IL, Decatur, NDB RWY 6, Amdt 6A, CANCELLED
Bedford, IN, Virgil I. Grissom Muni, NDB RWY 13, Amdt 8, CANCELLED
Bedford, IN, Virgil I. Grissom Muni, NDB RWY 31, Amdt 10, CANCELLED
Bloomington, IN, Monroe County, NDB RWY 35, Amdt 5, CANCELLED
Connersville, IN, Mettel Field, NDB RWY 18, Orig-A, CANCELLED
Elkhart, IN, Elkhart Muni, RNAV (GPS) RWY 9, Orig
Elkhart, IN, Elkhart Muni, RNAV (GPS) RWY 17, Orig
Elkhart, IN, Elkhart Muni, RNAV (GPS) RWY 27, Orig
Elkhart, IN, Elkhart Muni, RNAV (GPS) RWY 35, Orig
Elkhart, IN, Elkhart Muni, VOR RWY 9, Amdt 6
Elkhart, IN, Elkhart Muni, VOR RWY 27, Amdt 15
Elkhart, IN, Elkhart Muni, VOR/DME RWY 35, Amdt 4
Indianapolis, IN, Indianapolis Intl, NDB RWY 5L, Orig-B, CANCELLED
Indianapolis, IN, Indianapolis Intl, NDB RWY 5R, Amdt 2, CANCELLED
Indianapolis, IN, Indianapolis Intl, NDB RWY 23L, Amdt 2, CANCELLED
Indianapolis, IN, Indianapolis Intl, NDB RWY 32, Amdt 15, CANCELLED
Lafayette, IN, Purdue University, NDB RWY 10, Amdt 13, CANCELLED
South Bend, IN, South Bend Regional, RNAV (GPS) RWY 9R, Orig
South Bend, IN, South Bend Regional, RNAV (GPS) RWY 27L, Orig
South Bend, IN, South Bend Regional, NDB RWY 27L, Amdt 29
Terre Haute, IN, Terre Haute Intl-Hulman Field, NDB RWY 5, Amdt 19
Valparaiso, IN, Porter County Muni, NDB RWY 27, Amdt 6, CANCELLED
Goodland, KS, Renner Fld/Goodland Muni, NDB RWY 30, Amdt 7, CANCELLED
Hays, KS, Hays Regional, NDB RWY 34, Amdt 3, CANCELLED
Lawrence, KS, Lawrence Muni, NDB RWY 33, Amdt 1, CANCELLED
Olathe, KS, New Century Aircenter, NDB RWY 35, Amdt 6, CANCELLED
Olathe, KS, Johnson County Executive, NDB RWY 18, Amdt 4A, CANCELLED
Olathe, KS, Johnson County Executive, NDB RWY 36, Amdt 1A, CANCELLED
Topeka, KS, Forbes Field, NDB RWY 31, Amdt 8, CANCELLED
Topeka, KS, Philip Billard Muni, NDB RWY 13, Amdt 29, CANCELLED
Winfield/Arkansas City, KS, Strother Field, NDB RWY 35, Amdt 4, CANCELLED
Glasgow, KY, Glasgow Muni, NDB RWY 7, Amdt 11, CANCELLED
Lexington, KY, Blue Grass, NDB RWY 4, Amdt 21, CANCELLED
Lexington, KY, Blue Grass, NDB RWY 22, Orig, CANCELLED
Murray, KY, Kyle-Oakley Field, NDB RWY 23, Amdt 1, CANCELLED
Owensboro, KY, Owensboro-Daviess County, NDB RWY 36, Amdt 9, CANCELLED
Somerset, KY, Somerset-Pulaski County-J.T. Wilson Field, NDB RWY 4, Amdt 7, CANCELLED
Baton Rouge, LA, Baton Rouge Metropolitan-Ryan Field, NDB RWY 13, Amdt 25, CANCELLED
New Orleans, LA, Louis Armstrong/New Orleans Intl, NDB RWY 10 Amdt 26B, CANCELLED
Shreveport, LA, Shreveport Regional, NDB RWY 14, Amdt 20A, CANCELLED
Sulphur, LA, Southland Field, NDB RWY 15, Amdt 1C, CANCELLED
Tallulah, LA, Vicksburg Tallulah Rgnl, NDB RWY 36, Amdt 1, CANCELLED
Bangor, ME, Bangor Intl, NDB RWY 33, Amdt 5D, CANCELLED
Portland, ME, Portland Intl Jetport, NDB RWY 11, Amdt 16, CANCELLED
Baltimore, MD, Martin State, NDB RWY 15, Amdt 9, CANCELLED
Baltimore, MD, Martin State, NDB RWY 33, Amdt 8, CANCELLED
Gaithersburg, MD, Montgomery County Airpark, NDB RWY 14, Amdt 2

Boston, MA, General Edward Lawrence Logan Intl, NDB RWY 4R, Amdt 23A, CANCELLED
Boston, MA, General Edward Lawrence Logan Intl, NDB RWY 22L, Amdt 11A, CANCELLED
Hyannis, MA, Barnstable Muni-Boardman/Polando Field, NDB RWY 24, Amdt 9D, CANCELLED
Norwood, MA, Norwood Memorial, NDB RWY 35, Amdt 10, CANCELLED
Plymouth, MA, Plymouth Muni, NDB RWY 6, Amdt 4B, CANCELLED
Westfield, MA, Barnes Muni, NDB RWY 20, Amdt 15A, CANCELLED
Alma, MI, Gratiot Community, NDB RWY 9, Amdt 7, CANCELLED
Detroit, MI, Detroit Metropolitan Wayne County, NDB RWY 4R, Amdt 10F, CANCELLED
Detroit, MI, Detroit Metropolitan Wayne County, NDB RWY 27R, Amdt 10C, CANCELLED
Grand Rapids, MI, Gerald R. Ford Intl, NDB RWY 26L, Amdt 20A, CANCELLED
Saginaw, MI, MBS Intl, NDB RWY 5, Amdt 8, CANCELLED
Sault Ste Marie, MI, Chippewa County Intl, NDB RWY 16, Amdt 6, CANCELLED
Alexandria, MN, Chandler Field, NDB RWY 31, Amdt 5, CANCELLED
Duluth, MN, Duluth Intl, NDB RWY 9, Amdt 24, CANCELLED
Rochester, MN, Rochester International, NDB RWY 31, Amdt 22, CANCELLED
Columbia, MO, Columbia Regional, NDB RWY 2, Amdt 9, CANCELLED
Dexter, MO, Dexter Muni, NDB RWY 36, Amdt 1, CANCELLED
Kaiser/Lake Ozark, MO, Lee C Fine Memorial, NDB RWY 21, Amdt 6A, CANCELLED
Kansas City, MO, Kansas City Intl, NDB RWY 1L, Amdt 15A, CANCELLED
Kansas City, MO, Kansas City Intl, NDB RWY 9, Amdt 8A, CANCELLED
Kansas City, MO, Kansas City Intl, NDB RWY 19L, Orig-A, CANCELLED
St Joseph, MO, Rosecrans Memorial, NDB RWY 17, Amdt 8D, CANCELLED
St Joseph, MO, Rosecrans Memorial, NDB RWY 35, Amdt 28F, CANCELLED
Sedalia, MO, Sedalia Memorial, RNAV (GPS) RWY 18, Amdt 1
Sedalia, MO, Sedalia Memorial, RNAV (GPS) RWY 36, Amdt 1
Springfield, MO, Springfield-Branson Regional, NDB RWY 2, Amdt 17, CANCELLED
Springfield, MO, Springfield-Branson Regional, NDB RWY 14, Amdt 11A, CANCELLED
Jackson, MS, Jackson Intl, NDB RWY 16L, Amdt 5, CANCELLED
Meridian, MS, Key Field, NDB RWY 1, Amdt 19, CANCELLED
Oxford, MS, University Oxford, NDB RWY 9, Amdt 1A, CANCELLED
Beatrice, NE, Beatrice Municipal, NDB RWY 13, Amdt 8B, CANCELLED
Chadron, NE, Chadron Muni, NDB RWY 2, Amdt 1, CANCELLED
Columbus, NE, Columbus Muni, NDB RWY 14, Amdt 12A, CANCELLED
Omaha, NE, Eppley Airfield, NDB RWY 14R, Amdt 24D, CANCELLED
Omaha, NE, Eppley Airfield, NDB RWY 32L, Amdt 1B, CANCELLED
Wayne, NE, Wayne Muni, RNAV (GPS) RWY 17, Amdt 1
Wayne, NE, Wayne Muni, RNAV (GPS) RWY 35, Amdt 1
Concord, NH, Concord Muni, RNAV (GPS) RWY 12, Orig
Concord, NH, Concord Muni, RNAV (GPS) RWY 17, Orig
Concord, NH, Concord Muni, RNAV (GPS) RWY 35, Orig
Concord, NH, Concord Muni, GPS RWY 17, Orig, CANCELLED
Concord, NH, Concord Muni, NDB RWY 35, Amdt 6
Concord, NH, Concord Muni, VOR-A, Orig
Concord, NH, Concord Muni, VOR OR GPS RWY 12, Amdt 1, CANCELLED
Newark, NJ, Newark Liberty, NDB RWY 4R, Amdt 7, CANCELLED
Newark, NJ, Newark Liberty, NDB RWY 4L, Amdt 11, CANCELLED
Clovis, NM, Clovis Muni, NDB RWY 4, Amdt 4, CANCELLED
Las Cruces, NM, Las Cruces International, NDB RWY 30, Amdt 1, CANCELLED
Raton, NM, Raton Municipal/Crews Field, NDB RWY 2, Amdt 5, CANCELLED
Silver City, NM, Grant County, NDB RWY 26, Amdt 3B, CANCELLED
Elmira, NY, Elmira/Corning Regional, NDB RWY 24, Amdt 15, CANCELLED
Middletown, NY, Randall, NDB RWY 26, Amdt 1
New York, NY, LaGuardia, NDB RWY 4, Amdt 36A, CANCELLED
New York, NY, LaGuardia, NDB RWY 22, Amdt 12C, CANCELLED
Ogdensburg, NY, Ogdensburg Intl, NDB RWY 27, Amdt 1, CANCELLED
Rochester, NY, Greater Rochester Intl, NDB RWY 28, Amdt 20D, CANCELLED
Syracuse, NY, Syracuse Hancock Intl, NDB RWY 28, Amdt 28B, CANCELLED
Asheville, NC, Asheville Regional, NDB RWY 16, Amdt 15B, CANCELLED
Asheville, NC, Asheville Regional, NDB RWY 34, Amdt 18C, CANCELLED
Burlington, NC, Burlington-Alamance Regional, NDB RWY 6, Amdt 1, CANCELLED
Charlotte, NC, Charlotte/Douglas Intl, NDB RWY 5, Amdt 32, CANCELLED
Clinton, NC, Sampson County, NDB RWY 6, Amdt 6, CANCELLED
Fayetteville, NC, Fayetteville Regional/Grannis Field, NDB RWY 4, Amdt 15, CANCELLED
Jefferson, NC, Ashe County, NDB RWY 28, Amdt 1, CANCELLED
Kenansville, NC, Duplin County, NDB RWY 23, Orig-A, CANCELLED
Maxton, NC, Laurinburg-Maxton, NDB RWY 5, Amdt 1, CANCELLED
North Wilkesboro, NC, Wilkes County, NDB RWY 1, Amdt 2C, CANCELLED
Raleigh-Durham, NC, Raleigh-Durham Intl, NDB RWY 23L, Amdt 5, CANCELLED
Rocky Mount, NC, Rocky Mount-Wilson Regional, NDB RWY 4, Amdt 9, CANCELLED
Roxboro, NC, Person County, NDB RWY 6, Amdt 3, CANCELLED
Sanford, NC, Sanford Lee County Regional Airport, NDB RWY 3, Orig, CANCELLED
Washington, NC, Warren Field, NDB RWY 5, Orig-B, CANCELLED
Bellefontaine, OH, Bellefontaine Regional, NDB RWY 7, Orig, CANCELLED
Bellefontaine, OH, Bellefontaine Regional, NDB RWY 25, Orig, CANCELLED
Cincinnati, OH, Cincinnati-Blue Ash, NDB RWY 24, Amdt 2, CANCELLED
Columbus, OH, Port Columbus Intl, NDB RWY 10R, Amdt 7B, CANCELLED
Columbus, OH, Port Columbus Intl, NDB RWY 10L, Amdt 8C, CANCELLED
Columbus, OH, Port Columbus Intl, NDB RWY 28L, Amdt 13B, CANCELLED
Columbus, OH, Port Columbus Intl, NDB RWY 28R, Orig-C, CANCELLED
Dayton, OH, James M. Cox Dayton Intl, NDB RWY 6L, Amdt 6, CANCELLED
Toledo, OH, Toledo Express, NDB RWY 7, Amdt 24B, CANCELLED
Ardmore, OK, Ardmore Muni, NDB RWY 31, Amdt 5, CANCELLED
Bartlesville, OK, Frank Phillips, NDB RWY 17, Amdt 1A, CANCELLED
Enid, OK, Enid Woodring Muni, NDB RWY 35, Amdt 6B, CANCELLED
McAlester, OK, McAlester Regional, NDB RWY 1, Amdt 3, CANCELLED
Oklahoma City, OK, Will Rogers World, NDB RWY 35L, Orig-A, CANCELLED
Oklahoma City, OK, Will Rogers World, NDB RWY 35R, Amdt 5D, CANCELLED
Ponca City, OK, Ponca City Rgnl, NDB RWY 17, Amdt 5, CANCELLED
Stillwater, OK, Stillwater Regional, RNAV (GPS) RWY 17, Orig
Stillwater, OK, Stillwater Regional, RNAV (GPS) RWY 35, Orig
Stillwater, OK, Stillwater Regional, ILS OR LOC RWY 17, Amdt 2
Stillwater, OK, Stillwater Regional, VOR RWY 17, Amdt 14
Stillwater, OK, Stillwater Regional, VOR/DME RWY 35, Amdt 1
Stillwater, OK, Stillwater Regional, NDB RWY 17, Amdt 1
Stillwater, OK, Stillwater Regional, GPS RWY 17, Orig, CANCELLED
Stillwater, OK, Stillwater Regional, GPS RWY 35, Orig, CANCELLED
Altoona, PA, Altoona-Blair County, RNAV (GPS) Y RWY 21, Orig
Altoona, PA, Altoona-Blair County, RNAV (GPS) Z RWY 21, Orig
St Marys, PA, St Marys Muni, VOR RWY 28, Amdt 7
St Marys, PA, St Marys Muni, LOC/DME RWY 28, Amdt 3
St Marys, PA, St Marys Muni, RNAV (GPS) RWY 28, Orig
St Marys, PA, St Marys Muni, VOR/DME RNAV RWY 28, Amdt 5, CANCELLED
St Marys, PA, St Marys Muni, Takeoff Minimums and Textual DP, Amdt 2
San Juan, PR, Luis Munoz Marin Intl, NDB RWY 10, Amdt 6, CANCELLED
Providence, RI, Theodore Francis Green State, NDB RWY 5, Amdt 15D, CANCELLED
Providence, RI, Theodore Francis Green State, ILS OR LOC RWY 5, Amdt 18A; ILS RWY 5 (CAT II), Amdt 18A; ILS RWY 5 (CAT III), Amdt 18A
Providence, RI, Theodore Francis Green State, ILS OR LOC RWY 23, Amdt 5A
Charleston, SC, Charleston AFB/Intl, NDB RWY 15, Amdt 18A, CANCELLED

Greer, SC, Greenville-Spartanburg Intl-Roger Milliken, NDB RWY 4, Amdt 15, CANCELLED
North Myrtle Beach, SC, Grand Strand, NDB RWY 23, Amdt 11, CANCELLED
Rock Hill, SC, Rock Hill/York County/Bryant Field, NDB RWY 2, Orig-D, CANCELLED
Huron, SD, Huron Regional, LOC/DME BC RWY 30, Amdt 13
Huron, SD, Huron Regional, RNAV (GPS) RWY 30, Amdt 1
Rapid City, SD, Rapid City Regional, NDB RWY 32, Amdt 3C, CANCELLED
Sioux Falls, SD, Joe Foss Field, NDB RWY 3, Amdt 24B, CANCELLED
Bristol/Johnson/Kingsport, TN, Tri-Cities Rgnl TN/VA, NDB RWY 5, Amdt 17, CANCELLED
Bristol/Johnson/Kingsport, TN, Tri-Cities Rgnl TN/VA, NDB RWY 23, Amdt 19, CANCELLED
Dyersburg, TN, Dyersburg Muni. NDB RWY 4, Amdt 1, CANCELLED
Knoxville, TN, McGhee Tyson, NDB RWY 5L, Amdt 5, CANCELLED
McMinnville, TN, Warren County Memorial, NDB RWY 23, Amdt 1, CANCELLED
Memphis, TN, Memphis Intl, NDB RWY 9, Amdt 27A, CANCELLED
Millington, TN, Millington Muni, RNAV (GPS) RWY 22, Orig
Millington, TN, Millington Muni, GPS RWY 22, Orig, CANCELLED
Nashville, TN, Nashville Intl, NDB RWY 20R, Amdt 8, CANCELLED
Oneida, TN, Scott Muni, NDB RWY 23, Amdt 5, CANCELLED
Beaumont/Port Arthur, TX, Southeast Texas Regional, NDB RWY 12, Amdt 18, CANCELLED
Brownsville, TX, Brownsville/South Padre Island Intl, NDB RWY 13R, Amdt 14, CANCELLED
Castroville, TX, Castroville Muni, RNAV (GPS) RWY 15, Orig
Castroville, TX, Castroville Muni, RNAV (GPS) RWY 33, Orig
Castroville, TX, Castroville Muni, NDB RWY 33, Amdt 4
College Station, TX, Easterwood Field, NDB RWY 34, Amdt 12, CANCELLED
Corpus Christi, TX, Corpus Christi Intl, NDB RWY 13, Amdt 25A, CANCELLED
Dallas, TX, Addison, NDB RWY 15, Amdt 6, CANCELLED
El Paso, TX, El Paso Intl, NDB RWY 22, Amdt 29, CANCELLED
Fort Worth, TX, Fort Worth Meacham Intl, NDB RWY 16, Amdt 6, CANCELLED
Harlingen, TX, Valley Intl, NDB RWY 17L, Amdt 7, CANCELLED
Harlingen, TX, Valley Intl, NDB RWY 17R, Amdt 13, CANCELLED
Houston, TX, Ellington Field, NDB RWY 22, Orig, CANCELLED
Houston, TX, George Bush Intercontinental Houston, NDB Rwy 26L, Amdt. 3, CANCELLED
Houston, TX, Sugar Land Regional, NDB RWY 35, Amdt 5A, CANCELLED
Houston, TX, William P. Hobby, RNAV (GPS) RWY 4, Amdt 2
Houston, TX, William P. Hobby, RNAV (GPS) RWY 12R, Amdt 1
Houston, TX, William P. Hobby, RNAV (GPS) RWY 22, Amdt 2
Houston, TX, William P. Hobby, RNAV (GPS) RWY 30L, Amdt 1
Houston, TX, William P. Hobby, ILS OR LOC RWY 4, Amdt 39
Houston, TX, William P. Hobby, ILS OR LOC RWY 12R, Amdt 12
Lubbock, TX, Lubbock Preston Smith Intl, NDB RWY 17R, Amdt 15A, CANCELLED
Lubbock, TX, Lubbock Preston Smith Intl, NDB RWY 26, Amdt 2B, CANCELLED
Lufkin, TX, Angelina County, NDB RWY 7, Amdt 2A, CANCELLED
Mc Allen, TX, Mc Allen Miller Intl, NDB RWY 13, Amdt 6B, CANCELLED
Midland, TX, Midland International, NDB RWY 10, Amdt 10A, CANCELLED
Mineral Wells, TX, Mineral Wells, NDB RWY 31, Amdt 2A, CANCELLED
Monahans, TX, Roy Hurd Memorial, NDB RWY 12, Orig-A, CANCELLED
Nacogdoches, TX, A. L. Mangham Jr. Regional, NDB RWY 36, Amdt 1A, CANCELLED
Palestine, TX, Palestine Muni, NDB RWY 18, Amdt 4, CANCELLED
San Antonio, TX, San Antonio Intl, NDB RWY 3, Amdt 38A, CANCELLED
San Antonio, TX, San Antonio Intl, NDB RWY 12R, Amdt 21, CANCELLED
San Antonio, TX, San Antonio Intl, NDB RWY 30L, Amdt 12, CANCELLED
San Antonio, TX, San Antonio Intl, RNAV (GPS) RWY 21, Amdt 1
Waco, TX, TSTC Waco, NDB RWY 17L, Amdt 9B, CANCELLED
Waco, TX, Waco Regional, NDB RWY 19, Amdt 18A, CANCELLED
Emporia, VA, Emporia-Greensville Regional, NDB RWY 33, Orig-A, CANCELLED
Marion/Wytheville, VA, Mountain Empire, NDB RWY 26, Amdt 1A, CANCELLED
Martinsville, VA, Blue Ridge, NDB RWY 30, Amdt 2B, CANCELLED
Melfa, VA, Accomack County, NDB RWY 3, Orig, CANCELLED
Petersburg, VA, Dinwiddie County, NDB RWY 5, Amdt 5, CANCELLED
Richmond, VA, Chesterfield County, RNAV (GPS) RWY 15, Orig
Richmond, VA, Chesterfield County, RNAV (GPS) RWY 33, Orig
Richmond, VA, Chesterfield County, ILS OR LOC RWY 33, Amdt 2
Richmond, VA, Richmond/Chesterfield County, VOR/DME OR GPS RWY 15, Orig-B, CANCELLED
Richmond, VA, Richmond/Chesterfield County, NDB OR GPS RWY 33, Amdt 7C, CANCELLED
Richmond/Ashland, VA, Hanover County Muni, NDB RWY 16, Orig-D, CANCELLED
Roanoke, VA, Roanoke Regional/Woodrum Field, NDB RWY 33, Amdt 10, CANCELLED
Christiansted, VI, Henry E Rohlsen, NDB RWY 10, Amdt 13A, CANCELLED
Burlington, VT, Burlington Intl, NDB RWY 15, Amdt 19F, CANCELLED
Everett, WA, Snohomish County (Paine Field), ILS OR LOC RWY 16R, Amdt 20
Everett, WA, Snohomish County (Paine Field), VOR RWY 16R, Orig
Everett, WA, Snohomish County (Paine Field), VOR/DME RWY 16R, Orig
Everett, WA, Snohomish County/Paine Field, GPS RWY 16R, Orig-B, CANCELLED
Everett, WA, Snohomish County/Paine Field, GPS RWY 34L, Orig-A, CANCELLED
Everett, WA, Snohomish County/Paine Field, VOR OR GPS-B, Orig-C, CANCELLED
Everett, WA, Snohomish County (Paine Field), RNAV (GPS) RWY 16R, Orig
Everett, WA, Snohomish County (Paine Field), RNAV (GPS) RWY 34L, Orig
Everett, WA, Snohomish County (Paine Field), Takeoff Minimums and Textual DP, Amdt 2
Appleton, WI, Outagamie County Regional, NDB RWY 3, Amdt 14E, CANCELLED
Appleton, WI, Outagamie County Regional, NDB RWY 29, Amdt 1B, CANCELLED
Green Bay, WI, Austin Straubel Intl, NDB RWY 6, Amdt 17A, CANCELLED
Madison, WI, Dane County Regional-Truax Field, NDB RWY 36, Amdt 29, CANCELLED
Sheboygan, WI, Sheboygan County Memorial, NDB RWY 21, Amdt 1, CANCELLED

*Effective 1 Sep 2005*

Mc Gregor, MN, Isedor Iverson, RNAV (GPS) RWY 14, Orig
Mc Gregor, MN, Isedor Iverson, RNAV (GPS) RWY 32, Orig

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Part 35

**[Docket No. RM05–4–000—Order No. 661]**

## Interconnection for Wind Energy

June 2, 2005.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is amending its regulations to require public utilities to append to their standard large generator interconnection procedures and large generator interconnection agreements in their open access transmission tariffs (OATTs) standard procedures and technical requirements for the interconnection of large wind generation.

**EFFECTIVE DATE:** This final rule will become effective August 15, 2005.

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**SUPPLEMENTARY INFORMATION:**

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Before Commissioners: Pat Wood, III, Chairman; Nora Mead Brownell, Joseph T. Kelliher, and Suedeen G. Kelly.

1. In this Final Rule, to meet our responsibility under sections 205 and 206 of the Federal Power Act (FPA) [1] to remedy undue discrimination, the Commission adopts standard procedures and technical requirements for the interconnection of large wind plants. The Commission requires all public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce to append to the Large Generator Interconnection Procedures (LGIPs) and Large Generator Interconnection Agreements (LGIAs) in their Open Access Transmission Tariffs (OATTs) the Final Rule Appendix G adopted here. These standard technical requirements provide just and reasonable terms for the interconnection of wind plants.[2] The rule recognizes the technical differences of wind generating technology, and benefits customers by removing unnecessary obstacles to further development of wind generating resources while ensuring that reliability is protected.

## I. Introduction

2. In Order No. 2003,[3] the Commission adopted standard procedures and a standard agreement for the interconnection of large generation facilities. The Commission required public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce to file revised OATTs containing these standard provisions, and use them to provide interconnection service to generating facilities having a capacity of more than 20 megawatts.

3. In Order No. 2003–A, on rehearing, the Commission noted that the standard interconnection procedures and agreement were based on the needs of traditional synchronous generation facilities and that a different approach might be more appropriate for generators relying on non-synchronous technologies,[4] such as wind plants.[5]

Accordingly, the Commission granted certain clarifications, and also added a blank Appendix G (Requirements of Generators Relying on Non-Synchronous Technologies) to the standard LGIA for future adoption of requirements specific to non-synchronous technologies.[6]

4. Therefore, in a Notice of Proposed Rulemaking (NOPR), the Commission proposed technical standards applicable to the interconnection of large wind generating plants [7] to be included in Appendix G of the LGIA.[8] We proposed the standards in light of our findings in Order No. 2003–A noted above and in response to a petition submitted by the American Wind Energy Association (AWEA) on May 20, 2004.[9] The Commission proposed to adopt certain technical requirements that Transmission Providers would be required to apply to interconnection service for wind generation plants, which are different from those required of traditional synchronous generating plants. These standard technical requirements are now needed because of the increased presence of larger aggregated wind plants on many Transmission Providers' systems. The NOPR stated that, except for those articles of the LGIA for which wind plants have been exempted,[10] these requirements would supplement the standard interconnection procedures and requirements adopted by the Commission in Order No. 2003. Additionally, the NOPR sought comments on certain specific issues, including whether there are other non-synchronous technologies, or other technologies in addition to wind, that should also be covered by the proposed Appendix G.

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[1] 16 U.S.C. 824d–e (2000).

[2] As discussed in greater detail below, the Final Rule Appendix G applies only to wind plants, due to the unique characteristics of wind generating technology.

[3] *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs., Regulations Preambles ¶ 31,146 (2003) (Order No. 2003), *order on reh'g*, 69 Fed. Reg. 15,932 (Mar. 24, 2004), FERC Stats & Regs., Regulations Preambles ¶ 31,160 (2004) (Order No. 2003–A), *order on reh'g*, 70 Fed. Reg. 265 (January 4, 2005), FERC Stats & Regs., Regulations Preambles ¶ 31,171 (2004) (Order No. 2003–B), *reh'g pending; see also* Notice Clarifying Compliance Procedures, 106 FERC ¶ 61,009 (2004).

[4] A wind generator is considered non-synchronous because it does not run at the same speed as a traditional generator. A non-synchronous generator possesses significantly different characteristics and responds differently to network disturbances.

[5] Order No. 2003–A at P 407, n. 85.

[6] *Id.*

[7] Large wind generating plants are those with an output rated over 20 MW at the point of interconnection.

[8] *See Interconnection for Wind Energy and Other Alternative Technologies*, Notice of Proposed Rulemaking, 110 FERC ¶ 61,036 (2004) (NOPR).

[9] *See* Petition for Rulemaking or, in the Alternative, Request for Clarification of Order No. 2003–A, and Request for Technical Conference of the American Wind Energy Association (May 20, 2004), filed in Docket Nos. RM02–1–005 and PL04–15–000.

[10] LGIA article 5.4 (Power System Stabilizers), LGIA article 5.10.3 (Interconnection Customer's Interconnection Facilities Construction), and LGIA article 9.6.1 (Power Factor Design Criteria).

## II. Background

5. In Order No. 2003, to meet our responsibility under sections 205 and 206 of the FPA to remedy undue discrimination, the Commission required all public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce to append to their OATTs the LGIP and LGIA. To achieve greater standardization of interconnection terms and conditions, Order No. 2003 required such public utilities to file revised OATTs containing the LGIP and LGIA included in Order No. 2003.

6. As explained above, because some of the technical requirements in the LGIA were inappropriate for non-synchronous technologies (such as wind generators), the Commission clarified in Order No. 2003–A that LGIA article 5.4 (Power System Stabilizers), LGIA article 5.10.3 (Interconnection Customer's Interconnection Facilities Construction) and LGIA article 9.6.1 (Power Factor Design Criteria) would not be applied to wind generators.[11] Additionally, the Commission noted that "there may be other areas of the LGIP and LGIA that may call for a slightly different approach for a generator relying on newer technology because it may have unique electrical characteristics." [12]

7. On May 20, 2004, in Docket No. RM02–1–005, AWEA submitted a petition for rulemaking or, in the alternative, request for clarification of Order No. 2003–A, and a request for a technical conference. AWEA asked the Commission to adopt in Appendix G certain standards for the interconnection of wind generation plants. Specifically, AWEA submitted a proposed Appendix G that it argues addresses the concerns of both Transmission Providers and the wind generation industry. AWEA's proposed Appendix G included a low voltage ride-through capability standard that would allow the Transmission Provider to require as a condition of interconnection that wind generation facilities have the ability to continue operating or "ride through" certain low voltage conditions on the transmission systems to which they are interconnected. AWEA's proposed Appendix G also included that as a condition of interconnection, wind plants would install equipment enabling remote supervisory control and data acquisition (SCADA) that would limit the maximum plant output during system emergency and system contingency events and telemetry communication between the system operator and the wind plant for automatic forecasting and scheduling. Additionally, AWEA proposed that the power factor design criteria of up to 0.95 leading/lagging (required in Order No. 2003) be applied to wind generation plants, with flexibility regarding whether the reactive support equipment would be located at the common point of interconnection of all the generators in the plant rather than at the high side of the wind plant substation transformers. Further, AWEA proposed that the Commission require Transmission Providers and wind generator manufacturers to participate in a formal process to develop, update, and improve the engineering models and specifications used in modeling wind plant interconnections. Finally, AWEA proposed to include language in Appendix G allowing the wind Interconnection Customer to "self-study" interconnection feasibility by entering the interconnection queue without providing certain power and load flow data required of other large generators, receiving certain information from the Transmission Provider, and conducting its own Feasibility Study.

8. On September 24, 2004, the Commission held a Technical Conference to discuss the issues raised by AWEA's petition, including the technical requirements for the interconnection of wind plants and other such alternative technologies and the need for specific requirements for their interconnection. Additionally, the Technical Conference considered how wind and other alternative generator technologies may respond differently to transmission grid disturbances and have different effects on the transmission grid. The Commission also solicited and received post-Technical Conference comments from interested persons.

9. As noted above, the Commission's NOPR proposed to adopt in Appendix G to the LGIA a somewhat modified version of the low voltage ride-through, SCADA and power factor design standards proposed by AWEA in its May 20, 2004 petition. Specifically, the NOPR proposed to establish uniform standards in Appendix G that would require large wind plants seeking to interconnect to the grid to (1) demonstrate low voltage ride-through capability; in other words, show that the plant can remain on line during voltage disturbances up to specified time periods and associated voltage levels; (2) possess SCADA capability to transmit data and receive instructions from the Transmission Provider; and (3) maintain a power factor within the range of 0.95 leading to 0.95 lagging, measured at the high voltage side of the substation transformers. In the case of the low voltage ride-through requirement, the Commission proposed to permit the Transmission Provider to waive the requirement on a comparable and not unduly discriminatory basis for all wind plants. In the case of the power factor requirement, the Commission proposed to permit the Transmission Provider to waive or defer compliance with the requirement where it is not necessary. The Commission declined, however, to adopt AWEA's proposal to allow a wind generator to "enter the interconnection queue and conduct its own Feasibility Study, having obtained the information necessary to do so upon paying the initial deposit and submitting its interconnection application." [13] We asked for comments on how to balance the need of wind generators to obtain certain data from the Transmission Provider before completing their Interconnection Requests with the need to protect critical energy infrastructure information and commercially sensitive data against unwarranted disclosure.

## III. Discussion

10. Based on AWEA's petition, the comments received during and after the Technical Conference, and the comments filed in response to the NOPR, the Commission is adopting certain standard procedures and technical requirements for the interconnection of wind generating plants, as discussed in greater detail below. These procedures and technical requirements will be appended, as Appendix G, to both the LGIP and the LGIA.[14]

11. These technical requirements for the interconnection of wind plants recognize the unique design and operating characteristics of wind plants,[15] their increasing size and

[11] *Id.* at P 407, n. 85.

[12] *Id.*

[13] *See* AWEA Petition at 13.

[14] In the NOPR, the Commission proposed to include Appendix G as an attachment to the LGIA only. Upon further consideration, the Commission directs that the Final Rule Appendix G provisions related to completion of the Interconnection Request by a wind plant interconnection customer be appended to the LGIP, since they are procedural in nature, and that the remaining technical requirements be appended to the LGIA, to ensure that the provisions adopted here are applied throughout the interconnection process.

[15] As noted above, wind plants over 20 MW in total size are subject to the standard technical requirements in the Final Rule Appendix G. These wind plants are generally made up of several small induction wind generating turbines, laid out over a large area, and connected through a medium-voltage collector system. This collector system is connected to the low voltage side of the step-up transformer, which is then connected to the

Continued

increasing level of penetration on some transmission systems (in terms of the wind generating capacity's percentage contribution to total system generating capacity), and the effects they have on the transmission system. In Order No. 2003, the Commission noted that in the past, requests for interconnection frequently resulted in complex and time-consuming disputes over technical matters such as feasibility, cost, and cost responsibility.[16] That is true for wind interconnection as well as interconnection of more conventional generation. The special standard procedures we are adopting for the interconnection of large wind plants will minimize opportunities for undue discrimination by Transmission Providers and remove unnecessary obstacles to the development of wind generation, while protecting system reliability.[17] Like the LGIP and LGIA in Order No. 2003, the Final Rule Appendix G is to be added to the OATT of each public utility that owns, controls, or operates facilities for transmitting electric energy in interstate commerce.

12. The Final Rule Appendix G we adopt here applies only to the interconnection of wind plants. As discussed further below, the Commission does not believe at this time that the standard procedures and technical requirements in this Final Rule are appropriate for other alternative generating technologies that may supply over 20 MW at one Point of Interconnection. The standard procedures and technical requirements adopted here recognize the unique characteristics of wind plants, including the fact that they use induction generators, consist of several or numerous small generators connected to a collector system, and do not respond to grid disturbances in the same manner as large conventional generators.

13. The Appendix G procedures and technical requirements for the interconnection of wind generation plants are not the sole interconnection requirements for wind plants; large wind plants are subject to the other standard interconnection procedures and requirements adopted by the Commission in Order No. 2003, unless wind plants are exempted from such procedures and requirements by Order No. 2003 and its rehearing orders, and this order.

14. Additionally, as discussed further below, the Commission adopts a reasonable transition period for the technical requirements adopted in the Final Rule. Specifically, the standard technical requirements, if applicable, for low voltage ride-through capability, SCADA capability, and power factor design criteria apply only to LGIAs signed, filed with the Commission in unexecuted form, or filed as a non-conforming agreement, on or after January 1, 2006, or the date six months after publication of the Final Rule in the **Federal Register**, whichever is later. The procedural requirements related to the completion of the Interconnection Request by a wind plant Interconnection Customer, however, apply when the Final Rule takes effect, which is 60 days after the date of publication in the **Federal Register**.[18]

*A. Low Voltage Ride-Through Capability*

15. As the Commission stated in the NOPR, early wind generator technology would shut down the wind generating unit if there was a sudden change in voltage on the transmission system. With the increasing number and size of wind plants in the United States, there is a concern that wind plants tripping off-line during a low voltage situation could raise significant reliability concerns. As a result, Transmission Providers state that they need large wind plants to remain on-line during low voltage occurrences to maintain reliability. Further, in the past, Transmission Providers would often shut down wind units during a system disturbance. Wind generators would prefer to stay on-line, but they are concerned that having each Transmission Provider design its own low voltage ride-through requirement would greatly affect wind turbine manufacturing costs. As a result, both wind generators and most Transmission Providers support having a low voltage ride-through standard for large wind plants.

16. The NOPR proposed to require that large wind plants seeking to interconnect to the transmission system demonstrate low voltage ride-through capability, unless waived by the Transmission Provider on a comparable and not unduly discriminatory basis for all wind plants. Specifically, the NOPR Appendix G would require that wind generating plants demonstrate the ability to remain on-line during voltage disturbances up to the time periods and associated voltage levels set forth in Figure 1 of the NOPR. We proposed to measure voltage levels at the high voltage side of the wind plant substation transformer. The NOPR noted that while low voltage ride-through capability is needed for wind plants, it is less of a concern for large synchronous generating facilities because most of these facilities are equipped with automatic voltage control devices to increase output during low voltage events.

17. The NOPR sought comments on the proposed low voltage ride-through standard. In particular, the Commission was interested in comments addressing whether it should adopt a low voltage ride-through standard at all, whether the proposed standard or another standard is appropriate, and whether the proposed standard is specific enough. Specifically, the Commission sought comments on whether the required time periods and associated voltage levels proposed in Figure 1 of the NOPR Appendix G were appropriate or should be modified.

1. Comments

18. Several commenters, including AWEA,[19] Western, FirstEnergy, and the Midwest ISO, state that they support the low voltage ride-through standard in Figure 1 of the NOPR. Midwest Reliability Organization suggests, however, that the standard could be in article 9.6 of the LGIA. CenterPoint contends that the reliability concerns presented by the failure of a large wind plant to ride through a low voltage event also exist if other generators also fail to ride through such events, and thus would apply a low voltage ride-through requirement to all generators. Western supports the standard as proposed, with the understanding that it may need to be modified later if it causes unforeseen problems on the transmission system.

19. Numerous other entities support the proposed low voltage ride-through requirement with modifications. For instance, numerous commenters, including AWEA, PacifiCorp-PPM Energy, FPL Energy, Southern California Edison, AEP, Xcel, PJM, National Grid and Southern, believe that the required voltage should be measured at the point of interconnection, as opposed to the

transmission system at a single Point of Interconnection.

[16] Order No. 2003 at P 11.

[17] *See id.* at P 11–12.

[18] As discussed in greater detail below, in this Final Rule the Commission is adopting procedures that permit a wind plant Interconnection Customer to provide in the Interconnection Request a set of electrical design specifications that depict the wind plant as a single generator. These procedures recognize that the unique characteristics of wind plants do not permit them to submit a detailed electrical design in the initial Interconnection Request stage, and allow wind plants to enter the queue and receive the base case data necessary to provide a detailed design to the Transmission Provider.

[19] *See* AWEA Reply Comments (April 1, 2005) at 10. Specifically, AWEA asks that the proposed low voltage ride-through standard be adopted, specifically the proposed standard of Figure 1.

high side of the wind plant substation transformer.

20. Additionally, several entities dispute the specific time periods and associated voltage levels set forth in Figure 1 of the proposed Appendix G. American Superconductor states generally that the proposed low voltage ride-through curve in Figure 1 of the NOPR is unrealistic and does not resemble voltage situations that wind plants are likely to encounter. It also argues that the low voltage requirement proposed in the NOPR is not comparable to what is required of conventional generators. Midwest ISO TOs, CenterPoint and Xcel assert that requiring the low voltage ride-through capability to go only to 15 percent of the rated line voltage (as set out in Figure 1 of the NOPR) may be too high and may present reliability problems. They recommend that the Figure 1 low voltage ride-through profile require the wind turbine to ride through low voltage at zero percent of the rated line voltage for 150 milliseconds. NUSCo recommends that the Commission require wind generators to ride through a fault with zero percent of the rated line voltage at the point of interconnection for 250 milliseconds (15 cycles). American Transmission argues that the low voltage ride-through curve of Figure 1 should show the voltage to be at 0.90 per unit prior to time zero. ISO New England states that to the extent the Commission adopts a low voltage ride-through requirement, it should require wind plants to remain connected to the transmission system for a zero voltage level for the time period associated the typical time it takes to clear a normal design contingency fault.[20]

21. Several of the commenters, including AWEA, Gamesa, and GE suggest that the low voltage ride-through standard should be clarified to apply only to three-phase faults. AWEA also asks that the requirement be clarified to state that a wind plant would not be expected to continue to operate in low voltage situations where the wind farm is tripped off-line following a fault if (a) this action is performed intentionally under a special protection scheme, or (b) if the fault is on the Transmission Provider's side of the Point of Interconnection and clearing the fault would effectively disconnect the wind plant from the system. Midwest ISO TOs and Montana-Dakota Utilities also seek clarification regarding application of the proposed standard to unbalanced phase voltages.

22. Many commenters, while supportive of requiring wind plants to possess low voltage ride-through capability, argue that the specific standard should be permitted to vary based on reliability needs. For example, the New York PSC, while agreeing that large wind plants should possess low voltage ride-through capability, argues that the specific voltage-time standard should be developed on a case-by-case basis to reflect system needs. Midwest ISO TOs similarly contend that Transmission Providers should be able to establish different low voltage ride-through standards on a case-by-case basis. NYISO asserts that the low voltage ride-through standard proposed by the Commission should be a minimum performance requirement, and that Transmission Providers should have the flexibility to require a higher low voltage ride-through standard if the particular site location or wind plant design requires a higher standard to protect system reliability. Similarly, LIPA suggests that the Commission adopt a two-part low voltage ride-through standard; the first part would be the standard proposed in the NOPR, while the second part would apply a more stringent low voltage ride-through standard where the studies indicate that the NOPR requirements are inadequate, such as in locations with special reliability concerns. ISO New England recommends that the Commission not adopt a specific standard for low voltage ride-through capability, or alternatively, that the standard serve only as a guideline for wind turbine manufacturers. BPA and NERC contend that the development of low voltage ride-through standards should be left to the Western Electricity Coordinating Council, NERC, regional reliability councils, the Institute of Electrical and Electronics Engineers (IEEE), and the American National Standards Institute.[21] American Superconductor, Nevada Power, and NUSCo, among others, assert that the low voltage ride-through standard should be based on established regional reliability standards. Likewise, NorthWestern Energy asks that the standard be modified to allow the Transmission Provider to use the reliability council standard in effect when the LGIA is signed.

23. FPL Energy asks that the proposed low voltage ride-through requirement be modified so that the determination of whether a wind plant must have low voltage ride-through capability is made on a case-by case basis. According to FPL Energy, the NOPR would have the "unintended consequence" of mandating costly low voltage ride-through technology for all wind plants because Transmission Providers will not be able to determine that the capability will never be needed.[22] FPL Energy argues that the Commission's Final Rule should require the Transmission Provider to determine through the System Impact Study, on a case-by-case basis, whether the wind plant is required to possess low voltage ride-through capability. It notes that currently, Transmission Providers may not require an Interconnection Customer to be responsible for Network Upgrades that are not identified in the studies as necessary, and that a similar process should apply to the low voltage ride-through requirement. Finally, FPL Energy expresses concern that the use of the term "demonstrate" in the proposed requirement could be interpreted to require the wind plant to physically demonstrate the capability, risking harm to its electrical equipment.

24. With regard to the Commission's proposal to permit the Transmission Provider to waive the low voltage ride-through requirement, NUSCo and Tucson Electric both argue that no waiver of the low voltage ride-through requirement should be permitted. NUSCo asserts that the reliability of one Transmission Provider's system may be affected by the grant of a waiver by a neighboring Transmission Provider.

25. Xcel and LIPA believe there should also be a high voltage ride-through standard for wind plants, comparable to the high voltage ride-through standards for conventional generators.

### 2. Commission Conclusion

26. As discussed further below, we adopt the low voltage ride-through standard proposed in the NOPR, but will not require that it be met unless the System Impact Study shows that it is needed. Specifically, under the requirement we adopt in this Final Rule, a wind plant is required to satisfy the low voltage ride-through standard if the Transmission Provider shows, through the System Impact Study, that such

[20] NERC similarly states that to meet its general reliability standards for system performance, wind plants should remain online "through a normally cleared fault." NERC Comments at 3. Also, PJM states that wind plants should be required to operate during a zero voltage level at the Point of Interconnecton until the fault is cleared by primary protective devices on the Transmission System.

[21] Similarly, EEI suggests that the Commission adopt standards on an interim basis, until NERC, the regional reliability councils, or IEEE establish formal standards.

[22] FPL Energy estimates that for a 100 MW wind farm, the cost of low voltage ride-through exceeds $1.5 million.

capability is required to ensure safety or reliability. This differs from the NOPR, which proposed to require low voltage ride-through capability in all cases, except when the Transmission Provider waived the requirement on a comparable and not unduly discriminatory basis for all wind plants. Additionally, the Final Rule adopts the Point of Interconnection as the point of measurement for the low voltage ride-through standard, instead of the proposed high side of the wind plant substation transformers, and replaces the term "demonstrate" with "possess." We also grant certain clarifications, as discussed further below.

27. The Commission believes that establishing the achievable low voltage ride-through standard in this Final Rule if the Transmission Provider shows that it is necessary to maintain safety or reliability provides certainty to wind plant developers that their interconnection to the grid will not be frustrated, and limits opportunities for undue discrimination. A requirement based on a uniform standard ensures that wind developers are not faced with widely varying interconnection standards in different areas of the country, which would increase manufacturing costs needlessly. We believe that in the long run this is in the best interests of the wind industry and customers, as it helps provide a secure and reliable power supply, and will facilitate increased use of wind as a generation resource while ensuring that reliability is protected.

28. As noted above, the Commission requires low voltage ride-though capability only if the Transmission Provider shows that it is needed on a case-by-case basis, as FPL Energy requests. Specifically, low voltage ride-through capability is required only if the Transmission Provider shows, through the System Impact Study, that it is required to ensure the safety or reliability of the Transmission Provider's transmission system. Given that Transmission Providers have responsibility for ensuring the reliable operation of their systems (pursuant to NERC and regional reliability council standards), the Commission believes that they are in the best position to establish whether low voltage ride-through capability is needed in individual circumstances. The System Impact Study is the best vehicle for assessing the need for such capability, and this study should determine if there is a need for a wind plant to remain on-line during low voltage events to ensure the safety or reliability of the system. Requiring low voltage ride-through capability only if the System Impact Study shows it to be necessary ensures that the increased reliance on wind plants does not degrade system safety or reliability. It also ensures that the Transmission Provider does not require a wind plant to install costly equipment that is not needed for grid safety or reliability. This limits the opportunities for undue discrimination; a wind plant Interconnection Customer will not have its interconnection frustrated by unnecessary requirements to install costly equipment that is not needed for safety or reliability. Should the wind plant Interconnection Customer disagree with the Transmission Provider that the System Impact Study shows that low voltage ride-through capability is needed, it may challenge the Transmission Provider's conclusion through dispute resolution or appeal to the Commission.

29. Given our decision to apply the low voltage ride-through capability standard only on a case-by-case basis if the Transmission Provider shows, through the System Impact Study, that it is needed to ensure safety or reliability, there is no need for the waiver provision in the NOPR. As a result, issues raised by commenters regarding the waiver provision are moot.

30. As noted above, many entities representing a broad mix of market participants request that the low voltage ride-through requirement be modified to require that the voltage be measured at the Point of Interconnection, as opposed to the high voltage side of the wind plant substation transformer. Given the need to protect grid safety and reliability by having wind plants ride through low voltage events where necessary, and continue to provide output at the point where the plant and its associated interconnection facilities join the grid, we will do so. Use of this measurement point recognizes that the Point of Interconnection is the point at which the Interconnection Customer's responsibility ends and the Transmission Provider's responsibility begins. Additionally, this change to the NOPR is broadly supported, and simplifies the interconnection process by maintaining the same Point of Interconnection definition adopted in Order No. 2003.

31. We also find convincing FPL Energy's argument that using the term "demonstrate the ability" could be interpreted to require the wind plant to physically demonstrate that it has low voltage ride-through capability and thus could lead to unnecessary tests that could harm the wind plant electrical equipment. Accordingly, we replace the term "demonstrate the ability" with "be able."

32. We also clarify certain portions of the low voltage ride-through standard. First, we clarify that the low voltage ride-through requirement, and the time periods and associated voltage levels set forth in Appendix G, Figure 1, apply to three-phase faults.[23] This is because three-phase faults are the most severe, whereas two-phase or single-phase faults drop the voltage to a level not as low as that specified in Figure 1. Further, in response to AWEA, we clarify that a wind plant is not required to satisfy the standard in Appendix G, Figure 1 if the wind plant is intentionally tripped off line following a fault under a "special protection scheme"[24] agreed to by the Transmission Provider. These situations may include a fault on the Transmission Provider's side of the Point of Interconnection, as well as a fault other than a three-phase fault covered by the low voltage ride-through standard.

33. We reject the requests that the standards be only guidelines. The Commission sets forth in this Final Rule a low voltage ride-through standard that it believes, after consideration of the comments from all interested entities, including the wind industry, is achievable and will maintain grid safety and reliability while facilitating the increased use of wind resources. As noted above, the Commission is setting a standard for low voltage ride-through to provide certainty and diminish the opportunities for undue discrimination. Permitting Transmission Providers to set their own specific low voltage ride-through standards would create too great a risk that this opportunity would be used to frustrate wind plant interconnections or to favor a Transmission Provider's wind generating affiliate.

34. In response to comments suggesting that we should allow NERC and the regional reliability councils to establish low voltage ride-through standards, we are aware of the work being done by these organizations to address wind plant interconnection standards. However, no such standards are available today, and Transmission

[23] A three-phase fault is an unintentional short circuit condition involving all three phases in an electric system. It is the most severe in its impact, but occurs least frequently. For complete reliability, it is virtually universal to design an electric system for three-phase faults. Other types of faults are: single line-to-ground fault, line-to-line fault, and double line-to-ground fault.

[24] A special protection scheme is an automatic protection scheme designed to detect abnormal or predetermined system conditions and take corrective actions to maintain system reliability. Such actions may include changes in demand, generation, or system configuration to maintain acceptable voltage or power flows.

Providers and wind Interconnection Customers are looking for interconnection standards to apply now. If other entities develop an alternate standard, a Transmission Provider may seek to justify adopting them as variations from Appendix G, as discussed below. Additionally, the Commission would consider a future industry petition to revise Appendix G to conform to NERC developed standards.

35. With respect to Midwest ISO TOs' concern that Appendix G, Figure 1 does not contain information on how the standard would apply to unbalanced voltages in close proximity to the point of interconnection,[25] we note that it is impossible to identify all possible conditions and circumstances that may arise on the transmission system. The low voltage ride-through standard is a general one that will be adequate under most circumstances. We recognize that special circumstances may occur. These may be identified by the System Impact Study, which should identify any additional protection requirements in addition to this standard. We also note that, as discussed below, the Commission permits variations from the Final Rule Appendix G that are "consistent with or superior to" the standard provisions, that are based on regional reliability council requirements, or that are offered by independent entities such as Regional Transmission Organizations (RTOs) or Independent System Operators (ISOs).

36. Similarly, we are not persuaded to alter the specific time periods and associated voltage levels in Figure 1 of the NOPR Appendix G. The low voltage ride-through standard proposed in that figure and adopted here is close to the standard used in other countries and was presented to the Commission by representatives of the wind industry as an achievable requirement. Several commenters, including Transmission Providers, support the standard as one that would safeguard reliability. The Western Electricity Coordinating Council (WECC), a regional reliability council, has approved a similar low voltage ride-through standard. The standard we adopt in this Final Rule is an international standard that has been accepted for use by the Alberta Electric System Operator and Germany, and was developed following detailed study. We do not believe it would be appropriate to deviate from such a widely-accepted and achievable standard in this rulemaking.

37. We are not convinced of a need for a separate high voltage ride-through standard for wind generators. The record developed here does not indicate that this is a general concern across the country. Parties that believe a high voltage ride-through standard is required should ask NERC or the regional reliability councils to address this need. A Transmission Provider may seek to justify variations from Appendix G to establish these requirements under the variation provisions of Order No. 2003 and its rehearing order, as briefly summarized below in section III.G, "Variations from the Final Rule."

*B. Power Factor Design Criteria (Reactive Power)*

38. The Commission stated in the NOPR that until recently, Transmission Providers did not require wind generators to have the capability to provide reactive power because the generators were generally small and had little effect on the transmission grid. However, because of the larger size of many of the wind plants being built and the increased presence of wind energy on various transmission systems, the Commission proposed to require wind plants to operate within a specified power factor range to help balance the reactive power needs of the transmission system.

39. Specifically, the NOPR proposed to require that large wind plants maintain a power factor within the range of 0.95 leading to 0.95 lagging (as required by Order No. 2003), to be measured at the high voltage side of the wind plant substation transformer.[26] In Appendix G of the NOPR, we further proposed to allow wind plants flexibility in how they meet the power factor requirement; for example, using either power electronics designed to supply this level of reactive capability, fixed and switched capacitors if agreed to by the Transmission Provider, or a combination of the two.[27] Additionally, the NOPR proposed to allow the Transmission Provider to waive the power factor requirement for wind plants where it is not needed at that location or for a generating facility of that size, provided that such waiver is not unduly discriminatory (that is, is offered on a comparable basis to similarly situated wind plants). The NOPR stated, however, that if the Transmission Provider waived the power factor requirement, the interconnection agreement would be considered a non-conforming agreement under section 11.3 of the LGIP and thus would have to be filed with the Commission. The NOPR also proposed to require that wind plants have the capability to provide sufficient dynamic (as opposed to static) voltage support to interconnect to the transmission system, if the System Impact Study shows that dynamic capability is necessary for system reliability.[28]

40. The NOPR sought comments about whether the proposed power factor range should be increased or decreased for wind generating plants. It also sought comments as to whether any dynamic (*i.e.*, controllable) reactive capability should be required of wind plants, and if so, how much. Finally, the NOPR sought comments on the proposed waiver provision.

41. The comments received fall into several categories, including the general application of a power factor requirement to wind plants and the waiver provisions, the power factor range and operation within that range, measurement of the power factor requirement at the point of interconnection, and whether dynamic reactive power capability should be a requirement. These subcategories are separately addressed below.

1. Comments—Power Factor Range and General Application of the Requirement

42. Western, NERC, BPA and Great River support the proposed power factor range of 0.95 leading to 0.95 lagging (hereinafter stated as +/−0.95). Southern California Edison agrees that the proposed power factor range is appropriate unless it is waived by the Transmission Provider.

43. Numerous other commenters state that they support the standard, but that the Transmission Provider should be allowed to impose a wider power factor range on a wind generating plant to maintain the reliability of the transmission system. American Superconductor, for instance, believes that the +/−0.95 power factor range should be adopted as a standard except in cases where the Transmission Provider's System Impact Study indicates that additional reactive support is needed. Similarly, EEI asserts that the wind plant should operate within the +/−0.95 power factor range unless the Transmission Provider has established a different standard that

[25] Additionally, a number of commenters suggest low voltage ride-through levels and timing or cycling standards different from those reflected in the NOPR Appendix G, Figure 1.

[26] This proposed measurement point is different from Order No. 2003, which measures the power factor at the Point of Interconnection.

[27] Conventional generators inherently provide reactive power, whereas most induction-type generators used by wind plants currently can only provide reactive power through the addition of external devices.

[28] NOPR at P 18.

applies to all generators in its control area. New York PSC agrees with the NOPR power factor range, but argues that the Transmission Provider should be able to require a power factor of 0.90 lagging if the System Impact Study indicates it is needed for system reliability. FirstEnergy and American Transmission believe that to ensure a greater level of reliability, the Commission should adopt a power factor range of 0.90 lagging to 0.95 leading. NRECA–APPA maintains that while most Transmission Providers impose the +/−0.95 power factor requirement on conventional generators, some impose a larger range, such as 0.90 lagging to 0.95 leading, to meet reliability criteria. In that situation, they contend that the Transmission Provider should be allowed to impose that same wider power factor range on wind generating plants. In similar comments, NYISO urges the Commission to (1) consider the power factor standard a minimum requirement, as opposed to a maximum, and (2) find that the large wind farms should not be able to depend on the transmission system interconnection for the plants' excitation power.

44. NRECA–APPA and Xcel also state that the standard is unclear about whether the wind generator can operate anywhere in the +/−0.95 range. Xcel asks that the Commission clarify whether the wind generator is expected to operate over the entire +/−0.95 power factor range or at a specified point within that range.

45. Several commenters assert that the adherence to the Transmission Provider's voltage schedule is more important than merely maintaining a power factor within the specified range. NRECA–APPA asks that the wind plant be required to comply with the Transmission Provider's voltage schedule directives. PacifiCorp/PPM Energy asks the Commission to revise the proposed power factor standard to require the Transmission provider to specify a power factor or voltage control set point within the 0.95 leading to 0.95 lagging range. PacifCorp/PPM Energy also contends that the parenthetical in the proposed Appendix G (stating "taking into account any limitations due to voltage level, real power output, etc.") is ambiguous and should be eliminated.

46. AWEA argues that we should specify the minimum real power output of the wind facility at which the +/−0.95 power factor range would apply. It states that to be clear about the limits of this standard, the reactive power output criteria should use a minimum real power output set at greater than 10 percent of the rated output of the generator. FPL Energy states that General Electric wind turbines cannot meet the proposed power factor standard over the full range of real power output, and that dynamic VAR control (DVAR) banks or static capacitors would have to be installed at an additional expense to meet the proposed power factor over the entire range. FPL Energy asserts that such costs would provide limited reliability benefits.

47. Zilkha, FirstEnergy, NorthWestern Energy, and BPA indicate that the Transmission Provider should be allowed to waive the power factor requirement where it is not required. NUSCo, ISO New England and Midwest ISO TOs oppose allowing such a waiver. Midwest ISO TOs argue that if the Commission allows waiver, it should require that, where the Transmission Provider granting the waiver is not also the owner, the Transmission Owner approve the waiver. AWEA asserts that the proposed requirement that an interconnection agreement be filed with the Commission as a non-conforming agreement if the Transmission Provider has waived the reactive power requirement is inappropriate and inconsistent with Order No. 2003–A.

48. AWEA and FPL Energy ask that the +/−0.95 power factor standard not be required of a wind plant unless the Transmission Provider shows that it is needed for system safety or reliability. FPL Energy states that the Transmission Provider should have the burden of demonstrating that the reactive power standard is needed. It suggests that the Commission use the same test it used in the NOPR for dynamic voltage support, which requires that the Transmission Provider, before requiring such capability, must show that it is necessary for system reliability. The CPUC recommends a "least cost, best fit" approach to dealing with the reactive power requirement needs of wind farms.

49. Southern California Edison states that because reactive power at wind generating plants may be produced from devices external to the generator, a time delay may be necessary to allow for switching of reactive resources to enable the wind generator to operate at the appropriate power factor within the +/−0.95 power factor range. It states, however, that exempting the wind generating plant altogether from the power factor requirement is inappropriate.

2. Commission Conclusion—Power Factor Range and General Application of the Requirement

50. We adopt the power factor range of +/−0.95 for large wind generating plants. We modify other parts of the proposed requirements. First, this Final Rule requires the wind plant to maintain the required power factor range only if the Transmission Provider shows, through the System Impact Study, that such capability is required of that plant to ensure safety or reliability. This differs from the NOPR, which required the wind plant to maintain the required power factor in all cases, except if the Transmission Provider waived or deferred compliance with the reactive power standard. Establishing an achievable reactive power standard if it is needed for safety or reliability provides assurance to wind plant developers that their interconnection to the grid will not be frustrated or face uncertainty due to a lack of standards, and thus will limit opportunities for undue discrimination. This uniform standard ensures that wind developers, when they seek to interconnect, are not faced with widely varying standards in different areas, or for different wind technologies, manufacturers, or plant owners. This should remove unnecessary obstacles to the increased growth of wind generation. Furthermore, ensuring that a large wind plant provides reactive support to the transmission grid if needed will ensure that safety and reliability is protected.

51. Specifically, the Commission revises the proposed power factor standard to require that the wind plant maintain the required power factor only on a case-by-case basis if the Transmission Provider, in the System Impact Study, shows that it is necessary to ensure safety or reliability. The reactive power standard adopted here properly requires the Transmission Provider to show that reactive power capability is needed for each wind plant Interconnection Customer. As we noted with regard to low voltage ride-through capability, because the Transmission Provider is responsible for the safe and reliable operation of its transmission system (pursuant to NERC and regional reliability council standards), it is in the best position to establish if reactive power is needed in individual circumstances. The System Impact Study is the appropriate study for assessing the need for reactive power capability, and this study should determine if there is a need for a wind plant to have reactive power capability to ensure that the safety or reliability of

the system is maintained. Also, as we reasoned above with regard to low voltage ride-through, requiring wind plants to maintain the required power factor only if the System Impact Study shows it to be necessary ensures that the increased reliance on wind plants does not degrade system safety or reliability. It also ensures that the Transmission Provider does not require a wind plant to install costly equipment that is not needed for grid safety or reliability. Furthermore, requiring that the System Impact Study find a need for reactive power will limit the opportunities for undue discrimination; a wind plant Interconnection Customer will not have its interconnection frustrated by unnecessary requirements that are not necessary to maintain safety or reliability. Should a wind plant Interconnection Customer disagree with the Transmission Provider that the System Impact Study shows that the power factor requirement is needed, it may challenge the Transmission Provider's conclusion through dispute resolution or appeal to the Commission.

52. Given our decision to require that a wind plant maintain the power factor standard only on a case-by-case basis where the Transmission Provider shows, through the System Impact Study, that reactive power is needed to ensure reliability, there is no need to retain the waiver provisions proposed in the NOPR. As a result, issues raised by commenters regarding the waiver provisions are moot.

53. We clarify that the wind generating plant, if required to provide reactive power capability as described above, should be able to operate anywhere in the +/−0.95 power factor range.

54. We reject proposals to change the power factor range standard in Appendix G to 0.90 lagging to 0.95 leading. Adopting such a standard would make the power factor requirement more onerous for wind plants than for conventional generators. Concerning NYISO's request that the Commission consider the standard as a minimum requirement as opposed to a maximum, as we declined to do so in Order No. 2003, we decline to do so here for the same reasons.

55. In response to those who assert that adherence to the voltage schedule is more important than merely maintaining a power factor within the specified range, we note that article 9.6.2 of the LGIA already requires that the "Interconnection Customer * * * operate the Large Generating Facility to maintain the specified output voltage or power factor at the Point of Interconnection." This language applies to wind plants and addresses this concern.

56. We disagree with PacifiCorp/PPM Energy that the parenthetical statement in the NOPR, "taking into account any limitations due to voltage level, real power output * * *," is ambiguous and unnecessary. AWEA explains that the stated power factor range cannot be accomplished by all equipment vendors at all levels of output, and asks that the wind plant be held to the +/−0.95 power factor range only when it is generating above 10 percent of its rated output. The parenthetical statement is necessary due to the technical differences of wind plants, which cannot meet the power factor standard below certain levels of output, and addresses the concern raised by the wind industry.

57. We disagree with the CPUC's recommendation of a "least cost, best fit" approach. Such a "standard" is not a standard at all. Adopting such a least cost approach would result in widely varying "standards" for wind turbines and related equipment. This would not only open the door further for the undue discrimination that this rule is designed to eliminate, but also would lead to high cost individualized generator designs by equipment manufacturers that would not serve the long-term needs of the wind industry.

3. Comments—Point of Interconnection

58. In the NOPR, the Commission proposed to measure the required power factor at the high side of the wind plant substation transformers, as opposed to the Point of Interconnection measurement point used in Order No. 2003. Numerous commenters, including NUSCo, Southern, National Grid, PacifiCorp/PPM Energy, and Southern California Edison request that the power factor be measured at the Point of Interconnection, as opposed to at the high voltage side of the wind plant substation transformer. FPL Energy notes that while meeting the power factor requirement at the Point of Interconnection may be more costly for wind plants that have long generation tie lines, reliability requirements will not be met by measuring the power factor at a different point. AWEA states that the appropriate point of measurement is either at the Point of Interconnection or at the high side of the wind plant's transformer, depending upon the particular electrical circumstances. It adds that the point of measurement should be determined based on the Transmission Provider's System Impact Study.

4. Commission Conclusion—Point of Interconnection

59. We adopt the Point of Interconnection as the appropriate measurement point for the power factor standard. We agree that adopting the Point of Interconnection as the measurement point will better protect system reliability because it is closer to the bulk electrical power system, and will be consistent with Order No. 2003. In addition, numerous Transmission Providers and wind energy developers including PPM Energy and FPL Energy endorse establishing the point of measurement at the Point of Interconnection, instead of the high side of the substation transformers, as proposed in the NOPR. Moreover, FPL Energy supports this measurement point, even though it may be more costly for plants with long generation tie lines, because it is necessary for system safety and reliability.

5. Comments—Dynamic Reactive Power Capability

60. The Commission proposed in the NOPR to require wind plants to be able to provide sufficient dynamic voltage support if the System Impact Study shows that it is needed to maintain system reliability. Several commenters assert that wind generators should have dynamic reactive capability for the entire power factor range, and that dynamic reactive capability must be required in every instance. Midwest ISO TOs assert that the System Impact Study may show that no such capability is needed at the time of the study, but the need may arise later. They contend that at a minimum, a wind plant should not degrade the transient under-voltage performance of the transmission system at the Point of Interconnection.

61. Midwest ISO points to language from NERC standards [29] and argues that the need for dynamic reactive power capability cannot be determined by the System Impact Study because it is almost impossible to conceive of every possible disturbance scenario ahead of time. AEP argues that dynamic reactive capability must be required and that the specific level of dynamic capability should be determined on a need basis. ISO New England states that the wind

[29] Specifically, Midwest ISO cites the following language: "Dynamic reactive power support and voltage control are essential during power system disturbances. Synchronous generators, synchronous condensers, and static var compensators (SVCs and STATCOMs) can provide dynamic support." *See* Comments of Midwest ISO at 5–6, *citing* NERC Planning Standard I. D., *System Adequacy and Security—Voltage Support and Reactive Power*, approved by the NERC Board of Trustees on September 16, 1997.

plant's rate of response for dynamic voltage control should be comparable to that provided by a conventional synchronous generator using an automatic voltage regulator.

62. FirstEnergy and FPL Energy ask the Commission to clarify what it meant by the term "sufficient dynamic voltage support." It claims that the term "sufficient" is vague and requires clarification. Similarly, FPL Energy contends that the term "sufficient" is ambiguous, and should be clarified or removed from the Final Rule.

63. Further, FPL Energy notes that only one wind turbine manufacturer currently holds the patent for the variable speed wind turbine electronics that allow the turbine to produce dynamic reactive power. According to FPL Energy, the Commission, as a matter of public policy, should consider whether it is appropriate to set a power factor standard that will give one turbine manufacturer a significant competitive advantage.

64. American Superconductor argues that based on its experience of integrating wind generating plants into transmission systems, it is not always necessary to install dynamic capability for all of the reactive compensation required at a wind generating plant. It reports that all eight of the reactive compensation systems it has provided to wind generating plants used a combination of dynamic and static reactive capability. These hybrid systems consist of a small STATCOM device (with full dynamic capability)[30] that controls a number of switched shunt capacitors or reactors. They have proven to be very sound technically, as well as good economic choices, according to American Superconductor. It asks the Commission to recognize that the benefits of dynamic reactive capability can be achieved, often at substantially lower cost, by such systems.

65. NorthWestern Energy argues that dynamic reactive capability should not be required if the wind developer demonstrates that the wind generating plant will not cause voltage fluctuations greater than the "Border Line of Irritation," as identified in Section 10.5.1 of the IEEE's Standard 519, measured at the Point of Interconnection. The wind developer should also demonstrate that its addition will not diminish the rating of an existing transmission line by reducing reactive voltage support, according to NorthWestern Energy. It agrees that wind generators should be allowed to use a combination of fixed and/or switched capacitors and reactors in combination with dynamic capability to control the voltage. It states that dynamic capability would allow for the smooth switching of these devices, as well as the energizing and de-energizing of the wind turbines, without affecting the quality of power delivered to customers.

[30] A Static Compensator (STATCOM) provides voltage support to the electric system in a manner similar to a synchronous condenser and therefore is superior to Static VAR compensators or switched capacitor banks. Hybrid systems consist of a small STATCOM device and a number of switched capacitors or reactors.

6. Commission Conclusion—Dynamic Reactive Power Capability

66. The Commission adopts the language in the NOPR regarding dynamic reactive power capability. The Final Rule Appendix G, as explained above, requires that a wind plant have reactive power capability if the Transmission Provider shows, in the System Impact Study, that it is needed for safety or reliability. The Final Rule does not require that the reactive power capability installed by the wind plant be dynamic unless the System Impact Study also shows that this type of capability is needed for system reliability. We are not convinced that dynamic reactive capability is needed in every case, and we permit the Transmission Provider to make that determination on a case-by-case basis through the System Impact Study. We believe that the Transmission Provider is best situated to determine in the first instance whether dynamic reactive capability is needed, and what level of dynamic capability is necessary. We emphasize, however, that Transmission Providers must assess the need for dynamic reactive power capability on a comparable and not unduly discriminatory basis.

67. We reject requests that the Final Rule require that the reactive capability possessed by the wind plant be dynamic in every case. We conclude that the Transmission Provider's System Impact Study should show that dynamic reactive capability is needed in a particular case. If the wind plant Interconnection Customer disagrees with the Transmission Provider that the System Impact Study shows that dynamic reactive power capability is needed, it may challenge the Transmission Provider's conclusion through dispute resolution or appeal to the Commission. We disagree with Midwest ISO TOs that a System Impact Study can account only for the need of the dynamic reactive capability on the day of the study; the study should be able to make reasonable assumptions about future days.

68. We disagree with FirstEnergy and FPL Energy that the term "sufficient" requires clarification. The Final Rule allows the Transmission Provider to determine the sufficient level of dynamic reactive capability on a case-by-case basis through the System Impact Study. As noted above, if the wind plant Interconnection Customer disagrees with the Transmission Provider's determination, it may challenge the Transmission Provider's conclusion through dispute resolution or appeal to the Commission.

69. We acknowledge that dynamic reactive capability can be achieved, often at substantially lower cost, by systems with a combination of true dynamic capability plus switched shunt capacitors and reactors. The Final Rule Appendix G gives wind plants the flexibility to use a variety of combinations to provide the reactive capability necessary.

70. In response to FPL Energy's concern regarding wind turbine supply competition, we note that the wind turbine industry is highly competitive and that manufacturers are continually improving their designs. Although one manufacturer may have a competitive advantage right now, other manufacturers have indicated that they can rapidly improve their designs as required. Also, no manufacturer took exception to the Commission's proposed requirements. Furthermore, as described in detail below, there will be a transition period before the Appendix G standards will apply.

*C. Supervisory Control and Data Acquisition Capability*

71. We noted in the NOPR that in the past, Transmission Providers generally did not require wind generators to have remote supervisory control and data acquisition (SCADA) capability because of their small size and minimal effects on the transmission system. Many Transmission Providers now argue that with the increasing number of large wind plants connecting to transmission systems, SCADA capability is needed to acquire wind facility operating data and ensure the safety and reliability of the transmission system during normal, system emergency, and system contingency conditions.

72. The NOPR proposed to require that a large wind plant seeking to interconnect to the transmission grid possess SCADA capability to transmit data and receive instructions from the Transmission Provider. Additionally, Appendix G would have required that the Transmission Provider and the wind plant owner determine the type of SCADA information and equipment that

is essential for the proposed wind plant, taking into account the size of the plant, its characteristics, its location, and its importance in maintaining generation resource adequacy and transmission system reliability.[31]

73. The NOPR sought comments regarding the proposed SCADA capability requirements, specifically on whether there is any essential SCADA information that large wind plants should be required to provide, such as information needed to determine how the plant's maximum megawatt output and megawatt ramp rate vary over time with changes in the wind speed or information needed to forecast the megawatt output of the plant.

1. Comments

74. Great River, Midwest ISO, First Energy and Southern California Edison support the SCADA requirement in the NOPR. Ohio Consumer's Council, while also supportive, suggests that the Commission clarify the SCADA requirement so that future disputes regarding interpretation of it are minimized.

75. Numerous other commenters support the requirement with certain modifications. For example, EEI states that the requirement should require the parties to adhere to good utility practice, as that term is refined over time. It also asserts that the Commission should recognize that NERC and other regional reliability councils are the appropriate entities to determine how to support real-time operations associated with data acquisition and data exchange. Western and Gamesa, among others, believe that SCADA capability, at a minimum, should include real-time and hourly real power output and reactive power output information and interconnection facility status information. Gamesa and NorthWestern Energy also argue that third parties who have experience with wind energy forecasting, not the Transmission Provider or the control area operator, should develop wind forecasting models and paradigms. NorthWestern Energy further asserts that the wind plant should be manned at all times. Similarly, Xcel supports a requirement that wind plants provide a leased voice line from the Transmission Control Center to a manned wind plant control center for voltage support.

76. Xcel, New York PSC, AEP, NERC and LIPA, among others, support a SCADA requirement, but generally contend that the type of SCADA capability required should be determined between the individual Transmission Provider and the wind plant, based on local system requirements. LIPA, New York PSC and Southern assert that the right to determine what SCADA capability is required should not be delegated in whole or part to the wind plant developer. Southern is also concerned that limiting SCADA information requirements to only what is "essential" for the wind plant may be interpreted to jeopardize reliability. It suggests eliminating the term "essential" and replacing it with "required" to ensure that reliability is not jeopardized.

77. NRECA–APPA generally support the Commission's proposed SCADA requirement, but they question the Commission's statement in footnote 13 of the NOPR that it is difficult for the Transmission Provider to limit the output of a wind plant when necessary for reliability. They state that according to General Electric, wind farms in Europe are installing communications and control equipment (including turbine blades that can be adjusted to reduce the output of the wind generator at various wind speeds) to allow this to be done. They note that while not all wind plants need this capability, it may be needed at some plants, depending on the size of the plant or the number of wind plants on a transmission system, or other system characteristics.

78. AWEA and FPL Energy both express concern that the requirement in the NOPR that wind plants have the capability to "receive instructions" through SCADA could be interpreted to require control of the wind plant by the Transmission Provider, for example, to curtail the wind plant remotely at any time. FPL Energy asks the Commission to revise the requirement that the wind plant be able to "receive instructions" through SCADA to apply only during Emergency Conditions, as defined in the LGIA. AWEA asks that the Commission clarify that the proposed SCADA requirement does not establish a presumption that output controls are part of the standard, and that it state clearly that the terms and conditions for use of SCADA capability is a separate transmission service issue, not an interconnection issue, and must be resolved by contract or Commission-approved transmission tariff. Conversely, BPA asserts that direct SCADA control by the Transmission Provider is preferable and that the final SCADA requirement should permit a Transmission Provider to exercise supervisory control over a wind plant.

79. Southern, Nevada Power and American Transmission maintain that the SCADA requirement for wind generators should be the same as that for synchronous generators.

2. Commission Conclusion

80. We adopt the SCADA requirement proposed in the NOPR. In response to AWEA and FPL Energy, however, we clarify that Appendix G requires the wind plant to have only the capability to receive instructions. Nothing in this Final Rule authorizes a Transmission Provider to control a wind plant. Any such authorization would be subject to separate negotiation and agreement between the Interconnection Customer and the Transmission Provider.

81. Under the SCADA requirement adopted here, the wind Interconnection Customer will provide SCADA capability, with the specific SCADA information and control capability required to be agreed to by the wind plant Interconnection Customer and the Transmission Provider. This flexible requirement ensures that wind plants have SCADA capability, which we believe is necessary to ensure that system reliability is protected, and permits the wind plant Interconnection Customer and the Transmission Provider to negotiate the specific SCADA capability that meets the needs of the transmission system at the specific location of the wind plant. We expect Transmission Providers to be reasonable in these negotiations and not to use their control over the Transmission System to unnecessarily burden wind plants. Should the wind plant Interconnection Customer disagree with the Transmission Provider about the level of SCADA capability required, it may challenge the Transmission Provider's conclusion through dispute resolution or appeal to the Commission.

82. In response to EEI's request, the SCADA requirement does not need to be revised explicitly to require adherence to good utility practice. We note that Appendix G is a component of the LGIA, and the LGIA itself already requires the parties to adhere to good utility practice.

83. With respect to comments concerning the type of SCADA information needed for wind plants, the SCADA requirement in the NOPR allows the Parties to decide what information should be provided and the equipment to be installed at the site. We adopt this policy in this Final Rule. We are not deciding such issues as whether

[31] Unlike synchronous generating plants, which generally have SCADA capability, can respond to automatic generation control signals from the control center and are often staffed, wind generating plants consist of numerous induction generators connected through a medium-voltage collector system, and are often remote, unmanned, and characterized by an unpredictable rate of change of output, thus making it difficult for the Transmission Provider to limit the output of the wind plant when necessary for system reliability.

third parties should be used to develop wind forecasting models and paradigms. We simply require that some SCADA capability be installed for operation and reliability purposes. The flexible nature of the requirement we adopt here recognizes, as NERC states, that other entities are more appropriate to determine how best to support real-time operation with data acquisition and exchange. We agree with AWEA and others that this Final Rule only requires that SCADA capability be provided by the wind plant, and that the type of SCADA information supplied and control exercised can be negotiated and set forth in a separate agreement between the wind plant Interconnection Customer and the Transmission Provider.

84. Similarly, we deny requests that the Transmission Provider have the sole authority to determine the type of SCADA equipment to be installed at the wind plant. To ensure that unnecessary SCADA equipment is not required of the wind plant, the parties must determine together the SCADA capability and equipment needed, taking into account the size, location and characteristics of the wind plant and the safety and reliability of the transmission system. Southern has not shown that replacing the term "essential" with "required" would add any clarity to the requirement.

85. We are not convinced by arguments that the SCADA requirements for wind plants should be the same as for conventional generators. Since wind is different from conventional generators (as discussed above), information exchanged between the Transmission Provider and the wind plant may be of a different nature. As a result, it is appropriate to have different, more flexible SCADA requirements for wind plants.

*D. Wind Plant Interconnection Modeling*

86. In its May 20, 2004 petition, AWEA proposed that Transmission Providers be required to "participate in a formal process for updating, improving, and validating the engineering models used for modeling the interconnection impacts of wind turbines." [32] The Commission did not propose such a requirement in the NOPR, because such a process should take place outside the Commission, through industry technical groups or the regional reliability councils. The Commission recognized, however, that improvements in the way that wind interconnections are modeled would be beneficial, and encouraged the industry to address this issue.

1. Comments

87. Those submitting comments regarding wind plant interconnection modeling generally support the Commission's conclusion that the issue is best addressed through industry technical groups, NERC, and regional reliability councils.

2. Commission Conclusion

88. As we stated in the NOPR, we recommend that wind developers, wind turbine manufacturers, Transmission Providers and affected parties form technical groups and participate in a formal process to address, update, improve and validate wind turbine engineering models. We remain convinced, however, that the Commission is not the appropriate forum for such a process.

*E. Self-Study of Interconnection Feasibility*

89. In the NOPR, the Commission rejected a proposal by AWEA that would permit a wind plant Interconnection Customer to enter the interconnection queue and receive the base case data to "self-study" the feasibility of its proposed interconnection without having first submitted an Interconnection Request that includes power and load flow data and fully completed plant electric design specifications, as required under Order No. 2003.[33] The Commission noted that Order No. 2003 requires that a valid and complete Interconnection Request be on file with the Transmission Provider before the Interconnection Customer may receive Base Case data.[34] We further noted, however, that Section 2.3 of the LGIP did not address situations where the Interconnection Customer might need access to the Base Case data before it could complete its Interconnection Request. The Commission therefore sought comments on how to balance the need of wind generators to receive the base case data and "self-study" before filing a completed Interconnection Request with the need to protect this critical energy infrastructure information and commercially sensitive data against unwarranted disclosure.

1. Comments

90. Several entities, including Tucson Electric, Midwest Reliability Organization, Montana-Dakota Utilities, New York PSC, Nevada Power, Great River, LIPA, BPA, American Transmission, NUSCo, Xcel, and Midwest ISO TOs oppose AWEA's proposal to allow wind generators to be placed in the queue, receive the base case data and "self-study" before filing completed electric design specifications and other related technical data. They generally argue that wind plants should be treated no differently from other generating plants. Montana-Dakota Utilities suggests that wind plant developers use generic power flow network models before filing Interconnection Requests, since these models would not likely reveal commercially sensitive data or critical energy infrastructure information. BPA does state, however, that while it supports the Commission's decision not to alter the LGIA timelines, the requirement that wind plants provide detailed project specifications could be relaxed at the Feasibility Study stage, and that it is willing to work with wind developers to ensure that they have the information necessary to develop their Interconnection Requests. It asserts that the Commission should allow Transmission Providers the flexibility to determine when wind developers should submit turbine specifications and detailed electrical design data. LIPA argues that all generators should have comparable access to base case data, subject to their willingness to sign a confidentiality agreement, and that discussion of how to accommodate alternative plant designs (such as wind plants) in the interconnection process should be left to the Transmission Provider and the generator.

91. NRECA–APPA state that while they are willing to accept AWEA's proposal, they do not object to the NOPR proposal. Numerous other commenters, including Western, PacifiCorp/PPM Energy, FPL Energy, and the Ohio Consumer's Council indicate that they generally support the AWEA "self-study" proposal, or offer suggestions to balance the need of wind plants to obtain base case data with the need to protect such data from unwarranted release. Western has no objection to allowing wind generators to self-study if the Transmission Provider is given final approval before the Interconnection Request is completed. It asserts that wind plants should request base case data directly from the regional reliability council, execute a confidentiality agreement and pay a fee. PJM similarly contends that allowing wind plants to obtain base case data from the regional reliability councils will allow sufficient self-study by the

[32] *See* Petition of AWEA at 5.

[33] *See id.* at 13–14.

[34] *See* NOPR at P 22, *citing* LGIP, section 2.3; *see also* Order No. 2003 at P 77–84.

developer while also limiting the need for multiple restudies by the Transmission Provider. Western contends that self-study and base case information should be available to all prospective Interconnection Customers.

92. Ohio Consumer's Council asks that the Commission seriously consider AWEA's proposal that wind projects not be required to provide some detailed design data as a condition of obtaining a place in the interconnection queue. It states that large wind projects are based on complex and variable site work compared to the more traditional generating plants that are studied for selected locations based on transportation needs and access to water for cooling purposes. It stresses that the Commission's requirements regarding the submission of design data for entry in the interconnection queue should reflect these differences in technologies.

93. AWEA and PacifiCorp/PPM Energy ask the Commission to reconsider its proposal not to adopt AWEA's self-study proposal. PacifiCorp/PPM Energy state that wind turbine performance varies significantly by manufacturer and that wind plant developers necessarily typically negotiate turbine selection and evaluate the configuration of the facility throughout the interconnection study period. AWEA similarly notes the complexities involved in laying out the medium voltage collector systems used by wind plants, and states the layout cannot be finalized until the Point of Interconnection is firmly established. It states that consequently, the detailed design and data for the collector system, which many Transmission Providers assert is required by the Interconnection Request, cannot be available when the Interconnection Request is submitted. AWEA suggests that, rather than requiring that the generating plant design be "substantially completed" at the time the Interconnection Request is submitted, the Commission should allow a wind plant to file an Interconnection Request with the generating plant design data and other related data depicting the wind plant as "a single generating unit connected through step-up transformation, with the equivalent power output characteristics (MW output and MVAR range) as the total net MW output of the wind generating facility in question." [35] Under this proposal, the wind plant developer would be required to provide a "substantially completed" generating plant design before the System Impact Study, along with either the power system load flow data sheets or the newly developed machine models with substantially complete input data to those models. AWEA states that many, but not all, Transmission Providers now accept such data as satisfying the requirements of the Interconnection Request.

[35] Comments of AWEA at 10–11.

2. Commission Conclusion

94. In this Final Rule, we allow a wind plant Interconnection Customer to satisfy the requirements of the Interconnection Request by providing a set of preliminary electric design specifications depicting the wind plant as a single equivalent generator, as explained below. Once completing the Interconnection Request in this manner, the wind plant may enter the queue and receive the base case data as provided for in Order No. 2003. The Commission directs that these provisions be attached as Appendix G to the LGIP in the OATTs of all public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce.[36]

95. In the NOPR, we noted that Section 2.3 of the LGIP did not address situations in which the Interconnection Customer needs the Base Case data before it can complete its Interconnection Request. We sought comments on how to balance the need of wind generators to have this information before filing a completed Interconnection Request with the need to protect this critical energy infrastructure information and commercially sensitive data against unwarranted disclosure. In addition, we sought to ensure that one class of customers was not being given undue preferential treatment.

96. We note that many Transmission Providers, non-wind generators, and a state regulatory commission oppose allowing wind generators to file Interconnection Requests, and hence be given a place in the queue, before submitting their final plant designs and related technical data. However, some trade organizations, wind developers, and Transmission Providers with substantial experience interconnecting wind plants, including AWEA, FPL Energy, PacifiCorp/PPM Energy, Western and Ohio Consumer's Council, support the *AWEA* proposal or some accommodation of wind's special needs.

97. We are persuaded that wind projects are not the same as conventional generators with regard to Interconnection Requests. Large conventional generators are generally standard in design, and their design specifications and configurations do not necessarily change as a result of where they are located on the Transmission Provider's transmission system. Large wind plants, on the other hand, are located on sites made up of several acres of land. Their physical layout often consists of hundreds of wind turbines in the more remote areas of a Transmission Provider's system, and that layout can extend for several miles. The physical placement of the turbines, transformers and voltage support devices that affect the electrical characteristics created by the medium voltage collector system depend on the size and location of the wind plant and the location of other generators on the Transmission Provider's system. For these reasons, wind plant developers are unable to submit completed design specifications for individual wind turbines until much later in the interconnection process, in comparison with other developers.

98. However, a wind plant developer can provide at the time the Interconnection Request is submitted design specifications for the wind generating plant based on its aggregate output, though perhaps not for the individual wind turbines. As we stated in Order No. 2003–A and in the NOPR, the Appendix G we adopt in this rule is designed to account for these unique technical characteristics of wind plants. Recognizing these unique characteristics is not favoring one form of generation over others; it simply removes barriers to wind plant development that are not necessary to protect safety or reliability.

99. In short, we are persuaded that the technical characteristics of wind plants prevent them from providing certain detailed design specifications and other information at the time of the Interconnection Request. Therefore, the Commission adopts provisions in the Final Rule Appendix G permitting the wind developer to satisfy the requirements of the Interconnection Request by providing a set of preliminary electrical design specifications depicting the wind plant as a single equivalent generator.[37] Upon satisfying these and other applicable Interconnection Request requirements

[36] The Commission requires that these procedural provisions be separately appended as Appendix G to the LGIP, because they are procedural in nature, and to ensure that they are in force during the initial stages of the interconnection process. We are retaining the Appendix G moniker to ensure that these procedural provisions are recognized as applicable only to the interconnection of large wind plants, the subject of this Final Rule. The remaining technical requirements adopted in this Final Rule must be appended as Appendix G to the LGIA.

[37] "Single equivalent generator" information is design data that represents the aggregate electrical characteristics of the individual wind generators as a single generator.

in Order No. 2003, the wind plant may enter the queue and receive the base case data as provided for all large generators in Order No. 2003. However, no more than six months later, the wind plant must submit completed detailed design specifications and other data (including collector system layout data) needed to allow the Transmission Provider to complete its System Impact Study. This information must be provided before the System Impact Study can begin. This deadline provides a date certain regarding when the final design specifications must be submitted to the Transmission Provider to avoid having uncertain projects in the queue.

100. Permitting wind plants to provide single-generator-equivalent specifications at the Interconnection Request stage appropriately balances the need of a Transmission Provider to have adequate data in the Interconnection Request and the difficulty that a wind plant developer has in completing its detailed design before entering the queue and receiving access to the base case data. This provision also protects critical energy infrastructure information by making none of it available to anyone who has not made a satisfactory Interconnection Request. Wind plants will follow all other requirements of the queue and study processes set forth in Order No. 2003, including the timelines and confidentiality provisions.

*F. Applicability to Other Generating Technologies*

101. In the NOPR, the Commission sought comments as to whether there are other alternative technologies that should be covered by Appendix G.

1. Comments

102. Numerous entities state that other alternative technologies should be made subject to Appendix G.[38] Southern California Edison asserts that all non-synchronous generators should be subject to Appendix G. Tucson Electric submits that solar generators without fueled backup should be included in Appendix G. Other commenters, including Midwest Reliability Organization, National Grid, Xcel, the CPUC and Great River generally state that they do not necessarily support including other alternative technologies within the coverage of Appendix G. The CPUC, for example, does not believe that Appendix G should be expanded to apply to "renewable" technologies other than those that are intermittent or geographically constrained. National Grid states that these proceedings have focused exclusively on wind generation and thus does not support applying Appendix G more broadly. Xcel states that other non-synchronous technologies have not matured sufficiently to operate on a scale greater than 20 MW, and therefore should not be able to use Appendix G.

103. American Transmission asserts that the Commission should adopt the Alberta Electric System Operator definition of asynchronous generation, which is "a type of generator that produces alternating electric current that matches the frequency of an interconnected power system and the mechanical rotor of the generator does not rotate in synchronism with the system frequency." It argues that the Alberta Electric System Operator definition is superior because it is used in the electric power technical community to refer to the type of generator to which the NOPR is directed and because it compares the speed of an asynchronous generator to that of a traditional generator.

2. Commission Conclusion

104. The Commission concludes that the Final Rule Appendix G exceptions to the LGIP and LGIA apply only to large wind plants. As discussed above, the Appendix G was designed around the special needs and design characteristics of wind generators. The NOPR asked whether there were other generators that have similar characters and require similar technical requirements to those contained in Appendix G. Although numerous commenters suggested that other generators may have special needs and suggested that they should be made subject to Appendix G, none other than Tucson (who suggested solar generators without fueled backup) offered a specific induction generator technology with similar characteristics to wind as an Appendix G candidate. The Appendix G provisions adopted here focuses on the special characteristics of large wind plants, particularly the fact that they utilize many induction generators connected to the transmission system at a single point through a medium-voltage collector system. The Commission has not found at this time that any other technologies, including the solar generators without fueled backup offered by Tucson, have similar characteristics.

105. The Commission does not adopt American Transmission's proposed definition of "asynchronous generation" in the Final Rule. The Commission is not relying on the concept of asynchronous generation in this Final Rule, and we do not believe that this characteristic appropriately identifies the interconnection needs of large wind plants addressed by the Final Rule Appendix G. Accordingly, we do not make any definitional changes.

106. While we are not applying the Final Rule Appendix G to non-wind technologies, we may do this in the future, or take other generic or case-specific actions, if another technology emerges for which a different set of interconnection requirements is necessary.

*G. Variations From the Final Rule*

107. The NOPR proposed to permit Transmission Providers to justify variations from the Final Rule Appendix G using the same three variation standards in Order No. 2003. First, public utilities may seek variations from the Final Rule Appendix G based on regional reliability council requirements.[39] Second, we proposed that public utilities may argue that proposed variations are "consistent with or superior to" the Final Rule Appendix G.[40] Third, we proposed to permit independent public utility Transmission Providers, such as Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs), greater flexibility in adopting Appendix G (the "independent entity variation").[41]

1. Comments

108. Numerous entities request that they be permitted to justify variations from the Appendix G requirements. Several ask the Commission to clarify that the Appendix G performance standards are minimum requirements, as noted elsewhere.[42] Some commenters encourage the Commission to use NERC or regional reliability councils to develop necessary technical standards and requirements applicable to wind generation and its effect on reliability, including the incorporation of NERC's American National Standards Institute-approved standards, field tests and other requirements.

2. Commission Conclusion

109. As we proposed in the NOPR, we apply here all three of the variation standards in Order No. 2003. If a

[38] These entities include PJM, BPA, ISO New England, NYISO, Southern California Edison, CenterPoint, the NARUC, LIPA, New York PSC, Nevada Power, NUSCo and Tucson Electric.

[39] *See* NOPR at P 25, *citing* Order No. 2003 at P 823–24.

[40] *See* NOPR at P 25, *citing* Order No. 2003 at P 816.

[41] *See* NOPR at P 25, *citing* Order No. 2003 at P 822–27 and Order No. 2003–A at P 48.

[42] These entities include Midwest ISO TOs, FirstEnergy, NYISO, LADWP, NorthWestern Energy, CPUC and Southern, among others.

Transmission Provider seeks to justify variations from Appendix G, it may do so in its compliance filing. A Transmission Provider may propose to include standards developed by NERC or a regional reliability council in its own Appendix G. The Commission is mindful of the work being done by these organizations in developing standards for the interconnection of wind plants, and we strongly encourage all interested parties, including Transmission Providers, wind plant developers and wind turbine manufacturers, to continue to participate in developing these standards. The Commission will consider them in any request for a variation from the Final Rule Appendix G by an individual Transmission Provider, or a request by many to revise Appendix G.

*H. Transition Period*

110. In the NOPR, the Commission did not propose a transition period before the technical requirements in Appendix G would take effect.

1. Comments

111. AWEA, FPL Energy, and PacifiCorp/PPM Energy ask that there be a transition period so Appendix G would apply only to LGIAs signed or unexecuted LGIAs filed with the Commission after January 1, 2006, or six months after the issuance of this Final Rule, whichever is later. FPL Energy asserts that a transition period is needed to prevent added costs and delays to protect previously executed wind equipment purchase agreements and power purchase arrangements. PacifiCorp/PPM Energy add that wind turbines are already in the process of being manufactured that would require substantial changes to their electronics to meet the proposed requirements. AWEA asserts that the Commission has historically provided a transition period in similar circumstances, including in Order No. 2003.

112. AWEA also asks that all wind plants that are interconnected to the transmission system when Appendix G is adopted, or that have executed an LGIA or filed an unexecuted LGIA with the Commission before January 1, 2006 or six months after the issuance of this Final Rule, whichever is later, be exempted from the Appendix G requirements for the remaining life of the existing wind generator equipment. Likewise, Ohio Consumer's Council, LIPA and Xcel support a transition period and state that existing wind projects or those in advanced planning should be exempt from the Appendix G requirements.

113. BPA and American Transmission are opposed to any transition period. American Transmission states that once Appendix G is adopted, no deviations should be permitted unless otherwise agreed to by the Transmission Provider. BPA states that installing outdated or inferior wind equipment that is incapable of complying with reliability criteria is contrary to the intent of this proceeding. American Transmission also maintains that existing interconnection agreements with wind plants must be amended to conform to the requirements adopted in this proceeding. It argues that technical requirements for similar generating facilities should not be based merely on the timing of the interconnection.

2. Commission Conclusion

114. For the low voltage ride-through, SCADA, and power factor design criteria requirements adopted in the Final Rule Appendix G, which are substantive technical requirements, the Commission adopts the transition period requested by AWEA and others. Accordingly, these technical requirements in the Final Rule Appendix G, if applicable, apply only to LGIAs signed, filed with the Commission in unexecuted form, or filed as non-conforming agreements, on or after January 1, 2006, or the date six months after publication of the Final Rule in the **Federal Register**, whichever is later. The procedures permitting the wind plant Interconnection Customer to complete the Interconnection Request with single-generator equivalent design specifications apply immediately when the Final Rule becomes effective, 60 days after its publication in the **Federal Register.** This effective date also applies for purposes of public utilities making compliance filings to meet this Final Rule, as discussed further below.

115. It would be unfair and unreasonable to apply the low voltage ride-through, SCADA and power factor requirements in the Final Rule immediately or retroactively. The reasonable transition period we establish in this Final Rule allows wind equipment currently in the process of being manufactured to be completed without delay or added expense. This ensures that the Final Rule does not interrupt the supply of wind turbines. Further, we disagree with BPA that the transition period will undermine the reliability of a Transmission Provider's system. We note that during the transition period, our large generator interconnection rule applies to wind plants. Even though article 9.6.1 (Power Factor Design Criteria) of the LGIA does not apply to wind plants, the other provisions of that rule are adequate to prevent an interconnection that would undermine reliability of a Transmission Provider's system.

116. Consistent with our action grandfathering existing interconnection agreements in Order No. 2003,[43] the Commission is not requiring modifications to existing interconnection agreements, and is not requiring that interconnection agreements signed, filed with the Commission in unexecuted form, or filed as a non-conforming agreement before January 1, 2006, or the date six months after publication of the Final Rule in the **Federal Register**, whichever is later, comply with the low voltage ride-through, SCADA and power factor requirements of the Final Rule Appendix G, if applicable.

I. Miscellaneous Comments

117. The Fertilizer Institute notes that wind generators and generators that use waste heat have several things in common; for example, both produce electricity without any fuel consumption or air emissions. It states that through no fault of their own, neither wind generators nor fertilizer-fired generators can meet the rigorous balancing and scheduling requirements imposed by Transmission Provider's. It urges the Commission to exempt both from any requirement to balance their power deliveries and power receipts during any time period shorter than the peak and non-peak periods of a given day.

118. Also, American Transmission contends that Transmission Owners who are part of an RTO/ISO should be allowed to pursue ADR before an LGIA is filed with the Commission on an unexecuted basis.

1. Commission Conclusion

119. In response to the comments of the Fertilizer Institute, we note that the Commission recently issued a NOPR in Docket No. RM05–10–000 to address generator imbalance penalties assessed to intermittent generating resources.[44] We will consider the Fertilizer Institute's comments in that proceeding.

120. Further, in response to American Transmission's request that ADR be permitted before an unexecuted LGIA is filed, we note that the LGIP already provides dispute resolution procedures

[43] *See* Order No. 2003 at P 911.

[44] *Imbalance Provisions for Intermittent Resources Assessing the State of Wind Energy in Wholesale Electricity Markets*, Notice of Proposed Rulemaking, 70 Fed. Reg. 21,349 (Apr. 26, 2005), 111 FERC ¶ 61,026 (2005).

that apply to wind plant interconnections.[45]

*J. Compliance Issues*

121. As in Order No. 2003,[46] the Commission is requiring all public utilities that own, control, or operate transmission facilities in interstate commerce to adopt the Final Rule Appendix G as amendments (as discussed above) to the LGIP and LGIA in their OATTs 60 days after publication of the Final Rule in the **Federal Register**. Public utilities subject to this Final Rule are directed to adopt the low voltage ride-through, SCADA, and power factor design criteria requirements of the Final Rule Appendix G as amendments to their LGIAs, and to adopt the procedural provisions in the Final Rule Appendix G concerning completion of the Interconnection Request by the wind plant Interconnection Customer as amendments to their LGIPs. Further, consistent with our approach in Order No. 2003 and as discussed above,[47] we are not requiring retroactive changes to wind plant interconnection agreements that are already in effect. Also, as noted above, the low voltage ride-through, SCADA and power factor requirements adopted in the Final Rule Appendix G, if applicable, do not apply to LGIAs signed, filed with the Commission in unexecuted form, or filed as a non-conforming agreement, on or before January 1, 2006 or six months after the publication of this Final Rule in the **Federal Register**, whichever is later. As we state above, however, the procedures adopted in the Final Rule Appendix G regarding completion of the Interconnection Request by a wind plant Interconnection Customer apply beginning on the effective date of this Final Rule.

## IV. Information Collection Statement

122. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.[48] The Commission solicited comments on the Commission's need for this information, whether the information would have practical use, the accuracy of provided burden estimates, ways to enhance the quality, utility and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. With the exception of BPA, which supported the objectives of the Paperwork Reduction Act, the Commission did not receive any comments concerning its burden or cost estimates. Therefore, the Commission retains the estimates proposed in the NOPR.

123. *Public Reporting Burden:*

| Data collection | No. of respondents | No. of responses | Hours per response | Total annual hours |
|---|---|---|---|---|
| FERC–516 | 238 | 1 | 18 | 4,284 |

*Title:* FERC–516, Electric Rate Schedule Filings.

*Action:* Proposed Information Collection.

*OMB Control No.:* 1902–0096.

The applicant shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

*Respondents:* Business or other for profit.

*Frequency of Responses:* On occasion.

*Necessity of Information:* The regulations revise the requirements contained in 18 CFR part 35. The Commission is revising its standardized interconnection procedures and agreements to adopt standard technical requirements and procedures specifically applicable to wind generating plants. In particular, the Commission requires that public utilities add to their standard interconnection procedures and agreements standard technical requirements and procedures for the interconnection of wind generation plants. The Final Rule requires that each public utility that owns, operates, or controls transmission facilities make filings incorporating these technical requirements into its open access transmission tariff.

*Internal Review:* The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information collection requirements. The Commission's Office of Market, Tariffs and Rates uses the data included in filings under section 203 and 205 of the Federal Power to evaluate efforts for interconnection and coordination of the U.S. electric transmission system as well as for general industry oversight. These information requirements conform to the Commission's plan for efficient information collection, communication, and management within the electric power industry. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, Attention: Michael Miller, Office of the Executive Director, phone: (202) 502–8415, fax: (202) 273–0873, e-mail: *michael.miller@ferc.gov*. Comments on the requirements of the subject rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–4650.

## V. Environmental Analysis

124. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[49] As we stated in the NOPR, the Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in this categorical exclusion are rules that are clarifying, corrective, or procedural, or that do not substantially change the effect of the regulations being amended.[50] The categorical exclusion also includes information gathering, analysis, and dissemination.[51] This Final Rule updates and clarifies the application of the Commission's standard interconnection requirements to wind generating plants. Further, this Final Rule involves information gathering, analysis, and dissemination regarding the interconnection of wind

[45] *See* LGIP § 13.5.

[46] *See* Order No. 2003 at P 910.

[47] *Id.* at P 911.

[48] 5 CFR 1320.11 (2004).

[49] *Order No. 486, Regulations Implementing the National Environmental Policy Act*, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (Dec. 10, 1987).

[50] 18 CFR 380.4(a)(2)(ii) (2004).

[51] 18 CFR 380.4(a)(5) (2004).

generators. Therefore, the rule falls within the categorical exemptions provided in the Commission's Regulations, and as a result neither an environmental impact statement nor an environmental assessment is required. Additionally, we note that this rule removes unnecessary obstacles to the development and interconnection of wind plants, eliminating the airborne and other emissions that would otherwise result from the construction of fossil fuel generating plants.

### VI. Regulatory Flexibility Act Certification

125. The Regulatory Flexibility Act of 1980 (RFA)[52] generally requires a description and analysis of final rules that have significant economic impact on a substantial number of small entities.[53] The Commission is not required to make such analyses if a rule would not have such an effect.

126. The Commission does not believe that this Final Rule will have such an impact on small entities. Most filing companies subject to the Commission's jurisdiction do not fall within the RFA's definition of a small entity. Further, the filing requirements contain standard generator interconnection procedures and agreement for interconnecting wind plants larger than 20 MW, which exceeds the threshold of the Small Business Size Standard of NAICS. Therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

### VII. Document Availability

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

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

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

### VIII. Effective Date and Congressional Notification

130. This Final Rule will take effect August 15, 2005. However, as noted above (under "Transition Period"), the technical requirements in the Final Rule LGIA Appendix G will apply only to LGIAs signed, or agreements filed with the Commission in unexecuted form, on or after January 1, 2006, or the date six months from the date of publication of this Final Rule in the **Federal Register**, whichever is later. The Commission has determined with the concurrence of the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, that this rule is not a major rule within the meaning of section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.[54] The Commission will submit the Final Rule to both houses of Congress and the General Accountability Office.[55]

### List of Subjects in 18 CFR Part 35

Electric power rates; Electric utilities.

By the Commission.

**Linda Mitry,**

*Deputy Secretary.*

■ In consideration of the foregoing, the Commission revises part 35, Chapter I, Title 18 of the Code of Federal Regulations, as follows.

## PART 35 B—FILING OF RATE SCHEDULES

■ 1. The authority citation for part 35 continues to read as follows:

**Authority:** 16 U.S.C. 791a–825r, §§ 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. In § 35.28, paragraph (f)(1) is revised to read as follows:

**§ 35.28 Non-discriminatory open access transmission tariff.**

* * * * *

(f) *Standard generator interconnection procedures and agreements.*

(1) Every public utility that is required to have on file a non-discriminatory open access transmission tariff under this section must amend such tariff by adding the standard interconnection procedures and agreement contained in Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (Final Rule on Generator Interconnection), as amended by the Commission in Order No. 661, (Final Rule on Interconnection for Wind Energy), and the standard small generator interconnection procedures and agreement contained in Order No. 2006, FERC Stats. & Regs. ¶ 31,180 (Final Rule on Small Generator Interconnection), or such other interconnection procedures and agreements as may be approved by the Commission consistent with Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (Final Rule on Generator Interconnection) and Order No. 2006, FERC Stats. & Regs. ¶ 31,180 (Final Rule on Small Generator Interconnection).

(i) The amendment to implement the Final Rule on Generator Interconnection required by the preceding subsection must be filed no later than January 20, 2004.

(ii) The amendment to implement the Final Rule on Small Generator Interconnection required by the preceding subsection must be filed no later than August 15, 2005.

(iii) The amendment to implement the Final Rule on Interconnection for Wind Energy required by the preceding subsection must be filed no later than August 15, 2005.

(iv) Any public utility that seeks a deviation from the standard interconnection procedures and agreement contained in Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (Final Rule on Generator Interconnection), as amended by the Commission in Order No. 661 (Final Rule on Interconnection for Wind Energy), or the standard small generator interconnection procedures and agreement contained in Order No. 2006, FERC Stats. & Regs. ¶ 31,180 (Final Rule on Small Generator Interconnection), must demonstrate that the deviation is consistent with the principles of either Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (Final Rule on Generator Interconnection) or Order No. 2006, FERC Stats. & Regs. ¶ 31,180

[52] 5 U.S.C. 601–612 (2000).

[53] The RFA definition of "small entity" refers to the definition provided in the Small Business Act, which defines a "small business concern" as a business that is independently owned and operated and that is not dominant in its field of operation. 15 U.S.C. 632 (2000). The Small Business Size Standards component of the North American Industry Classification System defines a small electric utility as one that, including its affiliates, is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal years did not exceed 4 million MWh. 13 CFR 121.201 (Section 22, Utilities, North American Industry Classification System, NAICS) (2004).

[54] *See* 5 U.S.C. 804(2) (2000).

[55] *See* 5 U.S.C. 801(a)(1)(A) (2000).

(Final Rule on Small Generator Interconnection).

**Note:** The following atttachments will not be published in the Code of Federal Regulations.

## Appendix A—List of Commenter Acronyms

AEP—American Electric Power System
American Superconductor—American Superconductor Corporation
American Transmission—American Transmission Company, LLC
AWEA—American Wind Energy Association
BPA—Bonneville Power Administration
CenterPoint—CenterPoint Energy Houston Electric, LLC
CPUC—California Public Utilities Commission
EEI—Edison Electric Institute
Exelon—Exelon Corporation
FirstEnergy—FirstEnergy Companies
Fertilizer Institute—The Fertilizer Institute
FPL Energy—FPL Energy, LLC
Gamesa—Gamesa Energy USA, Inc.
GE—General Electric
Great River—Great River Energy
Innovation—Innovation Investments, LLC
ISO New England—ISO New England Inc.
LADWP—Los Angeles Department of Water and Power
LIPA—Long Island Power Authority and LIPA
Midwest ISO—Midwest Independent Transmission System Operator, Inc.
Midwest ISO TOs—Midwest ISO Transmission Owners
Midwest Reliability Organization—Midwest Reliability Organization
Montana-Dakota Utilities—Montana-Dakota Utilities
NARUC—National Association of Regulatory Utility Commissioners
National Grid—National Grid USA
NERC—North America Electric Reliability Council
Nevada Power—Nevada Power Company/ Sierra Pacific Power Company
New York PSC—New York State Public Service Commission
NRECA/APPA—National Rural Electric Cooperative Association and the American Public Power Association
NYISO—New York Independent Transmission System Operator, Inc.
NUSCo—Northeast Utilities Service Company
NorthWestern Energy—NorthWestern Energy
Ohio Consumers' Council—The Office of the Ohio Consumers' Council
PacifiCorp/PPM Energy—PacifiCorp and PPM Energy, Inc.
PJM—PJM Interconnection, LLC
SoCal Edison—Southern California Edison Company
Southern—Southern Company Services, Inc.
Tucson Electric—Tucson Electric Power
Western—Western Area Power Administration
Xcel—Xcel Energy Services, Inc.
Zilkha—Zilkha Renewable Energy, LLC

## Appendix B

**Note:** These provisions to be adopted as Appendix G to the LGIA.

## Appendix G—Interconnection Requirements for a Wind Generating Plant

Appendix G sets forth requirements and provisions specific to a wind generating plant. All other requirements of this LGIA continue to apply to wind generating plant interconnections.

*A. Technical Standards Applicable to a Wind Generating Plant*

*i. Low Voltage Ride-Through (LVRT) Capability*

A wind generating plant shall be able to remain online during voltage disturbances up to the time periods and associated voltage levels set forth in the standard in Figure 1, below, if the Transmission Provider's System Impact Study shows that low voltage ride-through capability is required to ensure safety or reliability.

The standard applies to voltage measured at the Point of Interconnection as defined in this LGIA. The figure shows the ratio of actual to nominal voltage (on the vertical axis) over time (on the horizontal axis). Before time 0.0, the voltage at the transformer is the nominal voltage. At time 0.0, the voltage drops. If the voltage remains at a level greater than 15 percent of the nominal voltage for a period that does not exceed 0.625 seconds, the plant must stay online. Further, if the voltage returns to 90 percent of the nominal voltage within 3 seconds of the beginning of the voltage drop (with the voltage at any given time never falling below the minimum voltage indicated by the solid line in Figure 1), the plant must stay online. The Interconnection Customer may not disable low voltage ride-through equipment while the wind plant is in operation. Two key features of this regulation are:

1. A wind generating plant must have low voltage ride-through capability down to 15 percent of the rated line voltage for 0.625 seconds;

2. A wind generating plant must be able to operate continuously at 90 percent of the rated line voltage, measured at the high voltage side of the wind plant substation transformer(s).

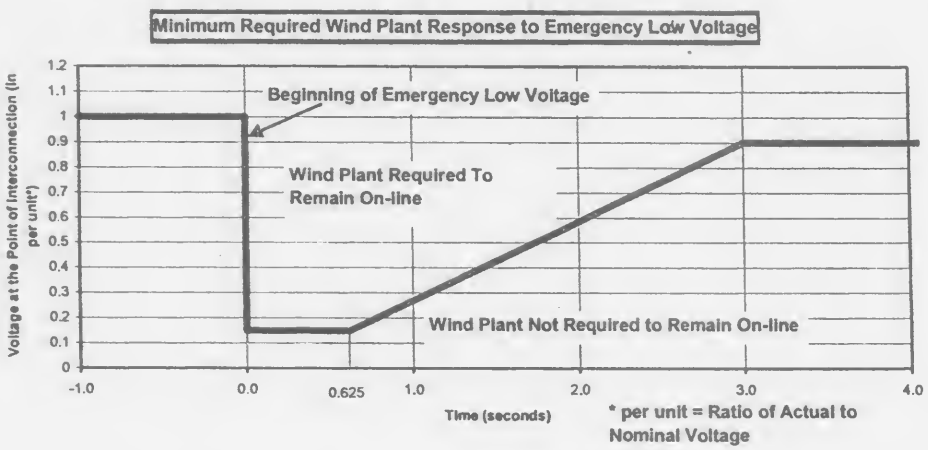


**Figure 1 Proposed low voltage ride-through standard**

*ii. Power Factor Design Criteria (Reactive Power)*

A wind generating plant shall maintain a power factor within the range of 0.95 leading to 0.95 lagging, measured at the Point of Interconnection as defined in this LGIA, if the Transmission Provider's System Impact Study shows that such a requirement is necessary to ensure safety or reliability. The power factor range standard can be met by using, for example, power electronics designed to supply this level of reactive capability (taking into account any limitations due to voltage level, real power output, *etc.*) or fixed and switched capacitors if agreed to by the Transmission Provider, or a combination of the two. The Interconnection Customer shall not disable power factor equipment while the wind plant is in operation. Wind plants shall also be able to provide sufficient dynamic voltage support in lieu of the power system stabilizer and automatic voltage regulation at the generator excitation system if the System Impact Study shows this to be required for system safety or reliability.

*iii. Supervisory Control and Data Acquisition (SCADA) Capability*

The wind plant shall provide SCADA capability to transmit data and receive instructions from the Transmission Provider to protect system reliability. The Transmission Provider and the wind plant Interconnection Customer shall determine what SCADA information is essential for the proposed wind plant, taking into account the size of the plant and its characteristics, location, and importance in maintaining generation resource adequacy and transmission system reliability in its area.

## Appendix C

Note: These provisions to be adopted as Appendix G to the LGIP.

## Appendix G—Interconnection Procedures for a Wind Generating Plant

Appendix G sets forth procedures specific to a wind generating plant. All other requirements of this LGIP continue to apply to wind generating plant interconnections.

*A. Special Procedures Applicable to Wind Generators*

The wind plant Interconnection Customer, in completing the Interconnection Request required by section 3.3 of this LGIP, may provide to the Transmission Provider a set of preliminary electrical design specifications depicting the wind plant as a single equivalent generator. Upon satisfying these and other applicable Interconnection Request conditions, the wind plant may enter the queue and receive the base case data as provided for in this LGIP.

No later than six months after submitting an Interconnection Request completed in this manner, the wind plant Interconnection Customer must submit completed detailed electrical design specifications and other data (including collector system layout data) needed to allow the Transmission Provider to complete the System Impact Study.

[FR Doc. 05–11678 Filed 6–15–05; 8:45 am]
BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Part 157

**[Docket No. RM05–1–001; Order No. 2005–A]**

## Regulations Governing the Conduct of Open Seasons for Alaska Natural Gas Transportation Projects

Issued June 1, 2005.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final rule; order on rehearing.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) generally reaffirms its determinations in Order No. 2005. Order No. 2005 establishes requirements governing the conduct of open seasons for proposals to construct Alaska natural gas transportation projects, including procedures for allocation of capacity. Pursuant to the directive of section 103(e)(2) of the Alaska Natural Gas Pipeline Act, enacted on October 13, 2004, the regulations promulgated in Order No. 2005 include the criteria for and timing of any open season, promote competition in the exploration, development, and production of Alaska natural gas, and for any open seasons for capacity exceeding the initial capacity, provide for the opportunity for the transportation of natural gas other than from the Prudhoe Bay and Point Thomson units.

In this order, the Commission addresses the requests for rehearing and/or clarification of Order No. 2005. Here, we grant rehearing in part, deny rehearing in part, and provide clarification of Order No. 2005. In specific, we: Clarify that the Commission may require design changes necessary to ensure that some portion of a proposed voluntary expansion will be allocated to new shippers or shippers seeking to transport gas from areas other than Prudhoe Bay or Point Thomson, provided such shippers are willing to sign qualifying long-term firm transportation agreements; codify the expanded criteria for evaluating late bids for capacity and the requirement that any late bid contain a good faith showing; in the case of the mandatory pre-review, codify that the plan to be filed by the Commission must contain the open season notice, and eliminates the 30-day prior notice requirement; discuss how the open season rules may apply to jurisdictional gas treatment plants; clarify that capacity bid for the open season is exempt from allocation only in a case where there is also presubscribed capacity, and that in the event there are more than one pre-subscription agreement, bidders in the open season may not cherry-pick among the provisions of the several agreements; clarify the project applicant's obligation to establish a separate entity to conduct the open season; and further codify the requirements of the catchall provision regarding information to be included in an open season notice.

**DATES:** *Effective Date:* Revisions in this order on rehearing will become effective on June 16, 2005.

**FOR FURTHER INFORMATION CONTACT:** Whit Holden, Office of the General Counsel, (202) 502–8089, *edwin.holden@ferc.gov;* Richard Foley, Office of Energy Projects, (202) 502–8955, *richard.foley@ferc.gov;* Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

**SUPLEMENTARY INFORMATION:**

Before Commissioners: Pat Wood, III, Chairman; Nora Mead Brownell, Joseph T. Kelliher, and Suedeen G. Kelly.

### Order on Rehearing and Clarification

1. On February 9, 2005, the Federal Energy Regulatory Commission (Commission) issued a Final Rule, Order No. 2005,[1] amending its regulations by adding Subpart B to Part 157 to establish requirements governing the conduct of open seasons for capacity on proposals to construct Alaska natural gas transportation projects. Order No. 2005 fulfilled the Commission's responsibilities to issue open season regulations under section 103 of the Alaska Natural Gas Pipeline Act (ANGPA or the Act), enacted on October 13, 2004. Section 103(e)(1) of the Act directs the Commission, within 120 days from enactment of the Act, to promulgate regulations governing the conduct of open seasons for Alaska natural gas transportation projects, including procedures for allocation of capacity. As required by section 103(e)(2) of the Act, the regulations promulgated in Order No. 2005 (1) include the criteria for and timing of any open season, (2) promote competition in the exploration, development, and production of Alaska

[1] *Regulations Governing the Conduct of Open Seasons for Alaska Natural Gas Transportation Projects,* RM05–1–000, Order No. 2005, FERC Stats. and Regs. ¶ 31,174 (2005).

natural gas, and (3) for any open seasons for capacity exceeding the initial capacity, provide for the opportunity for the transportation of natural gas other than from the Prudhoe Bay and Point Thomson units.

2. The Commission affirms here the legal and policy conclusions on which Order No. 2005 was based. As stated in Order No. 2005, the goal of the open season regulations is to design an open season process that provides non-discriminatory access to capacity on any Alaska natural gas transportation project and, at the same time, allows sufficient economic certainty to support the construction of the pipeline and thereby provide a stimulus for exploration, development, and production of Alaska natural gas. We find that Order No. 2005's open season rules as revised and clarified herein, satisfy that goal and, therefore, are in the public interest.

**Background**

3. ANGPA mandates the expedited processing by the Commission of any application for an Alaska natural gas transportation project. To this end, as stated above, section 103(e)(1) of the Act specifically directs the Commission to prescribe the rules which shall apply to any open season held for the purpose of soliciting interest in, or making binding commitments to the acquisition of capacity on, any Alaska natural gas transportation project, including the criteria for allocating capacity among competing bidders. In this regard, Congress instructed the Commission to include in its regulations the criteria for, and timing of, any open season, and to design its open season regulations to promote competition in the exploration, development, and production of Alaska natural gas and, as to any open season for the voluntary expansion [2] of the initial capacity of any Alaska natural gas transportation project, to specifically provide the opportunity for gas other than Prudhoe Bay and Point Thomson production to have access to the pipeline.

4. In response to the Act's directive, on November 15, 2004, the Commission issued in Docket No. RM05–1–000 a Notice of Proposed Rulemaking (NOPR) in this proceeding containing the Commission's proposed Alaska natural gas transportation project open season regulations. Also, the Commission held a public technical conference in Anchorage, Alaska on December 3, 2004 to develop a record in this proceeding. The Commission received 25 comments in response to the NOPR.

5. On February 9, 2005, the Commission issued Order No. 2005. The open season regulations contained in Order No. 2005 apply to any application for a certificate or other Commission authorization for an Alaska natural gas transportation project, whether filed pursuant to the NGA, the Alaska Natural Gas Transportation Act of 1976, or ANGPA, as well as to any voluntary applications for expansions of such a project.

6. The Final Rule adopted the NOPR's proposed requirements that the applicant provide a 30-day prior public notice containing extensive information intended to allow all interested persons to decide whether to participate in the open season, followed by an actual open season period of at least 90 days. The regulations in the Final Rule also adopted the NOPR's approach of allowing prospective applicants to develop and state in detail the methodologies for determining the value of bids and for allocating capacity, subject to the requirement that all capacity be awarded without undue discrimination or preference of any kind. In addition, the Final Rule required that at least 90 days prior to providing the open season notice, the prospective applicant must file its open season plan with the Commission for approval, and that the Commission will act on the plan within 60 days of its filing.

7. The Final Rule provided that prospective applicants must conduct or adopt a study of Alaska's in-state needs, and use the study results to design capacity needs for use within the state, and design in-state delivery points and in-state transportation rates as part of an open season. Moreover, bidding on in-state capacity must be conducted independent of out-of-state deliveries during a prospective applicant's open season.

8. In order to further the Commission's goal of a non-discriminatory open season, the Final Rule applied certain of the Standards of Conduct requirements of Order No. 2004, including the establishment of an independent, functionally-separate unit to conduct the open season. In addition, the open season notice must identify the prospective applicant's affiliates involved in the production of natural gas in the state of Alaska, and all information about the open season disclosed to any potential shippers must be made available to all potential shippers.

9. The Final Rule permitted pre-subscription by anchor shippers, limited to initial capacity only, in order to facilitate the development of an Alaska pipeline project. However, to ensure that all other potential shippers have an equal opportunity to obtain access to capacity on the project in the open season, all pre-subscription agreements must be made public within ten days of their execution, and capacity on the proposed project must be offered to all prospective qualifying shippers under the same terms and conditions and at the same rates as the pre-subscription agreements. In addition, if capacity is oversubscribed in the open season and it is not feasible to redesign the proposed project to meet both the pre-subscription shippers' and the open season shippers' capacity needs, then capacity bid for in the open season will not be reduced, but all capacity subject to the terms and conditions of pre-subscription agreements will be allocated pro rata.

10. In an effort to allow as many potential shippers as possible the opportunity to acquire capacity in the initial open season, the Final Rule required that the project sponsor must consider any qualifying bids tendered after the expiration of the open season, and reject them only if they cannot be accommodated due to economic, engineering, or operational constraints.

11. The Final Rule stated that, within ten days after precedent agreements have been executed for capacity acquired in the open season, the prospective applicant shall make public the results of the open season, including the names of the prospective shippers, amount of capacity awarded, and the terms of the agreements. Within 20 days after precedent agreements have been executed, copies of all precedent agreements, as well as copies of any correspondence with bidders whose bids were not accepted, must be filed with the Commission.

12. In another provision, the Final Rule stated that, as a part of the Commission's review of any application for an Alaska natural gas transportation project, it will consider the extent to which the proposed project has been designed to accommodate the needs of shippers who have made conforming bids during an open season, as well as the extent to which the project can accommodate low-cost expansion, and the Commission may require changes in the project's design necessary to promote competition and offer a reasonable opportunity for access to the project.

13. Finally, to provide guidance to interested parties on the important

[2] Excluded from the scope of the open season rules are expansions compelled by the Commission pursuant to section 105 of the Act. Section 105 authorizes the Commission to order these "involuntary" expansions upon the request of one or more persons, and upon the satisfaction of certain statutory criteria.

subject of expansion rate treatment, the Final Rule establishes a presumption in favor of rolled-in pricing for expansions up to the point that it would cause there to be a subsidy of expansion shippers by initial shippers.

14. Requests for rehearing and/or clarification were filed jointly by BP Exploration (Alaska), Inc., ConocoPhillips Company and Exxon Mobile Corporation (the North Slope Producers), by Enbridge, Inc. (Enbridge), by ChevronTexaco Natural Gas, a division of Chevron U.S.A. Inc. (ChevronTexaco), and by the State of Alaska. In addition, Anadarko Petroleum Corporation (Anadarko) and the Legislative Budget and Audit Committee of the Alaska State Legislature (Alaska Legislators) filed responses to the rehearing requests.[3]

**Discussion**

*I. Mandating Pipeline Design*

A. The Final Rule—§§ 157.36 and 157.37

15. Section 157.36 requires that any open season for expansion capacity of an Alaska natural gas transportation project must provide the opportunity for the transportation of gas other than Prudhoe Bay or Point Thomson production, and that the Commission, in considering any proposed voluntary expansion of an Alaska natural gas pipeline project, "may require design changes to ensure that all who are willing to sign long-term firm transportation contracts that some portion of the expansion capacity be allocated to new shippers or shippers seeking to transport natural gas from areas other than Prudhoe Bay and Point Thomson." Section 157.37 states that, in reviewing any application for an Alaska natural gas pipeline project, the Commission "may require changes in the project design necess[ary] to promote competition and offer a reasonable opportunity for access to the project, taking into account the extent to which the proposed project design accommodates the open season's conforming bids as well as low-cost expansion."[4] These provisions were included in the Final Rule in response to concerns of non-North Slope producers that they have access to capacity on an Alaska natural gas transportation project when their potential gas reserves are commercially developed.

B. Rehearing/Clarification Requests

16. The North Slope Producers and ChevronTexaco object to the provisions contained in sections 157.36 and 157.37 to the extent that they authorize the Commission to require changes in the design of an Alaska natural gas transportation project. The North Slope Producers object to these provisions on a number of grounds. First, they contend that it is beyond the Commission's NGA authority to mandate changes in the design of a pipeline, either to provide additional capacity or to enhance future expandability. The North Slope Producers contend that, in either case, the result is a mandatory expansion of the project, which according to section 7(a) of the NGA, is outside the Commission's authority to require.[5] The North Slope Producers maintain that this limitation on the Commission's authority is reflected in the Commission's regulations providing that open access pipelines are "not required to provide any requested transportation service for which capacity is not available or that would require the construction or acquisition of any new facilities,"[6] and in judicial precedent.[7] According to the North Slope Producers, the Commission has acted unreasonably in "morphing" ANGPA's vague and undefined open season requirements pertaining to competition in the exploration, development, and production of Alaska gas and sufficient opportunity for future access for the transportation of non-Prudhoe Bay/Point Thomson gas into factors to be considered by the Commission in its NGA section 7 review of certificate applications for Alaska natural gas transportation projects.

17. Second, the North Slope Producers assert that ANGPA section 105 further limits the Commission's authority to require an expansion of an Alaska natural gas transportation project sections. The North Slope Producers state that before an involuntary expansion can be ordered by the Commission, section 105 lists a number of statutory requirements that must be met which are designed to balance potential future shippers' interests with the need to protect the pipeline and existing shippers and to protect against uneconomic overbuilding. The North Slope Producers state that none of these statutory requirements are referenced in or satisfied by section 157.36 or 157.37.

18. Third, the North Slope Producers argue that the Commission appears to mistakenly "assume that a pipeline can, in all circumstances, be efficiently designed to accommodate all qualifying bids." The North Slope Producers assert that the most efficient and economic pipeline design might not be one which can accommodate 100 percent of the capacity bid for in the open season. In fact, according to the North Slope Producers, it is possible that a pipeline designed to accommodate all the capacity bid in the open season "could result in a design that is inefficient and/or negatively impacts future expansion design alternatives."

19. Fourth, the North Slope Producers maintain that to the extent that it authorizes a set-aside of capacity, section 157.36 violates the Order No. 636's goal of eliminating impediments to the transmission of proper pricing signals between producers and consumers, as well as the Commission's non-discrimination policies. The North Slope Producers point to the second sentence of section 157.36, which states:

> "In considering a proposed voluntary expansion of an Alaska natural gas pipeline project, the Commission will consider the extent to which the expansion will be utilized by shippers other than those who are the initial shippers on the project, and in order to promote competition and open access on the project, *may require design changes to ensure that all who are willing to sign long-term firm transportation contracts to some portion of the expansion capacity be allocated to new shippers or shippers seeking to transport natural gas from areas other than Prudhoe Bay and Point Thomson.*" (Emphasis added).

The North Slope Producers assert that if this "indecipherable" language is intended to set aside capacity for new

[3] Under Rule 213 of the Commission's Rules of Practice and Procedure, answers to rehearing requests are not permitted. However, the Commission has discretion to waive this rule when it finds that the answers will help provide a complete record in the proceeding or allow a better understanding of the issues. This proceeding involves the establishment of open season rules for capacity on an Alaska natural gas transportation project, and is critical to the development of Alaska's vast natural gas resources to meet anticipated national demand for natural gas, thereby enhancing national security. The Commission finds that the answers will provide necessary information to provide a full and complete record, which will assist the Commission in addressing the issues on rehearing pertaining to the complex and unique circumstances surrounding the development of an Alaska natural gas transportation project. Therefore, Anadarko's and the State of Alaska's answers to the rehearing requests are accepted. *See* 18 CFR 385.213 (2004).

[4] "Necessity" in section 157.37 is revised to read "necessary."

[5] Section 7(a) of the NGA provides "[t]hat the Commission shall have no authority to compel the enlargement of transportation facilities * * *" 15 U.S.C. 717f(a).

[6] 18 CFR 284.7(f).

[7] The North Slope Producers cite *Panhandle Eastern Pipe Line Co.*, 204 F.2d 675 (3rd Cir. 1953) in which the court stated that "[i]n light of section 7(a) we are compelled to conclude that Congress meant to leave the question whether to employ additional capital in the enlargement of its pipeline facilities to the unfettered judgment of the stockholders and directors of each natural gas company involved." 204 F.2d at 680.

shippers or shippers of gas from areas other than Prudhoe Bay and Point Thomson, then the Commission is favoring one shipper's bid over another bid that otherwise meets all of the bid criteria. The North Slope Producers assert that ANGPA's section 103(e)(2)(C) requirement that open season regulations for voluntary expansions are to "provide an opportunity for the transportation of gas other than Prudhoe Bay and Point Thomson gas" does not support section 157.36's apparent set-aside or preference. The North Slope Producers state that not only is such a preference inconsistent with the Commission's open access policies, it is patently discriminatory and anti-competitive and unlawful under the NGA. The North Slope Producers contend that allocating pipeline capacity in an open season to customers who value it most, *i.e.*, through the use of the Commission-favored net present value capacity allocation methodology, ensures pipelines and shippers that capacity will be allocated in a non-discriminatory and economically efficient manner. The North Slope Producers also assert that development of multi-owner fields could be delayed or hampered if one group of shipper/owners had a competitive advantage over another shipper/owner group due to a capacity allocation advantage or preference.

20. Finally, the North Slope Producers maintain that sections 157.36 and 157.37 are contrary to the Commission's reliance on market forces, on which its existing policies are based. Specifically, the North Slope Producers claim that Order No. 2005 fails to reconcile Subparts 157.36 and 157.37 with current Commission policies in favor of "facilitate[ing] the unimpeded operation of market forces to stimulate the production of natural gas,"[8] and against the subsidization of new services by existing shippers. The North Slope Producers state that it would be unreasonable to expect that the pipeline sponsors would simply assume the financial risk for significant amounts of uncontracted capacity on such an enormous project, yet Order No. 2005 fails to address cost recovery issues associated with any mandated design changes that might be ordered.

21. ChevronTexaco claims that the regulations promulgated in Order No. 2005 apply to open seasons for initial or voluntary expansion capacity; therefore, the idea of post-open season Commission-mandated design changes is inconsistent with and outside the scope of this rulemaking. Moreover, ChevronTexaco asserts that the design change provisions of sections 157.36 and 157.37 should be deleted from the open season regulations because the subject was not included in the Notice of Proposed Rulemaking. ChevronTexaco states that absent removing sections 157.36 and 157.37 from the open season regulations, the Commission should provide that it would not require project design changes if doing so would negatively impact the rates, terms or conditions of service for initial shippers or otherwise adversely affect pipeline operations of efficiency.

22. In its response to the rehearing requests, Anadarko argues that ANGPA and the NGA provide the Commission with ample authority to require changes in the design of an initial or expanded Alaska natural gas transportation project necessary to meet the statutory objectives of promoting competition and provide a reasonable opportunity for access to all shippers who have made conforming bids during the open season. Anadarko states that clearly there is interplay between the NGA and ANGPA. Specifically, states Anadarko, section 7(e) of the NGA provides that a "certificate shall be issued * * * if it is found that proposed service, sale, operation, construction * * * to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity." Anadarko states that the Commission considers many factors in making this public convenience and necessity finding, and, in the case of an Alaska natural gas transportation project, should consider the requirements of ANGPA.

23. Anadarko asserts that the Commission often imposes conditions to its certificates requiring routing or design modifications in order to support a finding that a particular project is in the public convenience and necessity. In any event, sections 157.36 and 157.37 do not mandate an expansion, according to Anadarko, because the applicant may choose not to accept a certificate that requires that the project be redesigned. Anadarko states that the regulations merely put the applicant on notice that its proposed project design might be rejected as failing to meet the objectives of ANGPA, and consequently, not being required by the public convenience and necessity.

24. In response to the North Slope Producers' charge that section 157.36 provides for discriminatory reallocation of capacity contrary to existing Commission policy, Anadarko contends that the Commission is merely following the mandate of ANGPA section 103(e)(2)(C). Anadarko states that under section 103(e)(2)(C), the Commission's regulations must ensure that any open season for expansion capacity provides the opportunity for the transportation of natural gas other than from Prudhoe Bay/Point Thomson, and section 157.36 seeks to do just that.

25. Anadarko also disputes the North Slope Producers' claim that parties were not adequately notified in the NOPR that pipeline design would be a subject of the rulemaking. Anadarko maintains that the regulations contained in sections 157.36 and 157.37 reasonably respond to many concerns expressed throughout the rulemaking process.[9] Anadarko contends that under the Administrative Procedure Act (APA), the Commission was required in this informal rulemaking proceeding to provide either the terms or substance of the proposed rule or a description of the subjects and issues involved.[10] Moreover, Anadarko points out that the courts have held that "even if the final rule deviates from the proposed rule,'[s]o long as the final rule promulgated by the agency is a "logical outgrowth" of the proposed rule" the purposes of the notice and comment have been adequately served."[11] Anadarko states that Order No. 2005's pipeline design provisions were a "logical outgrowth" of the NOPR and the issues discussed therein, *e.g.*, the major goals of ANGPA, concerns over potential discrimination, producer/sponsor preferences, the role of pre-subscriptions, and tensions between ANGPA's goals and the application of existing policies to an Alaska project.

26. Lastly, Anadarko contends that the Commission provided ample support for not following current Commission policies that favor reliance on market forces. Anadarko states that the rulemaking record in Order No. 2005 thoroughly discusses the conditions and circumstances in Alaska that are much different than those found in the lower 48 states, requiring the appropriate regulatory action taken in sections 157.36 and 157.37. In conclusion, Anadarko disagrees that 157.36 is "indecipherable" as claimed by the North Slope Producers.

27. The Alaska Legislators maintain that sections 157.36 and 157.37 are well within the Commission's broad power

[8] Order No. 636, FERC Stats. and Regs. ¶ 30,939 at 30,393 (1992), *quoting* S.Rep. No. 30 9, 101st Cong., 1st Sess. at p. 2 (1989).

[9] Anadarko identifies comments addressing pipeline size both at the technical conference and written. *See* Anadarko's March 29, 2005 response at 15–16.

[10] *See* 5 U.S.C.A. 553(b)(3).

[11] *Appalachian Power Co.* v. *EPA*, 135 F.3d 791, 804 n.22 (DC Cir. 1998).

to attach to certificates any conditions that may be found to be required by the public convenience and necessity. They claim that the "forced expansion" argument fails to acknowledge that ANGPA has injected into the public convenience and necessity standard of the NGA a new statutory standard, *i.e.*, the promotion of competition in the exploration, development and production of Alaska natural gas with respect to Alaska natural gas transportation projects. Moreover, the Alaska legislators contend that the Commission's pipeline design concerns are required not only by the mandate of ANGPA, but also by the economic realities in Alaska, where virtually all of the proven reserves are held by the North Slope Producers. The Alaska legislators state that the Commission is simply announcing in sections 157.36 and 157.37 that it may condition the approval of the certificate upon the applicant's making necessary design changes required to satisfy the public convenience and necessity standard, including the "promote competition" standard, which is uniquely applicable to an Alaska natural gas transportation project.

28. Addressing the North Slope Producers' claim that section 157.36 provides for an unduly discriminatory set aside of capacity for non-North Slope shippers, the Alaska legislators agree with Anadarko that ANGPA mandates that in the case of an expansion of an Alaska natural gas transportation project, the Commission must provide an opportunity for the transportation of natural gas other than from Prudhoe Bay and Point Thomson units in its open season rules. Alaska legislators state that section 157.36 is consistent with that mandate.

29. The Alaska legislators also defend the Commission's "proactive" approach through which it fashioned the open season rules in recognition of the recognized differences between competitive forces in the lower 48 states and the lack of competition in Alaska. Given these differences, the Alaska legislators maintain that the Commission was right to depart from existing Commission policy. They assert that the fact that Congress required the Commission to promulgate the Alaska open season rules in place of the Commission's long-standing policy of evaluating open seasons on a case-by-case, after-the-fact basis, is an illustration of the need for a different approach based on the unique circumstances surrounding an Alaska pipeline. The Alaska Legislators conclude that, unlike the situation in the lower 48 states, there is no existing or foreseeable competitive environment in Alaska, where the North Slope Produces not only control all the known gas reserves, but also may become the sponsors of the Alaska pipeline. Therefore, the Commission was right to not rely on market forces in Alaska to ensure the development, routing, sizing and timing of an Alaska pipeline.

30. Finally, the state of Alaska suggests that section 157.36 be expanded to better reflect its intent. According to the State of Alaska, section 157.36 should read:

> In considering a proposed voluntary expansion of an Alaska natural gas transportation project, the Commission will consider the extent to which the expansion will be utilized by shippers other than those who are the initial shippers on the project and, in order to promote competition and open access to the project, may require design changes to ensure that new shippers willing to sign long-term firm transportation contracts or shippers seeking to transport natural gas from areas other than Prudhoe Bay or Point Thomson who are willing to sign long-term contracts can have access to some portion of the expansion capacity.

C. Commission Response

31. The North Slope Producers' assertion that the Commission has no authority under the NGA to require changes in the design of a proposed Alaska natural gas transportation project in connection with an application for authorization either to construct the project, or to expand the project is inconsistent with law and precedent. At the outset, we reject the notion that any design change that might be required under either section 157.36 or 157.37 would constitute a mandatory expansion of the project. First, in every case in which the section 7(a) limitation has been addressed, the facilities involved were existing facilities subject to existing certificate authorization. The reasoning behind this limitation is clear. Once a natural gas company accepts a certificate and in reliance thereof expends resources to construct the facilities authorized therein, the pipeline and its customers should have the right to rely on the authorizations contained in that certificate. It is quite another thing where the Commission tells a certificate applicant that unless it agrees to certain changes (including cost allocations and the design of initial service rates), its proposal will not be found to be in the public convenience and necessity. In such case, if the applicant does not want to change its proposed project design, it is not required to accept the certificate. Furthermore, because design changes under either 157.36 or 157.37 would not constitute a mandatory project expansion, the statutory requirements of ANGPA section 105 have no application.

32. In considering an application for a certificate of public convenience and necessity under section 7 of the NGA, the Commission has the authority to consider all factors bearing on the public interest,[12] and in particular, the Commission "certainly has the right to consider a congressional expression of fundamental national policy as bearing upon the question whether a particular certificate is required by the public convenience and necessity."[13] In the case of an Alaska natural gas transportation project, these factors would properly include the requirements of ANGPA, including the statutory objectives of promoting competition and provide a reasonable opportunity for access to all shippers who have made conforming bids during the open season.

33. The Commission has authority under NGA section 7(e) to attach to a certificate of public convenience and necessity any conditions it deems necessary to meet the public interest.[14] The Commission has exercised this conditioning authority to require routing or design modifications in order to support a finding that a particular project is in the public convenience and necessity.[15] Sections 157.36 and 157.37 merely codify our existing authority and practice.

34. The North Slope Producers' claim that sections 157.36 and 157.37 are predicated on the Commission's erroneous assumption "that a pipeline can, in all circumstances, be efficiently designed to accommodate all qualifying bids." This is inaccurate. We noted in Order No. 2005 that both the North Slope Producers and Enbridge maintained that an Alaska pipeline could be designed and built with sufficient capacity to accommodate the needs of every qualified shipper.[16] Our expectation is that an Alaska natural gas transportation project will be designed and built, to the extent possible, to

[12] *See, e.g., FPC* v. *Transcontinental Gas Pipe Line Corporation*, 365 U.S. 1, 81 S.Ct. 435 (1961); *Office of Consumers' Counsel* v. *FERC*, 655 F.2d 1132, 210 U.S. App. D.C. 315 (1980).

[13] *City of Pittsburgh* v. *FPC*, 237 F.2d 741 at 754 (D.C. Cir. 1965).

[14] *See, e.g., FPC* v. *Hunt*, 376 U.S. 515, 525–527, 84 S.Ct. 861 (1964); *Atlantic Refining Co.* v. *Public Service Commission of New York*, 360 U.S. 378 (1959).

[15] *See, e.g., Vector Pipeline, L.P.*, 87 FERC ¶ 61,225 at 61,892–893 (1999); *Maritimes & Northeast Pipelines, L.L.C.*, 80 FERC ¶ 61,345 (1997); *NE Hub Partners, L.P.*, 83 FERC ¶ 61,043 (1998); *see also, Transcontinental Gas Pipe Line Corp* v. *FERC*, 589 F.2d 186 (5th Cir.), cert. denied, 445 U.S. 915 (1979).

[16] *See, e.g.*, Order No. 2005 at P 29, 37, and 88.

accommodate all qualified shippers who are ready to sign firm transportation agreements. Nonetheless, in Order No. 2005 we certainly did not rule out the possibility that a project, with or without pre-subscription agreements, might be oversubscribed.[17] On this note, we should emphasize that in our review of any application for initial Alaska project or any expansion thereof, our consideration of the project design will be driven by our need to find that the proposal is in the public convenience and necessity. Any conditions we impose must be required by the public interest, and be based on substantial evidence.

35. The North Slope Producers' claim that section 157.36 provides for an unduly discriminatory set-aside of capacity for non-North Slope shippers discounts, if not ignores, the Congressional mandate of ANGPA section 103(e)(2)(C) that requires our open season regulations to ensure that any open season for expansion capacity provides the opportunity for the transportation of natural gas other than from Prudhoe Bay/Point Thomson. Section 157.36 does so in a reasonable manner. In any event, our regulations do not require that an expansion proposal must, regardless of economic and technical considerations, provide transportation of gas other than Prudhoe Bay/Point Thomson volumes. The regulations simply require that an opportunity for such transportation be provided.

36. As pointed out elsewhere in this order, and throughout Order No. 2005, a number of existing Commission policies predicated on competitive conditions in the lower 48 states are ill-suited for application in the case of an Alaska natural gas transportation project, particularly in view of ANGPA's directives. As we stated in Order No. 2005, a successful Alaska natural gas transportation project will have to overcome a variety of significant obstacles, including unique and complex competitive conditions. Those competitive conditions, we said, are intensified by the generally agreed-upon fact that there will be only one such Alaska pipeline for the foreseeable future.[18] Against that backdrop, we affirm the conclusions of Order No. 2005, which serve as the underpinnings of the Final Rule's regulations, including the need in certain instances to accommodate existing Commission policy to the unique circumstances surrounding the exploration, production, development, and transportation to market of Alaska natural gas.

37. Finally, while due process and the APA impose an obligation on agencies to provide adequate notice of issues to be considered,[19] that obligation is satisfied in this informal rulemaking by providing either the terms or substance of the proposed rule or a description of the subjects and issues involved.[20] Order No. 2005's pipeline design provisions were a logical outgrowth of the NOPR and the issues discussed therein, *e.g.*, major goals of ANGPA, concerns over potential discrimination, producer/sponsor preferences, potential role of pre-subscriptions, tensions between ANGPA's goals, and application of existing policies to the circumstances of an Alaska project. Indeed, the critical importance of properly sizing the pipeline was a recurring theme throughout this proceeding, and was raised by several parties at the technical conference, and in later comments and reply comments.[21] Thus, Order No. 2005 does not unduly change the scope of this proceeding. In any event, the parties' ability to seek rehearing resolves any due process issues.

38. Although the North Slope Producers describe section 157.36 to be "indecipherable," their comments demonstrate that they understand its intent. Section 157.36 is intended to provide that the Commission may require design changes necessary to ensure that some portion of a proposed voluntary expansion will be allocated to new shippers or shippers seeking to transport gas from areas other than Prudhoe Bay or Point Thomson, provided such shippers are willing to sign qualifying long-term firm transportation agreements. To ensure clarity, we will revise section 157.36 to read as follows:

"In considering a proposed voluntary expansion of an Alaska natural gas transportation project, the Commission will consider the extent to which the expansion will be utilized by shippers other than those who are the initial shippers on the project and, in order to promote competition and open access to the project, may require design changes to ensure that some portion of the expansion capacity will be allocated to new shippers willing to sign qualifying long-term firm transportation contracts, including shippers seeking to transport natural gas from areas other than Prudhoe Bay or Point Thomson."

*II. Presumption of Rolled-in Rates for Expansions*

A. Final Rule—§ 157.39

39. Section 157.39 states that "[t]here shall be a rebuttable presumption that rates for any expansion of an Alaska natural gas transportation project shall be determined on a rolled-in basis." The Commission stated in Order No. 2005 that by providing for this presumption, the Commission is advising potential shippers, in advance of any initial Alaska natural gas transportation project open season, of its intention to harmonize the objective of rate predictability for initial shippers with the objective of reducing barriers to future exploration and production in designing rates for future expansions of any Alaska natural gas transportation project. The Commission concluded in Order No. 2005 that section 157.39 is consistent with "our guiding principle that competition favors all of the Commission's customers, as well as with the objectives of the Act, to adopt rolled-in rate treatment up to the point that would cause there to be a subsidy of expansion shippers by initial shippers, if any subsidy were to be found."

B. Rehearing/Clarification Requests

40. The North Slope Producers, Enbridge, and ChevronTexaco assert that the presumption in favor of rolled-in rates for voluntary expansions established in section 157.39 creates uncertainty for shippers and project sponsors, and, therefore, section 157.39 should be eliminated from the regulations or substantially revised. The North Slope Producers and Enbridge claim that prospective initial shippers, fearing that in the future their rates may be increased to subsidize the cost of expansion facilities, will be less willing to make the long-term commitments necessary to support an Alaska project. This uncertainty, they predict, will discourage rather than advance the development of an Alaska pipeline or any voluntary expansion thereof—a result clearly inconsistent with ANGPA's primary goal. Moreover, the North Slope Producers and Enbridge suggest that mandatory expansions pursuant to ANGPA section 105 will become more attractive than voluntary expansions because of the explicit rate protection for existing shippers in section 105.

[17] *See id.* at P 37; *see also* § 157.34(c)(15).

[18] The North Slope Producers, in their rehearing request, claim that it is too early to conclude that only one Alaska pipeline will ever be built. We find nothing in the record to support a contrary conclusion.

[19] *Public Service Commission of the Commonwealth of Kentucky* v. *FERC*, 397 F.3d 1004 (DC Cir. 2005), *citing Williston Basin Interstate Pipeline Co.* v. *FERC*, 165 F.3d 54 (DC Cir. 1999); *see* 5 U.S.C. 554(b)(3).

[20] See 5 U.S.C. 553(b)(3).

[21] See n. 8, *supra*.

41. The North Slope Producers contend that section 157.39 is unjustifiably inconsistent with the Commission's current policy regarding rate treatment of expansions, which is to discourage uneconomic expansions and assure that expansions will not be subsidized by existing shippers. They assert that even if, as claimed by the Commission, only one pipeline will be built in Alaska, that distinction does not justify deviating from the Commission's current policy.

42. The North Slope Producers charge that the Commission acted arbitrarily and capriciously in relying on ANGPA section 103(e) to justify its conclusion to provide for a presumption of rolled-in rates for expansions. Although the North Slope Producers concede that the Commission clearly has the authority under ANGPA and the NGA to approve rates for Alaska natural gas transportation projects, they claim that ANGPA section 103(e) has nothing to do with rate regulation. Furthermore, state the North Slope Producers, even if section 103 could be read to give the Commission authority to include rate regulations in its open season rules, the proper course would be to remove section 157.39 from the open season rules and instead address rate policy issues only after the parties have the opportunity of developing a complete factual record. Failing this, the North Slope Producers state that the Commission should revise section 157.39 to provide that the Commission's current rate policies will apply to Alaska projects.

43. Enbridge also argues that the Commission acted arbitrarily and capriciously by imposing a rebuttable rolled-in presumption, even where rolled-in pricing would increase existing shippers' rates. According to Enbridge, Order No. 2005 identifies two considerations, namely the Commission's disfavor of existing shippers subsidizing the rates of new shippers, and the Commission's reluctance to authorize an expansion rate that would have an unduly negative impact on the exploration and development of Alaska reserves. Enbridge contends that the presumption should be "scaled back" to apply only to cases where expansion rates are no higher than pre-existing rates. Enbridge points to the Commission's acknowledgement in Order No. 2005 that it "cannot at this point, without a specific project proposal or the facts surrounding a proposed expansion before us, define exactly what will be required to overcome the presumption." Enbridge contends that the Commission's inability to explain how the presumption can be rebutted renders rolled-in pricing mandatory, leaving the question of whether a rolled-in expansion rate that is higher than original rates is a subsidy to be resolved in a future NGA section 7 filing.

44. ChevronTexaco stresses that because the text of Order No. 2005 recognizes that "without a specific project proposal or the facts surrounding a proposed expansion" the Commission cannot determine what is needed to overcome the presumption favoring rolled-in rates, the Commission should defer any determination of rate treatment for expansions until a record can be developed after a specific proposal is made. According to ChevronTexaco, this inability to articulate when the presumption will be applied creates uncertainty that inhibits the development of any Alaska project.

45. ChevronTexaco states that inconsistency between the text of order and the text of the regulations creates further uncertainty. ChevronTexaco states that while the regulations state that the presumption applies to "any expansion," Order No. 2005's text, at paragraphs 124 and 125, suggests that rolled-in rates are appropriate only if there is no increase in rates for existing shippers. ChevronTexaco urges the Commission to clarify section 157.39 to state that no cross-subsidy is intended. Otherwise, the Commission should consider issuing, in lieu of a regulation, a policy statement which outlines the general direction that the Commission intends to take.

46. The Alaska Legislators and Anadarko contend that rolled-in pricing is essential and justified. Anadarko asserts that the Commission clearly has the statutory authority to establish a presumption of rolled-in pricing for future expansions in the open season regulations. Both Anadarko and the Alaska Legislators contend that the significant differences identified in the record between an Alaskan pipeline project and a pipeline in the lower 48 states provide ample justification for departing from the current pricing policy. The Alaska Legislators contend that even if there were some factual reason for applying the current policy, that policy cannot be reconciled with the policy considerations stated in ANGPA. Both Anadarko and the Alaska Legislators state that incremental pricing of expansions cannot be reconciled with ANGPA's goals of promoting competition in the exploration, development, and production of Alaska natural gas, and providing for the transportation of natural gas other than from the Prudhoe Bay and Point Thomson units in any expansions of the Alaska pipeline facilities. The Alaska Legislators estimate that expanding a pipeline, through looping, to a capacity of 7 billion cubic feet (Bcf), would result in an expansion rate 50 percent higher than existing rates if incrementally priced. Anadarko predicts that incremental pricing of expansions of an Alaskan pipeline beyond 6 Bcf would cause the pipeline to be capped at 6 Bcf.

C. Commission Response

47. ANGPA section 103(i) gives the Commission broad authority to establish "such regulations as are necessary" for the conduct of open seasons. In this regard, the Commission believes that it is appropriate to establish rate criteria that will assist potential shippers to make informed open season bids, and will promote competition, as required by ANGPA. As discussed in detail in Order No. 2005, these criteria include projected rates for in-state deliveries of gas, as well as a presumption for rolled-in rate treatment for future pipeline expansions.

48. In adopting the presumption for rolled-in rate treatment, the Commission balanced rate predictability for initial shippers with the objective of reducing barriers to future exploration, development and production of Alaska natural gas. The Commission was concerned that the prospect of high incremental transportation rates might increase risks to Alaskan producers and serve as a disincentive to future exploration and development of potentially valuable natural gas resources. On the other hand, the Commission does not wish to discourage voluntary capacity expansions.

49. The rolled-in rate presumption was not an abandonment of our current policy of not favoring rate subsidization by existing customers of capacity expansions as suggested in the requests for rehearing. The Commission did, however, suggest that because of the likelihood of a single Alaskan pipeline project, it would consider alternatives to our current policy on how to define or quantify subsidization by current customers. Current policy primarily considers whether the expansion project will result in a rate higher than the existing transportation rate for existing customers. An alternative consideration or definition of subsidization could be whether the expansion rate is no higher than the actual initial rate or of an initial rate without built-in subsidies. The Commission believed and continues to believe that the appropriate place to review this issue is in the context of a future NGA section 7 filing.

In such a proceeding, if the pipeline owners can show that the initial pipeline was sized appropriately, *i.e.*, it was uneconomic or inefficient to build a larger capacity pipeline, the Commission would consider this in overcoming the rolled-in rate presumption.

50. The text of Order No. 2005 referred to by ChevronTexaco does not simply state that rolled-in rates are appropriate only if there is no increase in rates for existing shippers; it suggests that a rolled-in expansion rate that is higher than the original rate is not necessarily a subsidy. As noted above, we will determine whether a particular rate amounts to a subsidy when the issue is presented to us.

51. Nothing in the requests for rehearing causes us to question our conclusion that a rebuttal presumption of rolled-in treatment for the expansion of an Alaska Project is a reasonable approach to the difficult issues we, and prospective pipeline proponents and shippers, may face on the future. We think that the signal we are sending is a positive one that will help spur natural gas exploration and development in Alaska. At the same time, we have not prejudged how we will resolve future proceedings, and all parties will have the opportunity to convince us of appropriate rate treatment if and when expansion proposals for an Alaska project are developed. We therefore will not change the rule on this matter.

*III. Late Bids*

A. The Final Rule—§ 157.34(d)(2)

52. Order No. 2005 added a new provision in the Final Rule, section 157.34(d)(2), that a project sponsor must consider any bids tendered after the expiration of the open season by qualified bidders, and may reject them only if they cannot be accommodated due to economic, engineering, or operational constraints, in which case the project sponsor must provide a detailed explanation for the rejection. The Commission explained that this requirement is designed to allow reasonable access to those shippers who may not be ready to participate during the established open season period, and at the same time provide the sponsor with flexibility in the timing of its open season.

B. Rehearing/Clarification Requests

53. The North Slope Producers and Enbridge contend that it is important for the timely development of any project that the project sponsors be able to rely on an open season that has a definite term. They state that the open season results are needed to permit the project sponsor to gauge demand and in turn finalize pipeline design. They assert that the late bid provisions of section 157.34(d)(2) will result in unreasonable risks and costs to the project sponsor by creating a never-ending, open-ended open season in which the project sponsor will be required, for each and every late bid received, to divert resources and incur additional costs to evaluate whether bid can be accommodated. In addition, they state that there is tremendous potential for delay at each step of the development of the project, if the project sponsor must stop and make design changes at every stage to accommodate a late bid. Thus, they state, section 157.34(d)(2) would frustrate the Commission's stated goal of adopting open season regulations that ensure sufficient economic certainty to support the construction of a pipeline.

54. The North Slope Producers add that financing cannot be secured until pipeline design and development costs are known and precedent agreements are in place. Consequently, they claim, the prospect of having to make changes to key project components to accommodate late bids jeopardizes the project sponsor's ability to obtain financing in a timely manner.

55. Both Enbridge and the North Slope Producers also state that section 157.34(d)(2) fails to provide a clear standard under which the project sponsor must evaluate late bids. This failure, they claim, presents another risk of uncertainty and delay. Enbridge argues that, even if it is necessary to significantly re-design a project in order to satisfy a late bid, the regulation would require that such a bid be accepted if the re-designed project remains feasible from an "economic, engineering or operational" perspective.

56. The North Slope Producers state that another effect of the late bid provision is that potential shippers will be discouraged from participating in an open season if they can submit a late bid. They worry that this would diminish the open season's ability to accurately demonstrate the demand for pipeline capacity. Enbridge also claims that, absent a good faith requirement in connection with submitting late bids, section 157.34(d)(2) permits such gamesmanship. Enbridge states that at a minimum, section 157.34(d)(2) should put "the burden on the bidder to demonstrate compelling circumstances that prevented participation in open season, and that the bid can be accommodated without changing system design, requiring capacity to be allocated away from other shippers, or otherwise adversely impacting the project's development and timing." In this regard, the State of Alaska maintains the Commission should include language in section 157.34(d)(2) that requires late bidders to provide adequate justification for their late bids.

57. Additionally, the North Slope Producers assert that, to the extent a project sponsor would be required to expand the project to accommodate late bids, the Commission is in effect ordering an expansion of the pipeline. In such a case, section 157.34(d)(2) raises the same issues regarding forced expansions as are raised by sections 157.36 and 157.37. The North Slope Producers contend that whereas the Commission may require an expansion under section 105, that section places the burden on the party seeking such expansion to establish that specific conditions are met, section 157.34(d)(2) appears to place the burden on the pipeline to justify why it cannot expand the project to accommodate a late bid.

58. Enbridge states that in any event there is little or no reason for section 157.34(d)(2) "given the other measures instituted by Order No. 2005 to protect the interests of late developing shippers." Specifically, Enbridge refers to the unprecedented level of information required in the open season notice on which bidders will be able to base their long-term capacity decisions, Order No. 2005's emphasis on requiring that the project's design demonstrate a capability for low-cost expansion, and, finally, the mandatory expansion provisions of ANGPA 105. Enbridge contends that to the extent late bids can be accommodated without adversely impacting the project's development, it is in the project sponsor's economic interests to do so.

59. ChevronTexaco requests that the Commission clarify that project sponsors will be required to consider late bids only if there is excess capacity after capacity is allocated to those open who bid in the open season. ChevronTexaco states that one of the major purposes of the open season is provide a level playing field for all participants, thereby eliminating the advantages of possessing superior or advance information. ChevronTexaco cannot understand the Commission's reasoning in giving special consideration to one specific parameter of a conforming bid, namely, the timing of the bid. According to ChevronTexaco, late bidders should not be allowed to put new burdens on the project or to adversely affect timely open season bidders.

60. Anadarko states that section 157.34(d)(2) is a reasonable compromise

balancing concerns that the open season could be held prematurely with a project sponsor's desire to control open season timing. Anadarko also states that it is possible to accommodate all qualified bidders up to the time the pipeline design is finalized.

C. Commission Response

61. Under the Commission's open access policy and rules, all operating interstate pipelines have an obligation to receive and respond to new requests for service, even if no capacity is available. All operating pipelines have provisions in their FERC tariffs governing the procedures that the pipeline will use in evaluating requests for service. Absent an expansion,[22] capacity could still be made available to a prospective shipper via capacity release or the capacity turnback provisions of an interstate pipeline's FERC tariff. During the several years between the time that the open season ends and an Alaskan pipeline goes into service, there will be no tariff with provisions like those described above in effect for that pipeline. Without the late bidder provisions of section 157.34(d), late-developing prospective shippers would have no formal way of seeking capacity on the pipeline after the open season ends. As revised herein, the Commission believes that the late bidder provision is a fair and necessary addition to the open season process for an Alaska natural gas transportation project.

62. The project sponsor's obligation under section 157.34(d)(2) is not "unbounded" or "open-ended," as North Slope Producers contend. We added this requirement in recognition of the possibility that an appreciable amount of time might pass between the close of the open season and the project sponsor's finalizing the details of the proposed pipeline design and associated development costs, given the size and scope of an Alaska natural gas pipeline project. During that time, it is possible that producers of Alaska natural gas who were not in a position to commit to long-term capacity commitments during the open season, might then be in a position to request capacity consistent with the open season notice (except, of course, that the bid is tendered out of time). We felt it proper to require the project sponsor to consider such a request. At the same time, we appreciated that at some point in time, either before or after the proposed pipeline design is finalized, the project sponsor might not be able to accommodate reasonably a late request. For that reason, we provided that late requests could be rejected on the basis of "economic, engineering or operational constraints." This is far from an unbounded, open-ended obligation. Indeed, as noted above, Enbridge points out that to the extent that late bids can be accommodated without adversely impacting the project's development, it is in the project sponsor's economic interest to do so. We see no harm in requiring that result.

63. We will however, revise the requirements of section 157.34(d)(2) in response to the complaints that the "economic, engineering or operational constraints" standard for rejecting late bids is too vague. Specifically, we are clarifying the criteria for rejecting late bids in section 157.34(d)(2) to be "economic, engineering, design, capacity or operational constraints, or accommodating the request would otherwise adversely impact the timely development of the project."[23] Additionally, we are adding a provision to the section which will enable the project sponsor, at the appropriate time in the development of its project and subject to Commission approval, to determine, based on the above criteria, that no further bids can be accepted. We will also revise section 157.34(d)(2) to provide that any bid tendered after the expiration of an open season must contain a good faith showing, including a statement of the circumstances which prevented the bidder from tendering a timely bid, and how those circumstances have changed. This requirement is consistent with the underlying premise of section 157.34(d)(2) in the Final Rule, and should serve to protect against "gamesmanship." With these revisions and clarifications, we believe that the late bid provision will permit late-developing shippers to obtain capacity after the expiration of the open season, while also providing the prospective applicant the assurance that it will be able to design and develop its project according to its own schedule.

*IV. Mandatory Pre-Approval*

A. The Final Rule—§ 157.38

64. Section 157.38 requires that, at least 90 days prior to providing its notice of open season, an applicant must file, for Commission approval, a detailed plan for conducting the open season in conformance with the regulations. The Commission will establish a date by which comments on the request for approval are due, and the Commission, unless it directs otherwise, will act on the request within 60 days of its filing. The Commission concluded in Order No. 2005 that this requirement would allow for the resolution of disputes or dissatisfaction with an open season at the earliest possible time, thereby reducing the risk of having to require a second remedial open season because the first one did not conform to the regulations.

B. Rehearing/Clarification Requests

65. The North Slope Producers and Enbridge urge the Commission to eliminate the mandatory pre-review process set out in section 157.38, calculating that with the addition of this mandatory review, the open season process will take at least 210 days, instead of the 120-day open season period proposed in the NOPR and established in section 157.34. They state that this additional 90 days does not include further delays that could result from disputes arising during the pre-review process, including the need to consider requests for rehearing of any orders pre-approving an open season or the Commission's inability to adhere to its 90-day window. The result, they claim, is that the open season process will be delayed, not expedited. Enbridge states that the 210-day period is longer than the 180-day open season period which the Commission rejected as inconsistent with Congress' sense of urgency, as well as the Commission's conclusion in Order No. 2005 that "timing is of the essence."

66. The North Slope Producers maintain that the Commission's justification for this requirement is that a successful open season is more likely to occur if issues are identified and resolved at the earliest time. The North Slope Producers disagree, claiming that, instead of reducing the chance of post-bid disputes, this layer of review will provide those who would gain commercial leverage by delaying the open season process "with an additional bite at the apple, first by objecting to the bid package, then by objecting to the results of the open season."

67. Both the North Slope Producers and Enbridge contend that the

[22] Interstate pipelines, other than an Alaska pipeline, cannot be required to expand their systems, but pipelines are required to respond to those who request service, even when none is available.

[23] We are retaining the requirement that the prospective applicant must provide a detailed explanation for its rejection, at least until such time as it has determined, subject to Commission approval, that no further late bids can be accepted. We find that, based on the prospective applicant's position, it is easier for it to evaluate why a late bid cannot be accepted, than it is for a later bidder to explain why its bid can be accommodated.

mandatory pre-review process is unnecessary and duplicative of other protections provided in Order No. 2005, including the transparency and specificity of the open season information, the 30-day prior notice requirement, the prohibition against undue discrimination or preference in rates, terms or conditions of service, and the imposition of Order No. 2004 standards of conduct. They contend that the effects of any delay of the open season can be profound, due to narrow, seasonal windows for environmental studies and preliminary field work, which cannot take place until the open season has been held. These risks, they claim, far outweigh any utility of a mandatory pre-review. In conclusion, the North Slope Producers contend that any pre-review of the open season notice should be voluntary, shortened, and that the Commission decision on the sufficiency should be deemed a pre-decisional, non-reviewable determination, similar to the Commission's action in rejecting a deficient certificate application under section 157.8 of the Commission's regulations.

68. Anadarko defends the mandatory pre-review requirement as striking an "appropriate balance between granting project sponsors flexibility in designing open seasons and providing regulatory supervision to potential bidders by requiring project sponsors to file and obtain approval of the open season plan." Anadarko and the Alaska Legislators state that pre-approval will reduce any risk of having to hold a second open season to correct one done improperly. Anadarko states that this will, as the Commission believes, promote rather than hinder a timely and successful open season. The Alaska Legislators agree with this assessment, contending that adding 90 days to the front end of the open season process, even with the prospect of a rehearing, is better than having an open season called back by an order on rehearing or on appeal from the results of an open season, and then having to hold another open season. Moreover, they state that once the open season is approved, parties may rely on those terms being controlling throughout the bidding and contracting process.

C. Commission Response

69. The North Slope Producers and Enbridge correctly state that, by virtue of the mandatory pre-approval established in section 157.38, the minimum duration of the whole open season process would be 210 days. However, the concept of a mandatory pre-approval and the attendant additional time that such review will add is not inconsistent with our concern that "time is of the essence" that caused us to reject a 180-day open season period, and instead provide for a 120-day open season.[24] Our focus in establishing this 120-day period was to arrive at a time period such that all prospective bidders reasonably could review the open season information and evaluate whether to make multi-year capacity commitments, thereby leveling the playing field.

70. When discussing the duration of the whole "open season process," we must consider the potential for delays due to disputes arising during the open season. In this regard, we found in Order No. 2005 that pre-approval of open season procedures would "allow issues to be identified and resolved at the earliest possible time and, ideally, reduce the possibility of dissatisfaction with open seasons, as well as the risk that the Commission will have to require that deficient open seasons be conducted again."[25] The North Slope Producers' and Enbridge's disagreement with this assessment is based on arguments that the transparency and specificity of the information required in the open season and other protections provided in the open season rules render pre-approval unnecessary, and that the pre-approval process itself invites delay.

71. We are not as optimistic as the North Slope Producers and Enbridge that there is little likelihood that disputes might arise over the conduct of an open season and its conformance with the open season rules. While the transparency and specificity of the open season rules might lead to a clearer identification of any issues in dispute, they do not change the fact that in any open season there will be a universe of potential bidders with starkly different, competing needs and interests, and the potential for dispute is real. We continue to believe that getting it right the first time is the best approach.

72. Nonetheless, in revisiting the requirement for mandatory pre-approval as a result of these rehearing requests, we find that it is appropriate to make some changes. First, we are revising section 157.38 to make clear that the plan to be filed by a prospective applicant shall include the information required in a notice of open season under section 157.34. Second, we are eliminating the 30-day prior notice requirement in section 157.34(a). Since the public will have actual notice of a prospective applicant proposed open season notice at least 90 days prior to the open season, there is no reason to provide for an additional prior notice period. By this change, we are reducing the 210-day period to 180 days. It also is our conclusion that, given the fact that participants in an open season will have the opportunity to object to the conduct of the open season after a certificate application is filed, as is our current practice, as well as the ability to seek rehearing and obtain appellate review of any Commission certificate orders, orders approving open season procedures will be interlocutory and not subject to rehearing.

*V. In-State Study*

A. The Final Rule—§ 157.34(b)

73. In response to concerns expressed by Alaska entities and in recognition of Congress's mandate that Alaska in-state needs be given due consideration, the Final Rule added in section 157.34(b) a requirement not contained in the proposed regulations that the open season information include an assessment of Alaska's in-state needs and prospective points of delivery within the State of Alaska, based to the extent possible on any available study performed or otherwise approved by an appropriate Alaska governmental entity.

B. Rehearing/Clarification Requests

74. While the North Slope Producers find reasonable a requirement that a study of in-state needs be completed prior to any open season, they object to section 157.34(b)'s requirement that the contents of the open season notice rely on an in-state study, if practicable. They assert that ANGPA does not require a pipeline sponsor's study to "include or consist" of a state-sanctioned study. The North Slope Producers contend that this requirement invites disputes as to whether it is "practicable" to include a state study, or whether "appropriate" state officials were involved. Consequently, the North Slope Producers request that the Commission revise section 157.34(b) to require that a project sponsor consult with the State regarding the study for in-state needs.

75. The Alaska Legislators state that the Commission has avoided the problem of "dueling studies" by deferring the study to the State of Alaska. In this regard, the Alaska legislators advise the Commission that the State of Alaska has undertaken to designate an appropriate agency to conduct or sanction the required study, and the Alaska House of Representatives has passed a resolution urging the

[24] The 120 days consists of the 30-day prior notice period (section 157.34(a)), followed by a 90-day open season (section 157.34(d)(1)).

[25] Order No. 2005 at P 109.

Administration to conduct, approve, or sanction the required study prior to the effective date of the opens season rules.

C. Commission Response

76. Section 157.34(b) does not mandate the use of a particular study but rather is premised on the common-sense notion that information provided by the State of Alaska likely will be valuable to potential shippers. We trust that the State and prospective pipeline applicants can agree on the manner in which such information can be provided. If questions arise as to the extent to which it is possible to include a state study, we will resolve them. Our regulations offer several options that the prospective applicant and the State of Alaska could take to ensure the adequate involvement of the State. Accordingly, we will not revise section 157.34(b).

*VI. In-State Rates*

A. The Final Rule—§ 157.34(c)(8)

77. In addition to the requirement that in-state gas needs be addressed in the open season, the Commission also required, in section 157.34(c)(8), that, based on in-state needs and the delivery points identified in the study, open season information includes a proposed in-state transportation rate, based on the costs of providing that service.

B. Rehearing/Clarification Requests

78. The North Slope Producers ask the Commission to clarify that estimating rates for in-state service does not create a requirement to offer such a service at that rate (or at all) if the open season does not yield firm commitments for in-State deliveries. They assert that the ultimate indicator of any market for in-state service is the willingness of shippers to make firm commitments to purchase capacity for in-state use during the open season, not a study. They also request that the Commission clarify that the estimated in-state service rates are merely illustrative and subject to adjustment.

79. Enbridge requests that the Commission make clear that the "estimated transportation rate" referred to in section 157.34(c)(8) is one based on project sponsor's estimated costs to make in-state deliveries, not upon any rates assumed by the study. Additionally, Enbridge states that the Commission clarify that bids for in-state service should be subjected to the same requirements for creditworthiness, collateral and execution of binding contractual commitments as apply to any other open season bidder.

80. The State of Alaska asks the Commission to clearly state that the in-state rates are to be distance-sensitive in order to ensure that the cost of in-state service is calculated properly.

C. Commission Response

81. During the open season process, qualified bidders must successfully bid upon and arrange to consummate service agreements for transportation service. Projected rates for in-state deliveries must be based on estimates of costs for providing service to the in-state delivery points. While prospective applicants will estimate rates during an open season, the Commission's review of proposed rates will be guided by section 284.10(c)(3) of our regulations, which states in part that "[a]ny rate filed for service * * * must reasonably reflect any material variation in the cost of providing the service due to * * * the distance over which the transportation is provided."

82. All shippers on any new interstate pipeline have a right to pay only the initial rate on file as approved in the NGA section 7 certificate of public convenience and necessity. Those initial rates, approved under section 7 as part of the certificate, would be paid unless changed under section 4 or 5 of the NGA after appropriate regulatory proceedings and upon the Commission's order. However, under the Commission's negotiated rate policy,[26] pipelines and shippers are free to make an agreement to "dispense with cost-of-service regulation" and agree to any mutually agreeable rate. A recourse rate found in the pipeline's tariff would be available for those shippers preferring traditional cost-of-service rates. Thus, if an in-state service is successfully bid upon, filed for and approved, an in-state cost-of-service recourse rate would be set in an Alaskan pipeline's tariff, but in-state shippers would also be free to seek a negotiated in-state rate with an Alaskan pipeline. Negotiated rates can be used to lock in transportation costs and pipeline revenues to the mutual benefit of both the shippers and the pipeline, without the risks of later changes to rates and revenues under the NGA.

83. If there are no successful bids for in-state service, the prospective applicant would nonetheless have to include the in-state service as part of its proposed initial tariff. An opportunity to have in-state service might arise if the pipeline voluntarily accepts a request for it at a later time, or if the Commission acts under section 103(h) of ANGPA and section 5 of the NGA to require the pipeline to make such in-state deliveries. The actual in-state rate for in-state service would be an issue for such future proceedings. Based on the foregoing, we see no need to further clarify the regulations.

*VII. Tying Arrangements*

A. The Final Rule—§§ 157.34(c)(6), 157.34(c)(10), and 157.35(a)

84. The Commission addressed the matter of tying access to pipeline capacity on an Alaska project to ancillary services in two sections of the Final Rule. First, section 157.34(c)(6) requires that the open season notice must contain an unbundled transportation rate. Second, section 157.34 (c)(10) prohibits a prospective applicant from requiring prospective shippers to process or treat their gas at any designated facility. We explained elsewhere in Order No. 2005 "that [we] can address any other discriminatory conduct in connection with gas quality requirements or other ancillary services through the provisions of section 157.35 in conjunction with existing Commission policies and procedures." Relevant to this explanation, section 157.35(a) provides that "[a]ll binding open seasons shall be conducted without undue discrimination or preference in the rates, terms, or conditions of service and all capacity awarded as a result of any open season shall be awarded without undue discrimination or preference of any kind."

B. Rehearing/Clarification Requests

85. The State of Alaska states that the Commission should more explicitly explain the prohibition against tying arrangements, and explain how the open season rules will apply to gas treatment plants. The State believes that the open season rules should do more than require an applicant to use an unbundled transportation rate, prohibit tying of capacity on the pipeline to the use of a designated plant or facility, and merely refer to the existing regulations and policies prohibiting undue discrimination or preference. Rather, Alaska states that the open season rules should make clear that any tying arrangements will be subject to an exacting inquiry by the Commission and will require a compelling justification, and even offers recommended language to this end.

86. Alaska also states that since ANGPA includes gas treatment plants in its definition of an Alaska natural gas

[26] Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, Docket No. RM95–6–000, Regulation of Negotiated Transportation Services of Natural Gas Pipelines, Docket No. RM96–7–000, 74 FERC ¶ 61,076, (Jan. 31, 1996).

transportation project,[27] treatment plants should be subject to the open season regulations. Alaska points out that the effect of the unbundling requirement of section 157.34(c)(6) is to exclude gas treatment plants from the requirements of the open season. As a possible solution, Alaska suggests that the open season rules be clarified to provide that the applicant must separately offer gas treatment plant capacity and pipeline capacity in the open season notice, and give bidders an opportunity to bid on either or both, as they choose. ChevronTexaco contends that because gas treatment plants are jurisdictional facilities,[28] Order No. 2005's approach of deferring consideration of any discriminatory conduct as to necessary such ancillary facilities and services to a later day does not satisfy the requirements of the ANGPA. Chevron Texaco maintains that it is particularly important that access to treatment facilities be subject to the same open season, non-discriminatory requirement as the pipeline because pipeline capacity without access to gas treatment facilities that maybe a part of the pipeline system is meaningless.

C. Commission Response

87. The Commission did not intend to preclude the inclusion of jurisdictional natural gas conditioning facilities from the open season. If, pursuant to ANGPA section 103, a project sponsor intends to file an application under section 7 of the NGA for authorization of a project that includes a jurisdictional natural gas conditioning service, we will review the open season plan and notice to ensure that such service is offered in its open season notice, subject to the same requirements as apply to transportation service. However, the prospective applicant must offer a separate rate for the gas treatment service and separate rate for the transportation service. Furthermore, the prospective applicant can neither require bidders to bid on both services, nor evaluate the bids based on whether bidders requested one or both services. Moreover, while the prospective applicant can require specific natural gas quality specifications such as would be met by using the conditioning services offered, it cannot reject an otherwise qualified bidder that states that it will deliver to the pipeline facilities gas that meets the stated quality specifications.

88. On the other hand, if a prospective applicant is proposing to apply to revise the Alaska Natural Gas Transportation System (ANGTS) application now held in abeyance, then a conditioning service will have to be included as a part of the open season but again, with all services offered priced separately. Specifically, in 1981, President Reagan submitted a Waiver of Law to Congress for the purpose of clearing away certain government-imposed obstacles to the private financing of the ANGTS. The Commission implemented that portion of the Presidential waiver that required the Commission to include within the ANGTS the gas conditioning plant at Prudhoe Bay.[29]

*VIII. Pre-Subscribed Capacity*

A. The Final Rule—§§ 157.33(b) and 157.34(c)(15)

89. Under section 157.33(b), pre-subscription agreements for initial capacity on a proposed Alaska natural gas transportation project are permitted, provided that capacity is offered to all open season prospective bidders at the same rates and on the same terms and conditions as contained in the pre-subscription agreements. In addition, if there is more than one pre-subscription agreement, open season prospective bidders are given the option of selecting the rates, terms and conditions contained in any one of the several agreements. However, section 157.34(c)(15) states that "[i]f capacity is oversubscribed and the prospective applicant does not redesign the project to accommodate all capacity requests, only capacity that has been acquired through pre-subscription shall be subject to allocation on a *pro rata* basis; no capacity acquired through the open season shall be allocated."

B. Rehearing/Clarification Requests

90. The North Slope Producers assert that the provision in section 157.34(c)(15) subjecting only presubscribed capacity to *pro rata* allocation, will dissuade any shippers from signing up for the presubscribed capacity, thereby "wholly negating" the recognized benefits of allowing pre-subscription agreements to facilitate the development of an Alaska natural gas transportation project. They predict that prospective shippers would rather wait for the open season than risk proration. The North Slope Producers maintain that this selective proration unduly discriminates against those shippers who are willing to make early commitments for firm capacity in order to support the project, in violation of the NGA and Commission policy. They add that since section 157.33(b) allows all open season participants to enjoy the same benefits as contained in the pre-subscription agreements, such discrimination is particularly unjustified. The North Slope Producers add that this is another example where the Commission is attempting to compel the project sponsor to make design changes in order to accommodate all bids.

91. The North Slope Producers also state that the final clause of section 157.34(c)(15) is not consistent with the Commission's presumed intent not to foreclose proration among open season bidders where there is no presubscribed capacity. They suggest that the final clause of that provision, which states "no capacity acquired through the open season shall be allocated," should be clarified.

92. In addition to agreeing that proration renders pre-subscription an unattractive option for prospective shippers, Enbridge adds that the additional requirement that the terms and conditions of any pre-subscription agreements be made public prior to the open season notice renders pre-subscription even less desirable because it put anchors shippers at a competitive disadvantage to open season bidders who would have prior knowledge of the pre-subscription bids. At the same time, Enbridge concedes that it would be highly unlikely that project would not be re-designed to accommodate capacity of all qualified bids at the incipient, open season stage.

93. Enbridge raises again the claim that the "numerous and overlapping protections" of Order No. 2005, in particular the level of information provided in open season notice and measures provided to ensure against discrimination, are sufficient to ensure a fair, open and non-discriminatory open season process. Enbridge also states that the Commission should clarify that open season shippers who in the open season elect to select the terms and conditions of a pre-subscription agreement may not "cherry-pick" terms and conditions from several agreements but must accept any one agreement in its entirety.

94. The State of Alaska seeks clarification that, in the case of capacity allocation on an oversubscribed pipeline that cannot reasonably be redesigned, both presubscribed capacity and capacity later acquired on the same rates, terms and conditions will be

[27] ANGPA Section 102(2) defines the term 'Alaska natural gas transportation project' as "any natural gas pipeline system that carries Alaska natural gas to the border between Alaska and Canada (including related facilities subject to the jurisdiction of the Commission) * * *"

[28] *See Venice Gathering Co.*, 97 FERC ¶ 61,045 at 61,255 (2001) (Treatment of gas to enhance its safe and efficient transportation is subject to Commission jurisdiction).

[29] *See Alaskan Northwest Natural Gas Transportation Co.*, 18 FERC ¶ 61,002 (1982).

subject to allocation, for the reason that the final words of section 157.34(c)(15) stating that "no capacity acquired through the open season shall be allocated," suggests otherwise.

95. ChevronTexaco maintains that the Commission failed to consider and provide for the various circumstances that could trigger the pro-rationing of pre-subscribed capacity. ChevronTexaco states that bidders in the open season could outbid pre-subscribing shippers on the basis of any of the qualifying conditions: For instance, an open season bidder might outbid pre-subscribing shippers whose agreements are at less than maximum rates, or whose agreements are of shorter terms. ChevronTexaco is concerned that pre-subscribing shippers might lose their capacity to open season bidders who outbid them because they know the salient terms of the pre-subscription agreements. Therefore, ChevronTexaco submits that the Commission should expand the requirement of pro-rationing by establishing that all bids eligible to be allocated capacity in an open season where pre-subscribing shippers will be prorated should be treated as having equal value to the pre-subscription precedent agreement for purposes of pro-rationing. In this way, later qualifying bidders would be prevented from outbidding pre-subscribing shippers.

96. In response to the claims on rehearing that the capacity allocation provisions of section 157.34(c)(15) are counterproductive because they will deter potential anchor shippers from entering into pre-subscription agreements, Anadarko contends that the Commission's finding that the North Slope Producers' unique position of control over pipeline design amply justifies putting the consequences of any decision not to redesign pipeline to accommodate all bidders on them. Anadarko also questions the importance placed on pre-subscription agreements in connection with an Alaska pipeline project. According to Anadarko, the only justification for a pre-subscription agreement is to facilitate financing and to provide the project sponsor with assurances that it has the commitments to justify development and construction expenses. However, states Anadarko, there is little doubt that any Alaska natural gas transportation project will be fully committed, even without pre-subscription agreements.

97. The Alaska Legislators support the pre-subscription rules of Order No. 2005, claiming that the rules make sense given the unique nature and circumstances of an Alaska natural gas transportation project and the need to balance concerns "that pre-subscription is essential to finance the pipeline with concerns of those who feared that such arrangements would favor affiliates of the pipeline or otherwise undermine the objectives of conducting public open seasons for capacity."

C. Commission Response

98. Although we allowed pre-subscription agreements in the belief that they could have utility in facilitating the development of an Alaska natural gas transportation project, we cannot quantify how beneficial such arrangements are. Our paramount consideration in allowing pre-subscription was that it should not impact in any way the capacity obtained through the open season process. For this reason, we provided that any capacity acquired by reason of agreements entered into prior to the open season would have to yield to capacity bid for in the open season in the case of oversubscription We believe our reasons for this selective proration, as stated in Order No. 2005 and reaffirmed here, are sound.

99. The argument that anchor shippers will be dissuaded from entering into pre-subscription agreements if they risk losing capacity as a result of open season bidding, and that the "recognized benefits" of pre-subscription will be lost, is unpersuasive. The North Slope producers and other potential project sponsors have developed a plethora of information in recent years regarding the viability of an Alaska project. They are fully capable of deciding whether they wish to execute pre-subscription agreements. If they do not, capacity will be allocated in an open season. There has been no showing that an Alaska project cannot be financed, as are many major projects, based on commitments made in an open season. While we have concluded that the public interest permits pre-subscription, under the conditions established by the rule, we do not find that the public interest requires pre-subscription. It does require competition and open-access. We leave it to potential project sponsors and shippers whether pre-subscription makes sense to them.

100. We will, however, clarify section 157.34(c)(15) in two respects, first to eliminate confusion over the last sentence of that section which concludes "no capacity acquired through the open season shall be allocated," and second to make clear that in the event there is more than one pre-subscription agreement, bidders in the open season may not cherry-pick among the provisions of the several agreements. The North Slope Producers contend that the last clause of section 157.34(c)(15) might be read to provide that proration is foreclosed among open season bidders even where there is no presubscribed capacity. We will clarify the language of the rule to avoid such a misreading. Capacity bid for in the open season is exempt from allocation only in a case where there is also presubscribed capacity, as explained in the text of Order No. 2005. The State of Alaska reads that clause to suggest that capacity acquired by bidders in the open season who elect to acquire their capacity on the same rates, terms and conditions as contained in a pre-subscription agreement will not be subject to pro rata allocation along with the pre-subscription shippers. Such an interpretation also misreads the intent of section 157.34(c)(15), and we will clarify the language of the rule accordingly. Finally, we will clarify section 157.33 to make clear that open season bidders may not cherry pick among the provisions of several precedent agreements, as was our intent in the Final Rule.

*IX. Other Issues*

101. The North Slope Producers request that the open season rules be clarified in certain respects. First, they request that the Commission clarify the open season regulations by replacing references to "prospective points of delivery within the State of Alaska" or "delivery points" in several subsections of the regulation with the term "tie-in points." [30] The North Slope Producers assert that the term "delivery point" implies an obligation that the pipeline will be finally designed to deliver gas all the way to in-State markets and that ANGPA does not contemplate or impose such an obligation.

102. The Commission understands the terms "prospective points of delivery within the State of Alaska" or "delivery points" to mean those points on the interstate Alaskan pipeline where custody of the gas would be transferred to the facilities of an intrastate pipeline, local distribution company, or end-user whose facilities are not otherwise under the Commission's jurisdiction, assuming that shippers on an Alaska pipeline requested such deliveries. The term "tie-in points" as used only once in ANGPA is used in reference to the study of in-state needs in section 103(g) and as a familiar natural gas industry phrase is not as familiar to the Commission as

[30] These sections include § 157.34(b) and 157.34(c)(1), (2), (3), (6), (8), and (16).

the terms "points of delivery" or "delivery points." [31]

103. As part of the open season, the prospective applicant is in fact obligated to offer to deliver gas at least at certain prospective in-state delivery points identified in the study of in-state needs. However, the open season notice's initial design of the pipeline need only match the prospective applicant's open season business proposal to deliver at least the amount of gas identified in the study of in-state needs at those prospective in-state delivery points. Bidders may seek alternative delivery points (such as ones closer to their market) as part of their bids, and as part of the open season the prospective applicant may consider building additional facilities to such alternate points, but has no obligation to do so as long as it treats similar requests the same. As discussed above, if the open season ends without any successful bids for in-state deliveries, then there is a continuing obligation for the prospective applicant to leave provision for such in-state service available in its tariff, but it would not have to voluntarily propose such service as part of its initial application. Also, as used in section 157.34, the term "delivery point(s)" also refers to the location at the border between Alaska and Canada where presumably prospective bidders will seek to have their volumes delivered. It would be much more confusing if the regulations were revised to refer to "tie-in points" for points inside Alaska and "delivery points" for locations at the border between Alaska and Canada. Therefore, we will not clarify the rules as requested by the North Slope Producers in this regard.

104. Second, the North Slope Producers state that the "catch-all" language in section 157.34(c)(18) was not scaled back enough from the language proposed in the NOPR. Specifically, they state that as written, the final regulation requires a pipeline applicant to provide all bidders, not only with information the applicant has provided to any bidder, but also with information "in the hands of" any bidder. The North Slope Producers claim that the applicant cannot know what information identified in section 157.34(c)(18) is "in the hands of a potential shipper." Moreover, they contend that while the text of Order No. 2005 does not discuss the intent of this subsection, the Commission's press release and the Commission staff's PowerPoint presentation at the February 9, 2005 Commission Open Meeting presentation refer to information that the applicant has in some way made available to a potential shipper, and the regulations should be clarified to be consistent with this intent. The North Slope Producers add that, read literally, this language would call for protected information. Enbridge, on the other hand, claims that section 15734(c)(18) should be eliminated as unnecessary due to the transparency assured by the rest of the numbered subsections of section 157.34(c).

105. Anadarko objects to this requested clarification, pointing out that the North Slope Producers are likely already to possess relevant project-related information as a result of discussions with other possible project sponsors, and if the North Slope Producers becomes the project sponsor, this information is already in their hands and was not made available to them by an applicant.

106. The "catchall" provision addresses the difficult issue of separation of functions between a prospective applicant and its affiliates who produce, sell or market Alaska gas, and as such are potential bidders for capacity on an Alaska natural gas transportation project. It has been targeted as a problem since it appeared in the NOPR and it was discussed extensively in the Final Rule.[32] The North Slope Producers have undertaken millions of dollars of due diligence "homework" on the design, cost, operation and feasibility of an Alaska pipeline. If they are not affiliated with the prospective applicant for an Alaska pipeline, then all that knowledge and information is theirs and, presumably, would give them an informational advantage in the open season bidding. However, if the North Slope Producers are affiliated with the prospective applicant, then the Commission and other potential bidders must be assured that any relevant information about the design, cost, operation and feasibility of an Alaska pipeline that the North Slope Producers transfers to an affiliated prospective applicant is available to everyone. The Commission desires to make this very important part of the Final Rule as clear as possible. Thus, we will revise section 157.34(c)(18) to read as follows:

All information *that the prospective applicant has in its possession* pertaining to the proposed service to be offered, projected pipeline capacity and design, proposed tariff provisions, and cost projections, *or that the prospective applicant has* made available to, *or obtained from, any potential shipper*, including any affiliates of the project sponsor and any shippers with pre-subscribed capacity, prior to the issuance of the public notice of open season:

The Commission understands that the scope of this information is extensive. Therefore, we will not require that the contents of the open season notice to be published by the prospective applicant must contain copies of all the documents which would be covered under section 157.34(c)(18), but that the notice identify a "public reading room" where such information is available, for copying at the reader's expense. Further, as the North Slope Producers point out, dealing with potential "protected information" will have to be addressed as it is in any commercial situation. The Commission expects that all parties will cooperate in dealing with "protected information," but as in all matters pertaining to the open season process, the Commission and its staff stand ready to assist in resolving any disputes.

107. Third, the North Slope Producers request that the Commission clarify the requirement in section 157.35(c) that the project applicant "create or designate a unit or division to conduct the open season that must function independent of the other divisions of the project applicant as well as the applicant's Marketing and Energy affiliates." They claim that they intend to create a separate entity to be the project sponsor and to conduct the open season, and that this section would require them to establish yet another separate entity to conduct the opens season, and that section 157.35(c) should be revised to reflect that this is sufficient. Specifically, the North Slope Producers propose to delete from the regulations the language requiring that a project applicant must designate a separate unit or division to conduct the open season. Anadarko claims that this requested clarification would largely nullify the purpose of section 157.35(c).

108. The Commission denies the North Slope Producers' proposed change to section 157.35(c). However, the Commission will amend the section to take into account situations in which a project applicant is an entity that has been separately created for the purpose of conducting an open season. In such cases, the separate entity would comply with the provisions of section 157.35(c) if that project applicant functioned and operated independently from the project applicant's Marketing and Energy Affiliates, as well as the other divisions of the project applicant. The purpose of section 157.35(c) is to ensure that the project applicant conducting the open season is independent of, and does not

[31] Although tie-in point is used in some Commission documents, the most common use is to identify the point where a pipeline's loop ties back into the mainline.

[32] *See* Order No. 2005 at P 72–83.

favor, its affiliates. If the project applicant was created to comply with section 157.35(c) and does, in fact, comply with the regulation, the project applicant is not required to create a further subdivision to achieve compliance.

109. The North Slope Producers identify several other non-substantive clarifications to the regulatory language that should be made to avoid confusion.[33] These corrections will be made.

110. Enbridge argues that since the open season regulations require that the project design criteria include a requirement that the project be capable of "low-cost expansion," [34] the Commission should explain that the threshold for satisfying the low-cost expansion" standard is any expansion that does not increase rates to initial shippers. However, as Enbridge recognizes, any certificate application for an Alaska natural gas transportation project might provide detail regarding several expansion scenarios depending on and in response to the results of the open season. The project design review that the Commission will undertake focuses on the proposed project's ability to accommodate the capacity bid for in the open season, as well as the extent to which the project can accommodate "low-cost" expansion. All expansions will involve cost. Obviously, as recognized by virtually all stakeholders, capacity that can be gained by compression alone would typically be the lowest-cost expansion. At the other end of the spectrum would be a pipeline that has no compression-only expansion potential, necessitating the need for looping in the first instance. The operative word in connection with any "low-cost" standard in section 157.37, is the extent of the design's expandability, and that standard is not tied to the cost impact of a given expansion. Consequently we will not clarify section 157.37 as requested by Enbridge.

111. ChevronTexaco claims that the Final Rule contains a conflict about how the contract term might be used by the prospective applicant in establishing its methodologies for the evaluation of bids and the allocation of capacity due to oversubscription, should that be necessary. It states that this confusion is caused because contract term is not mentioned in section 157.34(c)(14) regarding evaluation of bids, but is mentioned in section 157.34(c)(15) regarding allocation of capacity due to oversubscription. ChevronTexaco also complains that the Commission's stated intention to rely on after the fact enforcement of issues that might be caused by unusual contract terms, rather than set a cap on contract term for the purpose of bidding and allocation review methodologies, does not satisfy ANGPA's mandate that the Commission's open season rules are fully prescriptive. ChevronTexaco requests that the Commission clarify the open season regulations to require that open season notices to include a cap on the contract term for capacity bids.

112. First, our intention to rely on after-the-fact enforcement of open season issues that might be caused by unusual contract terms, or by any other aspect of the open season process that is not specifically enumerated in the open season regulations, completely satisfies the intent of Congress as stated in ANGPA. Moreover, as explained in Order No. 2005, it is consistent with our existing policy. However, we do agree that the discrepancy in language between section 157.34(c)(14) and section 157.34(c)(15) should be clarified to provide consistency between the methodologies for the evaluation of bids and the allocation of capacity due to oversubscription. To be consistent and avoid confusion, we will delete the phrase "including price and contract term" from section 157.34(c)(15). Furthermore, we will look carefully at this issue in our review of any open season plan and notice under section 157.38.

113. ChevronTexaco claims that the only way to assure that an open season was conducted fairly and in accordance with the open season rules is by making the precedent agreements publicly available. Therefore, ChevronTexaco objects to the provision in section 157.34(d)(4) which provides that all precedent agreements and correspondence with bidders who were not allocated capacity must be filed with the Commission, but that they may be filed under a request for confidential treatment pursuant to section 388.112 of the Commission's regulations. ChevronTexaco claims that since precedent agreements will become agreements that will appear in a pro forma tariff or an effective tariff, there is little chance that the information in the precedent agreements should be confidential for any prolonged period of time, or that any of the information would fall under a Freedom of Information Act exemption. ChevronTexaco states that the precedent agreements could be filed in a public and non-public version in the event parts of the agreements do contain protected information.

114. We deny ChevronTexaco's request. Under section 388.112 of the Commission's regulations, any person submitting a document to the Commission may request privileged treatment by claiming that some or all other information is exempt from the Freedom of Information Act's disclosure requirements. We are nor conferring any special confidential status to the agreements. The party requesting privileged treatment must support that claim. It may be, as ChevronTexaco claims, that precedent agreements are not likely to be exempt from disclosure. Neither section 157.35(d)(4) nor section 388.112 predetermines whether privileged treatment will be granted.

**Document Availability**

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

116. From FERC's Home Page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

117. User assistance is available for FERRIS and the FERC's Web site during normal business hours from our Help line at (202) 502–8222 or the Public Reference Room at (202) 502–8371 Press 0, TTY (202) 502–8659. E-Mail the Public Reference Room at *public.referenceroom@ferc.gov*.

**Effective Date**

118. These regulations are effective as of the date of publication in the **Federal Register**.

[33] These include typographical errors in section 157.35(d) (references to sections 258.4(a)(1) and (3) should be to sections 358.4(a)(1) and (3)), Order No. 2005, P 74 (should cite to §§ 358.5(d) and 358.4(e)(3) rather than §§ 358.4(d) and 358.(b)(e)(3)); section 157.34(c)(9) ("proscribed" should be changed to "prescribed"); and section 157.33(b) ("terms, rates, terms and conditions" should be changed to "duration, rates, terms and conditions"). The North Slope Producers also suggest that the term "rate amounts" in section 157.34(c)(9) should be changed to "rates" as the latter term is more commonly used in the industry.

[34] *See, e.g.*, Order No. 2005 at P 82; section 157.37.

**List of Subjects in 18 CFR Part 157**

Administrative practice and procedure; Natural gas; Reporting and recordkeeping requirements.

By the Commission.

**Linda Mitry,**

*Deputy Secretary.*

■ In consideration of the foregoing, the Commission amends Part 157, Chapter I, Title 18, *Code of Federal Regulations*, as follows.

## PART 157—APPLICATIONS FOR CERTIFICTES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

■ 1. The authority citation for Part 157 is revised to read as follows:

**Authority:** 15 U.S.C. 717–717w.

### Subpart B—Open Seasons for Alaska Natural Gas Transportion Projects

■ 2. In § 157.33, paragraph (b) is revised to read as follows:

**§ 157.33 Requirement for open seasons.**

(a) * * *

(b) Initial capacity on a proposed Alaska natural gas transportation project may be acquired prior to an open season through pre-subscription agreements, provided that in any open season as required in paragraph (a) of this section, capacity is offered to all prospective bidders at the same rates and on the same terms and conditions as contained in the pre-subscription agreements. All pre-subscription agreements shall be made public by posting on Internet websites and press releases within ten days of their execution. In the event there is more than one such agreement, all prospective bidders shall be allowed the option of selecting among the several agreements all of the rates, terms and conditions contained in any one such agreement.

■ 3. In § 157.34, paragraphs (a), (c)(9), (c)(15) and (c)(18), and (d)(2) are revised to read as follows:

**§ 157.34 Notice of open season.**

(a) *Notice.* A prospective applicant must provide reasonable public notice of an open season through methods including postings on Internet Web sites, press releases, direct mail solicitations, and other advertising. In addition, a prospective applicant must provide actual notice of an open season to the State of Alaska and to the Federal Coordinator for Alaska Natural Gas Transportation Projects.

* * * * *

(c) * * *

(9) Negotiated rate and other rate options under consideration, including any rates and terms of any precedent agreements with prospective anchor shippers that have been negotiated or agreed to outside of the open season process prescribed in this section;

* * * * *

(15) The methodology by which capacity will be awarded, in the case of over-subscription, clearly stating all terms that will be considered, except that if any capacity is acquired through pre-subscription agreements as provided in § 157.33(b) and the prospective applicant does not redesign the project to accommodate all capacity requests, only that capacity that was acquired through pre-subscription or was bid in the open season on the same rates, terms, and conditions as any one of the pre-subscription agreements shall be allocated on a pro rata basis and no other capacity acquired through the open season shall be allocated.

* * * * *

(18) All information that the prospective applicant has in its possession pertaining to the proposed service to be offered, projected pipeline capacity and design, proposed tariff provisions, and cost projections, or that the prospective applicant has made available to, or obtained from, any potential shipper, including any affiliates of the project sponsor and any shippers with pre-subscribed capacity, prior to the issuance of the public notice of open season;

* * * * *

(d) * * *

(2) A prospective applicant must consider any bids tendered after the expiration of the open season by qualifying bidders and may reject them only if they cannot be accommodated due to economic, engineering, design, capacity or operational constraints, or accommodating the request would otherwise adversely impact the timely development of the project, and a detailed explanation must accompany the rejection. Any bids tendered after the expiration of the open season must contain a good faith showing, including a statement of the circumstances which prevented the late bidder from tendering a timely bid and how those circumstances have changed. If a prospective applicant determines at any time that, based on the criteria stated in this paragraph, no further late bids for capacity can be accommodated, it may request Commission approval to summarily reject any further requests.

* * * * *

■ 4. In § 157.35, paragraph (c) is revised to read as follows and paragraph (d), the word "258.4(a)(1)" is removed and the word "358.4(a)(1)" is inserted in its place.

**§ 157.35 Undue discrimination or preference.**

(a) * * *

(b) * * *

(c) Each prospective applicant conducting an open season under this subpart must function independent of the other divisions of the prospective applicant as well as the prospective applicant's Marketing and Energy affiliates as those terms are defined in § 358.3(d) and (k) of the Commission's regulations. In instances in which the prospective applicant is not an entity created specifically to conduct an open season under this subpart, the prospective applicant must create or designate a unit or division to conduct the open season that must function independent of the other divisions of the project applicant as well as the project applicant's Marketing and Energy affiliates as those terms are defined in § 358.3(d) and (k) of the Commission's regulations.

* * * * *

■ 5. Section 157.36 is revised to read as follows:

**§ 157.36 Open seasons for expansions.**

Any open season for capacity exceeding the initial capacity of an Alaska natural gas transportation project must provide the opportunity for the transportation of gas other than Prudhoe Bay or Point Thomson production. In considering a proposed voluntary expansion of an Alaska natural gas pipeline project, the Commission will consider the extent to which the expansion will be utilized by shippers other than those who are the initial shippers on the project and, in order to promote competition and open access to the project, may require design changes to ensure that some portion of the expansion capacity be allocated to new shippers willing to sign long-term firm transportation contracts, including shippers seeking to transport natural gas from areas other than Prudhoe Bay and Point Thomson.

■ 6. Section 157.38 is revised to read as follows:

**§ 157.38 Pre-approval procedures.**

No later than 90 days prior to providing the notice of open season required by § 157.34(a), a prospective

applicant must file, for Commission approval, a detailed plan for conducting an open season in conformance with this subpart. The prospective applicant's plan shall include the proposed notice of open season. Upon receipt of a request for such a determination, the Secretary of the Commission shall issue a notice of the request, which will then be published in the **Federal Register**. The notice shall establish a date on which comments from interested persons are due and a date, which shall be within 60 days of receipt of the prospective applicant's request unless otherwise directed by the Commission, by which the Commission will act on the proposed plan.

[FR Doc. 05–11658 Filed 6–15–05; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### 18 CFR Part 294

**[Docket No. RM05–19–000; Order No. 659]**

### Electronic Reporting of Shortages and Anticipated Shortages of Electric Energy and Capacity

Issued May 27, 2005.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission is revising its regulations to provide that the means by which public utilities must report shortages and anticipated shortages of electric energy and capacity is by submitting an electronic filing via the Division of Reliability's pager system at *emergency@ferc.gov*, instead of filing with the Secretary of the Commission.

**EFFECTIVE DATE:** The rule will become effective June 16, 2005.

**FOR FURTHER INFORMATION CONTACT:** Jonathan E. First, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8529.

**SUPPLEMENTARY INFORMATION:**

Before Commissioners: Pat Wood, III, Chairman; Nora Mead Brownell, Joseph T. Kelliher, and Suedeen G. Kelly.

1. This Final Rule amends part 294 of the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 294 (2004), to provide that the means by which public utilities must comply with the requirement to report shortages and anticipated shortages of electric energy and capacity is by submitting a single electronic filing to the Commission via the Division of Reliability's pager system at *emergency@ferc.gov*, in lieu of the current requirement to file an original and two copies with the Secretary of the Commission.

2. Section 202(g) of the Federal Power Act, 16 U.S.C 824a(g) (2000), which implements section 206 of the Public Utility Regulatory Policies Act of 1978 (Continuance of Service), directs the Commission to promulgate a rule requiring that each public utility report "promptly" to the Commission and appropriate state regulatory authorities any anticipated shortage of electric energy or capacity which would affect the public utility's ability to serve its wholesale customers.

3. In conformance with this statutory provision, Part 294 of the Commission's regulations defines "anticipated shortage of electric energy or capacity" and sets forth reporting requirements for public utilities. Among other things, a report filed pursuant to Part 294 must include the nature and projected duration of the anticipated shortage, a list of firm wholesale customers likely to be affected by the shortage, procedures for accommodating the shortage and a contact person at the public utility.[1] Section 294.101(e) of the Commission's regulations, 18 CFR 294.101(e) (2004), provides that a public utility that submits a report pursuant to Part 294 must file an original and at least two copies to the Commission as well as one copy to relevant state regulators and firm power wholesale customers, "unless otherwise required by the Commission."

4. Generally, documents filed with the Commission must be submitted to the Secretary of the Commission, 18 CFR 375.105(c) (2004). However, time may be of the essence when a public utility is experiencing a shortage or anticipated shortage of electric energy or capacity. The Commission must receive information in as close to real time as possible for it to monitor meaningfully and, if appropriate, react to the situation. Accordingly, the Commission is revising section 294.101(e) of its regulations to provide that the means by which public utilities must comply with the requirement to report shortages and anticipated shortages of electric energy and capacity is by promptly submitting a single electronic report to the Commission via the Division of Reliability's electronic pager system at *emergency@ferc.gov*.

#### Information Collection Statement

5. The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection requirements imposed by the agency. 5 CFR part 1320. This Final Rule, which requires a single electronic submission under part 294 of the Commission's regulations and eliminates the filing of copies, is not subject to OMB approval.

#### Environmental Analysis

6. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[2] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included are exemptions for procedural or ministerial actions and for information gathering.[3] This rulemaking is exempt under those provisions.

#### Regulatory Flexibility Act Certification

7. The Regulatory Flexibility Act of 1980[4] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. This Final Rule does not create any new substantive obligations and eliminates the filing of copies under part 294 of the Commission's regulations. This change will have no significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

#### Document Availablity

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

[1] 18 CFR 294.101(c) (2004). Alternatively, 18 CFR 294.101(f) (2004) states that a public utility that provides in its rate schedule that it will notify appropriate states regulators and its firm power wholesale customers of anticipated shortages need only report to the Commission the nature and projected duration of the anticipated shortage and supply a list of firm power wholesale customers affected or likely to be affected.

[2] Order No. 486, *Regulations Implementing the National Environmental Policy Act*, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[3] 18 CFR 380.4(a)(1) and (5) (2004).

[4] 5 U.S.C. 601–612 (2000).

9. From FERC's Home Page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

10. User assistance is available for FERRIS and the FERC's Web site during normal business hours from our Help line at (202) 502–8222 or the Public Reference Room at (202) 502–8371 Press 0, TTY (202) 502–8659. E-Mail the Public Reference Room at *public.referenceroom@ferc.gov*.

**Effective Date and Congressional Notification**

11. In accordance with 5 U.S.C. 553(d)(3), the Commission finds that good cause exists to make this Final Rule effective immediately upon issuance. This Rule affects only the manner of filing under Part 294 of the Commission's regulations and eliminates the filing of copies with the Commission. The Commission further finds that a period of public comment on this rule is unnecessary. Under 5 U.S.C. 553(b), notice and comment procedures are unnecessary where a rulemaking concerns only agency procedures and practice, or where the agency finds that notice and comment is unnecessary. This rule concerns only the manner of filing under Part 294 of the Commission's regulations and eliminates the filing of copies with the Commission. It will not significantly affect regulated entities or the general public.

12. The provisions of 5 U.S.C. 801 regarding Congressional review of Final Rules does not apply to this Final Rule, because the rule concerns agency procedure and practice and will not substantially affect the rights of non-agency parties.

**List of Subjects in 18 CFR Part 294**

Filing requirements.

By the Commission.

**Linda Mitry,**

*Deputy Secretary.*

■ In consideration of the foregoing, the Commission amends Part 294, Chapter I, Title 18, *Code of Federal Regulations*, as follows.

## PART 294—PROCEDURES FOR SHORTAGES OF ELECTRIC ENERGY CAPACITY UNDER SECTION 206 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978

■ 1. The authority citation for Part 294 continues to read as follows:

**Authority:** 5 U.S.C. 553; 15 U.S.C. 791a–825r; 42 U.S.C. 7107–7352.

■ 2. Section 294.101 is amended by revising paragraph (e) to read as follows:

**§ 294.101 Shortages of electric energy and capacity.**

* * * * *

(e) *Reporting Procedure.* Any public utility that reports under this part must provide an electronic filing to this Commission at *emergency@ferc.gov* and one copy to any state regulatory authority and firm power wholesale customers, unless otherwise required by the Commission.

* * * * *

[FR Doc. 05–11554 Filed 6–15–05; 8:45 am]

BILLING CODE 6717–01–P

## SOCIAL SECURITY ADMINISTRATION

**20 CFR Part 404**

**[Regulation No. 4]**

**RIN 0960–AG27**

### Extension of the Expiration Date for Several Body System Listings

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Final rule.

**SUMMARY:** We use the Listing of Impairments (the listings) at the third step of the sequential evaluation process when we evaluate your claim for benefits based on disability under title II and title XVI of the Social Security Act (the Act). This final rule extends until July 3, 2006, the date on which listings for four body systems will no longer be effective and extends until July 2, 2007, the date on which the listings for eight body systems will no longer be effective.

Other than extending the date during which the listings will be effective, we have made no revisions to the listings; they remain the same as they now appear in the Code of Federal Regulations. This extension will ensure that we continue to have the medical evaluation criteria in the listings to adjudicate disability claims in these body systems at step three of the sequential evaluation process.

**DATES:** This final rule is effective on June 16, 2005.

**ADDRESSES:** The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html*. It is also available on the Internet site for SSA (*i.e.*, Social Security Online) at *http://policy.ssa.gov/pnpublic.nsf/LawsRegs*.

**FOR FURTHER INFORMATION CONTACT:** Robert Augustine, Social Insurance Specialist, Office of Regulations , Room 107, Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–0020 or TTY (410) 966–5609. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit out Internet site, Social Security Online, at *http://www.socialsecurity.gov*.

**SUPPLEMENTARY INFORMATION:** We use the listings in appendix 1 to subpart P of part 404 at the third step of the sequential evaluation process to evaluate claims filed by adults and children for benefits based on disability under the title II and title XVI programs. The listings are in two parts. There are listings for adults (part A) and for children (part B). If you are an individual age 18 or over, we apply the listings in part A when we assess your claim, and we never use the listings in part B. If you are an individual under age 18, we first use the criteria in part B of the listings. If the listings in part B do not apply, and the specific disease process(es) has a similar effect on adults and children, we then use the criteria in part A (see 20 CFR 404.1525 and 416.925).

In this final rule, we are extending until July 3, 2006, the date on which the listings for the following four body systems will no longer be effective:

Cardiovascular System (4.00 and 104.00)
Digestive System (5.00 and 105.00)
Genito-Urinary System (6.00 and 106.00)
Multiple Body Systems (110.00)

We are also extending until July 2, 2007, the date on which the listings for the following eight body systems will no longer be effective:

Growth Impairment (100.00)
Special Senses and Speech (2.00 and 102.00)
Respiratory System (3.00 and 103.00)
Hematological Disorders (7.00 and 107.00)
Endocrine System (9.00 and 109.00)
Neurological (11.00 and 111.00)
Mental Disorders (12.00 and 112.00)
Immune System (14.00 and 114.00)

As a result of medical advances in disability evaluation and treatment, and

our program experience, we periodically review and update the listings. We intend to publish proposed and final rules to update the listings as expeditiously as possible, and since we last extended the expiration date of the listings, we have published several notices of proposed rulemaking (or advance notices of proposed rulemaking). However, we will not be able to publish revised listings for these body systems by July 1, 2005, the current expiration date. Therefore, we are extending the current expiration date for these listings as indicated above.

In final rules published on June 20, 2003 (68 FR 36911), we extended to July 1, 2005, the date on which the listings for the following body systems would no longer be effective: Growth Impairment; Special Senses and Speech; Respiratory System; Cardiovascular System; Digestive System; Genito-Urinary System; Hemic and Lymphatic System; Skin; Endocrine System; Multiple Body Systems (110.00); Neurological; Mental Disorders; Neoplastic Diseases, Malignant; and Immune System.

Not all listings require effective date extensions at this time. For example, on June 19, 2000, we published final rules establishing a separate listing (Listing 10.06) for evaluating non-mosaic Down Syndrome in adults, and we created a multiple body systems listing section in the part A listings (10.00) (65 FR 31800). The part A multiple body systems listing will no longer be effective on June 19, 2008, unless it is extended or revised and promulgated again (65 FR at 31802). The expiration date for the part A multiple body systems listing is not affected by this final rule. On November 19, 2001, we published revised listings for the musculoskeletal body system (1.00 and 101.00) (66 FR 58010). The listings for the musculoskeletal body system will no longer be effective on February 19, 2009, unless they are extended or revised and promulgated again (66 FR at 58037). The expiration date for the musculoskeletal body system listings is not affected by this final rule. On June 9, 2004, we published revised listings for the skin disorders body system (8.00 and 108.00) (69 FR 32260). The listings for the skin disorders body system will no longer be effective on July 9, 2012, unless they are extended or revised and promulgated again (69 FR at 32262). The expiration date for the skin disorders body system listings is not affected by this final rule. On November 15, 2004, we published revised listings for the malignant neoplastic diseases body system (13.00 and 113.00) (69 FR 67018). The listings for the malignant neoplastic diseases body system will no longer be effective on December 15, 2009, unless they are extended or revised and promulgated again (69 FR at 67019). The expiration date for the malignant neoplastic diseases body system is not affected by this final rule.

**Regulatory Procedures**

*Justification for Final Rule*

Pursuant to section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5), we follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice and public comment procedures for this rule. Good cause exists because this final rule only extends the date on which these body system listings will no longer be effective. It makes no substantive changes to those listings. The current regulations expressly provide that listings may be extended, as well as revised and promulgated again. Therefore, we have determined that opportunity for prior comment is unnecessary, and we are issuing this regulation as a final rule.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule provided by 5 U.S.C. 553(d). As explained above, we are not making any substantive changes in these body system listings. However, without an extension of the expiration dates for these listings, we will lack regulatory criteria for assessing impairments in these body systems at the third step of the sequential evaluation process after the current expiration date of these listings. In order to ensure that we continue to have regulatory criteria for assessing impairments under these listings, we find that it is in the public interest to make this final rule effective on the date of publication.

*Executive Order 12866*

We have consulted with the Office of Management and Budget (OMB) and determined that this final rule does not meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. We have also determined that this final rule meets the plain language requirement of Executive Order 12866, as amended by Executive Order 13258.

*Regulatory Flexibility Act*

We certify that this final rule does not have a significant economic impact on a substantial number of small entities because it affects only individuals. Therefore, a regulatory flexibility analysis, as provided in the Regulatory Flexibility Act, as amended, is not required.

*Paperwork Reduction Act*

This final rule imposes no reporting/recordkeeping requirements necessitating clearance by OMB.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income)

**List of Subjects in 20 CFR Part 404**

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

Dated: May 25, 2005.

**Jo Anne B. Barnhart,**

*Commissioner of Social Security.*

■ For the reasons set forth in the preamble, part 404, subpart P, chapter III of title 20 of the Code of Federal Regulations is amended as set forth below.

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

### Subpart P—[Amended]

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

**Authority:** Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

■ 2. Appendix 1 to subpart P of part 404 is amended by revising items 1, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, and 15 of the introductory text before part A to read as follows:

**Appendix 1 to Subpart P of Part 404—Listing of Impairments**

* * * * *

1. Growth Impairment (100.00): July 2, 2007.

* * * * *

3. Special Senses and Speech (2.00 and 102.00): July 2, 2007.

4. Respiratory System (3.00 and 103.00): July 2, 2007.

5. Cardiovascular System (4.00 and 104.00): July 3, 2006.
6. Digestive System (5.00 and 105.00): July 3, 2006.
7. Genito-Urinary System (6.00 and 106.00): July 3, 2006.
8. Hematological Disorders (7.00 and 107.00): July 2, 2007.

* * * * *

10. Endocrine System (9.00 and 109.00): July 2, 2007.
11. Multiple Body Systems (10.00): June 19, 2008 and (110.00): July 3, 2006.
12. Neurological (11.00 and 111.00): July 2, 2007.
13. Mental Disorders (12.00 and 112.00): July 2, 2007.

* * * * *

15. Immune System (14.00 and 114.00): July 2, 2007.

* * * * *

[FR Doc. 05–11887 Filed 6–15–05; 8:45 am]

BILLING CODE 4191–02–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

**[CGD08–05–039]**

### Drawbridge Operation Regulations; Corpus Christi—Port Aransas Channel—Tule Lake, Corpus Christi, TX

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Tule Lake Vertical Lift Span Highway and Railroad Bridge across the Corpus Christi—Port Aransas Channel, mile 14.0, at Corpus Christi, Nueces County, TX. This deviation allows the bridge to remain closed to navigation for six hours each day for three consecutive days. This temporary deviation is necessary for the repair of the haul rope anchors of the drawbridge.

**DATES:** This deviation is effective from 8:30 a.m. on Tuesday, July 12, 2005, through 2:30 p.m. on Thursday, July 14, 2005.

**ADDRESSES:** Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 500 Poydras Street, New Orleans, Louisiana 70130–3310 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

**FOR FURTHER INFORMATION CONTACT:** Phil Johnson, Bridge Administration Branch, telephone (504) 589–2965.

**SUPPLEMENTARY INFORMATION:** The Port of Corpus Christi Authority has requested a temporary deviation in order to repair the haul rope anchors of the Tule Lake vertical lift span bridge across Corpus Christi—Port Aransas Channel, mile 14.0 at Corpus Christi, Nueces County, Texas. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 8:30 a.m. to 2:30 p.m. on Tuesday, July 12, on Wednesday, July 13, and on Thursday, July 14, 2005.

The bridge has a vertical clearance of 9.0 feet above mean high water, elevation 1.0 foot Mean Sea Level and 11.0 feet above mean low water, elevation −1.0 foot Mean Sea Level in the closed-to-navigation position. Navigation at the site of the bridge consists mainly of oil tankers and tows with barges. Recreational vessels do not generally transit this segment of the waterway. Due to prior experience, as well as coordination with waterway users, it has been determined that this three-day partial closure will not have a significant effect on these vessels. The bridge normally opens to pass navigation an average of 850 times per month. The bridge opens on signal as required by 33 CFR 117.5. The bridge may not be able to open for emergencies during the closure period. Alternate routes are not available.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 9, 2005.

**Marcus Redford,**

*Bridge Administrator.*

[FR Doc. 05–11849 Filed 6–15–05; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

**[CGD13–05–020]**

**RIN 1625–AA09**

### Drawbridge Operation Regulations; Duwamish Waterway, Seattle, WA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard has temporarily changed the operating regulations for the First Avenue South dual drawbridges across the Duwamish Waterway, mile 2.5, at Seattle, Washington. The change allows the bridge owner to keep the bridges closed during night hours from July 15 to November 15, 2005, between 9 p.m. and 5 a.m. Sunday through Friday. This will facilitate painting the structures while properly containing debris and paint.

**DATES:** This rule is effective from 9 p.m. July 15, 2005, to 5 a.m. November 15, 2005.

**ADDRESSES:** Comments and material received from the public as well as documents referred to in this preamble as being available in the docket, are part of docket (CGD13–04–047) and are available for inspection or copying at 13th Coast Guard District, Aids to Navigation and Waterways Management Branch, 915 Second Avenue, Seattle, WA 98174–1067 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Austin Pratt, Chief Bridge Section, (206) 220–7282.

**SUPPLEMENTARY INFORMATION:**

#### Regulatory Information

On January 21, 2005, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Duwamish Waterway, Seattle, Washington, in the **Federal Register** (70 FR 3168). We received no comments in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

#### Background and Purpose

The dual First Avenue South bascule bridges provide 32 feet of vertical clearance above mean high water for the central 100 feet of horizontal distance in the channel spans. When the drawspans are open there is unlimited vertical clearance for the central 120 feet of the spans. Drawbridge openings are provided for recreational vessels, large

barges, and floating construction equipment. The operating regulations currently in effect for these drawbridges at 33 Code of Federal Regulations 117.1041 provide that the spans need not open for the passage of vessels from 6 a.m. to 9 a.m. and from 3 p.m. to 6 p.m. Monday through Friday, except for federal holidays. The draws shall open at any time for a vessel of 5,000 gross tons and over, a vessel towing such a vessel or en route to take in tow a vessel of that size.

The temporary rule will enable the bridge owner to paint the structure after preparing the surfaces of the steel truss beneath the roadway. All of this work must be accomplished within a containment system that permits no material to fall into the waterway. This containment system will have to be modified for drawspan openings. The temporary rule will allow the work to proceed without frequent interruption.

**Discussion of Comments and Changes**

The Coast Guard received no comments in response to the notice of proposed rulemaking. The only change made is to postpone the start date from June 1 to July 15, 2005, for approximately the same 4-month duration. This should present no change in effect to mariners.

**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.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Most vessels will be able to plan transits to avoid the closed periods. Most commercial vessel owners have indicated that they can tolerate the proposed hours by working around them. Saturdays will enjoy normal operations, lessening inconvenience to sailboats.

**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 would not have a significant economic impact on a substantial number of small entities. This may affect some recreational sailboat owners insofar as they must return by 9 p.m. or wait until 5 a.m. to regain moorage above the drawbridges. We expect these to be few in number.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Austin Pratt, Chief, Bridge Section, at (206) 220–7282.

**Collection of Information**

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

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this 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 would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This 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 Information and Regulatory Affairs has not designated this 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 M16475.1D, 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 (32)(e) of the Instruction, from further environmental documentation. There are no expected environmental consequences of the action that would require further analysis and documentation.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Regulations**

■ For the reasons discussed in the preamble, the Coast Guard is amending 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1; section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. From 9 p.m. July 15, 2005, to 5 a.m. November 15, 2005, in § 117.1041, suspend paragraph (a)(1) and add a new paragraph (a)(3) to read as follows:

**§ 117.1041 Duwamish Waterway.**

(a) * * *

(3) Monday through Friday, except all Federal holidays but Columbus Day, the draws of the First Avenue South Bridges, mile 2.5, need not be opened for the passage of vessels from 6 a.m. to 9 a.m. and from 3 p.m. to 6 p.m., except that the draw shall open on one-hour notice for a vessel of 5000 gross tons and over, a vessel towing a vessel of 5000 gross tons and over, and a vessel proceeding to pick up for towing a vessel of 5000 gross tons and over.

Sunday through Friday, the draws need not be opened for the passage of any vessels from 9 p.m. to 5 a.m.

* * * * *

Dated: June 8, 2005.

**J.M. Garrett,**

*Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.*

[FR Doc. 05–11850 Filed 6–15–05; 8:45 am]

BILLING CODE 4910–15–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 148, 261, 268, 271, and 302

[RCRA–2003–0001; FRL–7924–9]

RIN 2050–AD80

### Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Dyes and/or Pigments Production Wastes; Land Disposal Restrictions for Newly Identified Wastes; CERCLA Hazardous Substance Designation and Reportable Quantities; Designation of Five Chemicals as Appendix VIII Constituents; Addition of Four Chemicals to the Treatment Standards of F039 and the Universal Treatment Standards; Correction

**AGENCY:** EPA.

**ACTION:** Final rule; correction.

**SUMMARY:** EPA issued a final rule in the **Federal Register** on February 24, 2005, listing as hazardous under the Resource Conservation and Recovery Act (RCRA) nonwastewaters generated from the production of certain dyes, pigments, and FD&C colorants. This document corrects typographical errors in the regulatory text and notes other typographical errors in the preamble.

**DATES:** This correction is effective on August 23, 2005.

**ADDRESSES:** Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of February 24, 2005.

**FOR FURTHER INFORMATION CONTACT:** Robert Kayser, Hazardous Waste Identification Division, Office of Solid Waste (5304W), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (703) 308–7304; fax number: (703) 308–0514; e-mail address: *kayser.robert@epa.gov*. For general information on the final rule, review our Web site at *http://www.epa.gov/epaoswer/hazwaste/id/dyes/index.htm*.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does This Action Apply to Me?*

The Agency included in the final rule of February 24, 2005, a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under the **FOR FURTHER INFORMATION CONTACT.**

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

In addition to using the EDOCKET at *http://www.epa.gov/edocket/*, you may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 261 is available at e-CFR Beta Site at *http://www.gpoaccess.gov/ecfr/*.

**II. What Does This Correction Do?**

This Action corrects two typographical errors in the final rule, both of which are the same but occur in different paragraphs, published in the **Federal Register** of February 24, 2005 (*see* FR Doc. 05–3454; 70 FR 9138–9180) (FRL–7875–8). The first error appears at 70 FR 9176 in the text of § 261.32(d)(2). At the end of the first sentence, the phrase "listing levels of this section" is misplaced and is in part repetitive. The phrase "listing levels of" should immediately precede "paragraph (c)" in that sentence and the last usage of the phrase "this section" at the end of the sentence should be deleted. Thus, the first sentence of § 261.32(d)(2) should conclude as follows: "to conclude that annual mass loadings for the K181 constituents are below the listing levels of paragraph (c) of this section."

The second error also appears at 70 FR 9176 in the text of § 261.32(d)(3)(iv)(B). At the end of the sentence, the phrase "listing levels of this section" is misplaced and is in part repetitive. The phrase "listing levels of" should immediately precede "paragraph (c)" in the sentence and the last usage of the phrase "this section" at the end of the sentence should be deleted. Thus, § 261.32(d)(3)(iv)(B) should conclude as follows: "to support any claim that the constituent mass loadings are below the listing levels of paragraph (c) of this section."

We also note that the preamble to the final rule contains several erroneous regulatory citations. The first one appears at 70 FR 9145, in the second column, in the first paragraph under the heading "1. Toluene-2,4-diamine," line three. The correct regulatory citation is to "§ 261.32(c)(1)" and not "§ 261.31(c)(1)". The second one appears in line six of the same paragraph. The correct citation is to

"§ 261.32(c)(2)" and not to "§ (c)(2)". The last one appears at 70 FR 9145, in the third column, in line six. The correct citation is to "§ 261.32(c)(1)" and not "§ 261.31(c)(1)".

### III. Why Is This Correction Issued as a Final Rule?

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an Agency for good cause finds that notice and public procedures are impracticable, unnecessary or contrary to the public interest, the agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's correction final without prior proposal and opportunity for comment, because EPA is merely correcting language to allow the affected rule sections to make sense grammatically. Therefore, EPA finds that additional public comment is not necessary under 5 U.S.C. 553(b)(B).

### IV. Do Any of the Statutory and Executive Order Reviews Apply to This Action?

This final rule implements an amendment to the Code of Federal Regulations that has no substantive impact on the underlying regulations, and it does not otherwise impose or amend any requirements. As such, the Office of Management and Budget (OMB) has determined that such amendments are not a "significant regulatory action" subject to review by OMB 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, this rule is not subject to Executive Order 13211, entitled 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). This action does not 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 the action does 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 action does not alter the relationships or distribution of power and responsibilities. For similar 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.

### V. 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 261

Environmental protection, Hazardous materials, Waste treatment and disposal, Recycling.

Dated: June 10, 2005.

**Stephen L. Johnson,**

*Administrator.*

■ For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

## PART 261—[CORRECTED]

■ 1. The authority citation for part 261 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

■ 2. Section 261.32 is amended by revising the introductory text to paragraph (d)(2) and paragraph (d)(3)(iv)(B) to read as follows:

**§ 261.32 Hazardous wastes from specific sources.**

* * * * *

(d) * * *

(2) *Determination for generated quantities of 1,000 MT/yr or less for wastes that contain K181 constituents.* If the total annual quantity of dyes and/or pigment nonwastewaters generated is 1,000 metric tons or less, the generator can use knowledge of the wastes (*e.g.*, knowledge of constituents in wastes based on prior analytical data and/or information about raw materials used, production processes used, and reaction and degradation products formed) to conclude that annual mass loadings for the K181 constituents are below the listing levels of paragraph (c) of this

section. To make this determination, the generator must:

* * * * *

(3) * * *

(iv) * * *

(B) The analytical measurements must be sufficiently sensitive, accurate and precise to support any claim that the constituent mass loadings are below the listing levels of paragraph (c) of this section.

* * * * *

[FR Doc. 05–11914 Filed 6–15–05; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 262, 264, and 265

[FRL–7925–1]

RIN 2050–AE21

## Hazardous Waste Management System; Modification of the Hazardous Waste Manifest System; Correction

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule; correcting amendments.

**SUMMARY:** The Environmental Protection Agency (EPA) is correcting errors that appeared in the Hazardous Waste Manifest Final Rule, which was published in the **Federal Register** (FR) on March 4, 2005 (70 FR 10776). This final rule does not create new regulatory requirements.

**EFFECTIVE DATE:** This final rule is effective September 6, 2005.

**ADDRESSES:** EPA has established a docket for the manifest final rule under Docket ID No. RCRA–2001–0032. All documents—including this correction—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 available publicly only in hard copy form. Docket materials are available either electronically in EDOCKET or in hard copy at the EPA Docket Center (EPA/DC), EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–0270.

**FOR FURTHER INFORMATION CONTACT:** For further information regarding specific aspects of this document, contact Bryan Groce, Office of Solid Waste, (703) 308–8750, *groce.bryan@epa.gov*, or Richard LaShier, Office of Solid Waste, (703) 308–8796, *lashier.rich@epa.gov*. Mail inquiries may be directed to the Office of Solid Waste, (5304W), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:**

### Table of Contents



### I. Does This Rule Create New Federal Requirements?

No. This rule creates no new regulatory requirements; rather, it corrects errors made in the Appendix to part 262 of chapter 40 of the Code of Federal Regulations (CFR) and corrects certain manifest regulations that were promulgated in the March 4, 2005 **Federal Register**.

### II. What Does This Rule Do?

This rule corrects the printing omissions of the manifest form (EPA Form 8700–22) and the continuation sheet (EPA Form 8700–22A), which were omitted inadvertently from the final rule promulgated on March 4, 2005 (70 FR 10776), by inserting the manifest form (EPA Form 8700–22) and the continuation sheet (EPA Form 8700–22A) into the corresponding manifest instructions. In addition, this rule amends portions of the instructions for the manifest form and continuation sheet, which are contained in the Appendix to part 262 of chapter 40 of the CFR, amends the marking requirements at 40 CFR 262.33 for hazardous waste generators and amends the manifest discrepancy requirements at 40 CFR 264.72 and 265.72. Specifically, the rule:

(1) Corrects the EPA mailing address for comment submissions regarding the Paperwork Reduction Act (PRA) burden statement estimates;

(2) Corrects the incorrect description of the telephone number to insert in Item 5 of the manifest instructions;

(3) Corrects the wording in the instructions to the first certification (*i.e.*, the Generator Certification) in Item 15 so that it is consistent with the revised certification wording on the manifest form;

(4) Clarifies that the reference to the DOT marking regulation (*i.e.*, 49 171.3(b)(1)) in 40 CFR 262.33 does not apply to generators, and deletes it from the placarding regulation that is applicable to generators; and,

(5) Corrects errors in 40 CFR 264.72(e)(4) and in 265.72(e)(4) pertaining to manifest discrepancies.

This final rule will be effective on September 6, 2005, which is the same effective date of the March 4, 2005 Manifest Final Rule. We believe this approach will minimize confusion about the new manifest form and procedures.

### III. Why Is This Correction Issued as a Final Rule?

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides when an agency for good cause finds that notice and public procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making this action final without prior proposal and opportunity for comment because these corrections to the final rule do not change the requirements of the final rule. They are minor corrections and are not controversial. Thus, notice and public comment are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

### IV. Why Are the Clarifications and Corrections in This Rule Necessary?

EPA believes the errors in the March 4, 2005 **Federal Register** notice may cause confusion about the new manifest form and procedures. Therefore, we are explaining the corrections below.

#### *A. Corrections and Clarifications to the PRA Burden Statement*

The EPA mailing address contained in the PRA burden statement for manifest completion is incorrect. We are amending the manifest instructions in the Appendix to 40 CFR part 262 by correcting the EPA mailing instructions contained in the PRA burden statement so that any correspondence regarding

the manifest burden estimate is sent to the appropriate division in the Office of Information Collection. We also are amending the PRA burden statement by removing the mailing address for the Office of Management and Budget. Any correspondence regarding the PRA burden statement for the manifest must be sent to the Director of the Collection Strategies Division in EPA's Office of Information Collection at the following address: U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460.

*B. Corrections to Item 5 of the Manifest Form Instructions*

Item 5 instructions require a manifest preparer to enter the generator's name, the mailing address to which the completed manifest signed by the designated facility should be mailed, and the generator's telephone number (including the area code). However, the instructions published on March 4 incorrectly state that the telephone number should be the number where the generator or his authorized agent may be reached to provide instructions in the event of an emergency. Given that Item 3 already requires an emergency phone number, that information does not need to be repeated in Item 5. Instead, the number provided in Item 5 should be the normal business phone number for the generator, or the number where the generator or his authorized agent may be reached to provide instructions in the event the designated and/or alternate (if any) facility rejects some or all of the shipment. Therefore, we are correcting the Item 5 instruction accordingly.

*C. Corrections to Item 15 of the Manifest Instructions*

The wording of the shipper's certification statement contained in the Generator's certification on the manifest, and the wording of the shipper's certification statement contained in the instructions to Item 15 are different. This final rule corrects the wording in the shipper's certification statement contained in the instructions to Item 15 so that it matches exactly the wording in the Generator's certification on the manifest. The corrected wording in the instructions is as follows:

"I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked, and labeled/placarded, and are in all respects in proper condition for transport by highway according to applicable international and national governmental regulations. If export shipment and I am the Primary Exporter, I certify that the contents of this consignment conform to the terms of the attached EPA Acknowledgment of Consent."

*D. Corrections and Clarifications to 40 CFR 262.33 and to 262.20(a)(2)*

In the May 2001 proposed rule, EPA proposed to amend 40 CFR 262.33 by referencing an existing DOT marking regulation (49 CFR 171.3(b)(1)) in 40 CFR part 262.33, which requires hazardous material (Hazmat) carriers (*i.e.*, transporters) to mark their name and motor carrier identification number on their vehicles. We proposed this change and subsequently retained it in the March 4, 2005 final rule to make generators aware of the DOT requirement, and because we believed that generators also are required to mark transportation vehicles, according to 49 CFR 171.3(b)(1), in situations where placards are not required. We did not intend to create new marking requirements for hazardous waste generators; rather, we added the reference to 49 CFR 171.3(b)(1) because at that time we understood the existing DOT regulation to apply to both generators and transporters. However, we now understand that 49 CFR 171.3(b)(1) only applies to persons who accept for transportation, transport, or deliver hazardous waste (*i.e.*, carriers or transporters), and it is therefore inappropriate to include this reference in EPA's generator regulations. This final rule deletes the DOT reference to 49 CFR 171.3(b)(1) from the placarding requirement at 40 CFR 262.33 and reinstates the placarding provisions that were in effect prior to the March 4, 2005 final rule. Therefore, existing generator marking requirements remain unchanged. Generators must placard or offer the initial transporter the appropriate placards according to DOT regulations in part 172, subpart F of Chapter 49 of the CFR, before transporting hazardous waste or offering hazardous waste for transportation off-site. Per the correction made to 40 CFR part 262.33 in this final rule, we also are correcting 40 CFR 262.20(a)(2). The reference to 40 CFR 262.33 in that section no longer is relevant. Therefore, we are removing it accordingly.

*E. Corrections to 40 CFR 264.72(e)(4) and to 265.72(e)(4)*

Paragraph (e)(4) in 40 CFR 264.72 and in 265.72 incorrectly contains the words "of this chapter" at the end of the sentence. These words are not necessary, and this notice corrects the error by removing those words from the end of the sentence in 40 CFR 264.72(e)(4) and in 265.72(e)(4).

## V. Statutory and Executive Order Reviews

*A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order No. 12866 (58 FR 51735, October 4, 1993), Federal agencies must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a "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 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; 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 rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

*B. Paperwork Reduction Act*

This final rule corrects errors in a previous rule and does not create any new regulatory requirements, and thus it does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*

*C. Regulatory Flexibility Analysis*

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et. seq.*, 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. EPA has determined that today's rule will not have significant

economic impact on a substantial number of small entities. The rule does not impose any additional burdens on small entities because it does not create any new regulatory requirements. Therefore, EPA has determined that it is appropriate to certify that this rule will not have a significant economic impact on a substantial number of small entities.

*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. For the reason described above, the rule does not create any new requirements, anddoes not contain a Federal mandate that may result in expenditures of $100 million or more to State, local, or tribal governments in the aggregate, or for the private sector. The rule likewise contains no regulatory requirements that might significantly or uniquely affect small governments under section 203 of the UMRA and imposes no burdens that may result in annual expenditures of $100 million or more. Accordingly, the requirements of UMRA do not apply.

*E. Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires Federal agencies 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." The Executive Order defines "policies that have federalism implications" 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 rule does not create any new Federal requirements. Therefore, this final rule does not have federalism implications, and it would 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.

*F. Executive Order 13175: Consultation With Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications."

This final rule does not have tribal implications, as specified in Executive Order 13175. It does not impose any new requirements on tribal officials nor does it impose substantial direct compliance costs on them. This rule does not create a mandate for tribal governments, nor does it impose any enforceable duties on these entities. This rule corrects errors to existing regulations governing the tracking of hazardous waste from a generator's site to the site of its disposition. Thus, Executive Order 13175 does not apply to this rule.

*G. Executive Order 13045: Protection of Children—Applicability of Executive Order 13045*

The Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that EPA determines (1) to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered.

This correction is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because this correction does not create any new Federal requirements, and it will not 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 of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory 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, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This correction does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

*J. 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 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). This rule will become effective on September 6, 2005.

**List of Subjects**

*40 CFR Part 262*

Environmental protection, Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

*40 CFR Part 264*

Environmental protection, Hazardous waste, Packaging and containers, Reporting and recordkeeping requirements, Security measures.

*40 CFR Part 265*

Environmental protection, Hazardous waste, Packaging and containers, Reporting and recordkeeping requirements.

Dated: June 10, 2005.

**Stephen L. Johnson,**

*Administrator.*

■ For the reasons stated in the preamble, title 40, chapter 1 of the Code of Federal Regulations is amended as follows:

## PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

■ 1. The authority citation for part 262 continues to read as follows:

**Authority:** 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938.

■ 2. Section 262.20 is amended by revising paragraph (a)(2) to read as follows:

### § 262.20 General Requirements

* * * * *

(a) * * *

(2) The revised manifest form and procedures in 40 CFR 260.10, 261.7, 262.20, 262.21, 262.27, 262.32, 262.34, 262.54, 262.60, and the appendix to part 262, shall not apply until September 5, 2006. The manifest form and procedures in 40 CFR 260.10, 261.7, 262.20, 262.21, 262.32, 262.34, 262.54, 262.60, and the Appendix to part 262, contained in the 40 CFR, parts 260 to 265, edition revised as of July 1, 2004, shall be applicable until September 5, 2006.

* * * * *

■ 3. Section 262.33 is revised to read as follows:

### § 262.33 Placarding.

Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must placard or offer the initial transporter the appropriate placards according to Department of Transportation regulations for hazardous materials under 49 CFR part 172, subpart F.

■ 4. The appendix to part 262 is amended by adding the manifest form (EPA Form 8700–22) and continuation sheet (EPA Form 8700–22A) into the corresponding manifest instructions, by revising paragraph 2 of the introductory text (the manifest Paperwork Reduction Act burden statement), the two paragarpahs preceeding the Instructions for Generators, and by revising Item 5 and Item 15 of the manifest instructions to read as follows:

### Appendix to Part 262—Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700–22 and 8700–22a and Their Instructions) U.S. EPA Form 8700–22

* * * * *

2. Federal regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, and disposal facilities to complete this form (FORM 8700–22) and, if necessary, the continuation sheet (FORM 8700–22A) for both inter- and intrastate transportation of hazardous waste.

BILLING CODE 6560–50–P

Please print or type. (Form designed for use on elite (12-pitch) typewriter.) Form Approved. OMB No. 2050-0039

**UNIFORM HAZARDOUS WASTE MANIFEST**

| 1. Generator ID Number | 2. Page 1 of | 3. Emergency Response Phone | 4. Manifest Tracking Number |
|---|---|---|---|
| | | | |

**GENERATOR**

5. Generator's Name and Mailing Address — Generator's Site Address (if different than mailing address)

Generator's Phone:

6. Transporter 1 Company Name — U.S. EPA ID Number

7. Transporter 2 Company Name — U.S. EPA ID Number

8. Designated Facility Name and Site Address — U.S. EPA ID Number

Facility's Phone:

| 9a. HM | 9b. U.S. DOT Description (including Proper Shipping Name, Hazard Class, ID Number, and Packing Group (if any)) | 10. Containers No. | 10. Containers Type | 11. Total Quantity | 12. Unit Wt./Vol. | 13. Waste Codes | | |
|---|---|---|---|---|---|---|---|---|
| | 1. | | | | | | | |
| | 2. | | | | | | | |
| | 3. | | | | | | | |
| | 4. | | | | | | | |

14. Special Handling Instructions and Additional Information

15. **GENERATOR'S/OFFEROR'S CERTIFICATION:** I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked and labeled/placarded, and are in all respects in proper condition for transport according to applicable international and national governmental regulations. If export shipment and I am the Primary Exporter, I certify that the contents of this consignment conform to the terms of the attached EPA Acknowledgment of Consent.
I certify that the waste minimization statement identified in 40 CFR 262.27(a) (if I am a large quantity generator) or (b) (if I am a small quantity generator) is true.

Generator's/Offeror's Printed/Typed Name — Signature — Month Day Year

**INT'L**

16. International Shipments ☐ Import to U.S. ☐ Export from U.S. Port of entry/exit:

Transporter signature (for exports only): Date leaving U.S.:

**TRANSPORTER**

17. Transporter Acknowledgment of Receipt of Materials

Transporter 1 Printed/Typed Name — Signature — Month Day Year

Transporter 2 Printed/Typed Name — Signature — Month Day Year

**DESIGNATED FACILITY**

18. Discrepancy

18a. Discrepancy Indication Space ☐ Quantity ☐ Type ☐ Residue ☐ Partial Rejection ☐ Full Rejection

Manifest Reference Number:

18b. Alternate Facility (or Generator) — U.S. EPA ID Number

Facility's Phone:

18c. Signature of Alternate Facility (or Generator) — Month Day Year

19. Hazardous Waste Report Management Method Codes (i.e., codes for hazardous waste treatment, disposal, and recycling systems)

| 1. | 2. | 3. | 4. |
|---|---|---|---|
| | | | |

20. Designated Facility Owner or Operator: Certification of receipt of hazardous materials covered by the manifest except as noted in Item 18a

Printed/Typed Name — Signature — Month Day Year

EPA Form 8700-22 (Rev. 3-05) Previous editions are obsolete.

DESIGNATED FACILITY TO DESTINATION STATE (IF REQUIRED)

**Manifest 8700–22**

The following statement must be included with each Uniform Hazardous Waste Manifest, either on the form, in the instructions to the form, or accompanying the form:

Public reporting burden for this collection of information is estimated to average: 30 minutes for generators, 10 minutes for transporters, and 25 minutes for owners or operators of treatment, storage, and disposal facilities. This includes time for reviewing instructions, gathering data, completing, reviewing and transmitting the form. Any correspondence regarding the PRA burden statement for the manifest must be sent to the Director of the Collection Strategies Division in EPA's Office of Information Collection at the following address: U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460. Do not send the completed form to this address.

**I. Instructions for Generators**

* * * * *

*Item 5. Generator's Mailing Address, Phone Number and Site Address*

Enter the name of the generator, the mailing address to which the completed manifest signed by the designated facility should be mailed, and the generator's telephone number. Note, the telephone number (including area code) should be the normal business number for the generator, or the number where the generator or his authorized agent may be reached to provide instructions in the event the designated and/or alternate (if any) facility rejects some or all of the shipment. Also enter the physical site address from which the shipment originates only if this address is different than the mailing address.

* * * * *

*Item 15. Generator's/Offeror's Certifications*

1. The generator must read, sign, and date the waste minimization certification statement. In signing the waste minimization certification statement, those generators who have not been exempted by statute or regulation from the duty to make a waste minimization certification under section 3002(b) of RCRA are also certifying that they have complied with the waste minimization requirements. The Generator's Certification also contains the required attestation that the shipment has been properly prepared and is in proper condition for transportation (the shipper's certification). The content of the shipper's certification statement is as follows: "I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked, and labeled/placarded, and are in all respects in proper condition for transport by highway according to applicable international and national governmental regulations. If export shipment and I am the Primary Exporter, I certify that the contents of this consignment conform to the terms of the attached EPA Acknowledgment of Consent." When a party other than the generator prepares the shipment for transportation, this party may also sign the shipper's certification statement as the offeror of the shipment.

2. Generator or Offeror personnel may preprint the words, "On behalf of" in the signature block or may hand write this statement in the signature block prior to signing the generator/offeror certification, to indicate that the individual signs as the employee or agent of the named principal.

**Note:** All of the above information except the handwritten signature required in Item 15 may be pre-printed.

* * * * *

*Item 20. Designated Facility Owner or Operator Certification of Receipt (Except as Noted in Item 18a)*

* * * * *

Please print or type. (Form designed for use on elite (12-pitch) typewriter.) Form Approved. OMB No. 2050-0039

**UNIFORM HAZARDOUS WASTE MANIFEST (Continuation Sheet)** | 21. Generator ID Number | 22. Page | **23. Manifest Tracking Number**

24. Generator's Name

25. Transporter _____ Company Name | U.S. EPA ID Number

26. Transporter _____ Company Name | U.S. EPA ID Number

GENERATOR

| 27a. HM | 27b. U.S. DOT Description (including Proper Shipping Name, Hazard Class, ID Number, and Packing Group (if any)) | 28. Containers No. | 28. Containers Type | 29. Total Quantity | 30. Unit Wt./Vol. | 31. Waste Codes | | |
|---|---|---|---|---|---|---|---|---|
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32. Special Handling Instructions and Additional Information

TRANSPORTER

33 Transporter _____ Acknowledgment of Receipt of Materials

Printed/Typed Name | Signature | Month | Day | Year

34. Transporter _____ Acknowledgment of Receipt of Materials

Printed/Typed Name | Signature | Month | Day | Year

DESIGNATED FACILITY

35. Discrepancy

36. Hazardous Waste Report Management Method Codes (i.e., codes for hazardous waste treatment, disposal, and recycling systems)

EPA Form 8700-22A (Rev. 3-05) Previous editions are obsolete. DESIGNATED FACILITY TO DESTINATION STATE (IF REQUIRED)

BILLING CODE 6560–50–C

Instructions—Continuation Sheet, U.S. EPA Form 8700–22A

* * * * *

## PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

■ 5. The authority citation for part 264 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6924, and 6925.

### Subpart E—Manifest System, Recordkeeping, and Reporting

■ 6. Section 264.72 is amended by revising paragraph (e)(4) to read as follows:

**§ 264.72 Manifest discrepancies.**

* * * * *

(e) * * *

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a).

* * * * *

## PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

■ 7. The authority citation for part 265 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936, and 6937, unless otherwise noted.

### Subpart E—Manifest System, Recordkeeping, and Reporting

■ 8. Section 265.72 is amended by revising paragraph (e)(4) to read as follows:

**§ 265.72 Manifest discrepancies.**

* * * * *

(e) * * *

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a).

* * * * *

[FR Doc. 05–11915 Filed 6–15–05; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### 49 CFR Part 192

**[Docket No. RSPA–03–15852; Amdt. Nos. 192–99, 195–83]**

**RIN 2137–AD96**

## Pipeline Safety: Pipeline Operator Public Awareness Program

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), U.S. Department of Transportation (DOT).

**ACTION:** Final rule; correction.

**SUMMARY:** PHMSA is correcting a Final Rule published in the **Federal Register** on May 19, 2005 (70 FR 28833). That Final Rule amended requirements for pipeline operators in 49 CFR parts 192 and 195 to develop and implement public awareness programs and incorporated by reference the guidelines of the American Petroleum Institute (API) Recommended Practice (RP) 1162. The document was assigned the amendment numbers 192–100 and 195–84, which were already assigned to different amendments. This document corrects the amendment numbers, and corrects the language amending part 192 so that it is consistent with part 195.

**DATES:** Effective June 20, 2005.

**FOR FURTHER INFORMATION CONTACT:** Blaine Keener by phone at 202–366–0970, by mail at 400 7th St. SW., Room 2103, Washington, DC 20590, or by e-mail at *blaine.keener@dot.gov*.

**SUPPLEMENTARY INFORMATION:** On May 19, 2005, PHMSA published a Final Rule in the **Federal Register** entitled "Pipeline Safety: Pipeline Operator Public Awareness Program" (70 FR 28833) under amendment numbers 192–100 and 195–84. PHMSA discovered that a rule published on March 3, 2005 entitled "Pipeline Safety: Operator Qualifications; Statutory Changes" had been assigned unsequential amendment numbers and already existed as amendments 192–100 and 195–84. Since the existing amendment numbers are already in use, this document corrects the amendment numbers for the Final Rule "Pipeline Safety: Operator Public Awareness Program" to reflect correct numbering as 192–99 and 195–83.

The Operator Public Awareness Program Final Rule incorporated by reference API RP 1162 into 49 CFR parts 192 and 195. After the rule's publication, PHMSA received a request to clarify the difference between the requirements in 195.440 (c) and 192.616 (c). The comment identified a language inconsistency requiring operators to "follow the general program recommendations of API RP 1162" in part 192, while part 195 specified that the operator "must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162".

PHMSA intended the amending language in parts 192 and 195 to be consistent. The language used in part 192 should match the language in part 195, which clarifies that the operator must follow both baseline and supplemental requirements of API RP 1162. In consideration of the foregoing, PHMSA corrects 49 CFR part 192 by making the following correcting amendments:

**List of Subjects in 49 CFR Part 192**

Pipeline safety and Reporting and recordkeeping requirements.

## PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

■ 1. The authority citation for part 192 continues to read as follows:

**Authority:** 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, 60116, and 60118; and 49 CFR 1.53.

■ 2. Section 192.616 paragraph (c) is revised to read as follows:

**§ 192.616 Public awareness.**

* * * * *

(c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety.

* * * * *

Issued in Washington, DC, on June 10, 2005.

**Stacey L. Gerard,**

*Acting Assistant Administrator/Chief Safety Officer.*

[FR Doc. 05–11865 Filed 6–15–05; 8:45 am]

BILLING CODE 4910–60–P

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### 49 CFR Part 194

**[Docket No. RSPA–03–16560; Amdt. No. 194–5]**

**RIN 2137–AC30**

## Pipeline Safety: Response Plans for Onshore Transportation-Related Oil Pipelines

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

**ACTION:** Final rule; correction.

**SUMMARY:** On February 23, 2005, the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety (OPS) issued a final rule adopting as a final rule, the interim final rule which was issued on January 5, 1993. This final rule also made minor amendments to some of the regulations in Part 194 in response to public comments and the experience that OPS gained in implementing the interim final rule, leading spill response exercises, and responding to actual spills. The amendments were generally technical in nature and did not involve additional costs to pipeline operators or the public.

In issuing the final rule, a table was inadvertently misprinted. This table in § 194.105(b)(3) specifies the potential spill volume reduction credits operators may use when they have secondary containment and other spill prevention measures on breakout tanks. These spill reduction credits are used when calculating the worst case discharge volume.

This correction replaces the incorrect table with the correct table.

**DATES:** This Final Rule correction is effective March 25, 2005.

**FOR FURTHER INFORMATION CONTACT:** L.E. Herrick, (202) 366–5523, U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Room 2103, 400 Seventh Street, SW., Washington, DC 20590–0001, on the contents of this final rule, or the Dockets Facility, *http://dms.dot.gov*, (202) 366–1918, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, for copies of this final rule or other information in the docket. General information about OPS programs is on the Internet home page at *http://ops.dot.gov*. For information on the Oil Pollution Act of 1990 (OPA 90), first click on the "Initiatives," then on "OPA Initiatives."

**List of Subjects in 49 CFR Part 194**

Environmental protection, Hazardous materials transportation, Oil pollution, Petroleum, Pipeline safety, Pipelines, Reporting and recordkeeping requirements, Transportation, Water pollution control.

■ Accordingly, the Final Rule, which was published at (70 FR 8734) February 23, 2005, is corrected as follows:

## PART 194—RESPONSE PLANS FOR ONSHORE OIL PIPELINES

■ 1. The authority citation for part 194 continues to read as follows:

**Authority:** 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5), and (j)(6); sec. 2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.53.

■ 2. Amend § 194.105 by revising paragraph (b)(4) and its table to read as follows:

**§ 194.105 Worst case discharge.**

* * * * *

(b) * * *

(4) Operators may claim prevention credits for breakout tank secondary containment and other specific spill prevention measures as follows:

| Prevention measure | Standard | Credit (percent) |
|---|---|---|
| Secondary containment > 100% | NFPA 30 | 50 |
| Built/repaired to API standards | API STD 620/650/653 | 10 |
| Overfill protection standards | API RP 2350 | 5 |
| Testing/cathodic protection | API STD 650/651/653 | 5 |
| Tertiary containment/drainage/treatment | NFPA 30 | 5 |
| Maximum allowable credit | | 75 |

* * * * *

Issued in Washington, DC, on June 2, 2005.

**Joy Kadnar,**

*Acting Deputy Associate Administrator for Pipeline Safety.*

[FR Doc. 05–11444 Filed 6–15–05; 8:45 am]

**BILLING CODE 4910–60–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 050304059–5146–02; I.D. 022805D]**

**RIN 0648–AS21**

## Fisheries of the Northeastern United States; Recreational Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2005

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement recreational management measures for the 2005 summer flounder, scup, and black sea bass fisheries. The intent of these measures is to prevent overfishing of the summer flounder, scup, and black sea bass resources.

**DATES:** Effective July 18, 2005, except for the amendment to § 648.107(a) introductory text, which is effective June 16, 2005.

**ADDRESSES:** Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees and of the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South

Street, Dover, DE 19901–6790. The EA/RIR/IRFA is also accessible via the Internet at *http://www.nero.noaa.gov/ro/doc/com.htm*. The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses contained in this final rule, and the summary of impacts and alternatives contained in this final rule. Copies of the small entity compliance guide are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin, Fishery Policy Analyst, (978) 281–9279, fax (978) 281–9135, e-mail *sarah.mclaughlin@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

## Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council), in consultation with the New England and South Atlantic Fishery Management Councils. The Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) and its implementing regulations, which are found at 50 CFR part 648, subparts A (general provisions), G (summer flounder), H (scup), and I (black sea bass), describe the process for specifying annual recreational management measures that apply in the Exclusive Economic Zone (EEZ). The states manage these fisheries within 3 miles of their coasts, under the Commission's plan for summer flounder, scup, and black sea bass. The Federal regulations govern vessels fishing in the EEZ, as well as vessels possessing a Federal fisheries permit, regardless of where they fish.

The 2005 coastwide recreational harvest limits are 11.98 million lb (5,434 mt) for summer flounder, 3.96 million lb (1,796 mt) for scup, and 4.13 million lb (1,873 mt) for black sea bass. The 2005 quota specifications, inclusive of the recreational harvest limits, were determined to be consistent with the 2005 target fishing mortality rate (F) for summer flounder and the target exploitation rates for scup and black sea bass.

The proposed rule to implement annual Federal recreational measures for the 2005 summer flounder, scup, and black sea bass fisheries was published on March 15, 2005 (70 FR 12639), and contained management measures (minimum fish sizes, possession limits, and fishing seasons) intended to keep annual recreational landings from exceeding the specified harvest limits. A complete discussion of the development of the recreational management measures appeared in the preamble of the proposed rule and is not repeated here. All minimum fish sizes discussed below are total length measurements of the fish, i.e., the straight-line distance from the tip of the snout to the end of the tail while the fish is lying on its side. All possession limits discussed below are per person.

Based on the recommendation of the Commission, the Regional Administrator finds that the recreational summer flounder fishing measures proposed to be implemented by the states of Massachusetts through North Carolina for 2005 are the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.102, 648.103, and 648.105(a), respectively. According to the regulation at § 648.107(a)(1), vessels subject to the recreational fishing measures of this part, landing summer flounder in a state with an approved conservation equivalency program shall not be subject to the more restrictive Federal measures, and shall instead be subject to the recreational fishing measures implemented by the state in which they land. Section 648.107(a) has been amended accordingly. The management measures will vary according to the state of landing, as specified in the following table.

TABLE 1—2005 STATE RECREATIONAL MANAGEMENT MEASURES FOR SUMMER FLOUNDER

| State | Minimum Fish Size | Possession Limit | Fishing Season |
|---|---|---|---|
| MA | 17 inches (43.2 cm) | 7 fish | January 1 through December 31 |
| RI | 17.5 inches (44.5 cm) | 7 fish | April 1 through December 31 |
| CT | 17.5 inches (44.5 cm) | 6 fish | April 30 through December 31 |
| NY | 17.5 inches (44.5 cm) | 5 fish | April 29 through October 31 |
| NJ | 16.5 inches (41.9 cm) | 8 fish | May 7 through October 10 |
| DE | 17.5 inches (44.5 cm) | 4 fish | January 1 through December 31 |
| MD* | 15.5 inches (39.4 cm) | 4 fish | January 1 through December 31 |
| VA | 16.5 inches (41.9 cm) | 6 fish | January 1 through December 31 |
| NC | 14 inches (35.6 cm) | 8 fish | January 1 through December 31 |

*Measures for the ocean waters off MD in the Atlantic Ocean and coastal bays; for the Chesapeake Bay, a 15–inch (38.1–cm) minimum fish size, a 2–fish possession limit, and a fishing season of January 1 through December 31 applies.

Table 2 contains the coastwide Federal measures for scup and black sea bass that are being implemented. These measures are unchanged from those published in the proposed rule.

TABLE 2—2005 SCUP AND BLACK SEA BASS RECREATIONAL MANAGEMENT MEASURES

| Fishery | Minimum Fish Size | | Possession Limit | Fishing Season |
|---|---|---|---|---|
| | inches | cm | | |
| Scup | 10 | 25.4 | 50 fish | January 1 through last day of February, and September 18 through November 30 |
| Black Sea Bass | 12 | 30.5 | 25 fish | January 1 through December 31 |

In the proposed rule, NMFS indicated that a 9–percent reduction in scup landings would be necessary to achieve the 2005 scup recreational target. NMFS disapproved the Council's scup recommendation (Scup Alternative 1), which would maintain the status quo coastwide management measures of a 10–inch (25.4–cm) minimum fish size, a 50–fish possession limit, and open seasons of January 1 through February 28, and September 7 through November 30, on the basis that maintaining the existing regulations would not achieve the 2005 scup recreational target. NMFS requested comment on the following two alternatives presented by the Council that are expected to reduce recreational landings by the required 9 percent: A 10–inch (25.4–cm) minimum fish size, a 50–fish possession limit, and open seasons of January 1 through February 28, and September 18 through November 30 (Scup Alternative 2); and a 10–inch (25.4–cm) minimum fish size, a 50–fish possession limit, and open seasons of January 1 through February 28, and September 12 through September 30 (Scup Alternative 3). No comments were received specifically regarding these two alternatives. Upon further analysis following publication of the proposed rule, NMFS has determined that the fishing season presented in Scup Alternative 3 was intended to be January 1 through February 28, and September 12 through October 31, i.e., it is the opening of the fishery for these periods that would effect a 9–percent reduction. As presented in the proposed rule, Scup Alternative 3 would achieve a 34–percent reduction. Council staff have verified that the use of September 30 in the alternative was a recording error. Taking into account input regarding the Mid-Atlantic party/charter sector from the Council's Scup Industry Advisory Panel that a fall fishing season of September 18 through November 30 would be preferable to September 12 through October 31, this final rule implements Scup Alternative 2.

As in the past 3 years, the scup fishery in state waters will be managed under a regional conservation equivalency system developed through the Commission. Because the Federal FMP does not contain provisions for conservation equivalency, and states may adopt their own unique measures, the Federal and state recreational scup management measures will differ for the 2005 season.

**Corrections to the Summer Flounder and Scup Regulations**

This final rule also makes two corrections to the regulations at §§ 648.104 and 648.123, respectively. In the final rule to implement measures contained in Framework Adjustment 5 to the FMP (69 FR 62818, October 28, 2004, FR Doc. 04–24107), the paragraph referring to the requirements of the summer flounder small-mesh exemption area letter of authorization was inadvertently published as § 648.104(b)(1)(I) rather than § 648.104(b)(1)(i). This final rule corrects that reference to be § 648.104(b)(1)(i). In the final rule to implement the 2005 annual summer flounder, scup, and black sea bass specifications, and other commercial scup measures (70 FR 303, January 4, 2005, FR Doc. 04–28752), the threshhold level to trigger the scup minimum mesh size requirement for otter trawl vessels during the scup Summer period (May 1 through October 31) was increased from 100 lb (45.4 kg) to 200 lb (90.7 kg). This change should also have been reflected in § 648.123(e), the paragraph regarding stowage of nets by trawl vessels fishing for scup. This final rule makes that change to be consistent with the threshhold level listed in the minimum mesh size regulations.

**Comments and Responses**

Two comment letters were received regarding the proposed recreational management measures (70 FR 12639, March 15, 2005).

*Comment 1:* One commenter did not specify the fishery for which he made comments, but NMFS understands the comments to pertain to scup. The commenter, a CT recreational angler, would prefer a minimum fish size of 9 inches (22.9 cm), a possession limit of 40 fish, and a fishing season of July 1 through October 31, to reduce the number of injured fish being returned to the water and to allow for a longer fishing season.

*Response:* The implementation of the recreational scup management measures suggested by the commenter would result in a substantial increase in landings. Although a reduction in landings would be expected from the implementation of a 9–inch (22.9–cm) minimum fish size and a possession limit of 40 fish, it is far too small to offset the increase in landings that would result from the suggested fishing season, which spans the months of July through October. To achieve the 2005 scup recreational harvest limit, consistent with the mortality objectives of the FMP, NMFS considered only alternatives expected to reduce landings in 2005 by at least 9 percent or more. As indicated above, NMFS selected Scup Alternative 2, which would allow the recreational scup fishery to remain open for substantially more days during the fall period than would Scup Alterative 3, as clarified.

*Comment 2:* The other commenter indicated support for shorter fishing seasons, marine protected areas, and reduction of fishing quotas in general.

*Response:* This rule implements management measures (minimum fish sizes, possession limits, and fishing seasons) intended to keep annual recreational landings from exceeding the specified harvest limits. As described in the proposed rule, the FMP established Monitoring Committees (Committees) for the summer flounder, scup, and black sea bass fisheries, consisting of representatives from the Commission, the Mid-Atlantic, New England, and South Atlantic Councils, and NMFS. The FMP and its implementing regulations require the Committees to review scientific and other relevant information annually and to recommend management measures (i.e., minimum fish size, possession limit, and fishing season) necessary to achieve the recreational harvest limits established for each of the three fisheries for the upcoming fishing year. While NMFS acknowledges that consideration of marine protected areas

and quotas is important, this rule is not the proper mechanism to address these general issues.

**Classification**

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

The Assistant Administrator for Fisheries, NOAA, finds, for the summer flounder recreational measures contained in this rule (§ 648.107(a)) , good cause pursuant to 5 U.S.C 553(d)(3) to make that portion of this rule effective immediately, thereby waiving the 30-day delayed effectiveness date required by 5 U.S.C. 553. The linchpin of NMFS's decision whether to proceed with the coastwide measures or to give effect to the conservation equivalent measures is advice from the Commission as to the results of its review of the plans of the individual states. This advice has only recently been received via a letter dated April 21, 2005. During the pendency of the Commission's process and subsequent preparation of this rule by NMFS, the recreational fisheries for these three species have commenced. The party and charter boats from the various states are by far the largest component of the recreational fishery that fish in the EEZ. The Federal coastwide regulatory measures for the three species that were codified last year remain in effect. The Federal coastwide measures for the summer flounder fishery are more restrictive than the measures adopted by the states and approved by the Commission as conservation equivalents, and implemented by NMFS in this rule. Federally permitted recreational vessels subject to these more restrictive measures are currently operating at a disadvantage since non-federally permitted recreational vessels can fish in state waters under more liberal measures.

In addition, NMFS faced an unavoidable delay in the implementation of this rule as a result of delayed submission of the Council's Coastal Zone Management Act consistency determination letters for review by the responsible state agencies (ME to NC). Because these letters were not issued until March 30, 2005, agency action cannot be taken until May 30, 2005, unless responses from the states are received earlier. Because implementation of summer flounder conservation equivalent measures would be preferable to the coastwide measures that will remain in place until publication of this final rule, the states have agreed to expedite their responses and have concurred with the consistency determination.

Because implementation of the proposed scup and black sea bass measures is not as time sensitive, since the proposed changes to the current scup and black sea bass affect the fall fishery, the waiver of the 30-day delay in effectiveness is for the recreational summer flounder measures only.

Included in this final rule is the FRFA prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the economic impacts summarized in the IRFA, the comments on, and responses to, the proposed rule, and the analyses completed in support of this action. A copy of the EA/RIR/IRFA is available from the Council (see **ADDRESSES**).

**Final Regulatory Flexibility Analysis**

*Statement of Objective and Need*

A description of the reasons why this action is being taken, and the objectives of and legal basis for this final rule are explained in the preambles to the proposed rule and this final rule and are not repeated here.

*Summary of Significant Issues Raised in Public Comments*

The two comment letters received on the proposed rule did not specifically address the potential economic impact of the rule. No changes to the proposed rule were required to be made as a result of the public comments. For a summary of the comments received, and the responses thereto, refer to the "Comments and Responses" section of this preamble.

*Description and Estimate of Number of Small Entities to Which This Rule Will Apply*

The Council estimated that the proposed measures could affect any of the 777 vessels possessing a Federal charter/party permit for summer flounder, scup, and/or black sea bass in 2003, the most recent year for which complete permit data are available. However, only 337 of these vessels reported active participation in the recreational summer flounder, scup, and/or black sea bass fisheries in 2003.

*Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

*Description of the Steps Taken to Minimize Economic Impact on Small Entities*

Under the conservation equivalency approach, each state may implement unique management measures appropriate to that state to achieve state-specific harvest limits, as long as the combined effect of all of the states' management measures achieves the same level of conservation as would Federal coastwide measures developed to achieve the annual recreational harvest limit. The conservation equivalency approach allows states flexibility in the specification of management measures, unlike the application of one set of coastwide measures. It is not possible to further mitigate economic impacts on small entities because the specification of the recreational management measures (minimum fish size, possession limits, and fishing seasons) contained in this final rule is constrained by the conservation objectives of the FMP.

The economic analysis conducted in support of this action assessed the impacts of the various management alternatives. In the EA, the no action alternative for each species is defined as the continuation of the management measures as codified for the 2004 fishing season. In consideration of the Council-recommended recreational harvest limits established for the 2005 fishing year, implementation of the same recreational measures established for the 2004 fishing year would be inconsistent with the goals and objectives of the FMP and its implementing regulations, and, because it could result in overfishing of the scup fishery, would be inconsistent with National Standard 1 of the Magnuson-Stevens Act. Therefore, the no action alternatives for each fishery were not considered to be reasonable alternatives to the preferred actions for each fishery and their collective impacts were not analyzed in the EA/RIR/IRFA. The no action measures were analyzed in Summer Flounder Alternative 2, Scup Alternative 1, and Black Sea Bass Alternative 2.

At this time, it is not possible to determine the economic impact of summer flounder conservation equivalency on each state. However, it is likely to be proportional to the level of landings reductions required. If the conservation equivalency alternative is effective at achieving the recreational harvest limit, then it is likely to be the only alternative that minimizes economic impacts, to the extent practicable, yet achieves the biological objectives of the FMP. Under § 648.107,

vessels landing summer flounder in any state that does not implement conservation equivalent measures are subject to the precautionary default measures, consisting of an 18–inch (45.7–cm) minimum fish size, a possession limit of one fish, and no closed season. The suites of conservation equivalent measures proposed by each state are less restrictive than the precautionary default measures. Therefore, because states have a choice as to the specific measures to apply to landings in each state, it is more rational for the states to adopt conservation equivalent measures that result in fewer adverse economic impacts than to adopt the more restrictive measures contained in the precautionary default alternative.

For the proposed rule, average party/charter losses for each of the 18 potential combinations of alternatives were estimated for federally permitted vessels by multiplying the number of potentially affected trips in 2005 in each state by the estimated average access fee paid by party/charter anglers in the Northeast Region in 2004. Predicted average losses for NY were presented as an example, and ranged from $1,917 per vessel under the combined effects of Summer Flounder Alternative 2, Scup Alternative 1, and Black Sea Bass Alternative 1, to $8,817 per vessel under the combined effects of the summer flounder precautionary default (considered in Summer Flounder Alternative 1), Scup Alternative 3, and Black Sea Bass Alternative 2 or 3 (assuming a 25–percent reduction in effort for affected trips). Analyses for the combinations including Scup Alternative 3 have been repeated using the revised fishing season of January 1 through February 28, and September 18 through November 30. The result is that predicted average losses for NY range from $1,917 per vessel under the combined effects of Summer Flounder Alternative 2, Scup Alternative 1, and Black Sea Bass Alternative 1, to $8,732 per vessel under the combined effects of the summer flounder precautionary default (considered in Summer Flounder Alternative 1), Scup Alternative 3, and either Black Sea Bass Alternative 2 or 3.

*Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of Federal party/charter permits issued for the summer flounder, scup, and black sea bass fisheries. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from NMFS (see **ADDRESSES**) and at the following website: *http://www.nero.noaa.gov.*

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 9, 2005.

**Rebecca Lent,**

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

■ For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.104, the first sentence of paragraph (b)(1) is revised to read as follows:

**§ 648.104 Gear restrictions.**

* * * * *

(b) * * *

(1) Vessels issued a summer flounder moratorium permit, a summer flounder small-mesh exemption area letter of authorization (LOA), required under paragraph (b)(1)(i) of this section, and fishing from November 1 through April 30 in the exemption area, which is east of the line that follows 72°30.0′ W. long. until it intersects the outer boundary of the EEZ (copies of a map depicting the area are available upon request from the Regional Administrator). * * *

* * * * *

■ 3. In § 648.107, paragraph (a) introductory text is revised to read as follows:

**§ 648.107 Conservation equivalent measures for the summer flounder fishery.**

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by Massachusetts through North Carolina for 2005 are the conservation equivalent of the season, minimum fish size, and possession limit prescribed in §§ 648.102, 648.103, and 648.105(a), respectively. This determination is based on a recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission.

* * * * *

■ 4. In § 648.122, paragraph (g) is revised to read as follows:

**§ 648.122 Season and area restrictions.**

* * * * *

(g) *Time restrictions.* Vessels that are not eligible for a moratorium permit under § 648.4(a)(6), and fishermen subject to the possession limit, may not possess scup, except from January 1 through the last day of February, and from September 18 through November 30. This time period may be adjusted pursuant to the procedures in § 648.120.

■ 5. In § 648.123, the first sentence of paragraph (a)(5) is revised to read as follows:

**§ 648.123 Gear restrictions.**

(a) * * *

(5) *Stowage of nets.* The owner or operator of an otter trawl vessel retaining 500 lb (226.8 kg) or more of scup from November 1 through April 30, or 200 lb (90.7 kg) or more of scup from May 1 through October 31, and subject to the minimum mesh requirements in paragraph (a)(1) of this section, and the owner or operator of a midwater trawl or other trawl vessel subject to the minimum size requirement in § 648.122, may not have available for immediate use any net, or any piece of net, not meeting the minimum mesh size requirement, or mesh that is rigged in a manner that is inconsistent with the minimum mesh size. * * *

* * * * *

■ 6. Section 648.142 is revised to read as follows:

**§ 648.142 Time restrictions.**

Vessels that are not eligible for a moratorium permit under § 648.4(a)(7), and fishermen subject to the possession limit may possess black sea bass from January 1 through December 31, unless this time period is adjusted pursuant to the procedures in § 648.140.

[FR Doc. 05–11837 Filed 6–15–05; 8:45 am]

BILLING CODE 3510–22–S

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 050613158-5158-01; I.D. 061305B]**

**RIN 0648–AT48**

## Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Emergency Fishery Closure Due to the Presence of the Toxin that Causes Paralytic Shellfish Poisoning (PSP)

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

**ACTION:** Emergency action; request for comments.

**SUMMARY:** NMFS is promulgating emergency regulations, at the request of the Food and Drug Administration (FDA), to close portions of Federal waters of the Gulf of Maine, Georges Bank, and southern New England to the harvest of shellfish (bivalves), with the exception of sea scallop adductor muscles harvested and shucked at sea, due to the presence in those waters of the toxin that causes paralytic shellfish poisoning (PSP). The concentrations of the toxin in the Federal waters is great enough to warrant a public health emergency. The closure will remain in effect until September 30, 2005, with the possibility of a reduction or an extension of the closure based upon FDA's determination that the concentration of the toxin in shellfish is at a level that is safe or unsafe, respectively, for human consumption.

**DATES:** Effective June 14, 2005 through September 30, 2005. Comments must be received by July 18, 2005.

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

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

Copies of the emergency rule are available from Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930.

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

**SUPPLEMENTARY INFORMATION:**

### Background

On June 10, 2005, FDA requested that NMFS close an area of Federal waters off the coasts of New Hampshire and Massachusetts to any harvesting of shellfish (bivalves) intended for human consumption. This includes surfclams, ocean quahogs, unshucked or "roe-on" scallops, and mussels. The only exception to this closure is for Atlantic sea scallops harvested for onboard shucking of the adductor muscle or "meat" which is unaffected by the toxin. The text of the June 10, 2005, FDA request is as follows:

June 10, 2005
Rebecca Lent, Ph.D.
Deputy Administrator
National Marine Fisheries Service
1315 East West Highway
Silver Spring, MD 20910

Dear Dr. Lent:

On behalf of Michael O. Leavitt, Secretary of Health and Human Services (HHS), the Food and Drug Administration (FDA) is requesting that the National Oceanic and Atmospheric Administration (NOAA)/National Marine Fisheries Service (NMFS) of the Department of Commerce close waters of the north western Atlantic Ocean, as described below, to the harvesting of bivalve molluscan shellfish intended for human consumption. The States of Massachusetts, New Hampshire, and Maine are experiencing one of the largest toxic algal blooms (red tides) in their history. The red tide, which is responsible for the production of marine biotoxins that cause Paralytic Shellfish Poisoning (PSP) in persons consuming affected shellfish, has spread from State waters to Federal waters further offshore. In accordance with the National Shellfish Sanitation Program (NSSP), the States have closed affected waters within their jurisdiction. Closure of Federal waters is also necessary to address this public health emergency by ensuring that potentially unsafe bivalve molluscan shellfish are not harvested for human consumption.

FDA is requesting that NMFS close all waters south of 43 degrees north latitude, west of 69 degrees west longitude, north of 40 degrees north latitude, and east of 71 degrees west longitude. This area is to be closed to the harvesting of all species of bivalve molluscan shellfish with the only exception of scallops that are harvested for onboard shucking of the adductor muscle. While FDA cannot predict how long the closure should remain in effect, it is reasonable that closure should at least extend for 2 to 3 months. Reopening the area should be based on test results from shellfish collected within the closed area. The closure does not include Federal waters off the coast of Maine because cell counts of the organism responsible for production of the dangerous marine biotoxin are at lower levels and the small fishery in these waters has been controlled through State and industry actions.

Given the severity of the illness associated with PSP, FDA requests that NMFS moves as quickly as possible to implement the closure. FDA stands ready to assist NMFS in whatever way it can. Please contact Paul DiStefano at 301–436–1410, of my staff, or me should you have any questions or need further assistance.

As always, FDA appreciates the support and cooperation provided by NMFS in our joint efforts to protect public health. We look forward to working with you to collect samples from the closure to better define the level of toxicity in shellfish meats and in our joint efforts to once again reopen the area for commercial harvest.

Sincerely,

Lester M. Crawford, D.V.M., Ph.D.
Acting Commissioner of Food and Drugs.

According to FDA, portions of the north western Atlantic Ocean are experiencing one of the largest toxic algal blooms (red tides) in history. The red tide is responsible for the production of marine biotoxins that cause PSP in persons consuming affected shellfish. It has spread from State waters to Federal waters further offshore. In accordance with the FDA's National Shellfish Sanitation Program (NSSP), the States have closed affected waters within their jurisdiction. Closure of the Federal waters is also necessary to address the public health emergency.

While it is difficult to predict precisely how long the closure should remain in effect, FDA estimates that the closure should remain in effect at least 2 to 3 months. Thus, this closure will remain in effect until September 30, 2005, with the possibility of a reduction or an extension of the closure based upon FDA's determination that the concentration of the toxin in shellfish is at a level that is safe or unsafe, respectively, for human consumption.

This action temporarily closes all Federal waters of the Exclusive Economic Zone (EEZ) of the Northeastern United States to any shellfish harvesting, with the exception of Atlantic sea scallops shucked at sea for their adductor muscles, in the area bound by the following coordinates in the order stated: (1) 43°00′ N. lat., 71°00′

W. long.; (2) 43°00′ N. lat., 69°00′ W. long.; (3) 40°00′ N. lat., 69°00′ W. long.; (4) 40°00′ N. lat., 71°00′ W. long., and then ending at the first point.

**Classification**

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1855(c).

This rule has been determined to be not significant under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment for this action, as prior notice and comment would be impracticable and contrary to the public interest. The action is in response to a public health emergency. The FDA has requested that NMFS move as quickly as possible to close a specified area to the harvest of shellfish, as shellfish harvested from that area could pose a public health risk if consumed. Any delay in implementing this rule could pose serious health risks to the public. For the reasons stated above, the AA also finds good cause to waive the delayed effectiveness period pursuant to 5 U.S.C. 553(d)(3).

Since this emergency action is necessary to protect public health, a Regulatory Impact Review (RIR) in accordance with Executive Order 12866 has not been completed. The RIR will be made available to the public once it has been completed.

Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 14, 2005.

**Rebecca Lent**

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

■ For the reasons set out in the preamble, 50 CFR part 648 is amended to read as follows:

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.14, paragraph (a)(166) is added to read as follows:

**§ 648.14 Prohibitions.**

(a) * * *

(166) Fish for, harvest, catch, possess, or attempt to fish for, harvest, catch, or possess any bivalve shellfish, including Atlantic surfclams, ocean quahogs, and mussels, with the exception of sea scallops harvested only for adductor muscles and shucked at sea, in the area of the U.S. Exclusive Economic Zone bound by the following coordinates in the order stated: 43°00′ N. lat., 71°00′ W. long.; 43°00′ N. lat., 69°00′ W. long.; 40°00′ N. lat., 69°00′ W. long.; 40°00′ N. lat., 71°00′ W. long., and then ending at the first point.

* * * * *

[FR Doc. 05–12030 Filed 6–14–05; 3:36 pm]

BILLING CODE 3510–22–S

# Proposed Rules

Federal Register
Vol. 70, No. 115
Thursday, June 16, 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. FAA–2005–21470; Directorate Identifier 2003–NM–45–AD]**

**RIN 2120–AA64**

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

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30 and DC–10–30F (KC–10A and KDC–10) airplanes; Model DC–10–40 and DC–10–40F airplanes; and Model MD–11 and MD–11F airplanes. This proposed AD would require for certain airplanes, modifying the thrust reverser command wiring of the number 2 engine. For certain other airplanes, this proposed AD would require modifying the thrust reverser system wiring from the flight compartment to engines 1, 2, and 3 thrust reversers. This proposed AD would also require installing thrust reverser locking systems on certain airplanes. This proposed AD is prompted by a determination that the thrust reverser systems on these McDonnell Douglas airplanes do not adequately preclude unwanted deployment of a thrust reverser. We are proposing this AD to prevent an unwanted deployment of a thrust reverser during flight, which could result in reduced controllability of the airplane.

**DATES:** We must receive comments on this proposed AD by August 15, 2005.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024).

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–21470; the directorate identifier for this docket is 2003–NM–45–AD.

**FOR FURTHER INFORMATION CONTACT:** Philip C. Kush, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5263; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2005–21470; Directorate Identifier 2003–NM–45–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

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

### Examining the Docket

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

### Discussion

In 1992, the FAA issued a document titled "Criteria for Assessing Transport Turbojet Fleet Thrust Reverser Safety." This document is based upon the premise that no failure of thrust reverser components anticipated to occur in-service should prevent continued safe flight and landing of an airplane. In order to comply with the criteria in the document, Boeing has developed a modification that increases the level of safety of the thrust reverser system by incorporating wire modifications on McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30 and DC–10–30F (KC–10A and KDC–10) airplanes; Model DC–10–40 and DC–10–40F airplanes; and Model MD–11 and MD–11F airplanes; and by installing thrust reverser interlocks on Model DC–10–40 and DC–10–40F airplanes. Based upon the Boeing safety evaluations, we have determined that the existing thrust reverser systems on these McDonnell

Douglas airplanes do not adequately preclude unwanted deployment of a thrust reverser. Such unwanted deployment of a thrust reverser during flight could result in reduced controllability of the airplane.

This is the third in a series of planned rulemaking actions that will encompass the entire fleet of McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30 and DC–10–30F (KC–10A and KDC–10) airplanes; Model DC–10–40 and DC–10–40F airplanes; and Model MD–11 and MD–11F airplanes. This rulemaking action would be the final planned action and would complete the FAA's review of these models based on the 1992 "Criteria for Assessing Transport Turbojet Fleet Thrust Reverser Safety" for McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30 and DC–10–30F (KC–10A and KDC–10) airplanes; Model DC–10–40 and DC–10–40F airplanes; and Model MD–11 and MD–11F airplanes.

**Other Related Rulemaking**

We have previously issued AD 2001–05–10, amendment 39–12147 (66 FR 15785, March 21, 2001), applicable to all McDonnell Douglas Model DC–10 and MD–11 series airplanes, and KC–10A (military) airplanes. That AD requires installation of thrust reverser interlocks on certain airplanes, inspections of the thrust reverser systems to detect discrepancies on certain other airplanes, and corrective actions, if necessary. The actions required by paragraphs (c) and (i) of AD 2001–05–10 are done in accordance with McDonnell Douglas Alert Service Bulletin DC10–78A057, Revision 01, dated February 18, 1999.

We have also previously issued AD 2001–17–19, amendment 39–12410 (66 FR 44950, August 27, 2001), applicable to all McDonnell Douglas Model DC–10 series airplanes, and KC–10A and KDC–10 (military) airplanes. That AD requires certain modifications of the thrust reverser control and indication system and wiring on each engine. The actions required by paragraph (a) of AD 2001–17–19 are done in accordance with McDonnell Douglas Service Bulletin DC10–78–060, dated December 17, 1999.

**Relevant Service Information**

We have reviewed Boeing Service Bulletin DC10–78–066, Revision 01, dated November 30, 2001 (for Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30 and DC–10–30F (KC–10A and KDC–10) airplanes); and Boeing Service Bulletin DC10–78–067, dated October 30, 2002 (for Model DC–10–40 and DC–10–40F airplanes). These service bulletins describe procedures for modifying the thrust reverser command wiring of the number 2 engine, located in the aft fuselage/pylon area, to provide wire separation. The modification includes installing new tubes, revising the wiring, and routing the wiring as specified in the service bulletins.

Boeing Service Bulletin DC10–78–067 also specifies prior or concurrent accomplishment of the following service bulletins:

CONCURRENT SERVICE BULLETINS FOR BOEING SERVICE BULLETIN DC10–78–067

| McDonnell Douglas | Revision level | Date | Action |
|---|---|---|---|
| Alert Service Bulletin DC10–78A057 (cited as a source of service information for AD 2001–05–10). | 01 | February 18, 1999 | Repetitive detailed visual inspections, functional checks, and torque checks of the thrust reverser systems and applicable corrective actions. |
| Service Bulletin DC10–78–060 (cited as a source of service information for AD 2001–17–19). | Original | December 17, 1999 | Modification of the indication light system for the thrust reversers. |
| Service Bulletin DC10–78–064 | Original | June 24, 2003 | Installation of an additional thrust reverser locking system at each wing position. |

We have also reviewed Boeing Service Bulletin MD11–78–007, Revision 02, dated August 22, 2001 (for Model MD–11 and –11F airplanes). This service bulletin describes procedures for modifying the thrust reverser system wiring from the flight compartment to engines 1, 2, and 3 thrust reversers. The modification includes revising and routing the wiring; and verifying the proper configuration code and revising the wiring if required; as applicable. The modification also includes a test of the thrust reverser system.

Boeing Service Bulletin MD11–78–007 also specifies prior or concurrent accomplishment of the following service bulletins:

CONCURRENT SERVICE BULLETINS FOR BOEING SERVICE BULLETIN MD11–78–007

| Service bulletin | Revision level | Date | Action |
|---|---|---|---|
| McDonnell Douglas Service Bulletin MD11–31–091. | Original | November 5, 1998 | Update program software of display electronic units. |
| Rohr Service Bulletin MD–11 54–200 | 1 | May 14, 2001 | Modify wing pylon harnesses. |
| Rohr Service Bulletin MD–11 54–201 | Original | November 30, 1999 | Modify pylon thrust reverser harnesses and J-box. |

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

**FAA's Determination and Requirements of the Proposed AD**

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the Proposed AD and Service Information."

Although AD 2001–05–10 and AD 2001–17–19 already provide certain

thrust reverser safety enhancements, this proposed AD is necessary to ensure that failure of a thrust reverser component would not prevent safe flight and landing.

**Differences Between the Proposed AD and Service Information**

Boeing Service Bulletin DC10–78–067, dated October 30, 2002, specifies that McDonnell Douglas Service Bulletin DC10–78–064, June 24, 2003, be done prior to or concurrently with Boeing Service Bulletin DC10–78–067. We have determined that the installation of the thrust reverser locking systems specified in McDonnell Douglas Service Bulletin DC10–78–064 may be done after accomplishing the actions specified Boeing Service Bulletin DC10–78–067 as long as the actions in both service bulletins are done within 60 months. We have coordinated this difference with the airplane manufacturer.

**Costs of Compliance**

There are about 612 airplanes of the affected designs in the worldwide fleet. This proposed AD would affect about 245 airplanes of U.S. registry. The following tables provide the estimated costs for U.S. operators to comply with this proposed AD, for the applicable actions, at an average hourly labor rate of $65.

COST FOR WIRING MODIFICATION/THRUST REVERSER LOCKING SYSTEM INSTALLATION

| Action | Work hours | Parts | Cost per airplane | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|
| Modify wiring (Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30 and DC–10–30F (KC–10A and KDC–10) airplanes) | 34 | $1,562 | $3,772 | 40 | $150,880 |
| Modify wiring (Model DC–10–40 and DC–10–40F airplanes) | 34 | 5,238 | 7,448 | 45 | 335,160 |
| Modify wiring (Model MD–11 and –11F airplanes) | 124–192 | 11,912–17,672 | 19,972–30,152 | 160 | 3,195,520–4,824,320 |
| Install thrust reverser locking system (Model DC–10–40 and DC–10–40F airplanes) | 218 | 165,535–207,792 | 179,705–221,962 | 45 | 8,086,725–9,988,290 |

COST OF CONCURRENT ACTIONS FOR MODEL MD–11 AND MD–11F AIRPLANES

| Action | Work hours | Hourly labor rate | Parts | Cost per airplane |
|---|---|---|---|---|
| Update program software, as applicable | 2 | $65 | (1) | $130 |
| Modify wing pylon harnesses, as applicable | 100 | 65 | 5,268 | 11,768 |
| Modify pylon thrust reverser harnesses and J-box, as applicable | 52 | 65 | 4,397 | 7,777 |

[1] None.

**Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

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

**Regulatory Findings**

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**McDonnell Douglas:** Docket No. FAA–2005–21470; Directorate Identifier 2003–NM–45–AD.

**Comments Due Date**

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by August 15, 2005.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to airplanes, certificated in any category, as listed in Table 1 of this AD.

TABLE 1.—APPLICABILITY

| McDonnell Douglas airplane— | As identified in— |
|---|---|
| (1) Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30 and DC–10–30F (KC–10A and KDC–10) airplanes. | Boeing Service Bulletin DC10–78–066, Revision 01, dated November 30, 2001. |
| (2) Model DC–10–40 and DC–10–40F airplanes | Boeing Service Bulletin DC10–78–067, dated October 30, 2002. |
| (3) Model MD–11 and MD–11F airplanes | Boeing Service Bulletin MD11–78–007, Revision 02, dated August 22, 2001. |

**Unsafe Condition**

(d) This AD was prompted by a determination that the thrust reverser systems on these McDonnell Douglas airplanes do not adequately preclude unwanted deployment of a thrust reverser. We are issuing this AD to prevent an unwanted deployment of a thrust reverser during flight, which could result in reduced controllability of the airplane.

**Compliance**

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

**Wiring Modification**

(f) For Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, and DC–10–30F (KC–10A and KDC–10) airplanes: Within 60 months after the effective date of this AD, modify the thrust reverser command wiring of the number 2 engine by doing all the actions specified in the Accomplishment Instructions of Boeing Service Bulletin DC10–78–066, Revision 01, dated November 30, 2001.

(g) For Model MD–11 and MD–11F airplanes: Within 60 months after the effective date of this AD, modify the thrust reverser system wiring from the flight compartment to engines 1, 2, and 3 thrust reversers by doing all the actions specified in the Accomplishment Instructions of Boeing Service Bulletin MD11–78–007, Revision 02, dated August 22, 2001.

**Wiring Modification/Installation of Thrust Reverser Locking System**

(h) For Model DC–10–40 and DC–10–40F airplanes: Within 60 months after the effective date of this AD, modify the thrust reverser command wiring of the number 2 engine by doing all the actions specified in the Accomplishment Instructions of Boeing Service Bulletin DC10–78–067, dated October 30, 2002, and install thrust reverser locking systems by doing all the applicable actions specified in the Accomplishment Instructions of McDonnell Douglas Service Bulletin DC10–78–064, dated June 24, 2003.

**Prior or Concurrent Actions**

(i) For Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, and DC–10–30F (KC–10A and KDC–10) airplanes: Prior to or concurrent with the actions required by paragraph (f) of this AD, do the actions specified in Table 2 of this AD.

TABLE 2.—PRIOR OR CONCURRENT ACTIONS FOR MODEL DC–10–10, DC–10–10F, DC–10–15, DC–10–30, AND DC–10–30F (KC–10A AND KDC–10), AIRPLANES

| Do these actions— | Required by— | In accordance with— |
|---|---|---|
| Repetitive detailed visual inspections, functional checks, and torque checks of the thrust reverser systems, and applicable corrective actions. | Paragraphs (c) and (i) of AD 2001–05–10, amendment Bulletin 39–12147. | McDonnell Douglas Alert Service Bulletin DC10–78A057, Revision 01, dated February 18, 1999. |
| Modification of the indication light system for the thrust reversers. | Paragraph (a) of AD 2001–17–19, amendment 39–12410. | McDonnell Douglas Service Bulletin DC10–78–060, dated December 17, 1999. |

(j) For Model MD–11 and MD–11F airplanes: Prior to or concurrent with the actions required by paragraph (g) of this AD, do the actions specified in Table 3 of this AD.

TABLE 3.—PRIOR OR CONCURRENT ACTIONS FOR MODEL MD–11 AND MD–11F AIRPLANES

| Do these actions— | In accordance with— |
|---|---|
| Update program software of display electronic units | McDonnell Douglas Service Bulletin MD11–31–091, dated November 5, 1998. |
| Modify wing pylon harnesses | Rohr Service Bulletin MD–11–54–200, Revision 1, dated May 14, 2001. |
| Modify pylon thrust reverser harnesses and J-box | Rohr Service Bulletin MD–11–54–201, dated November 30, 1999. |

**Actions Accomplished According to Previous Issues of Service Bulletins**

(k) Actions accomplished before the effective date of this AD according to Boeing Service Bulletin DC10–78–066, dated March 6, 2001; or Boeing Service Bulletin MD11–78–007, dated January 31, 2000; or Revision 01, dated June 6, 2001; are considered acceptable for compliance with the applicable corresponding actions specified in this AD.

**Alternative Methods of Compliance (AMOCs)**

(l) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Issued in Renton, Washington, on June 3, 2005.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 05–11879 Filed 6–15–05; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 622

**[I.D. 060805B]**

**RIN 0648–AP51**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Comprehensive Amendment to the Fishery Management Plans of the U.S. Caribbean

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

**ACTION:** Notification of availability of FMP amendment.

**SUMMARY:** The Caribbean Fishery Management Council (Council) has submitted a comprehensive amendment to its Spiny Lobster, Queen Conch, Reef Fish, and Coral Fishery Management Plans (FMPs) for review, approval, and implementation by NMFS. The amendment proposes to: establish management strategies to end overfishing and rebuild overfished stocks; require standardized collection of bycatch data; minimize bycatch and bycatch mortality to the extent practicable; designate essential fish habitat (EFH) and EFH habitat areas of particular concern (EFH-HAPCs) for managed stocks; and minimize, to the extent practicable, adverse effects on such habitat caused by fishing. The Council is proposing these actions to support the objectives of the Council's Spiny Lobster, Queen Conch, Reef Fish, and Coral FMPs. The intended effect of these proposed actions is to achieve optimum yield in the fisheries and provide social and economic benefits associated with maintaining healthy fishery stocks.

**DATES:** Written comments must be received no later than 5 p.m., eastern time, on August 15, 2005.

**ADDRESSES:** You may submit comments by any of the following methods:

- E-mail: *0648–AP51.NOA@noaa.gov.* Include in the subject line the following document identifier: 0648–AP51–NOA.
- Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Steve Branstetter, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.
- Fax: 727–824–5308, Attention: Steve Branstetter.

Copies of the comprehensive amendment, which includes a Final Supplemental Environmental Impact Statement, a Regulatory Impact Review, and an Initial Regulatory Flexibility Analysis are available from the Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–2577; telephone: 787–766–5926; fax: 787–766–6239; e-mail: *miguelar@coqui.net.*

**FOR FURTHER INFORMATION CONTACT:** Dr. Steve Branstetter, phone: 727–824–5305; fax: 727–824–5308; e-mail: *steve.branstetter@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each Regional Fishery Management Council to submit any FMP or amendment to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, publish an announcement in the **Federal Register** notifying the public that the plan or amendment is available for review and comment.

The amendment evaluates the benefits and impacts of a number of alternatives to address the following general categories of actions: (1) Defining fishery management units (FMUs) and sub-units; (2) specifying biological reference points and stock status determination criteria; (3) regulating fishing mortality; (4) rebuilding overfished fisheries; (5) achieving the Magnuson-Stevens Act bycatch mandates; and (6) achieving the Magnuson-Stevens Act EFH mandates.

### Fishery Management Units

The amendment proposes to re-define the FMUs and sub-units in the Queen Conch, Reef Fish, and Coral FMPs. The amendment proposes to redefine select FMUs to represent those species present in sufficient numbers in the U.S. EEZ to warrant inclusion in Council FMPs, retain select species in FMUs for data collection only, and define or modify FMU sub-units to include species that are best managed together or as a unit.

### Biological Reference Points and Stock Status Criteria

For all managed species (or FMU sub-units), with the exception of those species that would be included in a data collection only category, the amendment proposes to establish or revise values such as maximum sustainable yield (MSY), optimum yield, fishing mortality rate and biomass level ratios, minimum stock size threshold, maximum fishing mortality threshold, and define limit and target control rules.

### Rebuilding Strategies

The amendment describes management strategies to rebuild those stocks considered to be overfished, or to protect stocks from becoming overfished. The rebuilding schedules are designed to rebuild these stocks to their biomass at MSY ($B_{MSY}$) within specified time frames. To achieve these goals, the Council is proposing actions to achieve immediate reductions in fishing mortality including closed seasons and areas, gear restrictions, and administrative actions to foster the development of consistent regulations in state and Federal waters.

### Standardized Bycatch Reporting Methodology

The amendment proposes several actions to improve U.S. Caribbean bycatch data collection for fisheries of the region including modifying trip tickets used by the local governments to incorporate bycatch data fields. In addition, management measures are proposed to further reduce bycatch.

### Essential Fish Habitat

The amendment describes, identifies, and designates EFH and EFH-HAPCs for managed stocks, and proposes management actions to minimize to the extent practicable adverse effects on such habitat caused by fishing.

A proposed rule that would implement measures outlined in the amendment has been received from the Council. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Comments received by August 15, 2005, whether specifically directed to the comprehensive amendment or the

subsequent proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve the amendment. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: June 9, 2005.

**Alan D. Risenhoover,**

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

[FR Doc. 05–11917 Filed 6–15–05; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 050607152–5152–01; I.D. 052605B]**

**RIN 0648–AT04**

## Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Retention Standard

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

**ACTION:** Proposed rule, request for comments.

**SUMMARY:** NMFS issues a proposed rule to implement Amendment 79 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). This action is necessary to reduce bycatch and improve utilization of groundfish harvested by catcher/processor trawl vessels in the Bering Sea and Aleutian Island management area (BSAI) that are not listed American Fisheries Act (AFA) catcher/processors referred to throughout this proposed rule as non-AFA catcher/processors. This action is intended to promote the management objectives of the Improved Retention/Improved Utilization (IRIU) program, the FMP, and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Written comments on the proposed rule must be received by August 1, 2005.

**ADDRESSES:** Written comments may be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by any of the following methods:

- E-mail: *BSA79PR–0648–AT04@noaa.gov*. Include in the subject line of email comments the following identifier: GRS. E-mail comments, with or without attachments, are limited to 5 megabytes;
- Webform at the Federal e-Rulemaking Portal: *http:www.regulations.gov*. Follow the. instructions at that site for submitting comments:
- Mail to P.O. Box 21668, Juneau, AK 99802;
- Fax: to (907) 586–7557; or
- Hand Delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, AK.

Comments regarding the burden-hour estimates or other aspects of the collection-of information requirements contained in this rule should be submitted in writing to NMFS at the ADDRESSES above, and e-mail to David Rostker, OMB, by e-mail at *David_Rostker@omb.eop.gov* or by fax to 202–395–7285.

Copies of the Environmental Assessment/Regulatory Impact Review/ Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action may be obtained from the same mailing address above or from the NMFS Alaska Region website at *www.fakr.noaa.gov*.

**FOR FURTHER INFORMATION CONTACT:** Jason Anderson at *Jason.anderson@noaa.gov* or Jeff Hartman at *Jeff.hartman@noaa.gov*. Either may be contacted at (907) 586–7228.

**SUPPLEMENTARY INFORMATION:**

### Background

NMFS manages the U.S. groundfish fisheries of the BSAI in the Exclusive Economic Zone under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP pursuant to the Magnuson-Stevens Act. Regulations implementing the FMP appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

Public comments are being solicited on Amendment 79 through the end of the comment period specified in the notification of availability of the FMP amendment (NOA). The NOA published in the **Federal Register** on June 2, 2005 (70 FR 32287), with comments on the amendment invited through August 1, 2005. Public comments on the proposed rule must be received by the end of the comment period on the amendment, as published in the NOA, to be considered in the approval/disapproval decision on the amendment. All comments received by the end of the comment period on the amendment, whether specifically directed to the amendment, or the proposed rule, will be considered in the approval/disapproval decision. Comments received after that date will not be considered in the approval/ disapproval decision on the amendment. To be considered, written comments must received by the close of business on the last day of the comment period/ that does not mean postmarked or otherwise transmitted by that date.

This proposed action is one of several adopted by the Council in recent years to decrease regulatory and economic discards and increase catch utilization in the BSAI groundfish fisheries. Amendment 49 to the FMP was implemented on January 3, 1998 (62 FR 63880), establishing IRIU standards for pollock and Pacific cod beginning January 3, 1998, and for rock sole and yellowfin sole (flatfish) beginning January 1, 2003. In 2001, the Council determined that cost, market and logistical constraints would prevent non-AFA trawl catcher/processors from being able to comply with IRIU requirements for flatfish. In June 2002, the Council developed a problem statement for the development of alternatives to address the pending effective date of IRIU regulations for flatfish. In October 2002, the Council adopted Amendment 75 to the FMP which delayed the effective date of IRIU requirements for flatfish harvested in the BSAI until June 1, 2004. The Council's intent for this delay was to provide additional time for the development of bycatch reduction measures that could be more practically and effectively applied to the non-AFA trawl catcher/processor sector.

In October 2002, the Council also initiated the analysis of four new FMP amendments that were intended to augment or replace IRIU regulations for BSAI flatfish prior to the June 2004 effective date for this program. Amendment "B" would have created flatfish discard limits for the flatfish fisheries; Amendment 76 would exempt fisheries with less than a 5–percent IRIU flatfish bycatch rate from IRIU flatfish regulations; Amendment 79 (the proposed action) would establish a minimum groundfish retention standard (GRS); and Amendment 80 (as modified at the October 2004 Council meeting) would allocate specified target species and prohibited species catch (PSC) limits to non-AFA trawl catcher/ processors and allow these vessels to form one or more fishery cooperatives.

NMFS partially approved Amendment 75 on September 2, 2003 (68 FR 52412), by approving the removal of the January 1, 2003 effective date for the IRIU flatfish program from the FMP, and by disapproving the adjusted effective date of June 1, 2004. NMFS's decision on Amendment 75 had the effect of indefinitely delaying the IRIU flatfish program. With the indefinite delay of this program, Amendment 76 no longer had practical application in the BSAI and Amendment "B" was rejected by the Council as infeasible following discussions between industry representatives and fishery managers. However, the Council continued to develop Amendments 79 and 80. Amendment 79, which this rule proposes to implement, was adopted by the Council in June 2003. If approved, it would supercede Amendment 75. The Council continues to develop Amendment 80.

As part of Amendment 79, the Council adopted a revision to the maximum retainable amount (MRA) for pollock harvested by non-AFA vessels in the BSAI that would allow for increased retention of pollock incidentally harvested by non-AFA vessels. Before June 2003, the proposed GRS and pollock MRA revision were component parts of the same action to reduce discards in the BSAI. The Council recognized that the MRA change could have immediate benefits for reducing discard in groundfish fisheries however, and requested NMFS to expedite the proposed pollock MRA revision as a separate action. The revised MRA for pollock harvested by non-AFA vessels in the BSAI was implemented by a final rule published in the **Federal Register** on June 14, 2004 (69 FR 32901).

**GRS Program**

The Council's analysis of groundfish retention rates in the BSAI fishery revealed that vessels in the non-AFA trawl catcher/processor sector had the lowest retained catch rates of any groundfish trawl fishery in the BSAI. The EA/RIR/IRFA for Amendment 79 reported that the non-AFA trawl catcher/processor sector had a retained groundfish catch rate of 75.1 percent in 2001. However, during the same year in the BSAI, AFA trawl catcher/processors had a retained catch rate of 99.1 percent, pot catcher/processors had a retained catch rate of 93.5 percent and longline catcher/processors had a retained catch rate of 85.4 percent. In 2001, the non-AFA trawl catcher/processor sector accounted for 67 percent of all discards in the BSAI. For these reasons, the GRS program that would be authorized under Amendment 79 focuses on this sector for improved groundfish retention rates and reduced bycatch.

This action proposes to implement an annual GRS for non-AFA trawl catcher/processors equal to or greater than 125 ft (38.1 m) length overall (LOA). The percent of groundfish retained would be a percent calculated as a specified ratio of the round-weight equivalent of total retained groundfish to total groundfish catch. The owners or operators of these vessels would be required to meet this standard on an annual basis. The use of total groundfish catch in the denominator of the calculation, instead of total catch, is proposed to avoid a potential incentive to target on non-groundfish species and to recognize that retention of non-groundfish often is either impractical or prohibited. Further, the catch of groundfish that are required to be treated as prohibited species under 50 CFR 679.20(d)(2) would be removed from the GRS calculation for individual vessels. By removing groundfish that are in prohibited species status, vessel operators would not be held accountable for retaining catch that they are required to discard. Groundfish species closed to directed fishing would be included in the calculation for percent of groundfish retained, because species taken incidental to target species may be retained up to the MRA (50 CFR 679.20(e)). This constraint would provide an incentive to reduce incidental catch while providing flexibility to catch target species. The annual GRS ratios as adopted by the Council are shown below:

TABLE 1. GROUNDFISH RETENTION STANDARD

| *GRS Schedule* | *Annual GRS* |
|---|---|
| 2005 | 65% |
| 2006 | 75% |
| 2007 | 80% |
| 2008 and each year after | 85% |

The Council considered several alternatives to an annual GRS. The Council's preferred alternative, however, included an annual GRS because it would increase the number of vessels that could comply with the GRS program and addressed NMFS enforcement concerns. The EA/RIR/IRFA prepared for this action indicates that, in general, more vessels would be in compliance with the GRS standard as the period over which the GRS is calculated is increased from a weekly assessment period to a year. Additionally, NMFS Enforcement expressed concerns that some of the calculation periods for the GRS under consideration by the Council (for example, weekly) were infeasible because recordkeeping and reporting processes did not allow NMFS to match catch and production estimates over those time periods.

The purpose of the incremental increase of the annual GRS would be to provide additional time for vessels to adjust fishing operations to lower bycatch practices. If Amendment 79 is approved, NMFS anticipates the GRS to be effective January 20, 2006, and vessels would be required to retain at least 75 percent of their groundfish catch in the initial year of the program. The Council intended NMFS to approve Amendment 79 and implement the GRS program by 2005 with a GRS of 65 percent. However, Secretarial review of Amendment 79 and associated rulemaking was not initiated prior to the start of the 2005 fishing year. Because the GRS would be enforced on the basis of a calendar year, the 2006 fishing year would be the earliest the GRS program could be implemented. The EA/RIR/IRFA prepared for this action indicates that 16 BSAI non-AFA trawl catcher/processor vessels would be regulated by the GRS program. Data presented in the EA/RIR/IRFA to evaluate the effects of this action on these 16 vessels demonstrates that in 2001 the 16 non-AFA trawl catcher/processors retained 75.1 percent of their total groundfish catch. Furthermore, the analysis estimates that overall, the vessels regulated by this proposed action would retain 76.3 percent of total groundfish catch in 2006. For 2006, the analysis estimates that five of these 16 vessels would need to increase total groundfish retention to meet the 75–percent standard. NMFS understands that some vessels may incur an additional burden to meet a GRS of 75 percent rather than 65 percent for the first year of the program. The EA/RIR/IRFA and Council anticipate that this additional burden would be minimal because this sector has demonstrated groundfish retention amounts that frequently exceed 65 percent and have met the 75–percent level in 2001. It is NMFS's opinion that the starting level of 75 percent in 2006 is consistent with Council intent on this action and practicable according to the analysis presented on National Standards 7 and 9 in the EA/RIR/IRFA. However, NMFS requests public comment on the implementation of the GRS program at 75 percent in 2006. In

the event that NMFS determines, based on public comment, that the initiation of the GRS at 75 percent is not consistent with Council intent to gradually increase the GRS regardless of when the program is implemented, an initial GRS of 65 percent may be substituted for the 75 percent GRS in the final rule.

The FMP would establish the GRS as a tool for reducing discards of groundfish for any BSAI groundfish fishery sector. However, the Council specified that regulations implementing a GRS would only apply to non-AFA trawl catcher/processors that are 125 ft (38.1 m) LOA or greater. Data provided in the EA/RIR/IRFA indicate that other BSAI groundfish trawl sectors consistently achieve or exceed these standards. In 2001, non-AFA trawl catcher/processors less than 125 ft (38.1 m) LOA accounted for only 8 percent of the total catch of all non-AFA trawl catcher/processors and 7 percent of the retained catch. Given the relatively small contribution to this sector's overall harvest and recognizing that compliance costs associated with observers and scale monitoring requirements would be relatively higher for vessels less than 125 feet (38.1 m) LOA, the Council chose to exclude these vessels from the proposed GRS program.

The Council also specified that regulations implementing the GRS would require vessels subject to the GRS program to create products that yield at least 15 percent from each retained fish. Current regulations at § 679.27(i) set forth a 15–percent utilization requirement for all IRIU species. This action proposes to add groundfish listed in Table 2a to Part 679, except for any groundfish on prohibited species status, as IRIU species. Non-AFA trawl catcher/processors equal to or greater than 125 ft (38.1 m) LOA would be required to meet these current utilization standards for retained groundfish species used in the calculation for percent of retained groundfish.

**Monitoring and Enforcement of the GRS**

The GRS would be enforced on an individual vessel basis as opposed to a sector basis, so that those vessels that chronically fail to meet the standard could not impose a penalty on those vessels that consistently meet these requirements. All regulated vessels would be required to use NMFS-approved scales to determine the weight of total catch and either obtain sufficient observer coverage to ensure every haul is observed for verification that all fish are weighed or use an alternative scale use verification plan approved by NMFS. Each vessel would be required to provide a single location for observers to collect samples to reduce the potential of sample bias. Observer sampling of each haul would be necessary to determine the percentage of the total catch that is comprised of groundfish. This information would be used to estimate total groundfish weight used in the denominator of the GRS calculation. The round weight of retained groundfish catch would be calculated using NMFS standard product recovery rates (PRRs) set forth in regulations at Table 3 to Part 679. For each product/species combination, retained tonnage would be equal to primary product tonnage divided by the applicable PRR. For primary products that do not have a PRR specified in Table 3, NMFS would use best available data until a PRR could be established in regulation. Since all IRIU species must meet minimum utilization requirements at § 679.27(i), any primary product with a PRR less than 15 percent of the total weight of retained or lawfully transferred products produced from catch or receipt of that IR/IU species would not comply with this action. Further Council action and rulemaking would be required to include any primary product that could not meet these utilization standards.

NMFS proposes to prohibit the mixing of catch from two or more hauls prior to sampling by an observer. NMFS proposes this prohibition because all hauls must be observed and sampled, and it is not possible to obtain a discrete sample if hauls are mixed. Non-AFA catcher/processors using trawl gear occasionally mix catch from two or more hauls prior to sampling by an observer. However, the amount of groundfish retained under the GRS would be calculated based on the proportion of groundfish in each haul. To determine the proportion of groundfish in each haul, each haul would be sampled by an observer for species composition. The proportion of groundfish in each species composition sample would be extrapolated to the total haul weight. For purposes of calculating the percent of retained groundfish, NMFS would not be able to determine accurately the total haul weight of groundfish or species composition for a specific haul if two or more hauls are mixed.

Recent enforcement actions concerning intentional presorting of catch to bias observed catch rates of Pacific halibut document the incentive for biasing observer samples to optimize groundfish catch relative to constraining PSC or other groundfish catch. However, NMFS believes the ability to bias observer samples could be reduced under the GRS in comparison with the status quo by implementing the monitoring provisions that would be required under this rule. These include space and catch access provisions that would be approved by NMFS and that would allow observers to monitor all catch between the bin and the scale used to weigh total catch.

Recent enforcement actions also have identified an issue with observers not being willing to serve as witnesses in enforcement actions because of inconvenience, cost, and the need for the observer to refamiliarize herself or himself with the data and other records relating to the alleged violation. This could be a particular problem when numerous observers may have information regarding evidence necessary to prove the violations of the GRS. To address this issue, and to acknowledge the critical role observers play in effective management and enforcement of Alaska fisheries, NMFS intends to implement a program that provides for payment of witness fees to any observer who, at the request of an enforcement attorney, assists in the prosecution of an enforcement action. NMFS believes that this program will mitigate, to some degree, the inconvenience and other detriments that may otherwise dissuade an observer from assisting the government in proving its case.

**Authority for Bycatch Reduction, the National Standards and the GRS**

The EA/RIR/IRFA for Amendment 79 (see **ADDRESSES**), provides information on Magnuson-Stevens Act requirements to reduce bycatch and increase retention of catch. The analysis also highlights the relevance of National Standards 7 and 9 in the selection of the Council's preferred alternative. In their deliberations, the Council stated that its adoption of Amendment 79 balances conservation through reductions in discards (National Standard 9) and minimizes costs where practicable (National Standard 7) by enforcing higher retention rates only on the specific section of the fleet with the largest problem.

Reduction of bycatch for fisheries and other living marine resources has become a national and global concern. For example, on March 6, 2003, NMFS issued a National Bycatch Strategy to address issues related to the management of bycatch within the Nation's fisheries. To provide the authority for programs like the GRS, Congress amended the Magnuson-Stevens Act to require each fishery management plan approved by the

Secretary to "establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority- (A) minimize bycatch; and (B) minimize the mortality of bycatch which cannot be avoided." Also, NMFS regulations at 50 CFR part 600.350(d)(3) provide guidance on factors that should be considered in determining the practicability of a particular management action to minimize bycatch or the mortality of bycatch. Relevant factors were considered and assessed in the EA/RIR/IRFA prepared for this action and are summarized below.

**Comparing GRS Tradeoffs**

The Council deliberated on Magnuson-Stevens Act requirements to reduce bycatch and concluded that progress made in adhering to the National Standards and potential consumer and environmental benefits from improved retention and utilization of groundfish offset the costs of enforcement, increased observers, vessel modifications, operational adjustments and recordkeeping and reporting. The EA/RIR/IRFA describes these conclusions relative to conservation goals through reductions in discards (National Standard 9) and minimization of costs where practicable (National Standard 7) by enforcing higher retention rates only on the specific section of the fleet with a recent history of higher discard rates relative to other BSAI groundfish fisheries. The analysis notes that the growing national and regional emphasis on reduction of discards reflects national and regional consumer interest in and potential for non-market, non-consumptive, or environmental benefits for this type of program. The analysis also recognizes the technical difficulty of quantifying those potential benefits. The Council also evaluated a range of alternatives to Amendment 79 that would have imposed greater compliance costs on industry, such as a proposal for full retention of specified flatfish species in the original IRIU program implemented under Amendment 49. The Council considered and rejected recommendations to enforce the GRS on other BSAI groundfish sectors, concluding that an application of the action to the target fleet with the highest discard rates would provide the greatest benefit in bycatch reduction through the GRS program. At the same time, the preferred alternative also would mitigate the cost of the program on the industry and sector it most directly impacts. For example, the preferred alternative would mitigate the adverse impacts of the program by excluding non-AFA trawl catcher/processor vessels less than 125 ft (38.1 m) LOA. Non-AFA trawl catcher/processor vessels have "specific and particular operational concerns" associated with the enforcement and monitoring requirements of the GRS. It also gradually would phase in the GRS program over time which would allow the affected vessels to adjust to the retention requirements. This phase-in would provide that portion of the industry most impacted by GRS requirements with the opportunity to continue targeting rock sole and yellowfin sole, while working to reduce discards in these fisheries.

**Description of Regulations Specific to the GRS Program**

Current recordkeeping and reporting regulations at § 679.5(a)(7)(iv)(C)(*3*) require the owners or operators of a catcher/processor using trawl gear to record an estimate of total round weight of groundfish by haul in a NMFS daily cumulative production logbook (DCPL). Other regulations, including those that would implement monitoring requirements for the GRS, require all catch on certain catcher/processors to be weighed on NMFS-approved scales. Proposed revisions to regulations at § 679.5(a)(7)(iv)(C)(*3*) would require all vessel owners or operators of vessels subject to the GRS to record in the DCPL the total catch scale weight for each haul. This would increase the quality of data available to NMFS managers and provide NMFS enforcement with a tool to verify total catch weight for vessels subject to the GRS program.

Proposed regulations at § 679.7(m) establish prohibitions specific to the GRS program. Regulations at § 679.7(m)(1) would prohibit owners or operators from discarding groundfish in an amount greater than allowed under the GRS program.

Regulations at § 679.7(m)(2) would prohibit owners or operators from failing to submit, submitting inaccurate information, or intentionally submitting false information that relates to the GRS program.

Regulations at § 679.7(m)(3) would (1) prohibit an owner or operator from processing or discarding any catch that was not weighed on a NMFS-approved scale that complies with requirements described at § 679.28(b), (2) prohibit the sorting of catch prior to the catch passing over the scale, and (3) require that all catch be available to be sampled by an observer.

Regulations at § 679.7(m)(4) would prohibit the processing of any catch by a vessel that does not comply with observer sampling station requirements described at § 679.28(d). Also, as previously described, regulations at § 679.7(m)(5) would prohibit the mixing of catch from two or more hauls.

Regulations at § 679.27(b)(4) would describe the specific groundfish species to be used in the GRS calculation. This would include all species listed in Table 2a to 50 CFR part 679, except for listed groundfish species that are in prohibited species status. By establishing these species as IRIU species, they would be subject to the 15–percent utilization requirements currently found at § 679.27(i). Regulations at § 679.27(j)(1) would also describe the vessels that would be required to comply with the GRS program and the time period for which the GRS would be calculated.

Regulations at § 679.27(j)(2)(i) would show the equation used for the GRS calculation and describe the variable and source of the variable used in each component of the calculation. Also, § 679.27(j)(2)(ii) would describe the schedule for increasing GRS percentages from 2006 through 2008 and beyond. As described above, the GRS is proposed to be implemented in 2006 at the 2006 level of 75 percent, although NMFS specifically requests public comment on whether a first year rate of 65 percent may be more appropriate.

Regulations at § 679.27(j)(3) would describe the monitoring requirements for vessels subject to the GRS program. Section 679.27(j)(3)(i) would require vessels subject to the GRS program to comply with minimum observer coverage requirements at § 679.50(c)(6). These requirements are described below. Regulations at § 679.27(j)(3)(ii) would require vessels to weigh each haul on a NMFS-approved scale and comply with catch weighing requirements described at § 679.28(b). Also, the vessel owner or operator would be required to ensure that catch from each haul is available to be sampled by an observer from a single location at a single collection point. Regulations at § 679.27(j)(3)(iii) would require the owner or operator to provide an observer sampling station that meets requirements described at § 679.28(d).

Vessels required to comply with the GRS program also may operate in areas other than the BSAI. Total retained groundfish is calculated from total fish product divided by the PRR for each species. For purposes of enforcing GRS requirements, it is necessary to separate fish or fish product subject to the GRS program from fish or fish product not subject to the GRS program. Regulations at § 679.27(j)(4) would require all owners or operators required to comply

with the GRS program to either (1) offload or transfer all fish or fish product prior to harvesting fish outside of the BSAI; or (2) ensure that the vessel is in compliance with recordkeeping and reporting and monitoring requirements described above and at § 679.5(a)(7)(iv)(C) and § 679.27(j)(3) at all times when fishing outside the BSAI. These requirements will improve the enforcement of this proposed action by assuring that all hauls used to estimate the GRS are observed, and that a record is created by the vessel operator to compare with the observer record.

Regulations at § 679.27(j)(5) would require all vessels required to comply with the GRS program that have BSAI groundfish on board, groundfish product on board, or receive deliveries of unsorted catch from vessels not required to comply with the GRS program, to comply with monitoring requirements described above and at § 679.27(j)(3). For purposes of enforcing GRS requirements, this requirement is necessary to separate fish or fish product subject to the GRS program from fish or fish product not subject to the GRS program.

Regulations at §§ 679.50(c)(6)(i) and (c)(6)(ii) would describe observer coverage and observer workload requirements for vessels subject to the GRS program. The owner or operator of a vessel subject to the GRS program would be required to provide two Level 2 NMFS-certified observers, at least one of which must be certified as a lead Level 2 observer, for each day the vessel is used to harvest or process fish in the BSAI. The owner or operator would be required to provide more than two observers if workload restrictions would otherwise preclude sampling duties. The time required for an observer to complete sampling, data recording, and data communications would not be permitted to exceed 12 hours in a 24-hour period and the observer would not be permitted to conduct sampling duties for more than 9 hours in each 24-hour period. NMFS could authorize an alternative processing plan that could allow the vessel to carry only one lead Level 2 NMFS-certified observer if the vessel owner or operator supplies vessel logbook or observer data to NMFS that demonstrates these duties can be completed within these workload restrictions. NMFS would not authorize an alternative processing plan if it would require the observer to divide 12-hour shifts into shifts of less than 6 hours.

**Classification**

At this time, NMFS has not determined that the FMP amendment that this proposed rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

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

NMFS prepared an initial regulatory flexibility analysis (IRFA) as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are provided above. A copy of the IRFA is available from NMFS (see **ADDRESSES**). A summary of the analysis follows.

This proposed action is intended to decrease regulatory and economic discards and increase catch utilization in the BSAI groundfish fisheries by implementing an annual GRS for non-AFA trawl catcher/processors equal to or greater than 125 ft (38.1 m) LOA. The percent of groundfish retained would be a percent calculated as a specified ratio of the round-weight equivalent of total retained groundfish to total groundfish catch. The GRS would gradually increase from 75 percent in 2006 to 85 percent in 2008.

The GRS program would apply only to non-AFA catcher/processors using trawl gear that are 125 ft (38.1 m) LOA or greater. Sixteen head-and-gut trawl catcher/processors meet these criteria. Based on the best available data, it is improbable that any of these vessels are small entities. However, NMFS does not have the level of data and information to make a statistically confident estimation of the number of small entities affected by this proposed action. Therefore, an IRFA has been prepared.

Alternative 1 described in the EA/RIR/IRFA is the status quo alternative. Current regulations regarding retention and discards would remain in effect.

Alternative 2 would establish a GRS of 70 percent. The standard would apply to non-AFA trawl catcher/processors 125 ft (38.1 m) LOA or greater and enforced at the sector level. Compliance with the GRS would be determined at the end of a fishing year. The MRA for pollock would be increased to 35 percent for all non-AFA trawl catcher/processors, including vessels less than 125 ft (38.1 m) LOA, and compliance with the pollock MRA would be monitored and enforced on each vessel at the end of each offload. NMFS-approved scales, a certified observer sampling station, and observer coverage of every haul would be used to measure and verify total catch. Alternative processing plans, approved by NMFS, could be substituted for observer coverage of every haul. Retained catch would be calculated using NMFS standard PRRs.

Alternative 3 would establish a GRS of 85 percent for January through May of each calendar year. The GRS would increase to 90 percent for the remainder of the year. The GRS would apply to individual non-AFA catcher/processors 125 feet (38.1 m) LOA or greater. Non-AFA catcher/processors less than 125 feet (38.1 m) LOA would be exempt from the GRS program if their weekly production is less than 600 mt. The MRA for pollock would be revised so that it is enforced at any time. Compliance with the GRS would be monitored and enforced at the end of each week for each area and gear type. NMFS-approved scales, a certified observer sampling station, and observation of every haul would be used to measure and verify total catch. Retained catch would be calculated using standard PRRs.

Alternative 4 is the preferred alternative, and would implement a gradually increasing annual GRS for non-AFA trawl catcher/processors equal to or greater than 125 ft (38.1 m) length overall (LOA). This alternative, including provisions to monitor and enforce this action, is described in further detail above in the preamble to this proposed action.

Retaining additional groundfish is not expected to generate additional revenues, and could result in lower revenues if these fish displace higher value fish. Vessels subject to the GRS program could incur operating costs associated with holding, processing, transporting, and transferring fish that are of relatively low value. However, changes in technology, fishing techniques, and markets could reduce these potential costs.

Vessels subject to this proposed action would be required to comply with the monitoring components described in the preamble above. NMFS estimates 7 of the 16 vessels subject to the GRS program would be required to install NMFS-approved flow scales, which are estimated to cost approximately $50,000 each. Equipment necessary to comply with observer sampling station requirements is estimated to cost between $6,000 and $12,000. Installation of this equipment is estimated to cost between $20,000 and $100,000. Under the GRS program, every haul would be required to be available for sampling by a NMFS-

certified observer. This requirement would likely necessitate an additional observer on each vessel, which is estimated to cost $82,000 per vessel per year.

This action proposes to revise recordkeeping and reporting requirements for vessels subject to the GRS. Proposed revisions to regulations would require all vessel owners or operators of vessels subject to the GRS to record in the DCPL the total catch scale weight for each haul. This would increase the quality of data available to NMFS managers and provide NMFS enforcement with a tool to verify total catch weight for vessels subject to the GRS program.

The analysis did not reveal any Federal rules that duplicate, overlap, or conflict with the proposed action.

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval under OMB No. 0648–0330. Public reporting burden per response for: at-sea scale inspection report/sticker is estimated to average 6 minutes; record of daily scale tests is estimated to average 45 minutes; printed output of at-sea scale weight is estimated to average 45 minutes; observer sampling station inspection request is estimated to average 2 hours; and prior notice to observer of scale test is estimated to average 2 minutes.

This proposed rule contains a collection-of-information requirement subject to the PRA and which has been approved by OMB under control number OMB 0648–0213. Public reporting burden for catcher/processor trawl gear daily cumulative production logbook is estimated to average 30 minutes per response.

Estimated response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS Alaska Region at the **ADDRESSES** above, and e-mail to *David_Rostker@omb.eop.gov*, or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, 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.

**List of Subjects in 50 CFR Part 679**

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: June 10, 2005.

**Rebecca Lent,**

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

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended to read as follows:

## PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*; 1540(f); 1801 *et seq.*; 1851 note; 3631 *et seq.*

2. In § 679.2, a definition of "Groundfish Retention Standard (GRS)" is added to read as follows:

**§ 679.2 Definitions.**

* * * * *

*Groundfish Retention Standard (GRS)* means the retention and utilization standard for groundfish described at § 679.27(j) of this part.

* * * * *

3. In § 679.5, paragraph (a)(7)(iv)(C)(*3*) is revised to read as follows:

**§ 679.5 Recordkeeping and reporting (R&R).**

(a) * * *

(7) * * *

(iv) * * *

(C) * * *

| Enter ... | In a ... | If a ... |
|---|---|---|
| * * * * * * * | | |
| (*3*) Estimated total round weight of groundfish by haul. If the owner or operator of the vessel is required to comply with the GRS program described at § 679.27(j), the operator or manager must enter the round weight total of all catch by haul as measured by the NMFS-approved scale. | Trawl DCPL | C/P |
| * * * * * * * | | |

* * * * *

4. In § 679.7, paragraph (m) is added to read as follows:

**§ 679.7 Prohibitions.**

* * * * *

(m) *Prohibitions specific to GRS.* It is unlawful for the owner or operator of a catcher/processor that is 125 ft (38.1 m) LOA or longer and not listed in § 679.4(l)(2)(i) and using trawl gear in the BSAI to:

(1) Retain an amount of groundfish during a fishing year that is less than the amount of groundfish required to be retained under the GRS program described at § 679.27(j).

(2) Fail to submit, submit inaccurate information, or intentionally submit false information on any report, application or statement required under this part.

(3) Process or discard any catch not weighed on a NMFS-approved scale that complies with the requirements of § 679.28(b). Catch must not be sorted before it is weighed and each haul must be available to be sampled by an observer for species composition.

(4) Process any groundfish without an observer sampling station that complies with § 679.28(d).

(5) Combine catch from two or more hauls.

5. In § 679.27, paragraphs (b)(4) and (j) are added to read as follows:

**§ 679.27 Improved Retention/Improved Utilization Program.**

* * * * *

(b) * * *

(4) All species listed in Table 2a to this part for purposes of the GRS program described in § 679.27(j), except

for groundfish in prohibited species status at the end of each reporting week.

* * * * *

(j) *Groundfish retention standard*—(1) *Applicability.* The operator of a catcher/processor that is 125 ft (38.1 m) LOA or longer, not listed in § 679.4(l)(2)(i), and using trawl gear must comply with the GRS set forth under § 679.27(j)(2)(ii) while fishing for or processing groundfish caught from the BSAI between January 1 and December 31 of each year. The owner of a catcher/processor 125 ft (38.1 m) LOA or longer is required to ensure that the operator complies with the GRS program set forth under § 679.27(j)(2)(ii). No part of the GRS program supersedes minimum retention or utilization requirements for IR/IU species found in this section.

(2) *Percent of groundfish retained calculation.* (i) For any fishing year, the percent of groundfish retained by each vessel identified under paragraph (j)(1)(i) of this section would be calculated using the following equations:

$$GFroundweight = \sum_{i=1}^{n} (PWspecies_n / PRRspecies_n)$$

Substituting the value for *GFroundweight* into the following equation,

$GFR\% = (GFroundweight/TotalGF)*100$

Where:

*GFroundweight* = the total annual round weight equivalent of all retained product weights for each IR/IU groundfish species.

$PWspecies_n$ = the total annual product weight for each groundfish species listed in Table 2a to this part by product type as reported in the vessel's weekly production report required at § 679.5(i).

$PRRspecies_n$ = the standard product recovery rate for each groundfish species and product combination listed in Table 3 to Part 679.

*GFR%* = the groundfish retention percentage for a vessel calculated as GFroundweight divided by the total weight of groundfish catch.

*TotalGF* = the total groundfish catch weight as measured by the flow scale measurement, less any non-groundfish, PSC species or groundfish species on prohibited species status under § 679.20.

(ii) The following table displays annual minimum groundfish retention requirements for each vessel required to comply with the GRS program under paragraph (j)(1)(i) of this section:

| GROUNDFISH RETENTION STANDARD | |
|---|---|
| *GRS Schedule* | *Annual GRS* |
| 2006 | 75% |
| 2007 | 80% |
| 2008 and each year after | 85% |

(3) *Monitoring requirements*—(i) *Observer coverage requirements.* In addition to complying with minimum observer coverage requirements at § 679.50(c), the owner or operator of a vessel required to comply with the GRS program must comply with observer coverage requirements as described at § 679.50(c)(6) at all times the vessel is used to harvest groundfish in the BSAI with trawl gear.

(ii) *Catch weighing.* For each haul, all catch caught by a vessel required to comply with the GRS program must be weighed on a NMFS-approved scale and made available for sampling by a NMFS certified observer at a single location. The owner or operator of a vessel required to comply with the GRS program must ensure that the vessel is in compliance with the scale requirements described at § 679.28(b), that each haul is weighed separately, and that no sorting of catch takes place prior to weighing. All weighed catch must be recorded as required at § 679.5(a)(7)(iv)(C).

(iii) *Observer sampling station.* The owner or operator of a vessel required to comply with the GRS program must provide an observer sampling station as described at § 679.28(d) and the owner of a vessel required to comply with the GRS program must ensure that the vessel operator complies with the observer sampling station requirements described at § 679.28(d) at all times the vessel is used to harvest groundfish in the BSAI. In addition to the requirements at § 679.28(d)(7)(ii), observers must be able to sample all catch from a single point along the conveyer belt conveying unsorted catch, and when standing where unsorted catch is collected, the observer must be able to see that no catch has been removed between the bin and where unsorted catch is collected.

(4) *Requirements for vessels that also harvest groundfish outside of the BSAI.* The operator of a vessel required to comply with the GRS program must offload or transfer all fish or fish product prior to harvesting fish outside the BSAI, unless the operator of the vessel is in compliance with the recordkeeping and reporting and monitoring requirements described at § 679.5(a)(7)(iv)(C) and § 679.27(j)(3) at all times the vessel harvests or processes groundfish outside the BSAI.

(5) *Requirements for vessels receiving deliveries of unsorted catch.* The owner or operator of a vessel required to comply with § 679.27(j) that receives deliveries of unsorted catch while processing or possessing fish subject to the GRS program must comply with § 679.27(j)(3) while processing deliveries of unsorted catch.

6. In § 679.50, paragraph (c)(6) is added to read as follows:

**§ 679.50 Groundfish Observer Program applicable through December 31, 2007.**

* * * * *

(c) * * *

(6) *Catcher/processors 125 ft (38.1 m) LOA or longer and not listed in § 679.4(l)(2)(i) using trawl gear in the BSAI*—(i) *Coverage requirement.* The owner or operator of a catcher/processor using trawl gear and not listed in § 679.4(l)(2)(i) must provide at least two level 2 NMFS-certified observers, at least one of which must be certified as a lead level 2 observer, for each day that the vessel is used to harvest or process groundfish in the BSAI. More than two observers are required if the observer workload restriction at paragraph (c)(6)(ii) of this section would otherwise preclude sampling as required under § 679.27(j)(3). NMFS may authorize the vessel to carry only one lead level 2 observer if the vessel owner or operator supplies vessel logbook or observer data that demonstrate that one level 2 observer can complete sampling, data recording, and data communication duties within the workload requirements described in § 679.50(c)(6)(ii) under an alternative processing plan. NMFS will not authorize an alternative processing plan with only one lead level 2 observer if it would require the observer to divide a 12-hour shift into shifts of less than 6 hours.

(ii) *Observer work load.* The time required for the observer to complete sampling, data recording, and data communication duties must not exceed 12 consecutive hours in each 24-hour

period, and the observer must not conduct sampling duties more than 9 hours in each 24-hour period.

* * * * *

[FR Doc. 05–11918 Filed 6–15–05; 8:45 am]
BILLING CODE 3510–22–S

# Notices

Federal Register
Vol. 70, No. 115
Thursday, June 16, 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

### Office of the Chief Financial Officer

### Notice of Request for Revision and Extension of a Currently Approved Information Collection

**AGENCY:** Office of the Chief Financial Officer, USDA.

**ACTION:** Notice.

**SUMMARY:** This notice announces the Office of the Chief Financial Officer's intention to request revision and extension of the U.S. Department of Agriculture's currently approved information collection in support of debt collection, as required by the Paperwork Reduction Act of 1995, chapter 35, title 44 of the United States Code.

**DATES:** Comments on this notice must be received by August 15, 2005 for consideration.

**ADDRESSES:** Address all comments concerning this notice to Matthew Faulkner, Credit, Travel and Grants Policy Division, Office of the Chief Financial Officer, USDA, Room 3417 South Building, 1400 Independence Avenue, SW., Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Dale Theurer on 202–720–1167, FAX 202–690–1529 or e-mail *dale.theurer@usda.gov.*

**SUPPLEMENTARY INFORMATION:** The Debt Collection Act of 1982, Public Law 97–365, 96 Stat. 1749, as amended by Public Law 98–167, 97 Stat. 1104, and the Debt Collection Improvement Act of 1996, Public Law 104–134, require that any payable monies or those that may become payable may be subject to administrative offset for the collection of a delinquent debt a person or legal entity owes to the United States. The Act covers monies from the United States under contracts and other written agreements to any person or legal entity. A legal entity is defined as an agency or subdivision of a State or local government.

*Title:* Debt Collection.

*OMB Number:* 0505–0007.

*Expiration Date of Approval:* September 30, 2005.

*Type of Request:* Extension on currently approved information collection.

*Abstract:* 31 U.S.C. 3716, which was enacted as part of the Debt Collection Act, authorizes the collection of debts by administrative offset. The Debt Collection Improvement Act of 1996 expanded the application of administrative offset to every instance except where a statute explicitly prohibits the use of administrative offset for collection purposes. Protection is provided to debtors by requiring that an individual debtor be given notice of a debt. The notice provides information to delinquent debtors targeted for administrative offset who want additional information, or desire to either enter into repayment agreements or request a review of an agency's determination to offset. Creditor agencies use the collected information to respond and/or to take appropriate action. If the relevant information is not collected, the creditor agencies cannot comply with the due process provision of the Debt Collection and Debt Collection Improvement Acts. Collection of information only affects delinquent debtors.

*Estimate of Burden:* A public reporting and record-keeping burden for this collection of information is estimated to average one hour per response.

*Respondents:* Delinquent Debtors.

*Estimated Number of Respondents:* 16,895.

*Estimated Number of Responses per Respondent:* 2.

*Estimated Total Annual Burden on Respondents:* 33,790 hours.

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

**Patricia E. Healy,**

*Acting Chief Financial Officer.*

[FR Doc. 05–11839 Filed 6–15–05; 8:45 am]

BILLING CODE 3410–90–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Shasta County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Shasta County Resource Advisory Committee (RAC) will meet at the USDA Service Center in Redding, California, June 29, 2005. The purpose of this meeting is to discuss proposed projects under Title II of the Secure Rural Schools and Community Self-Determination Act of 2000.

**DATES:** June 29, 2005. *Time:* 8 a.m.–noon.

**ADDRESSES:** The meetings will be held at the USDA Service Center, 3644 Avtech Parkway, Redding, California 96002.

**FOR FURTHER INFORMATION CONTACT:** Michael R. Odle, Public Affairs Officer and RAC Coordinator.

**SUPPLEMENTARY INFORMATION:** The meetings are open to the public. Public input sessions will be provided and individuals will have the opportunity to address the Shasta County Resource Advisory Committee.

Dated: June 9, 2005.

**J. Sharon Heywood,**

*Forest Supervisor.*

[FR Doc. 05–11877 Filed 6–15–05; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

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

*Agency:* Bureau of Industry and Security (BIS).

*Title:* Prior Notification of Exports Under License Exception AGR.

*Agency Form Number:* BIS–748P.

*OMB Approval Number:* 0694–0123.

*Type of Request:* Extension of a currently approved collection.

*Burden:* 208 hours.

*Average Time Per Response:* 58 minutes per response.

*Number of Respondents:* 215 respondents.

*Needs and Uses:* Section 906 of the Trade Sanctions Reform and Export Enhancement Act (TSRA) requires that exports of agricultural commodities, medicine or medical devices to Cuba or to the government of a country that has been determined by the Secretary of State to have repeatedly provide support for acts of international terrorism, or to any other entity in such a country, are made pursuant to one-year licenses issued by the U.S. Government, while further providing that the requirements of one-year licenses shall be no more restrictive than license exceptions administered by the Department of Commerce, except that procedures shall be in place to deny licenses for exports to any entity within such country promoting international terrorism.

*Affected Public:* Individuals, businesses or other for-profit institutions.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 or via e-mail at *dhynek@doc.gov*.

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

Dated: June 13, 2005.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 05–11888 Filed 6–15–05; 8:45 am]

BILLING CODE 3510–33–P

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

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

*Agency:* Bureau of Industry and Security (BIS).

*Title:* Competitive Enhancement Needs Assessment Survey Program.

*Agency Form Number:* N/A.

*OMB Approval Number:* 0694–0083.

*Type of Request:* Renewal of an existing collection of information.

*Burden:* 3,000 hours.

*Average Time Per Response:* 30 minutes per response.

*Number of Respondents:* 3,000 respondents.

*Needs and Uses:* The Defense Production Act of 1950, as amended, and Executive Order 12919, authorizes the Secretary of Commerce to assess the capabilities of the defense industrial base to support the national defense and to develop policy alternatives to improve the international competitiveness of specific domestic industries and their abilities to meet defense program needs. The information collected from voluntary surveys will be used to assist small and medium-sized firms in defense transition and in gaining access to advanced technologies and manufacturing processes available from Federal Laboratories. The goal is to improve regions of the country adversely by cutbacks in defense spending and military base closures.

*Affected Public:* Individuals, businesses or other for-profit institutions.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230, or via e-mail at *dhynek@doc.gov*.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: June 13, 2005.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 05–11889 Filed 6–15–05; 8:45 am]

BILLING CODE 3510–JT–P

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

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

*Agency:* Bureau of Industry and Security (BIS).

*Title:* National Defense Authorization Act (NDAA).

*Agency Form Number:* BIS–742R, BIS–742S.

*OMB Approval Number:* 0694–0107.

*Type of Request:* Extention of a currently approved collection of information.

*Burden:* 35 hours.

*Average Time Per Response:* 15 minutes per response.

*Number of Respondents:* 140 respondents.

*Needs and Uses:* This collection of information is required as the result of the amending of the Export Administration Regulations (15 CFR parts 730–799) (EAR) by revising the (EAR) requirements for exports and reexports contained in Sections 1211–1215 of the National Defense Authorization Act (NDAA) for fiscal year 1998 (Pub. L. 105–85, 111 Stat. 1629), signed by the President on November 18, 1997. The Bureau of Industry and Security (BIS) needs the information in this collection to fulfill two requirements of the National Defense Authorization Act for Fiscal Year 1998 (NDAA). Those requirements are: (1) Proposed exports and reexports of high performance computers to specific countries must be reviewed by enumerated government agencies prior to the export and (2) that the government conduct a "post shipment verification" of each high performance computer exported to those countries after November 17, 1997. Both of these requirements are new and were imposed by the Congress with the passage of the NDAA. To simplify the latter, BIS has developed a new form that will incorporate the relevant data elements and replace the written report, thereby standardizing the data format for the applicant, and enabling the use of information technology in the processing of the data.

*Affected Public:* Individuals, businesses or other for-profit institutions.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 or via e-mail at *dhynek@doc.gov*.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk

Officer, e-mail address, *David_Rostker@omb.eop.gov*, or fax number, (202) 395–7285.

Dated: June 13, 2005.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 05–11890 Filed 6–15–05; 8:45 am]

BILLING CODE 3510–DT–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–846]**

### Brake Rotors from the People's Republic of China: Extension of Time Limit for Final Results in the Seventh Antidumping Duty Administrative Review and the Eleventh New Shipper Review

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

**EFFECTIVE DATE:** June 16, 2005.

**FOR FURTHER INFORMATION CONTACT:** Amber Musser at (202) 482–1777, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230.

**SUPPLEMENTARY INFORMATION:**

#### Background

On May 9, 2005, the Department of Commerce ("the Department") published the preliminary results of the administrative review and the new shipper review of the antidumping duty order on brake rotors from the People's Republic of China. *See Brake Rotors from the People's Republic of China: Preliminary Results and Partial Rescission of Seventh Administrative Antidumping Duty Administrative Review and Eleventh New Shipper Review*, 70 FR 24382 (May 9, 2005) ("*Preliminary Results*").[1] The results of this administrative and new shipper review are currently due no later than September 6, 2005.

#### Extension of Time Limit for Final Results of Review

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), the Department shall make a final determination in an administrative review of an antidumping duty order within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the foregoing time, the administering authority may extend that 120-day period to 180 days. In this case, the Department finds that it is not practicable to complete the final results in the administrative review and new shipper review of brake rotors from the PRC within the current time frame due to the large number of companies participating in this review. There are fourteen companies participating in the administrative review, and one company participating in the new shipper review.

Therefore, in accordance with sections 751(a)(3)(A) of the Act, the Department is extending the time for completion of the final results of this review until no later than November 7, 2005, which is the next business day after 180 days from the date of the publication of the *Preliminary Results*.

This notice is issued and published in accordance with Section 751(a)(3)(A) of the Act.

Dated: June 9, 2005.

**Barbara E. Tillman,**

*Acting Deputy Assistant Secretary for Import Administration.*

[FR Doc. E5–3096 Filed 6–15–05; 8:45 am]

BILLING CODE 3510–DS–S

[1] Pursuant to Section 351.214(j)(3) of its regulations, the Department is conducting these reviews concurrently.

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 060605A]**

### Marine Mammals; File No. 1071–1770

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

**ACTION:** Issuance of permit.

**SUMMARY:** Notice is hereby given that the Dolphin Institute, 420 Ward Avenue, Suite 212, Honolulu, HI 96814 (Principal Investigator: Adam Pack. Ph.D.) has been issued a permit to conduct scientific research.

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment (see **SUPPLEMENTARY INFORMATION**).

**FOR FURTHER INFORMATION CONTACT:** Carrie Hubard or Ruth Johnson, (301) 713–2289.

**SUPPLEMENTARY INFORMATION:** On February 17, 2005, notice was published in the **Federal Register** (70 FR 8076) that a request for a scientific research permit to take marine mammals had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 1071–1770–00 authorizes the Holder to study non-listed cetaceans in the Eastern, Western, and Central North Pacific Ocean. Studies include: (1) Photo-identification of individuals to determine individual life histories, social role, migration, habitat use, distribution, and reproductive status; (2) underwater videogrammetry to determine the sizes of animals; (3) underwater videography to document behaviors and aid in sex determination; and (4) passive acoustic recordings. Research will take place in waters off the main Hawaiian Islands (primary study area) and along the rim of the North Pacific from California northward to Southeast Alaska and then westward through the Gulf of Alaska, Aleutian Islands, and regions of the upper western Pacific. Research will also take place in Japanese waters off the Mariana, Bonin (Ogasawara), and Ryukyuan islands. The Holder also requested takes of large whale species, including humpback whales (*Megaptera novaeangliae*). However, a decision has not yet been made on the proposed research involving threatened and endangered species. The current permit only includes level B harassment of non-threatened and endangered species. The permit will be valid for five years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Documents may be reviewed at any of the following locations:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 427–2521;

Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562) 980–4018; or

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808) 973–2935; fax (808) 973–2941.

Dated: June 9, 2005.

**Stephen L. Leathery,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 05–11836 Filed 6–15–05; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 060305A]**

### Marine Mammals; File Nos. 782–1768, 358–1769, 715–1784, 434–1669, 1010–1641, and 881–1668

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

**ACTION:** Issuance of permits and permit amendments.

**SUMMARY:** Notice is hereby given that the following individuals and institutions have been issued a permit or permit amendment to conduct research on Steller sea lions (*Eumetopias jubatus*): the National Marine Mammal Laboratory, Alaska Fisheries Science Center, Seattle, WA (NMML: File No. 782–1768); the Alaska Department of Fish and Game, Anchorage, AK (ADF&G: File No. 358–1769); the North Pacific Universities Marine Mammal Research Consortium, University of British Columbia, Vancouver, B.C. (NPUMMRC: File No. 715–1784); the Oregon Department of Fish and Wildlife, Corvallis, OR (ODFW; File No. 434–1669); the Aleutians East Borough, Juneau, AK (AEB: File No. 1010–1641); and the Alaska SeaLife Center, Seward, AK (ASLC: File No. 881–1668).

**ADDRESSES:** The permits and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 427–2521;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249.

**FOR FURTHER INFORMATION CONTACT:** Tammy Adams or Amy Sloan, (301) 713–2289.

**SUPPLEMENTARY INFORMATION:** On April 4, 2005, notice was published in the **Federal Register** (70 FR 17072) that requests for permits and permit amendments to conduct research on Steller sea lions had been submitted by the above-named individuals and institutions. The requested permits and amendments have been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 782–1768 has been issued to NMML to allow them to conduct aerial surveys and ground counts as well as capture, sample, and mark Steller sea lions. The permit is valid for five years from the date of issuance and allows a limited number of sea lion mortalities incidental to the research.

Permit No. 358–1769 has been issued to ADF&G to allow them to conduct aerial surveys and ground counts as well as capture, sample, and mark Steller sea lions. The permit is valid for five years from the date of issuance and allows a limited number of sea lion mortalities incidental to the research.

Permit No. 715–1784 has been issued to NPUMMRC to allow them to collect data on sea lion distribution and diet compositions through aerial surveys of sea lion rookeries and haul outs in Southeast Alaska; collection of scat from rookeries and haul outs in Southeast Alaska; conducting behavioral observations of sea lions on rookeries, haul outs and tagged sea lions at sea; and mortality incidental to research. The permit is valid for five years from the date of issuance.

Permit No. 434–1669, issued to ODFW on November 12, 2002 (67 FR 69724) has been amended to extend the duration of the permit for three years, incorporate a study on the effects of hot-brands, and allow an increase in the number of sea lions harassed annually during research.

Permit No. 1010–1641, issued to AEB on November 12, 2002 (67 FR 69724), has been amended to extend the duration of the permit for three years and increase the number of sea lions that may be harassed annually during research.

Permit No. 881–1668, issued to the ASLC on November 12, 2002 (67 FR 69724), has been amended to extend the duration of the permit, modify some of the study objectives, change some of the study methods, and increase the numbers of Steller sea lions that may be captured, harassed, or killed incidental to the research.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an environmental assessment was prepared analyzing the effects of the permitted activities. After a Finding of No Significant Impact, the determination was made that it was not necessary to prepare an environmental impact statement.

Issuance of these permits and amendments, as required by the ESA, was based on a finding that such permits and amendments: (1) were applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 8, 2005.

**Stephen L. Leathery,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 05–11838 Filed 6–15–05; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Consideration will be given to all comments received by July 18, 2005.

*Title, Form, and OMB Number:* Request for Reference; DD Form 370; OMB Control Number 0704–0167.

*Type of Request:* Extension.

*Number of Respondents:* 70,000.

*Responses Per Respondent:* 1.

*Annual Responses:* 70,000.

*Average Burden Per Response:* .167 hours (10 minutes).

*Annual Burden Hours:* 11,690.

*Needs and Uses:* Title 10 USC 504, 505, 508, and 12102, establishes minimum standards for enlistment into the Armed Forces. This information collection is for reference information on individuals applying for enlistment in the Armed Forces of the United States who require a waiver. The form associated with this information collection, DD 370, "Request for Reference," is used by recruiters to obtain reference information on

applicants who have admitted committing a civil or moral offense. The respondents may provide character information which would allow the applicant to be considered for a waiver and therefore continue the application process.

*Affected Public:* Individuals or households; business or other for-profit; Federal government; State, local or tribal government.

*Frequency:* On Occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Mr. Lewis Oleinick.

Written comments and recommendations on the proposed information collection should be sent to Mr. Oleinick at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings, WHS/ESD Information Management Division, 1225 South Clark Street, Suite 504, Arlington, VA 22202–4326.

Dated: May 25, 2005.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 05–11893 Filed 6–15–05; 8:45 am]

BILLING CODE 5001–06–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB review; comment request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Consideration will be given to all comments received by July 18, 2005.

*Title and OMB Number:* Industry Partnership Survey; OMB Number 0702–TBD.

*Type of Request:* New.

*Number of Respondents:* 1,714

*Responses per Respondent:* 1.

*Annual Responses:* 1,371.

*Average Burden per Response:* 15 minutes.

*Annual Burden Hours:* 343.

*Needs and Uses:* SDDC will use the survey information to improve the efficiency, quality and timeliness of its processes, as well as to strengthen its partnership with industry. Although the survey instruments are brief, with only basic information requested to measure satisfaction and to obtain feedback on areas that may require improvement, SDDC expects the data, comments, and suggestions offered by the respondents to help improve the performance of its systems and contain costs. Because the survey ask about the roles of SDDC employees, the responses will also help improve the SDDC exercise of project oversight responsibilities.

*Affected Public:* Business or other for-profit.

*Frequency:* On occasion (14 month cycle).

*Respondents Obligation:* Voluntary.

*OMB Desk Officer:* Mr. Lewis Oleinick.

Written comments and recommendations on the proposed information collection should be sent to Mr. Oleinick at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings, WHS/ESD/ Information Management Division, 1225 South Clark Street, Suite 504, Arlington, VA 22202–4326.

Dated: May 20, 2005.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 05–11895 Filed 6–15–05; 8:45 am]

BILLING CODE 5001–06–M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Proposed Collection; Comment Request

**AGENCY:** Office of the Administrative Assistant to the Secretary of the Army (OAA–RPA), DoD.

**ACTION:** Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by August 15, 2005.

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to Department of the Army, Human Resources Command, Officer Personnel Management Directorate (AHRC–OPD–A), 200 Stovall Street, Alexandria, Virginia 22332. ATTN: (Annette V. Bush). Consideration will be given to all comments received within 60 days of the date of publication of this notice.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 602–0636.

*Title, Associated Form, and OMB Number:* Application and Contract for Establishment of a Junior Reserve Officers' Training Corps Unit, DA Form 3126, OMB Control Number 0702–0021.

*Needs and Uses:* Educational institutions which desire to host a Junior ROTC unit may make application using DA Form 3126. The program provides unique educational opportunities for young citizens through their participation in a Federally sponsored course while pursuing a civilian education. Participating students develop citizenship, leadership and communication skills, knowledge of the rule of the U.S. Army in support of national objectives, as well as an appreciation for the importance of physical fitness. The organization of units established by the Department of the Army at public and private secondary schools is provided under 10 USC 2031 and 32 CFR 542.

*Affected Public:* Not-for-profit institutions.

*Annual Burden Hours:* 70.

*Number of Respondents:* 70.

*Responses Per Respondent:* 1.

*Average Burden Per Response:* 1 hour.

*Frequency:* On occasion.

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

The DA Form 3126 is initiated by the school desiring to host a unit and is countersigned by a representative of the Secretary of the Army. The contract is necessary to establish a mutual

agreement between the secondary institution and the U.S. Government. The Commanding General, Human Resources Command, is responsible for administering the JROTC program and overall policy. Region commanders are responsible for operating and administering the JROTC training conducted within their areas. Completed DA 3126 forms are submitted to the regional ROTC commanders. Data provided on the application is used to determined which schools are selected and addresses such factors as: (1) Receipt of signed applications and agreements; (2) enrollment potential; (3) capacity of the institution to conduct the program; (4) accreditation status; (5) ability to comply with statutory and contractual requirements; and (6) fair and equitable distribution of units throughout the nation.

Dated: May 25, 2005.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 05–11894 Filed 6–15–05; 8:45 am]

BILLING CODE 5001–06–M

## DEPARTMENT OF EDUCATION

### William D. Ford Federal Direct Loan Program

**AGENCY:** Federal Student Aid, Department of Education.

**ACTION:** Notice of the annual updates to the Income Contingent Repayment (ICR) plan formula for 2005.

**SUMMARY:** The Secretary announces the annual updates to the ICR plan formula for 2005. Under the William D. Ford Federal Direct Loan (Direct Loan) Program, borrowers may choose to repay their student loans (Direct Subsidized Loan, Direct Unsubsidized Loan, Direct Subsidized Consolidation Loan, and Direct Unsubsidized Consolidation Loan) under the ICR plan, which bases the repayment amount on the borrower's income, family size, loan amount, and interest rate. Each year, we adjust the formula for calculating a borrower's payment to reflect changes due to inflation. This notice contains the adjusted income percentage factors for 2005 and charts showing sample repayment amounts based on the adjusted ICR plan formula. It also contains examples of how the calculation of the monthly ICR amount is performed and a constant multiplier chart for use in performing the calculations. The adjustments for the ICR plan formula contained in this notice are effective from July 1, 2005 to June 30, 2006.

**FOR FURTHER INFORMATION CONTACT:** Don Watson, U.S. Department of Education, room 11412, UCP, 400 Maryland Avenue, SW., Washington, DC 20202–5400. Telephone: (202) 377–4008.

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

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

**SUPPLEMENTARY INFORMATION:** Direct Loan Program borrowers may choose to repay their Direct Subsidized Loan, Direct Unsubsidized Loan, Direct Subsidized Consolidation Loan, and Direct Unsubsidized Consolidation Loan under the ICR plan. The attachment to this notice provides updates to examples of how the calculation of the monthly ICR amount is performed, the income percentage factors, the constant multiplier chart, and charts showing sample repayment amounts.

We have updated the income percentage factors to reflect changes based on inflation. We have revised the table of income percentage factors by changing the dollar amounts of the incomes shown by a percentage equal to the estimated percentage change in the Consumer Price Index for all urban consumers from December 2004 to December 2005. Further, we provide examples of monthly repayment amount calculations and two charts that show sample repayment amounts for single and married or head-of-household borrowers at various income and debt levels based on the updated income percentage factors.

The updated income percentage factors, at any given income, may cause a borrower's payments to be slightly lower than they were in prior years. This updated amount more accurately reflects the impact of inflation on a borrower's current ability to repay.

#### Electronic Access to This Document

You may review 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/federegister.*

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.*

**Program Authority:** 20 U.S.C. 1087 *et seq.*

Dated: June 13, 2005.

**Theresa S. Shaw,**

*Chief Operating Officer, Federal Student Aid.*

#### Attachment—Examples of the Calculations of Monthly Repayment Amounts

*Example 1.* This example assumes you are a single borrower with $15,000 in Direct Loans, the interest rate being charged is 8.25 percent, and you have an adjusted gross income (AGI) of $34,301. (The 8.25 percent interest rate used in this example is the maximum interest rate that may be charged for all Direct Loans excluding Direct PLUS Loans and certain Direct PLUS Consolidation Loans; your actual interest rate may be lower.)

*Step 1:* Determine your annual payments based on what you would pay over 12 years using standard amortization. To do this, multiply your loan balance by the constant multiplier for 8.25 percent interest (0.131545). The constant multiplier is a factor used to calculate amortized payments at a given interest rate over a fixed period of time. You can view the constant multiplier chart at the end of this notice to determine the constant multiplier that you should use for the interest rate on your loan. If your exact interest rate is not listed, use the next highest rate for estimation purposes.

- $0.131545 \times \$15{,}000 = \$1{,}973.18$

*Step 2:* Multiply the result of Step 1 by the income percentage factor shown in the income percentage factors table that corresponds to your income and then divide the result by 100 (if your income is not listed in the income percentage factors table, calculate the applicable income percentage factor by following the instructions under the "Interpolation" heading later in this notice):

- $88.77 \times \$1{,}973.18 \div 100 = \$1{,}751.59$

*Step 3:* Determine 20 percent of your discretionary income (your discretionary income is your AGI minus the HHS Poverty Guideline amount for your family size). Because you are a single borrower, subtract the poverty level for a family of one, as published in the **Federal Register** on February 18, 2005 (70 FR 8373), from your AGI and multiply the result by 20 percent:

- $34,301 − $9,570 = $24,731
- $24,731 × 0.20 = $4,946.20

*Step 4:* Compare the amount from Step 2 with the amount from Step 3. The lower of the two will be your annual payment amount. In this example, you will be paying the amount calculated under Step 2. To determine your monthly repayment amount, divide the annual amount by 12.

- $1,751.59 ÷ 12 = $145.97

*Example 2.* In this example, you are married. You and your spouse have a combined AGI of $64,819 and are repaying your loans jointly under the ICR plan. You have no children. You have a Direct Loan balance of $10,000, and your spouse has a Direct Loan balance of $15,000. Your interest rate is 8.25 percent. (The 8.25 percent interest rate used in this example is the maximum interest rate that may be charged for all Direct Loans excluding Direct PLUS Loans and certain Direct PLUS Consolidation Loans; your actual interest rate may be lower.)

*Step 1:* Add your and your spouse's Direct Loan balances together to determine your aggregate loan balance:

- $10,000 + $15,000 = $25,000

*Step 2:* Determine the annual payment based on what you would pay over 12 years using standard amortization. To do this, multiply your aggregate loan balance by the constant multiplier for 8.25 percent interest (0.131545). You can view the constant multiplier chart at the end of this notice to determine the constant multiplier that you should use for the interest rate on your loan. If your exact interest rate is not listed, use the next highest rate for estimation purposes.

- 0.131545 × $25,000 = $3,288.63

*Step 3:* Multiply the result of Step 2 by the income percentage factor shown in the income percentage factors table that corresponds to your and your spouse's income and then divide the result by 100 (if your and your spouse's aggregate income is not listed in the income percentage factors table, calculate the applicable income percentage factor by following the instructions under the "Interpolation" heading later in this notice):

- 109.40 × $3,288.63 ÷ 100 = $3,597.76

*Step 4:* Determine 20 percent of your discretionary income. To do this, subtract the poverty level for a family of two, as published in the **Federal Register** on February 18, 2005 (70 FR 8373), from your combined AGI and multiply the result by 20 percent:

- $64,819 − $12,830 = $51,989
- $51,989 × 0.20 = $10,397.80

*Step 5:* Compare the amount from Step 3 with the amount from Step 4. The lower of the two will be your annual payment amount. You and your spouse will pay the amount calculated under Step 3. To determine your monthly repayment amount, divide the annual amount by 12.

- $3,597.76 ÷ 12 = $299.81

*Interpolation:* If your income does not appear on the income percentage factors table, you will have to calculate the income percentage factor through interpolation. For example, assume you are single and your income is $25,000.

*Step 1:* Find the closest income listed that is less than your income of $25,000 and the closest income listed that is greater than your income of $25,000.

*Step 2:* Subtract the lower amount from the higher amount (for this discussion, we will call the result the "income interval"):

- $27,308 − $22,951 = $4,357

*Step 3:* Determine the difference between the two income percentage factors that are given for these incomes (for this discussion, we will call the result the "income percentage factor interval"):

- 80.33% − 71.89% = 8.44%

*Step 4:* Subtract from your income the closest income shown on the chart that is less than your income of $25,000:

- $25,000 − $22,951 = $2,049

*Step 5:* Divide the result of Step 4 by the income interval determined in Step 2:

- $2,049 ÷ $4,357 = 0.4703

*Step 6:* Multiply the result of Step 5 by the income percentage factor interval:

- 8.44% × 0.4703 = 3.9693%

*Step 7:* Add the result of Step 6 to the lower of the two income percentage factors used in Step 3 to calculate the income percentage factor interval for $25,000 in income:

- 3.9693 + 71.89% = 75.86% (rounded to the nearest hundredth)

The result is the income percentage factor that will be used to calculate the monthly repayment amount under the ICR plan.

## Income Percentage Factors for 2005

(Based on annual income)

| Single | | Married/head of household | |
|---|---|---|---|
| Income | Factor (percent) | Income | Factor (percent) |
| 8,967 | 55.00 | 8,967 | 50.52 |
| 12,338 | 57.79 | 14,149 | 56.68 |
| 15,876 | 60.57 | 16,862 | 59.56 |
| 19,495 | 66.23 | 22,043 | 67.79 |
| 22,951 | 71.89 | 27,308 | 75.22 |
| 27,308 | 80.33 | 34,301 | 87.61 |
| 34,301 | 88.77 | 43,018 | 100.00 |
| 43,019 | 100.00 | 51,739 | 100.00 |
| 51,739 | 100.00 | 64,819 | 109.40 |
| 62,184 | 111.80 | 86,614 | 125.00 |
| 79,624 | 123.50 | 117,131 | 140.60 |
| 112,773 | 141.20 | 163,813 | 150.00 |
| 129,305 | 150.00 | 267,682 | 200.00 |
| 230,315 | 200.00 | ..... | ..... |

## Constant Multiplier Chart for 12-Year Amortization

| Interest rate (percent) | Annual constant multiplier |
|---|---|
| 2.875 | 0.098632 |

CONSTANT MULTIPLIER CHART FOR 12-YEAR AMORTIZATION—Continued

| Interest rate (percent) | Annual constant multiplier |
|---|---|
| 3.500 | 0.102174 |
| 4.000 | 0.105063 |
| 4.500 | 0.108001 |
| 5.000 | 0.110987 |
| 5.500 | 0.114021 |
| 6.000 | 0.117102 |
| 6.500 | 0.120231 |
| 7.000 | 0.123406 |
| 7.500 | 0.126627 |
| 8.250 | 0.131545 |

BILLING CODE 4000–01–P

**Sample First-Year Monthly Repayment Amounts for a Single Borrower at Various Income and Debt Levels**

| Income | Initial Debt | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | $5,000 | $7,500 | $10,000 | $12,500 | $15,000 | $17,500 | $20,000 | $22,500 | $25,000 | $30,000 | $35,000 | $40,000 | $45,000 | $50,000 | $55,000 | $60,000 | $70,000 | $80,000 | $90,000 | $100,000 |
| 5,000 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 6,000 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 7,000 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 8,000 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 9,000 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 10,000 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 |
| 12,500 | 32 | 48 | 49 | 49 | 49 | 49 | 49 | 49 | 49 | 49 | 49 | 49 | 49 | 49 | 49 | 49 | 49 | 49 | 49 | 49 |
| 15,000 | 33 | 49 | 66 | 82 | 91 | 91 | 91 | 91 | 91 | 91 | 91 | 91 | 91 | 91 | 91 | 91 | 91 | 91 | 91 | 91 |
| 17,500 | 35 | 52 | 69 | 86 | 104 | 121 | 132 | 132 | 132 | 132 | 132 | 132 | 132 | 132 | 132 | 132 | 132 | 132 | 132 | 132 |
| 20,000 | 37 | 55 | 74 | 92 | 110 | 129 | 147 | 165 | 174 | 174 | 174 | 174 | 174 | 174 | 174 | 174 | 174 | 174 | 174 | 174 |
| 22,500 | 39 | 59 | 78 | 98 | 117 | 136 | 156 | 175 | 195 | 216 | 216 | 216 | 216 | 216 | 216 | 216 | 216 | 216 | 216 | 216 |
| 25,000 | 42 | 62 | 83 | 104 | 125 | 146 | 166 | 187 | 208 | 249 | 257 | 257 | 257 | 257 | 257 | 257 | 257 | 257 | 257 | 257 |
| 30,000 | 46 | 69 | 92 | 115 | 137 | 160 | 183 | 206 | 229 | 275 | 321 | 341 | 341 | 341 | 341 | 341 | 341 | 341 | 341 | 341 |
| 35,000 | 49 | 74 | 98 | 123 | 147 | 172 | 197 | 221 | 246 | 295 | 344 | 393 | 423 | 423 | 423 | 423 | 423 | 423 | 423 | 423 |
| 40,000 | 53 | 79 | 105 | 132 | 158 | 184 | 211 | 237 | 263 | 316 | 369 | 421 | 474 | 507 | 507 | 507 | 507 | 507 | 507 | 507 |
| 45,000 | 55 | 82 | 110 | 137 | 164 | 192 | 219 | 247 | 274 | 329 | 384 | 438 | 493 | 548 | 591 | 591 | 591 | 591 | 591 | 591 |
| 50,000 | 55 | 82 | 110 | 137 | 164 | 192 | 219 | 247 | 274 | 329 | 384 | 438 | 493 | 548 | 603 | 658 | 658 | 658 | 658 | 658 |
| 55,000 | 57 | 85 | 114 | 142 | 171 | 199 | 227 | 256 | 284 | 341 | 398 | 455 | 511 | 568 | 625 | 682 | 757 | 757 | 757 | 757 |
| 60,000 | 60 | 90 | 120 | 150 | 180 | 210 | 240 | 270 | 300 | 360 | 419 | 479 | 539 | 599 | 659 | 719 | 839 | 841 | 841 | 841 |
| 65,000 | 62 | 93 | 125 | 156 | 187 | 218 | 249 | 280 | 312 | 374 | 436 | 499 | 561 | 623 | 685 | 748 | 872 | 924 | 924 | 924 |
| 70,000 | 64 | 96 | 128 | 160 | 192 | 225 | 257 | 289 | 321 | 385 | 449 | 513 | 577 | 642 | 706 | 770 | 898 | 1007 | 1007 | 1007 |
| 80,000 | 68 | 102 | 136 | 170 | 203 | 237 | 271 | 305 | 339 | 407 | 475 | 542 | 610 | 678 | 746 | 814 | 949 | 1085 | 1174 | 1174 |
| 90,000 | 71 | 106 | 141 | 177 | 212 | 248 | 283 | 318 | 354 | 424 | 495 | 566 | 637 | 707 | 778 | 849 | 990 | 1132 | 1273 | 1341 |
| 100,000 | 74 | 110 | 147 | 184 | 221 | 258 | 295 | 331 | 368 | 442 | 516 | 589 | 663 | 737 | 810 | 884 | 1031 | 1178 | 1326 | 1473 |

Sample repayment amounts are based on an interest rate of 8.25%.

**Sample First-Year Monthly Repayment Amounts for a Married or Head-of-Household Borrower at Various Income and Debt Levels**

Family Size = 3

| Income | Initial Debt | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | $5,000 | $7,500 | $10,000 | $12,500 | $15,000 | $17,500 | $20,000 | $22,500 | $25,000 | $30,000 | $35,000 | $40,000 | $45,000 | $50,000 | $55,000 | $60,000 | $70,000 | $80,000 | $90,000 | $100,000 |
| 6,000 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 7,000 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 8,000 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 9,000 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 10,000 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 12,500 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 15,000 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 17,500 | 23 | 23 | 23 | 23 | 23 | 23 | 23 | 23 | 23 | 23 | 23 | 23 | 23 | 23 | 23 | 23 | 23 | 23 | 23 | 23 |
| 20,000 | 35 | 53 | 65 | 65 | 65 | 65 | 65 | 65 | 65 | 65 | 65 | 65 | 65 | 65 | 65 | 65 | 65 | 65 | 65 | 65 |
| 22,500 | 38 | 56 | 75 | 94 | 107 | 107 | 107 | 107 | 107 | 107 | 107 | 107 | 107 | 107 | 107 | 107 | 107 | 107 | 107 | 107 |
| 25,000 | 39 | 59 | 79 | 99 | 118 | 138 | 149 | 149 | 149 | 149 | 149 | 149 | 149 | 149 | 149 | 149 | 149 | 149 | 149 | 149 |
| 30,000 | 44 | 66 | 88 | 110 | 132 | 153 | 175 | 197 | 219 | 232 | 232 | 232 | 232 | 232 | 232 | 232 | 232 | 232 | 232 | 232 |
| 35,000 | 49 | 73 | 97 | 121 | 146 | 170 | 194 | 219 | 243 | 291 | 315 | 315 | 315 | 315 | 315 | 315 | 315 | 315 | 315 | 315 |
| 40,000 | 52 | 79 | 105 | 131 | 157 | 184 | 210 | 236 | 262 | 315 | 367 | 399 | 399 | 399 | 399 | 399 | 399 | 399 | 399 | 399 |
| 45,000 | 55 | 82 | 110 | 137 | 164 | 192 | 219 | 247 | 274 | 329 | 384 | 438 | 482 | 482 | 482 | 482 | 482 | 482 | 482 | 482 |
| 50,000 | 55 | 82 | 110 | 137 | 164 | 192 | 219 | 247 | 274 | 329 | 384 | 438 | 493 | 548 | 565 | 565 | 565 | 565 | 565 | 565 |
| 55,000 | 56 | 84 | 112 | 140 | 168 | 196 | 224 | 252 | 280 | 337 | 393 | 449 | 505 | 561 | 617 | 649 | 649 | 649 | 649 | 649 |
| 60,000 | 58 | 87 | 116 | 145 | 174 | 203 | 232 | 261 | 290 | 348 | 406 | 465 | 523 | 581 | 639 | 697 | 732 | 732 | 732 | 732 |
| 65,000 | 60 | 90 | 120 | 150 | 180 | 210 | 240 | 270 | 300 | 360 | 420 | 480 | 540 | 600 | 660 | 720 | 815 | 815 | 815 | 815 |
| 70,000 | 62 | 93 | 124 | 155 | 186 | 217 | 248 | 279 | 310 | 372 | 434 | 496 | 558 | 620 | 682 | 744 | 868 | 899 | 899 | 899 |
| 80,000 | 66 | 99 | 132 | 165 | 198 | 231 | 264 | 297 | 329 | 396 | 461 | 527 | 593 | 659 | 725 | 791 | 923 | 1055 | 1065 | 1065 |
| 90,000 | 69 | 104 | 139 | 174 | 208 | 243 | 278 | 313 | 347 | 417 | 486 | 556 | 625 | 695 | 764 | 834 | 972 | 1111 | 1232 | 1232 |
| 100,000 | 72 | 108 | 145 | 181 | 217 | 253 | 289 | 325 | 361 | 434 | 506 | 578 | 650 | 723 | 795 | 867 | 1012 | 1156 | 1301 | 1399 |

Sample repayment amounts are based on an interest rate of 8.25%.

[FR Doc. 05–11922 Filed 6–15–05; 8:45 am]
BILLING CODE 4000–01–C

## DEPARTMENT OF EDUCATION

### Notice Inviting Comments on Priorities To Be Proposed to the National Board for Education Sciences of the Institute of Education Sciences

**AGENCY:** Institute of Education Sciences, Department of Education.

**ACTION:** Notice inviting comments on priorities to be proposed to the National Board for Education Sciences of the Institute of Education Sciences.

**SUMMARY:** The Director of the Institute of Education Sciences (Institute) has developed priorities to guide the work of the Institute. The National Board for Education Sciences (Board) must approve the priorities, but before proposing the priorities to the Board, the Director must seek public comment on the priorities. The public comments will be provided to the Board prior to its action on the priorities.

**DATES:** We must receive your comments on or before August 16, 2005.

**ADDRESSES:** Address all comments about these proposed priorities to Elizabeth Payer, Institute of Education Sciences, U.S. Department of Education, 555 New Jersey Avenue, NW., room 602c, Washington, DC 20208. If you prefer to send your comments through the Internet, use the following address: *elizabeth.payer@ed.gov*. We encourage you to submit comments electronically to ensure timely receipt. We also ask that you include:

(1) "Comment on Proposed Priorities of the Institute" in the subject line of your e-mail message;

(2) Your name, title, organization, postal address, telephone number, and the full text of your comments in your e-mail message; and

(3) As an attachment to your e-mail message, the full text of your comments without your name, title, organization and contact information, so that we may more easily compile all of the comments we receive for review by members of the National Board for Education Sciences.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Payer. Telephone: (202) 219–1310.

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

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

### Invitation To Comment

We invite you to submit comments regarding these proposed priorities. To ensure that your comments have maximum effect in developing the final priorities, we urge you to identify clearly the specific proposed priority that each comment addresses.

During and after the comment period, you may inspect all public comments about these proposed priorities in room 602c, 555 New Jersey Avenue, NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

### Assistance to Individuals With Disabilities in Reviewing the Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public record for these proposed priorities. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

**SUPPLEMENTARY INFORMATION:**

### Background

The Education Sciences Reform Act of 2002 (20 U.S.C. 9516) requires that the Director of the Institute propose to the Board priorities for the Institute. The Director is to identify topics that require long term research and topics that are focused on understanding and solving education problems and issues, including those associated with the goals and requirements established in the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004; the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001; and the Higher Education Act of 1965, as amended, such as closing the achievement gap; ensuring that all children have the ability to obtain a high-quality education and reach, at a minimum, proficiency on State standards and assessments; and ensuring access to, and opportunities for, postsecondary education.

Before submitting proposed priorities to the Board, the Director must make the priorities available to the public for comment for not less than 60 days. Each comment submitted must be provided to the Board.

The Director anticipates submitting to the Board proposed priorities for the Institute at its next meeting to be held on September 6–7, 2005.

The Board must approve or disapprove the priorities for the Institute proposed by the Director, including any necessary revision of the priorities. Approved priorities are to be transmitted to appropriate congressional committees by the Board.

The Director will publish in the **Federal Register** the Institute's plan for addressing the priorities and make it available for comment for not less than 60 days.

### Proposed Priorities

The long-term goals associated with the Institute's priorities are threefold: First, to develop or identify a substantial number of programs, practices, policies, and approaches that are effective in enhancing academic achievement, and that are widely deployed and well-implemented; second, to identify what does not work and what is problematic, and thereby encourage innovation and further research; and third, to develop dissemination strategies and sources of information on the results of education research that are routinely used by policymakers, educators, and the general public when making education decisions. By providing an independent, scientific base of evidence, the Institute aims to further the transformation of education into an evidence-based field, and thereby enable the nation to educate all of its students in an effective manner.

In pursuit of its goals, the Institute will support research, conduct evaluations, and compile statistics in education that conform to rigorous scientific standards, and will disseminate and promote the use of research in forms and through activities that are objective, free of bias in their interpretation, and readily accessible. Given these goals, we invite you to submit comments regarding the priorities proposed here.

The Institute's over-arching priority is research that contributes to improved academic achievement for all students, and particularly for those students whose education prospects are hindered by inadequate education services and conditions associated with poverty, race/ethnicity, limited English proficiency, disability, and family circumstance.

With academic achievement as the major priority, the Institute will focus on outcomes that differ by periods of education. In the infancy and preschool period, the outcomes of interest will be those that enhance readiness for schooling, for example, language skills. In kindergarten through 12th grade, the

core academic outcomes of reading and writing, mathematics, and science will be emphasized, as will discipline and social interactions within schools that support learning. At the post-secondary level, the focus will be on enrollment in and completion of programs that prepare students for rewarding and constructive careers. The same outcomes are emphasized for students with disabilities across each of these periods. The acquisition of basic skills by adults with low levels of education is also of interest, as is the learning of skills that support independent living for individuals with significant cognitive disabilities.

In conducting research on factors that affect the academic outcomes on which it focuses, the Institute will concentrate on conditions that are within the control of the education system, with the aim of identifying, developing, and validating effective education programs, practices, policies, and approaches. Conditions that are of greatest interest to the Institute are in the areas of curriculum, instruction, assessment, the quality of the teaching and administrative workforce, and the systems and policies that affect these factors and their interrelationships, such as accountability systems and education options for parents.

The successful pursuit of the Institute's goals and priorities requires increased capacity to produce and use rigorous education research. To that end, the Institute's priorities include support of doctoral and post-doctoral training in the education sciences, development and refinement of education research methods, and expansion for research purposes of longitudinal databases that link individual student data to information on conditions that can affect student outcomes, such as curriculum. To assure increased capacity to use and apply the results of research, the Institute will support systematic reviews of evidence, enhanced access to findings through advanced electronic systems, and outreach to parents, educators, students, policymakers, and the general public.

These are not exclusive or absolute priorities: To the extent that resources permit and the Institute's priorities are being adequately addressed, the Institute may address other important education issues.

*Intergovernmental Review*

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

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(Catalog of Federal Domestic Assistance number does not apply.)

**Program Authority:** 20 U.S.C. 9501 *et seq.*

Dated: June 13, 2005.

**Grover J. Whitehurst,**

*Director, Institute of Education Sciences.*

[FR Doc. 05–11921 Filed 6–15–05; 8:45 am]

**BILLING CODE 4001–01–P**

## DEPARTMENT OF ENERGY

### West Valley Demonstration Project Waste Management Activities

**AGENCY:** U.S. Department of Energy.

**ACTION:** Record of decision.

**SUMMARY:** In the *Final West Valley Demonstration Project Waste Management Environmental Impact Statement* (WVDP WM EIS, Department of Energy (DOE)/EIS–0337, December 2003), DOE considered alternatives for the management of WVDP low-level radioactive waste (LLW), mixed (radioactive and hazardous) LLW (MLLW), transuranic (TRU) waste, and high-level radioactive waste (HLW). DOE prepared the WVDP WM EIS pursuant to the National Environmental Policy Act (NEPA), 42 United States Code (U.S.C.) 4321 *et seq.*, the Council on Environmental Quality's regulations for implementing the National Environmental Policy Act (NEPA) (40 Code of Federal Regulations (CFR) parts 1500–1508), and DOE's NEPA Implementing Procedures (10 CFR part 1021). To make progress toward fulfilling its responsibilities under the WVDP Act, DOE needs to disposition the wastes that are either currently in storage at the site or that will be generated at the site over the next ten years. DOE evaluated three alternatives for the management of the wastes: A *No Action Alternative* (Continuation of Ongoing Waste Management Activities), *Alternative A* (Off-site Shipment of HLW, LLW, MLLW, and TRU Wastes to Disposal), and Alternative B (Off-site Shipment of LLW and MLLW to Disposal, and Shipment of HLW and TRU Waste to Interim Storage [prior to disposal]). Based on the analysis of the potential impacts documented in the EIS, implementation of any of the alternatives would result in very low impacts to human health and the environment.

DOE has decided to partially implement Alternative A, the preferred alternative, for the management of WVDP LLW, MLLW, and HLW that are either currently in site over the next ten years:

DOE will ship LLW and MLLW off site for disposal in accordance with all applicable regulatory requirements, including permit requirements, waste acceptance criteria (WAC), and applicable DOE Orders. DOE will dispose of LLW and MLLW at commercial sites (such as Envirocare, a commercial radioactive waste disposal site in Clive, Utah), one or both of two DOE sites (the Nevada Test Site [NTS] in Mercury, Nevada; or the Hanford Site in Richland, Washington), or a combination of commercial and DOE sites, consistent with DOE's February 2000 decision regarding LLW and MLLW disposal.[1] Disposal of WVDP LLW and MLLW at Hanford would be subject to the limits DOE has imposed upon non-Hanford waste receipts in its June 2004 decision regarding waste management at the Hanford Site,[2] and contingent upon the resolution of ongoing Hanford litigation in which a preliminary injunction has been entered against shipping off site LLW and MLLW to Hanford.

Consistent with the Waste Management Programmatic Environmental Impact Statement High-Level Waste Record of Decision (64 FR

[1] Record of Decision for the Department's Waste Management Program: Treatment and Disposal of Low-Level Waste and Mixed Low-Level Waste; Amendment of the Record of Decision for the Nevada Test Site (65 FR 10061, February 25, 2000).

[2] Record of Decision for the Solid Waste Program, Hanford Site, Richland, Washington: Storage and Treatment of Low-Level Waste and Mixed Low-Level Waste; Disposal of Low-Level Waste and Mixed Low-Level Waste, and Storage, Processing and Certification of Transuranic Waste for Shipment to the Waste Isolation Pilot Plant (69 FR 39449, June 30, 2004.

46661, August 26, 1999), DOE will store canisters of vitrified HLW at the WVDP site until transfer to a geologic repository. Contingent upon issuance of a license by the Nuclear Regulatory Commission (NRC) to construct and operate the repository and the execution of a disposal contract between DOE and the State of New York, DOE plans to dispose of the canisters there when the repository becomes available.

DOE is deferring a decision on the disposal of WVDP TRU waste, pending a determination by DOE that the waste meets all statutory and regulatory requirements for disposal at the Waste Isolation Pilot Plant (WIPP).

**ADDRESSES:** Copies of the WVDP WM EIS and this Record of Decision (ROD) may be obtained by calling (716) 942–2152 or (800) 633–5280 (toll-free), by sending an e-mail request to *sonja.allen@wvnsco.com*, or by mailing a request to: Mr. Daniel W. Sullivan, EIS Document Manager, DOE West Valley Area Office, 10282 Rock Springs Road, WV–49, West Valley, New York 14171–9799.

This ROD will be available on the DOE NEPA Web site, *http://www.eh.doe.gov/nepa/pub_rods_toc.html*, and the WVDP Web site, *http://www.wv.doe.gov*. The WVDP WM EIS is available at the WVDP Web site and through DOE's NEPA Web site at *http://www.eh.doe.gov/nepa/*.

**FOR FURTHER INFORMATION CONTACT:** Questions concerning WVDP waste management activities can be submitted by calling (716) 942–2152 or (800) 633–5280 (toll-free), by sending an e-mail request to *sonja.allen@wvnsco.com*, or by mailing them to Mr. Daniel W. Sullivan at the above address.

For general information on the DOE NEPA process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: (202) 586–4600, or leave a message at (800) 472–2756.

**SUPPLEMENTARY INFORMATION:**

## Background

The Western New York Nuclear Service Center (Center) comprises 14 square kilometers (5 square miles) in West Valley, New York, and is located in the town of Ashford, approximately 50 kilometers (30 miles) southeast of Buffalo, New York. It was the only commercial nuclear fuel reprocessing plant to have operated in the United States. The Center operated under a license issued by the Atomic Energy Commission in 1966 to Nuclear Fuel Services, Incorporated, and the New York State Atomic and Space Development Authority, now known as the New York State Energy Research and Development Authority (NYSERDA).

During reprocessing, spent nuclear fuel from commercial nuclear power plants and DOE sites was chopped, dissolved, and processed by a solvent extraction system to recover uranium and plutonium. Fuel reprocessing ended in 1972, when the plant was shut down for modifications to increase its capacity, reduce occupational radiation exposure, and reduce radioactive effluents. At the time, the owner and operator of the reprocessing plant, Nuclear Fuel Services, Incorporated, expected that the modifications would take two years and $15 million to complete. However, between 1972 and 1976, there were major changes in regulatory requirements, including more stringent seismic and tornado siting criteria for nuclear facilities and more extensive regulations for radioactive waste management, radiation protection, and nuclear material safeguards. In 1976, Nuclear Fuel Services, Incorporated, judged that over $600 million would be required to modify the facility to increase its capacity and to comply with these changes in regulatory standards.

As a result, the company announced its decision to withdraw from the nuclear fuel reprocessing business and exercise its contractual right to yield responsibility for the Center to NYSERDA. Nuclear Fuel Services, Incorporated, withdrew from the Center without removing any of the in-process nuclear wastes. NYSERDA now holds title to and manages the Center on behalf of the people of the State of New York.

In 1980, Congress passed the WVDP Act (Public Law No. 96–368, 42 U.S.C. 2021a). The WVDP Act requires DOE to demonstrate that the liquid HLW from reprocessing can be safely managed by solidifying it at the Center and transporting it to a geologic repository for permanent disposal. Specifically, Section 2(a) of the Act directs DOE to take the following actions:

1. Solidify HLW by vitrification or such other technology that the DOE deems effective;

2. Develop containers suitable for the permanent disposal of the solidified HLW;

3. Transport the solidified HLW to an appropriate Federal repository for permanent disposal;

4. Dispose of the LLW and TRU waste produced by the HLW solidification program; and

5. Decontaminate and decommission the waste storage tanks and facilities used to store HLW, the facilities used for solidification of the HLW, and any material and hardware used in connection with the project in accordance with such requirements as the NRC may prescribe.

In the 20 years since the WVDP Act was enacted, DOE has succeeded in preparing all 2.3 million liters (600,000 gallons) of waste resulting from reprocessing of spent nuclear fuel for disposal, including treatment of HLW by vitrification (combining liquid HLW with borosilicate glass), and has developed stainless-steel canisters suitable for HLW permanent disposal (actions 1 and 2). The *Decommissioning and/or Long-Term Stewardship at the WVDP and the Western New York Nuclear Service Center EIS*, currently being prepared, will address decommissioning and closure alternatives. DOE published a Notice of Intent to prepare the *Decommissioning and/or Long-Term Stewardship at the WVDP and the Western New York Nuclear Service Center EIS* on March 13, 2003 (68 FR 12044, March 13, 2003).

Although DOE does not manage low-level radioactive waste according to the classes of NRC's regulations for shallow land disposal, 10 CFR 61.55, a 1987 Stipulation of Compromise between the Coalition on West Valley Nuclear Wastes and DOE specified that an EIS be prepared that addresses the disposal of those Class B and C wastes generated as a result of the activities of DOE at the WVDP.

## Purpose and Need for Action

In accordance with the directives in the WVDP Act, DOE is responsible for the facilities used in connection with the WVDP HLW vitrification effort and for disposal of the LLW, MLLW, HLW, and TRU waste produced by the WVDP HLW solidification program. To make progress in fulfilling its responsibilities under the WVDP Act, DOE needs to identify a disposal path for the wastes that are currently stored onsite and that will be generated from ongoing operations and decontamination activities that will occur over the next ten years. Decommissioning and/or long-term stewardship (LTS) decisions will be made under the *Decommissioning and/or Long-Term Stewardship at the WVDP and the Western New York Nuclear Service Center EIS*.

## Alternatives Considered

The WVDP WM EIS evaluates alternatives for meeting DOE's onsite waste management and off-site

transportation and disposal responsibilities under the WVDP Act. To address the range of reasonable alternatives, the WVDP WM EIS evaluated three alternatives. Each alternative is described below. In implementing any of these alternatives, DOE would comply with applicable laws, regulations, orders, agreements, receiving site permits and WAC, and state-approved closure plans.

*No Action Alternative—Continuation of Ongoing Waste Management Activities*

Under this alternative, DOE would provide continued operational support and monitoring of WVDP waste management facilities to meet the requirements for safety and hazard management.

Waste management activities currently in progress would continue for onsite storage of existing Class A, B, and C (per 10 CFR 61.55) LLW and MLLW, TRU waste and HLW waste and off-site disposal of a limited quantity of Class A LLW at a commercial facility such as Envirocare in Utah, or at DOE disposal facilities at the Hanford Site in Washington or NTS in Nevada. Removal of these wastes for off-site disposal would require 169 truck shipments or 85 rail shipments. The HLW storage tanks and their surrounding vaults would continue to be ventilated to manage moisture levels as a corrosion prevention measure until decommissioning and/or LTS decisions are made based in part on the impact assessment to be provided by the *Decommissioning and/or Long-Term Stewardship at the WVDP and the Western New York Nuclear Service Center EIS.*

*Alternative A (Preferred Alternative)—Off-Site Shipment of HLW, LLW, MLLW, and TRU Wastes to Disposal*

Under this alternative, DOE would ship Class A, B, and C LLW and MLLW to either or both of two DOE potential disposal sites (the Hanford Site or NTS) and/or to a commercial disposal site (such as Envirocare), ship TRU waste to WIPP (near Carlsbad, New Mexico), and ship HLW to the Yucca Mountain Repository (in Nye County, Nevada). LLW and MLLW would be shipped over the next ten years (requiring approximately 1,966 truck shipments or 608 rail shipments). TRU waste shipments to WIPP could be completed within the next ten years if the TRU waste is determined to meet all the requirements for disposal at WIPP (requiring approximately 270 truck shipments or 172 rail shipments); however, if some or all of WVDP's TRU waste does not meet these requirements, the DOE would need to explore other alternatives for disposal of this waste.

Approximately 300 canisters of HLW would be shipped to the Yucca Mountain Repository (requiring approximately 300 truck shipments or 60 rail shipments). These shipments would occur when the repository becomes available, which is contingent upon authorization by NRC to construct and operate the repository, and the execution of a disposal contract between the DOE and the State of New York. The waste storage tanks would continue to be managed as described under the No Action Alternative.

*Alternative B—Off-Site Shipment of LLW and MLLW to Disposal, and Shipment of HLW and TRU Waste to Interim Storage*

Under this alternative, LLW and MLLW would be shipped off-site for disposal at the same locations as Alternative A. TRU wastes would be shipped to the Hanford Site; Idaho National Laboratory in Idaho Falls, Idaho; the Oak Ridge National Laboratory in Oak Ridge, Tennessee; and/or the Savannah River Site (SRS) in Aiken, South Carolina, for interim storage and then to WIPP for disposal. TRU waste also could be shipped to WIPP for interim storage prior to disposal there. HLW would be shipped to SRS or Hanford for interim storage, with subsequent shipment to the Yucca Mountain Repository for disposal. Implementation of this alternative would require 540 truck shipments or 344 rail shipments of TRU waste and 600 truck shipments or 120 rail shipments of HLW; this represents the number of shipments required from WVDP to the interim storage site and then from interim storage to the disposal site.

It is assumed that the shipment of LLW and MLLW to disposal would occur within the next ten years, and that TRU waste and HLW would be shipped to interim storage during that same ten years. Ultimate disposal of TRU wastes and HLW wastes would be subject to the same constraints described under Alternative A. The impacts of transporting these wastes to their ultimate disposal sites, as well as to the interim storage sites, were included in the impact analyses for this alternative. The waste storage tanks would continue to be managed as described under the No Action Alternative.

**Environmental Impacts**

The waste management actions proposed under all alternatives would be conducted in existing facilities (and in the case of waste transportation, on existing road and rail lines) by the existing work force at the involved facilities and would not involve either new construction or building demolition. Because there would be no mechanism for new land disturbance under any alternative, there is no potential, except for transportation accidents, to directly or indirectly impact current land use; biotic communities; cultural, historical, or archaeological resources; visual resources; ambient noise levels; threatened or endangered species or their critical habitats; wetlands; or floodplains. None of the onsite management activities under any of the alternatives would result in any new criteria air pollutant emissions. Additionally, because the work force needed for the waste management activities analyzed in this EIS would be the same under all alternatives and there would be no increases or decreases from current employment levels as a result of waste management activities, there is no potential for socioeconomic impacts.

Waste management activities under each alternative would result in the limited exposure of workers to small amounts of radiation and contaminated material, and exposure of the public to very small quantities of radioactive materials. The human health impacts to involved and noninvolved workers and the public at or near the WVDP site are small and are dominated by ongoing WVDP site operations that would continue under all alternatives. Any differences in the potential impacts among the three alternatives would not be discernible. Implementation of any of the alternatives would result in very small impacts to human health or the environment.

The EIS analysis of potential human health impacts shows that onsite waste management actions under each alternative would result in less than one latent cancer fatality (LCF) among workers (maximum 0.1 LCF) and the public (maximum 0.0015 LCF) under normal operating conditions. Further, neither individual involved workers, the maximally exposed individual, nor the public, near the WVDP site would be expected to incur a LCF under any atmospheric conditions if an accident were to occur during waste management activities.

Projected impacts from off-site waste transportation are less than one LCF among workers and the public for all three alternatives. The consequences of the maximum reasonably foreseeable transportation accidents under each alternative would vary slightly among the alternatives and between truck and

rail transport. Under the No Action Alternative, the maximum reasonably foreseeable transportation accident would involve Class A LLW. For truck transport, this accident could result in about one LCF, and for rail about two LCF's, among the exposed population (the annual probability of such an accident occurring is about five in ten million for truck transport, or about two in one million for rail transport). For Alternatives A and B, the maximum reasonably foreseeable truck or rail transportation accident with the highest consequences would involve TRU waste. Because one TRU waste shipping container (a TRUPACT–II container) was assumed to be involved in either the truck or rail accident, the consequences for the truck or rail accident would be the same. Among the exposed population, this accident could result in about four LCF's (for Alternative A, the annual probability of such an accident occurring is about six in ten million for truck transport, or about one in ten million for rail transport; for Alternative B, the annual probability of such an accident occurring is about eight in ten million for truck transport, or about three in ten million for rail transport). Potential impacts of waste management activities at off-site receiving locations have been addressed in earlier NEPA documents, as described in the WVDP WM EIS (Section 1.7.1). For all waste types, WVDP waste represents less than two percent of the total DOE waste inventory. Human health impacts at all sites as a result of the management (storage or disposal) of WVDP waste during the ten-year period of analysis would be very minor (substantially less than one LCF).

Based on the analysis of the potential impacts documented in the WVDP WM EIS, DOE has determined that implementation of any of the alternatives would result in very low impacts to human health and the environment.

**Environmentally Preferable Alternative**

Alternative A (Off-site Shipment of HLW, LLW, MLLW, and TRU Wastes to Disposal) is the environmentally preferable alternative. Because less radioactive waste would be transported under the No Action Alternative, implementation of that alternative is likely to result in the smallest impacts over the next ten years as compared to Alternatives A or B. Over time, however, the removal of waste from the WVDP site to a safer and more secure disposal site will reduce radiological risk to workers and the public. Alternative A would have the smallest transportation risks among the action alternatives because implementation of this alternative would require half the number of TRU waste and HLW shipments as under Alternative B, and potential transportation risks decrease as the number of miles traveled and individual shipments decrease.

**Public Comments on the Final WVDP WM EIS and Agency Response**

Following the issuance of the Final WVDP WM EIS, DOE received comment letters from the Southwest Research and Information Center (SRIC) (dated January 23, 2004), the Coalition on West Valley Nuclear Wastes (Coalition) (dated February 14, 2004), and from the State of Nevada Department of Administration (dated February 17, 2004). These letters are summarized below, followed by DOE's response to the comments presented.

*SRIC Comment Summary:* SRIC stated that it objects to those portions of the Final WVDP WM EIS action alternatives related to disposing of TRU waste at WIPP. The commenter stated that the EIS is inadequate with regard to TRU waste, and that the DOE should analyze alternatives for storage and disposal of WVDP TRU waste that do not include WIPP. The commenter further stated that WVDP waste is prohibited from disposal at WIPP under the WIPP Land Withdrawal Act because it is not defense waste and because the EIS did not describe all of the requirements for disposal at WIPP; the U.S. Environmental Protection Agency certification for the repository does not include any WVDP TRU waste; the State of New Mexico operating permit does not include any WVDP TRU waste; inventory estimates in the WVDP WM EIS differ from previous estimates such as those in the *WIPP Supplemental EIS–II* (DOE/EIS–0026-S–2, 1997) (WIPP SEIS–II), which shows that the DOE has inadequate waste characterization and inventory information for decisionmaking; DOE should not consider bringing West Valley HLW to be stored or disposed of at WIPP; and the public comment process on the EIS was inadequate.

*DOE Response:* DOE is deferring a decision on the disposal of WVDP TRU waste, pending a determination by the DOE that the waste meets all statutory and regulatory requirements for disposal at the WIPP. With regard to potential WVDP TRU waste disposal at WIPP, DOE will further respond to SRIC comments when a decision on WVDP TRU waste disposal is made. However, it is appropriate at this time to respond to two more general SRIC comments.

First, with regard to the suggestion that the DOE not send WVDP HLW to WIPP, this EIS did not propose to send HLW to WIPP and did not analyze an alternative that would support such a decision. The WIPP Land Withdrawal Act prohibits disposal of HLW at WIPP, and DOE does not intend to dispose of West Valley HLW at WIPP.

Second, DOE disagrees with the commenter's assertion that the public comment process for this EIS was inadequate. Pursuant to the NEPA implementing regulations, DOE published notices (66 FR 16447, March 26, 2001, and 68 FR 26587, May 16, 2003) for public scoping and the public comment period for the Draft EIS in the **Federal Register**, and held two public hearings at the WVDP. The Draft WVDP WM EIS (and the Final EIS) were provided to the agencies in all states hosting proposed disposal or storage sites. Specifically, in New Mexico, the documents were sent to the New Mexico Environment Department (State National Environmental Policy Act Clearinghouse). DOE also provided copies of the Draft WVDP WM EIS (and the Final WVDP WM EIS) to all persons known to be interested. Copies of the Draft and Final EIS were provided to governors and Members of Congress in all potentially affected states (including Idaho, New Mexico, Nevada, Oregon, South Carolina, Tennessee, Utah, and Washington). DOE received and considered comments from stakeholders in states hosting DOE sites analyzed for waste storage and/or disposal; these are identified in the Final WVDP WM EIS.

*Coalition Comment Summary:* The Coalition stated that the DOE did not respond to its comments on the Draft WVDP WM EIS regarding the Coalition's position that shipment of Class B/C waste (as determined under NRC classification regulations) off site for disposal violates the 1987 Stipulation of Compromise (Stipulation) resolving the litigation between the Coalition and DOE. In addition, the Coalition stated that the DOE did not respond to other specific comments: the preparation of the WVDP WM EIS and the *Decommissioning and/or Long-Term Stewardship at the WVDP and the Western New York Nuclear Service Center EIS* do not comply with the Coalition's position that only one EIS can satisfy the Stipulation; by preparing two EISs, DOE has improperly segmented the actions under NEPA by not including the impacts at receiving sites and has failed to identify impacts at those sites for larger volumes of waste that could be generated under the *Decommissioning and/or Long-Term Stewardship at the WVDP and the*

*Western New York Nuclear Service Center EIS;* in accordance with the Stipulation, Class B/C waste cannot be shipped off site until the entire closure EIS process has been completed; and DOE has acknowledged that additional NEPA documentation would be needed before West Valley waste could be shipped to Hanford. The Coalition also stated that it objects to the "counterfeit" version of the Stipulation DOE included in Appendix A of the WVDP WM EIS, as that version is not identical to the original version.

*DOE Response:* DOE has reviewed all comments received on the Draft WVDP WM EIS, including those from the Coalition and its members, and has addressed the comments in Appendix E of the Final WVDP WM EIS. DOE understands that it is the Coalition's position that the Stipulation does not allow disposal of Class B or C LLW until the *Decommissioning and/or Long-Term Stewardship at the WVDP and the Western New York Nuclear Service Center EIS* is completed. DOE agrees with the Coalition that a decision to dispose of WVDP LLW *on site* would be precluded by the Stipulation prior to completion of the Decommissioning EIS; however, DOE does not believe that the Stipulation was intended to preclude a decision to dispose of WVDP LLW *off site* prior to completion of that EIS. Moreover, DOE's waste management activities described in the WVDP WM EIS will not affect the range of reasonable alternatives available for decommissioning or LTS. Therefore, DOE concludes that its NEPA strategy does not constitute impermissible segmentation, and that the shipment of stored wastes off site for disposal has independent utility.

Chapter 5 of the WVDP WM EIS states that impacts at receiving sites, including the potential inventory of wastes to be shipped from WVDP, were analyzed in the WM Programmatic EIS *(Final Waste Management Programmatic Environmental Impact Statement for Managing, Treatment, Storage, and Disposal of Radioactive and Hazardous Waste,* DOE/EIS–0200–F). In addition, DOE added a statement to Chapter 5 in the Final WVDP WM EIS that future wastes generated by decommissioning and LTS are not known at this time and would be addressed under the *Decommissioning and/or Long-Term Stewardship at the WVDP and the Western New York Nuclear Service Center EIS.* DOE's responses to comments also stated that additional site-specific review as called for in the WM Programmatic EIS was in progress at Hanford. The Final Hanford Solid and Radioactive Waste EIS has since been issued (January 2004) and analyzes waste from off-site generators, including WVDP.

DOE agrees with the Coalition that DOE should have identified the version of the Stipulation in Appendix A of the WVDP WM EIS as a reprint. However, the differences between that version and the original Stipulation are minor (such as spacing and punctuation) and did not change or affect the content of the text.

*State of Nevada Comment Summary:* The State's Division of Water Resources stated that applications for the use of the waters of the State pertaining to the proposed geologic repository at Yucca Mountain, Nevada, have been denied by the State Engineer, a ruling which has been appealed to the Federal District Court in Nevada.

*DOE Response:* The Final WVDP WM EIS stated, and DOE further states in this decision, that the WVDP immobilized HLW planned for disposal at Yucca Mountain will be stored onsite until a repository becomes available.

**Decision**

The WVDP Act (Pub. L. 96–368) mandates that DOE dispose of LLW and TRU waste generated by the HLW solidification project. To make progress in meeting its obligations under the Act, DOE has decided to implement partially Alternative A, the preferred alternative, for the management of WVDP LLW and MLLW that is currently in storage at the site or that will be generated at the site over the next ten years. Of the two action alternatives evaluated, Alternative A is the environmentally preferable action alternative, has the fewest transportation impacts, and the least radiological risk to workers and the public.

In accordance with all applicable regulatory requirements, including WVDP permit requirements, WAC and applicable agreements, and DOE Orders, DOE will ship LLW and MLLW off site for disposal at commercial sites (such as Envirocare, a commercial radioactive waste disposal site in Clive, Utah); at one or both of two DOE sites, the NTS in Mercury, Nevada, or the Hanford Site in Richland, Washington; or a combination of commercial and DOE sites, consistent with DOE's February 2000 decision regarding LLW and MLLW disposal.[1] This decision includes wastes DOE may determine in the future to be LLW or MLLW pursuant to a waste incidental to reprocessing by evaluation process. Disposal at Hanford would be subject to any of the WVDP LLW and MLLW (as well as all other off-site DOE waste) limits DOE has imposed upon non-Hanford waste receipts in its June 2004 decision regarding waste management at the Hanford Site,[2] and contingent upon the resolution of ongoing Hanford litigation in which a preliminary injunction has been entered against shipping offsite LLW and MLLW to Hanford. During packaging, shipping, and managing WVDP waste at receiving facilities, DOE will continue to follow all practicable means to avoid or minimize environmental harm.

DOE will store the canisters of vitrified HLW at the WVDP site until they can be shipped to a geologic repository for the disposal of HLW. As stated in the Waste Management Programmatic Environmental Impact Statement Record of Decision, DOE plans to transfer the canisters to the geologic repository when the repository becomes available, which is contingent upon issuance of a license by the NRC to construct and operate the repository, and subject to the execution of a disposal contract between the DOE and the State of New York. DOE is deferring a decision on the disposal of WVDP TRU waste, pending a determination by the DOE that the waste meets all statutory and regulatory requirements for disposal at the WIPP.

Issued at Washington, DC, June 9, 2005.

**Charles E. Anderson,**

*Principal Deputy Assistant Secretary for Environmental Management.*

[FR Doc. 05–11882 Filed 6–15–05; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Innovative American Technology, Inc.

**AGENCY:** Department of Energy, Office of the General Counsel.

**ACTION:** Notice of intent to grant exclusive patent license.

**SUMMARY:** Notice is hereby given to an intent to grant to Innovative American Technology, Inc. (IAT), of Boca Raton, Florida, an exclusive license to practice the inventions described in U.S. Patent No. 6,545,281, entitled "Pocked Surface Neutron Detector" and U.S. Patent No. 6,479,826 entitled "Coated Semiconductor for Neutron Detection". The inventions are owned by the United States of America, as represented by the U.S. Department of Energy (DOE).

**DATES:** Written comments or nonexclusive license applications are to be received at the address listed below no later than July 18, 2005.

**ADDRESSES:** Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** John T. Lucas, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, Forrestal Building, Room 6F–067, 1000 Independence Ave., SW., Washington, DC 20585; telephone (202) 586–2939.

**SUPPLEMENTARY INFORMATION:** 35 U.S.C. 209 provides federal agencies with authority to grant exclusive licenses in federally-owned inventions, if, among other things, the agency finds that the public will be served by the granting of the license. The statute requires that no exclusive license may be granted unless public notice of the intent to grant the license has been provided, and the agency has considered all comments received in response to that public notice, before the end of the comment period.

IAT, of Boca Raton, Florida has applied for an exclusive license to practice the inventions embodied in U.S. Patents Nos. 6,545,281 and 6,479,826 and has plans for commercialization of the inventions.

The exclusive license will be subject to a license and other rights retained by the U.S. Government, and other terms and conditions to be negotiated. DOE intends to negotiate to grant the license, unless, within 30 days of this notice, the Assistant General Counsel for Technology Transfer and Intellectual Property, Department of Energy, Washington, DC 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reason why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention in which applicant states that if already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The Department will review all timely written responses to this notice, and will proceed with negotiating the license if, after consideration of written responses to this notice, a finding is made that the license is in the public interest.

Issued in Washington, DC on June 10, 2005.

**Paul A. Gottlieb,**

*Assistant General Counsel for Technology Transfer and Intellectual Property.*

[FR Doc. 05–11885 Filed 6–15–05; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**Docket Nos. RP00–327–007 and RP00–604–007]**

### Columbia Gas Transmission Corporation; Notice Of Segmentation Report

June 9, 2005.

Take notice that on June 1, 2005, Columbia Gas Transmission Corporation (Columbia) tendered for filing its segmentation report reflecting all segmentation activity that transpired on its system during the first year the program was in place. Columbia states that it filed the segmentation report in compliance with an order issued July 19, 2002 (100 FERC ¶§ 61,084 (2002), *order on reh'g and clarification*, 104 FERC ¶ 61,168 (2003)) in its Order No. 637 proceeding. Columbia further indicates that it is also providing a first-year report on its experience administering the secondary point priority allocation methodology.

Columbia states that it is considering the merger of the segmentation pool into the Rate Schedule IPP (Interruptible Paper Pool) in order to create one virtual pool on its system that will exist along with the physical pooling points provided under Rate Schedule AS (Aggregation Service). Columbia described the option for the merger and requested comment by all interested parties. Columbia further states that it is willing to hold a customer meeting to further explore the merger concept, to the extent adequate customer support exists to make such discussions worthwhile. Columbia also requests that the Commission accept its first-year report on segmentation and secondary point priority allocation.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Protest Date:* 5 p.m. eastern time on June 21, 2005.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E5–3090 Filed 6–15–05; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. RP05–367–000 and CP00–6–013]**

### Gulfstream Natural Gas System, L.L.C.; Notice of Submission of Cost and Revenue Study

June 9, 2005.

Take notice that on May 27, 2005, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing a cost and revenue study for Phase I and Phase II of the Gulfstream project, pursuant to the Commission's April 28, 2000, and October 8, 2003, orders in Docket No. CP00–6–000, *et al.*

Gulfstream states that copies of the cost and revenue study were served on Gulfstream's customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene

or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Intervention and Protest Date:* 5 p.m. eastern time on June 16, 2005.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E5–3089 Filed 6–15–05; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Western Area Power Administration

### Loveland Area Projects-Rate Order No. WAPA–125

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of proposed power rates.

**SUMMARY:** The Western Area Power Administration (Western) is proposing revised rates for Loveland Area Projects (LAP) firm electric service. LAP consists of the Fryingpan-Arkansas Project and the Pick-Sloan Missouri Basin Program—Western Division, which were integrated for marketing and rate-making purposes in 1989. Current rates, under Rate Schedule L–F5, expire on December 31, 2008, but are not sufficient to meet the LAP revenue requirements. Proposed rates will provide sufficient revenue to pay all annual costs, including interest expense, and repay required investment within the allowable period. Western will prepare a brochure that provides detailed information on the rates to all interested parties. Proposed rates, under Rate Schedule L–F6, are scheduled to go into effect on January 1, 2006, and will remain in effect through December 31, 2010. Publication of this **Federal Register** notice begins the formal process for the proposed rate adjustment.

**DATES:** The consultation and comment period begins today and will end September 14, 2005. Western will present a detailed explanation of the proposed rates at public information forums. The public information forum dates are:

1. July 19, 2005, 10 a.m. MDT in Denver, CO.

2. July 20, 2005, 8 a.m. CDT in Lincoln, NE.

Western will accept oral and written comments at a public comment forum. The public comment forum will be held on the following date:

1. August 16, 2005, 9 a.m. MDT in Denver, CO.

Western will accept written comments any time during the consultation and comment period.

**ADDRESSES:** Send written comments to Joel K. Bladow, Regional Manager, Rocky Mountain Region, Western Area Power Administration, 5555 East Crossroads Boulevard, Loveland, CO 80538–8986, e-mail *lapfirmadj@wapa.gov*. Western will post information about the rate process on its Web site under the "Rate Adjustments" section at *http://www.wapa.gov/rm/rm.htm*. Western will post official comments received via letter and e-mail to its Web site after the close of the comment period. Western must receive written comments by the end of the consultation and comment period to ensure they are considered in Western's decision process.

The public information forum locations are:

1. Denver—Radisson Stapleton Plaza Hotel, 3333 Quebec Street, Denver, CO.

2. Lincoln—Peru State College Center (located on the skywalk floor of Energy Square; Floor 3 in Center Park Garage), 1111 O Street, Lincoln, NE.

The public comment forum location is:

1. Denver—Radisson Stapleton Plaza Hotel, 3333 Quebec Street, Denver, CO.

**FOR FURTHER INFORMATION CONTACT:** Mr. Daniel T. Payton, Rates Manager, Rocky Mountain Region, Western Area Power Administration, 5555 East Crossroads Boulevard, Loveland, CO 80538–8986, telephone (970) 461–7442, e-mail *lapfirmadj@wapa.gov*.

**SUPPLEMENTARY INFORMATION:** Proposed rates for LAP firm electric service are designed to recover an annual revenue requirement that includes investment repayment, interest, purchase power, operation and maintenance, and repayment of irrigation assistance costs as required by law. The projected annual revenue requirement for firm electric service is allocated equally between capacity and energy.

The Department of Energy approved Rate Schedule L–F5 for LAP firm electric service on December 24, 2003 (Rate Order No. WAPA–105, 69 FR 644, January 6, 2004), and the Federal Energy Regulatory Commission (Commission) confirmed and approved the rate schedule on December 21, 2004, under FERC Docket No. EF04–5181–000 (109 FERC 62,228). Approval for Rate Schedule L–F5 covered 5 years beginning on February 1, 2004, ending on December 31, 2008.

Under Rate Schedule L–F5, the composite rate effective on October 1, 2004, is 23.90 mills per kilowatthour (mills/kWh), the energy rate is 11.95 mills/kWh and the capacity rate is $3.14 per kilowattmonth (kWmonth). Under Rate Schedule L–F6, Western is proposing a two-step rate adjustment. Under a two-step method, the rates for LAP firm electric service will result in an overall composite rate increase of approximately 9.3 percent effective on January 1, 2006, and another 5.2 percent effective on January 1, 2007, for a total increase of approximately 14.5 percent. The proposed rates for L–F6 firm electric service are listed in Table 1.

TABLE 1.—TWO-STEP PROPOSAL-FIRM ELECTRIC SERVICE REVENUE REQUIREMENT & RATES

| Firm electric service | Existing rates | First step rates Jan. 1, 2006 | Percent change | Second step rates Jan. 1, 2007 | Percent change |
|---|---|---|---|---|---|
| LAP Revenue Requirement | $48.8 million | $53.3 million | 9.2 | $55.8 million | 5.1 |
| LAP Composite Rate | 23.90 mills/kWh | 26.12 mills/kWh | 9.3 | 27.36 mills/kWh | 5.2 |
| Firm Energy | 11.95 mills/kWh | 13.06 mills/kWh | 9.3 | 13.68 mills/kWh | 5.2 |
| Firm Capacity | $3.14/kW-month | $3.43/kW-month | 9.2 | $3.59/kW-month | 5.1 |

**Legal Authority**

Since the proposed rates constitute a major adjustment as defined by 10 CFR part 903, Western will hold both a public information forum and a public comment forum. After review of public comments and possible amendments or adjustments, Western will recommend that the Deputy Secretary of Energy approve the proposed rates on an interim basis.

Western is establishing firm electric service rates for LAP under the Department of Energy Organization Act (42 U.S.C. 7152); the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s); and other acts that specifically apply to the projects involved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Commission. Existing Department of Energy (DOE) procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985.

**Availability of Information**

All brochures, studies, comments, letters, memorandums, e-mail, or other documents that Western initiates to develop the proposed rates are available for inspection and copying at the Rocky Mountain Regional Office, located at 5555 East Crossroads Boulevard, Loveland, Colorado. Many of these documents, and supporting information, are also available on its Web site under the "Rate Adjustments" section located at *http://www.wapa.gov/rm/rm.htm.*

**Regulatory Procedure Requirements**

*Regulatory Flexibility Analysis*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. This action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

*Environmental Compliance*

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*); Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from preparing an environmental assessment or an environmental impact statement.

*Determination Under Executive Order 12866*

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

*Small Business Regulatory Enforcement Fairness Act*

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Dated: June 8, 2005.

**Michael S. Hacskaylo,**

*Administrator.*

[FR Doc. 05–11883 Filed 6–15–05; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Western Area Power Administration

### Pick-Sloan Missouri Basin Program—Eastern Division-Rate Order No. WAPA–126

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of proposed power rates.

**SUMMARY:** The Western Area Power Administration (Western) is proposing revised rates for Pick-Sloan Missouri Basin Program—Eastern Division (P–SMBP—ED) firm electric and firm peaking power service. Current rates, under Rate Schedules P–SED–F7 and P–SED–FP7, extend through December 31, 2008. The proposed rates will provide sufficient revenue to pay all annual costs, including interest expense, and repayment of required investment within the allowable period. Western will prepare a brochure that provides detailed information on the rates to all interested parties. The proposed rates, under Rate Schedules P–SED–F8 and P–SED–FP8, are scheduled to go into effect on January 1, 2006, and will remain in effect through December 31, 2010. Publication of this **Federal Register** notice begins the formal process for the proposed rates.

**DATES:** The consultation and comment period begins today and will end September 14, 2005. Western will present a detailed explanation of the proposed rates at public information forums. Public information forum dates are:

1. July 19, 2005, 10 a.m. MDT, Denver, CO.
2. July 20, 2005, 8 a.m. CDT, Lincoln, NE.
3. July 20, 2005, 2 p.m. CDT, Sioux Falls, SD.
4. July 21, 2005, 9 a.m. CDT, Fargo, ND.

Western will accept oral and written comments at public comment forums. Public comment forums will be held on the following dates:

1. August 16, 2005, 9 a.m. MDT, Denver, CO.
2. August 17, 2005, 9 a.m. CDT, Sioux Falls, SD.

Western will accept written comments any time during the consultation and comment period.

**ADDRESSES:** Send written comments to Robert J. Harris, Regional Manager, Upper Great Plains Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT 59101–1266, e-mail *ugp_firmrate@wapa.gov.* Western will post information about the rate process on its Web site at *http://www.wapa.gov/ugp/rates/2006FirmRateAdj.* Western will post official comments received via letter and e-mail to its Web site after the close of the comment period. Western must receive written comments by the end of the consultation and comment period to ensure they are considered in Western's decision process.

Public information forum locations are:

1. Denver—Radisson Stapleton Plaza, 3333 Quebec Street, Denver, CO.
2. Lincoln—Peru State College Center, 1111 O Street, Lincoln, NE.
3. Sioux Falls—Sheraton Hotel and Convention Center, 1211 West Avenue North, Sioux Falls, SD.
4. Fargo—Doublewood Inn, 3333 13th Avenue South, Fargo, ND.

Public comment forum locations are:

1. Denver—Radisson Stapleton Plaza, 3333 Quebec Street, Denver, CO.
2. Sioux Falls—Sheraton Hotel and Convention Center, 1211 West Avenue North, Sioux Falls, SD.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jon R. Horst, Rates Manager, Upper

Great Plains Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT 59101–1266, telephone (406) 247–7444, e-mail horst@wapa.gov.

**SUPPLEMENTARY INFORMATION:** Proposed rates for P-SMBP—ED firm electric and firm peaking service are designed to recover an annual revenue requirement that includes investment repayment, interest, purchase power, operation and maintenance expense, and other expenses. The projected annual revenue requirement for firm electric service is allocated equally between capacity and energy.

The Deputy Secretary of Energy approved Rate Schedules P–SED–F7 and P–SED–FP7 for P–SMBP—ED firm electric and firm peaking service on December 24, 2003 (Rate Order No. WAPA–110, 69 FR 649, January 6, 2004), and the Federal Energy Regulatory Commission (Commission) confirmed and approved the rate schedules on December 23, 2004, under FERC Docket No. EF04–5031–000 (109 FERC 62,234). Approval for Rate Schedules P–SED–F7 and P–FED–FP7 covered 5 years beginning on February 1, 2004, ending on December 31, 2008.

Under Rate Schedule P–SED–F7, the second step of the composite rate effective on October 1, 2004, is 16.51 mills per kilowatthour (mills/kWh), the energy rate is 9.62 mills/kWh, and the capacity rate is $3.72 per kilowattmonth (kWmonth). Under Rate Schedule P–SED–F8, Western is proposing a two-step rate adjustment. Under a two-step method, the rates for P–SMBP—ED firm electric service will result in an overall composite rate increase of about 11.9 percent effective January 1, 2006, an additional 5.8 percent effective January 1, 2007, with a total compounded increase of about 18.4 percent. The proposed Firm Capacity and Firm Peaking Capacity rates will increase about 12.9 percent effective on January 1, 2006, an additional 6.0 percent effective January 1, 2007, with a total compounded increase of about 19.6 percent. Proposed rates for P–SMBP—ED firm electric and firm peaking service are listed in Table 1.

TABLE 1.—TWO STEP PROPOSAL—FIRM ELECTRIC SERVICE REVENUE REQUIREMENT AND RATES

| Firm electric service | Existing rates | First step rates Jan. 1, 2006 | Percent change | Second step rates Jan. 1, 2007 | Percent change |
|---|---|---|---|---|---|
| P–SMBP–ED Revenue Requirement. | $160.1 million | $179.4 million | 12.1 | $189.9 million | 5.9 |
| P–SMBP–ED Composite Rate. | 16.51 mills/kWh | 18.47 mills/kWh | 11.9 | 19.54 mills/kWh | 5.8 |
| Firm Capacity | $3.72/kWmonth | $4.20/kWmonth | 12.9 | $4.45/kWmonth | 6.0 |
| Firm Energy | 9.62 mills/kWh | 10.69 mills/kWh | 11.1 | 11.29 mills/kWh | 5.6 |
| Tiered 60 Percent Load Factor. | 5.21 mills/kWh | 5.21 mills/kWh | 0.0 | 5.21 mills/kWh | 0.0 |
| Firm Peaking Capacity | $3.72/kWmonth | $4.20/kWmonth | 12.9 | $4.45/kWmonth | 6.0 |
| Firm Peaking Energy [1] | 9.62 mills/kWh | 10.69 mills/kWh | 11.1 | 11.29 mills/kWh | 5.6 |

[1] Firm Peaking Energy is normally returned. This rate will be assessed in the event Firm Peaking Energy is not returned.

During informal information discussions, Western received requests from the Firm Peaking customers and others to reconsider the Firm Peaking rate design. Concern was expressed by the Firm Peaking customers and others in informal discussions for this rate adjustment as well as in past rate processes on assignment of costs associated with the drought. Firm Peaking customers and others have suggested some alternatives for consideration by Western. In response to those suggestions, Western prepared an alternative proposal, the Firm Peaking Capacity Design Alternative, for consideration and comment in this public process.

Although the two-step rate adjustment in Table 1 is the option being proposed, maintaining equity among products and rates is in Western's interest. Therefore, Western is soliciting comments on equity among products and comments with supporting information for or against the Firm Peaking Capacity Design Alternative. In this alternative, the Firm Peaking Capacity rate is 13.9 percent less than the Firm Power Capacity rate. The impact on the Firm Power revenue requirement is approximately a 1-percent increase. The comparative changes in the rates between the proposed two-step rate adjustment and the Firm Peaking Capacity Design Alternative are described here: The Firm Capacity rate would increase from 12.9 percent to 16.1 percent in the first step and the second step would be an additional 6.0 percent in both proposals. The Firm Energy rate would remain the same with an 11.1-percent increase in the first step and a 5.6-percent increase in the second step. The proposed rates provided under this alternative are included in Table 2.

TABLE 2.—PROPOSED—FIRM PEAKING CAPACITY DESIGN ALTERNATIVE

| Firm electric service | Existing rates | First step rates Jan. 1, 2006 | Percent change | Second step rates Jan. 1, 2007 | Percent change |
|---|---|---|---|---|---|
| P-SMBP—ED Revenue Requirement. | $160.1 million | $179.4 million | 12.1 | $189.9 million | 5.9 |
| P-SMBP—ED Composite Rate. | 16.51 mills/kWh | 18.71 mills/kWh | 13.3 | 19.79 mills/kWh | 5.8 |
| Firm Capacity | $3.72/kWmonth | $4.32/kWmonth | 16.1 | $4.58/kWmonth | 6.0 |
| Firm Energy | 9.62 mills/kWh | 10.69 mills/kWh | 11.1 | 11.29 mills/kWh | 5.6 |
| Tiered > Percent Load Factor. | 5.21 mills/kWh | 5.21 mills/kWh | 0.0 | 5.21 mills/kWh | 0.0 |
| Firm Peaking Capacity | $3.72/kWmonth | $3.72/kWmonth | 0 | $3.94/kWmonth | 5.9 |
| Firm Peaking Energy [1] | 9.62 mills/kWh | 10.69 mills/kWh | 11.1 | 11.29 mills/kWh | 5.6 |

[1] Firm Peaking Energy is normally returned. This rate will be assessed in the event Firm Peaking Energy is not returned.

**Legal Authority**

Since the proposed rates constitute a major rate adjustment as defined by 10 CFR part 903, Western will hold both public information forum and public comment forums. After review of public comments, and possible amendments or adjustments, Western will recommend the Deputy Secretary of Energy approve the proposed rates on an interim basis.

Western is establishing the firm electric service rates for P-SMBP—ED under the Department of Energy Organization Act (42 U.S.C. 7152); the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and other acts that specifically apply to the projects involved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Commission. Existing Department of Energy (DOE) procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985 (50 FR 37835).

**Availability of Information**

All brochures, studies, comments, letters, memorandums, or other documents that Western initiates or uses to develop the proposed rates are available for inspection and copying at the Upper Great Plains Regional Office, located at 2900 4th Avenue North, Billings, MT. Many of these documents and supporting information are also available on its Web site under the "2006 Firm Rate Adjustment" section located at *http://www.wapa.gov/ugp/rates/2006FirmRateAdj.*

**Regulatory Procedure Requirements**

*Regulatory Flexibility Analysis*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. This action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

**Environmental Compliance**

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*); Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined this action is categorically excluded from preparing an environmental assessment or an environmental impact statement.

*Determination Under Executive Order 12866*

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

*Small Business Regulatory Enforcement Fairness Act*

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Dated: June 8, 2005.

**Michael S. Hacskaylo,**

*Administrator.*

[FR Doc. 05–11884 Filed 6–15–05; 8:45 am]

BILLING CODE 6450–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[OW–2003–0033, FRL–7924–8]**

## Agency Information Collection Activities: Proposed Collection; Comment Request; Modification of Secondary Treatment Requirements for Discharges Into Marine Waters, EPA ICR Number 0138.08, OMB Control Number 2040–0088

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on September 30, 2005. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before August 15, 2005.

**ADDRESSES:** Submit your comments, referencing docket ID number OW–2003–0033, to EPA online using EDOCKET (our preferred method), by e-mail to *OW-Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, Mail Code: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Virginia Fox-Norse, Office of Wetlands, Oceans and Watersheds: Oceans and Coastal Protection Division (Mail Code 4504T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number (202) 566–1266; fax number: (202) 566–1337; e-mail address: *fox-norse.virginia@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has established a public docket for this ICR under Docket ID number OW–2003–0033, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will

be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

*Affected entities:* Entities potentially affected by this action are those municipalities that currently have section 301(h) waivers from secondary treatment, have applied for a renewal of a section 301(h) waiver, or those with a pending section 301(h) waiver application, and the states within which these municipalities are located.

*Title:* Modification of Secondary Treatment Requirements for Discharges Into Marine Waters

*Abstract:* Regulations implementing section 301(h) of the Clean Water Act (CWA) are found at 40 CFR part 125, subpart G. The section 301(h) program involves collecting information from two sources: (1) The municipal wastewater treatment facility, commonly called a publicly owned treatment works (POTW), and (2) the state in which the POTW is located. Municipalities had the opportunity to apply for a waiver from secondary treatment requirements, but that opportunity closed in December, 1982. A POTW that seeks a section 301(h) waiver does so voluntarily to obtain or retain a benefit. A section 301(h) waiver modifies secondary treatment requirements of CWA section 301(b)(1)(B). Secondary treatment requirements establish technology-based effluent limitations for biochemical oxygen demand (BOD), suspended solids (SS), and pH (a measure of acidity or alkalinity) (40 CFR part 133). A POTW seeking to obtain a section 301(h) waiver, holding a current waiver or reapplying for a waiver, provides application, monitoring, and toxic control program information. The state provides information on its determination whether the discharge under the proposed conditions of the waiver ensures the protection of water quality, biological habitats, and beneficial uses of receiving waters and whether the discharge will result in additional treatment, pollution control, or any other requirement for any other point or nonpoint sources. The state also provides information to certify that the discharge will meet all applicable state laws and that the state accepts all permit conditions.

There are 4 situations where information will be required under the section 301(h) program:

(1) A POTW continuing the application process for a section 301(h) waiver, or reapplying for a waiver: As the permits with section 301(h) waivers reach their expiration dates, EPA must have updated information on the discharge to determine whether the section 301(h) criteria are still being met and whether the section 301(h) waiver should be reissued. Under 40 CFR 125.59(f), each section 301(h) permittee is required to submit an application for a new section 301(h) modified permit within 180 days of the existing permit's expiration date. 40 CFR 125.59(c) lists the information required for a modified permit. The information that EPA needs to determine whether the POTW's reapplication meets the section 301(h) criteria is outlined in the questionnaire attached to 40 CFR part 125, subpart G.

(2) Monitoring and toxic control program information: Once a waiver has been granted, EPA must continue to assess whether the discharge is meeting section 301(h) criteria, and that the receiving water quality, biological habitats, and beneficial uses of the receiving waters are protected. To do this, EPA needs monitoring information furnished by the permittee. According to 40 CFR 125.68(d), any permit issued with a section 301(h) waiver must contain the monitoring requirements of 40 CFR 125.63(b), (c), and (d) for biomonitoring, water quality criteria and standards monitoring, and effluent monitoring, respectively. Section 125.68(d) also requires reporting at the frequency specified in the monitoring program. In addition to monitoring information, EPA needs information on the toxics control program required by section 125.66 to ensure that the permittee is effectively minimizing industrial and nonindustrial toxic pollutant and pesticide discharges into the treatment works.

(3) Application revision information: Section 125.59(d) of 40 CFR allows a POTW to revise its application one time only, following a tentative decision by EPA to deny the waiver request. In its application revision, the POTW usually corrects deficiencies and changes proposed treatment levels as well as outfall and diffuser locations. The application revision is a voluntary submission for the applicant, and a letter of intent to revise the application must be submitted within 45 days of EPA's tentative decision (40 CFR 125.59(f)). EPA needs this information to evaluate revised applications to determine whether the modified discharge will ensure protection of water quality, biological habitats, and beneficial uses of receiving waters.

(4) State determination and state certification information: For revised or renewal applications for section 301(h) waivers, EPA needs a state determination. The state determines whether all state laws (including water quality standards) are satisfied. This helps ensure that water quality, biological habitats, and beneficial uses of receiving waters are protected. Additionally, the state must determine if the applicant's discharge will result in additional treatment, pollution control, or any other requirement for any other point or nonpoint sources. This process allows the state's views to be taken into account when EPA reviews the section 301(h) application and develops permit conditions. For revised and renewed section 301(h) waiver applications, EPA also needs the CWA section 401(a)(1) certification information to ensure that all state water quality laws are met by any permit it issues with a section 301(h) modification, and the state accepts all the permit conditions. This information is the means by which the state can exercise its authority to concur with or deny a section 301(h) decision made by the EPA Regional Office.

The information covered by this information collection request involves treatment plant operating data, effects of POTWs' discharges on marine environments, and States' viewpoints on issues concerning effects of POTWs' discharges on marine environments. None of this information is confidential; thus confidentiality is not an issue. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

*The EPA would like to solicit comments to:*

(i) 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;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological

collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The estimated annual average burden for the 51 respondents totals 65,037 hours for this information collection. The average annual reporting burden varies depending on the size of the respondent and the category of the information collection. The frequency of response varies from once every five years, to case-by-case, depending on the category. The annual reporting and recordkeeping burden for this collection of information is estimated to average 667 hours per response for POTWs and 86 hours per response for States. There are no applicable projected cost burdens for respondents or record keepers resulting from the collection of information, for a total capital and startup cost component annualized over its expected useful life, a total operation and maintenance component, or a purchase of services component. 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.

Dated: June 6, 2005.

**Diane Regas,**

*Director, Office of Wetlands, Oceans and Watersheds.*

[FR Doc. 05–11916 Filed 6–15–05; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act; Meeting

**DATE AND TIME:** Tuesday, June 21, 2005 at 10 a.m.

**PLACE:** 999 E Street, NW., Washington, DC.

**STATUS:** This Meeting Will Be Closed to the Public.

**ITEMS TO BE DISCUSSED:** Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

**DATE AND TIME:** Thursday, June 23, 2005, at 10 a.m.

**PLACE:** 999 E Street, NW., Washington, DC (Ninth Floor).

**STATUS:** This Meeting Will Be Open to the Public.

**ITEMS TO BE DISCUSSED:**

Correction and Approval of Minutes.

Advisory Opinion 2005–06: Friends of McInnis Canyons National Conservation Area and former Representative Scott McInnis and Friends of Scott McInnis, Inc. by Treasurer, Orville F. Petersen.

Final Rules and Explanation and Justification for Candidate Solicitation at State, District and Local Party Fundraising Events (11 CFR 300.64).

Final Rules and Explanation and Justification for Definitions of "Agent" for BCRA Regulations on Non-Federal Funds and Coordinated and Independent Expenditures (11 CFR 109.3 and 300.2(b)).

Final Rules and Explanation and Justification for Payroll Deductions by Member Corporations for Contributions to a Trade Association's Separate Segregated Fund.

Routine Administrative Matters.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Biersack, Press Officer, Telephone: (202) 694–1220.

**Mary W. Dove,**

*Secretary of the Commission.*

[FR Doc. 05–12025 Filed 6–14–05; 2:37 am]

**BILLING CODE 6715–01–M**

## FEDERAL MARITIME COMMISSION

### Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may obtain copies of agreements by contacting the Commission's Office of Agreements at (202) 523–5793 or via e-mail at *tradeanalysis@fmc.gov*. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

*Agreement No.:* 002206–004.

*Title:* California Association of Port Authorities and Northwest Marine Terminals Association Interconference Agreement.

*Parties:* California Association of Port Authorities and Northwest Marine Terminals Association.

*Filing Party:* Timothy Schott, Association Secretary; California Association of Port Authorities; 1510 14th Street; Sacramento, California 95814.

*Synopsis:* The amendment changes the succession order of officers and the makeup of the Executive Committee and expands the scope of the agreement's planning to include labor practices, infrastructure development, railroad practices and environmental policy. It also makes technical changes to the agreement.

*Agreement No.:* 007345–022.

*Title:* California Association of Port Authorities Agreement.

*Parties:* Port of Stockton; Port of Sacramento; Port of Redmond City; Port of Hueneme; Port of San Diego; Port of Richmond; Port of Los Angeles; Port of Long Beach; Port of Oakland; Encinal Terminals; Humboldt Bay Harbor District.

*Filing Party:* Timothy Schott, Association Secretary; California Association of Port Authorities; 1510 14th Street; Sacramento, California 95814.

*Synopsis:* The amendment changes the succession order of officers and the makeup of the Executive Committee and expands the scope of the agreement's planning to include labor practices, infrastructure development, railroad practices and environmental policy. It also makes technical changes to the agreement.

*Agreement No.:* 011325–032.

*Title:* Westbound Transpacific Stabilization Agreement.

*Parties:* American President Lines, Ltd./APL Co. Pte Ltd.; China Shipping Container Lines Co., Ltd.; COSCO Container Lines Company Limited; Evergreen Marine Corporation (Taiwan), Ltd.; Hanjin Shipping Co., Ltd.; Hapag-Lloyd Container Line GmbH; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; A. P. Hyundai Merchant Marine Co. Ltd.; Kawasaki Kisen Kaisha Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha Line; Orient Overseas Container Line Limited; P&O Nedlloyd B.V.; P&O Nedlloyd Limited and Yangming Marine Transport Corp.

*Filing Party:* David F. Smith, Esq.; Sher & Blackwell, LLP; 1850 M Street, NW., Suite 900; Washington, DC 20036.

*Synopsis:* The amendment reflects the withdrawal of Mitsui O.S.K. Lines, Ltd., effective June 12, 2005.

*Agreement No.:* 011516–005.

*Title:* Voluntary Intermodal Sealift Discussion Agreement.

*Parties:* American President Lines, Ltd.; Crowley Liner Services, Inc.; Crowley Marine Services, Inc.; Farrell Lines, Inc.; Lykes Lines Limited, LLC; Maersk Lines, Limited; Matson Navigation Company, Inc.; and Totem Ocean Trailer Express, Inc.

*Filing Party:* Gerald A. Malia, Esq.; 1660 L Street, NW., Suite 506; Washington, DC 20036.

*Synopsis:* The amendment changes Lykes' name to CP Ships USA, LLC.

*Agreement No.:* 011702–003.

*Title:* Hapag-Lloyd/Lykes Space Charter Agreement.

*Parties:* Hapag-Lloyd Container Linie GmbH and Lykes Lines Limited, LLC. ("Lykes").

*Filing Party:* Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

*Synopsis:* The amendment changes Lykes' name to CP Ships USA, LLC, deletes references to Appendix A, deletes obsolete language from Article 7.2, and restates the agreement.

*Agreement No.:* 011907–001.

*Title:* ABX/APL Space Charter Agreement.

*Parties:* CMA CGM S.A.; APL Co. Pte Ltd.; P&O Nedlloyd Limited/P&O Nedlloyd B.V. (acting as a single party).

*Filing Party:* Neil M. Mayer, Esq.; Hoppel, Mayer & Coleman; 1000 Connecticut Avenue, NW., Washington, DC 20036.

*Synopsis:* The amendment alters Article 5.1 to reduce the number of slots required to be chartered by APL under the agreement from 200 TEUs per sailing to 150 TEUs per sailing.

*Agreement No.:* 011910–001.

*Title:* HSDG/APL Space Charter Agreement.

*Parties:* Hamburg Sud and APL Co. PTE Ltd.

*Filing Party:* Wayne R. Rohde, Esq.; Sher & Blackwell, LLP; 1850 M Street, NW., Suite 900; Washington, DC 20036.

*Synopsis:* The amendment reduces APL's slot allocation and extends the duration of the agreement.

By Order of the Federal Maritime Commission.

Dated: June 10, 2005.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 05–11832 Filed 6–15–05; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License; Applicant

Notice is hereby given that the following applicant has filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicant should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicant: Impex Transport Inc. dba Impex GLS, 850 Dillon Drive, Wood Dale, IL 60191. *Officer:* Kyung Rip Joo, President (Qualifying Individual).

Dated: June 10, 2005.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 05–11833 Filed 6–15–05; 8:45 am]

BILLING CODE 6730–01–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 July 11, 2005.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

*1. Coastal Banking Company, Inc.,* Beaufort, South Carolina; to merge with First Capital Bank Holding Company, Inc., Fernandina Beach, Florida, and thereby indirectly acquire First National Bank of Nassau County, Fernandina Beach, Florida.

B. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

*1. Capitol Bancorp, Ltd. and Capitol Development Bancorp Limited I,* both of Lansing, Michigan; to acquire 51 percent of the voting shares of Bank of San Francisco (in organization), San Francisco, California.

Board of Governors of the Federal Reserve System, June 10, 2005.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 05–11867 Filed 6–15–05; 8:45 am]

BILLING CODE 6210–01–P

## GENERAL SERVICES ADMINISTRATION

### Office of Governmentwide Policy; Cancellation of an Optional Form by the Department of Defense

**AGENCY:** Office of Governmentwide Policy, GSA.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense cancelled the following Optional Form because of low usage: OF 70A, Fragile Label (2½ x 2½").

**DATES:** Effective June 16, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ms. Barbara Williams, (202) 501–0581.

Dated: June 7, 2005.

**Barbara M. Williams,**

*Deputy Standard and Optional Forms Management Officer, General Services Administration.*

[FR Doc. 05–11846 Filed 6–15–05; 8:45 am]

BILLING CODE 6820–34–M

## GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0259]

### Federal Supply Service; Information Collection; Market Research Questionnaire

**AGENCY:** Federal Supply Service, GSA.

**ACTION:** Notice of request for comments regarding a renewal to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding the market research questionnaire. The clearance currently expires on August 31, 2005.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

**DATES:** Submit comments on or before: August 15, 2005.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Baden, Director, Supply Standards Division, Federal Supply Service, at telephone (703) 605–1824, or via e-mail to *kathleen.baden@gsa.gov*.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Regulatory Secretariat (VIR), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0259, Market Research Questionnaire, in all correspondence.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

The General Services Administration will be requesting the Office of Management and Budget (OMB) to review and approve information collection 3090–0259 concerning Market Research Questionnaire. The Market Research Questionnaire is used to gather information that is necessary to develop and/or revise Federal specifications and other purchase descriptions.

**B. Annual Reporting Burden**

*Respondents:* 25.
*Responses Per Respondent:* 25.
*Hours Per Response:* 0.5.
*Total Burden Hours:* 12.5.
*OBTAINING COPIES OF PROPOSALS:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 3090–0259, Market Research Questionnaire, in all correspondence.

Dated: June 9, 2005.

**Michael W. Carleton,**

*Chief Information Officer.*

[FR Doc. 05–11872 Filed 6–15–05; 8:45 am]

BILLING CODE 6820–89–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Delegation of Authority

Notice is hereby given that I have delegated to the Assistant Secretary for Children and Families the authority vested in the Secretary of Health and Human Services to continue the administration of grants and contracts initially awarded in Fiscal Years 2002, 2003 and 2004 under the Special Projects of Regional and National Significance (SPRANS) Community-based Abstinence Education Program, pursuant to Title V, section 501(a)(2) of the Social Security Act, as amended. The SPRANS Community-based Abstinence Education Program includes Community-based Abstinence Education grants, Abstinence Education Special Congressional Initiative Project grants, and the Abstinence Education Technical Assistance contract with the National Abstinence Clearinghouse. This delegation permits the Assistant Secretary for Children and Families to administer FY 2002, 2003 and FY 2004 SPRANS abstinence education grants under the terms and conditions of the initial awards, thereby allowing the continuation of the existing grants consistent with recent appropriations enactments (Pub. L. 108–477).

This delegation shall be exercised under the Department's policy on regulations and the existing delegation of authority to approve and issue regulations, excludes the authority to issue reports to Congress, to take final action to withhold funds from States, and to act under the nondiscrimination provisions of the Social Security Act.

This delegation also supersedes all prior delegations of authority to the extent that they are inconsistent with the provisions of this delegation. Except as specified above, the existing delegations of authority concerning Title V of the Social Security Act are unaffected, including those existing delegations of authority that permit the Health Resources and Services Administration to administer all other Special Projects of Regional and National Significance under section 501(a)(2) of the Social Security Act.

I have ratified any actions taken by the Assistant Secretary for Children and Families, or any other Administration for Children and Families officials, which, in effect, involved the exercise of this authority prior to the effective date of this delegation.

This delegation is effective on the date of signature.

Dated: May 31, 2005.

**Michael O. Leavitt,**

*Secretary.*

[FR Doc. 05–11842 Filed 6–15–05; 8:45 am]

BILLING CODE 4184–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control

Special Emphasis Panel (SEP): Health Promotion and Disease Prevention Research Centers: Special Interest Project Competitive Supplements, Program Announcement Number (PA) DP–04–003A

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

*Name:* Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Health Promotion and Disease Prevention Research Centers: Special Interest Project Competitive Supplements, Program Announcement Number (PA) DP–04–003A.

*Times and Dates:* 2 p.m.–5 p.m., July 11, 2005(Closed); 8:30 a.m.–5 p.m., July 12, 2005(Closed); 8:30 a.m.–5 p.m., July 13, 2005(Closed); 8:30 a.m.–5 p.m., July 14, 2005(Closed).

*Place:* Sheraton Colony Square Hotel, 188 14th Street, Atlanta, GA. 30361, Telephone Number 1.800.276.7415.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director,

Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

*Matters to be Discussed:* The meeting will include the review, discussion, and evaluation of applications received in response to: Health Promotion and Disease Prevention Research Centers: Special Interest Project Competitive Supplements, Program Announcement Number (PA) DP–04–003A.

*Contact Person for More Information:* Gwendolyn H. Cattledge, Ph.D., MSEP, Scientific Review Administrator, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, NE, Mailstop K–02, Atlanta, GA 30341, Telephone (770) 488–4655.

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: June 8, 2005.

**Alvin Hall,**

*Director, Management Analysis and Services Office, , Centers for Disease Control and Prevention.*

[FR Doc. 05–11878 Filed 6–15–05; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Notice of Correction for the Discretionary Funds for Projects To Establish Individual Development Account (IDA) Programs for Refugees

**AGENCY:** Administration for Children and Families, ACF, DHHS.

**ACTION:** Notice of correction.

*Funding Opportunity Title:* Discretionary Funds for Projects to Establish Individual Development Account (IDA) Programs for Refugees.

*Funding Opportunity Number:* HHs–2005–ACF–ORR–ZI–0093.

**SUMMARY:** This notice is to inform interested parties of clarifications made to the Discretionary Funds for Projects to Establish Individual Development Account (IDA) Programs for Refugees published on Monday, June 6, 2005. The following clarifications should be noted:

*Section IV.3 stated the following:*

• "3. Submission Dates and Times Due Date for Applications: August 5, 2005."

The language in section IV.3 is replaced with:

• "3. Submission Dates and Times Due Date for Applications: July 21, 2005."

*Executive Summary:* A footnote was omitted in relation to the word "refugee".

The omitted footnote in the Executive Summary should state: Refugee [1]

[1] Eligibility for refugee social services includes: (1) Refugees; (2) asylees; (3) Cuban and Haitian entrants under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422); (4) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, as included in the FY 1988 Continuing Resolution (Pub. L. 100–202); (5) certain Amerasians from Vietnam who are U.S. citizens under Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1989 (Pub. L. 100–461), 1990 (Pub. L. 101–167), and 1991 (Pub. L. 101–513); and (6) victims of a severe form of trafficking who receive certification or eligibility letters from ORR (see 45 CFR 400.43 and ORR State Letters Number 01–13 as modified by Number 02–01 and Number 04–12 on trafficking victims). For convenience, the term "refugee" is used in this notice to encompass all such eligible persons. Additional information on eligibility is available at: *http://www.acf.hhs.gov/programs /orr/policy/sl01–13.htm* and *http://www.acf.hhs.gov/programs /orr/policy/sl02–01.htm.*

Dated: June 18, 2005.

**Nguyen Van Hanh,**

*Director, Office of Refugee Resettlement.*

[FR Doc. 05–11831 Filed 6–15–05; 8:45 am]

BILLING CODE 4184–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Administration on Children, Youth and Families, Children's Bureau

*Funding Opportunity Title:* Training of Child Welfare Agency Supervisors in the Effective Delivery and Management of Federal Independent Living Service for Youth in Foster Care

*Announcement Type:* Initial.

*Funding Opportunity Number:* HHS–2005–ACF–ACYF–CW–0009.

*CFDA Number:* 93.556.

*Due Date for Applications:* August 5, 2005.

*Category of Funding Activity:* Social Services and Income Security.

*Executive Summary:* The Children's Bureau announces the availability of funds and requests applications to develop, implement, evaluate and disseminate a training curriculum for public child welfare agency supervisors. This curriculum will strengthen supervision of staff interventions with older youth who are in foster care and/or in independent living programs. These youth, mostly ages 16 to 21, need assistance in making a successful transition to adulthood, as well as achieving self-sufficiency to avoid long-term dependency on the social welfare system.

These youth often face decisions with regard to personal housing, transportation, employment and education. They need workers who can guide them and who understand these challenges. The target youth also need workers who have a working knowledge of adolescent transition programs. "In the continuing work of the Muskie School of Public Service, University of Southern Maine and National Resource Center for Youth Services, College of Continuing Education University of Oklahoma, four core principles have emerged as essential in order for adolescent transitional living programs to be successful." It is the thinking of current experts in the field that programs for youth are more likely to be successful when these four principles are incorporated into the program design regardless of the type of services provided. The principles are:

(1) Positive youth development;
(2) Collaboration;
(3) Cultural competence; and
(4) Permanent connections.

**Priority Area 1**

**I. Funding Opportunity Description**

The Children's Bureau announces the availability of funds and requests applications to develop, implement, evaluate and disseminate a training curriculum for public child welfare agency supervisors. This curriculum will strengthen supervision of staffs' interventions with older youth who are in foster care and/or in independent living programs. These youth, mostly age 16 to 21, need assistance in making a successful transition to adulthood, as well as help in avoiding long-term dependency on the social welfare system.

These youth often face decisions with regard to personal housing, transportation, employment and education. They need workers who can guide them and who understand these challenges. The target youth also need workers who have a working knowledge of adolescent transition programs. "In the continuing work of the Muskie School of Public Service, University of Southern Maine and National Resource Center for Youth Services, College of Continuing Education University of

Oklahoma, four core principles have emerged as essential in order for adolescent transitional living programs to be successful." It is the thinking of current experts in the field that programs for youth are more likely to be successful when these four principles are incorporated into the program design regardless of the type of services provided. The principles are:

(1) Positive youth development;
(2) Collaboration;
(3) Cultural competence; and
(4) Permanent connections.

For more information on these principles contact the University of Oklahoma, National Resource Center for Youth Services at *http://www.nrcys.ou.edu.*

Child welfare supervisors must ensure that child welfare workers understand and utilize:

(1) Positive youth development philosophy;
(2) Client assessment;
(3) Age-appropriate intervention planning; and
(4) Implementation and evaluation of individualized Independent Living Program (ILP) training and program activities.

Training based on the curriculum should increase child welfare supervisor's ability to supervise a worker in:

(1) Assessing a youth's readiness for ILP services, support and training;
(2) Identifying culturally competent ILP program services and activities;
(3) Utilizing positive youth development principles for involving youth in decisionmaking, implementation and evaluation of training and program activities;
(4) Identifying areas of stress and its impact on youth in foster care;
(5) Working with youth to help them deal with crisis situations and to assess the results of the intervention;
(6) Working with youth to develop and maintain permanent connections; and
(7) Collaborating with both inter- and intra-agency resource people to achieve positive outcomes for youth transitioning to adulthood.

*Background*

In December 1999, Congress passed new independent living legislation, the John H. Chaffee Foster Care Independence Program which amended the original Federal Independent Living Program (section 477 of the Social Security Act). The new program provides States with increased funding and flexibility to help youth make the transition from foster care to self-sufficiency. Currently all 50 States, Puerto Rico and the District of Columbia have an ILP. Services and activities include educational and employment assistance, training in basic living skills (budgeting, housekeeping, food shopping, building and maintaining positive social relationships), counseling, housing, case management and outreach services. The new legislation allows the use of these funds for additional activities including room and board, age-appropriate services to youth younger than 16, post-secondary educational assistance and preventive health activities.

In addition, the Adoption and Safe Families Act of 1997 (ASFA) has had considerable impact on child welfare practice and how the goals of safety, permanency and well-being of youth must be accomplished. Thus, there is a need to refocus attention on practice approaches that give attention, as appropriate, to reunification with the biological parents, adoption, placement, or other alternative approaches to permanency for youth of all ages. For many older foster care youth, even if they can spend time with family members, their chances for a successful transition to adulthood are greatly improved if they learn to count on themselves to address their daily challenges, and if they have the knowledge, skills and experience to do so.

Older youth in foster care need special help and support. As of September 30, 2002 there were an estimated 533,897 children in substitute/foster care. Of these children an estimated 39 percent were identified as being 13 years of age or older (AFCARS—Adoption and Foster Care Analysis and Reporting System—data as of October 2003). Approximately 20,000 youth age out of the system every year. These young people often have histories of significant abuse, neglect and multiple foster care placements. They often find themselves completely on their own after discharge, with few, if any, financial resources; limited education, training and employment options; no safe place to live; and little or no support from family, friends and community. A focus on the four core principles for these youth is crucial. The permanent connections work to help ground the youth in the community and provide a support system that these traumatized youth often lack. Collaborations help to ensure that a full array of services is available to the youth during and after their transition from care. A focus on positive youth development allows the youth to have the daily living skills needed to function on their own along with the knowledge to maintain their emotional health. Through the provision of culturally competent services, the agencies ensure that youth feel protected and connected in their environment.

Training of child welfare supervisors has predominantly focused on supervising staff to meet generalized permanency needs while focusing on the family as a whole. Most of this work is still done in the context of family-centered services that build on family strengths and meet family needs. There is limited attention given to assessing problem situations from the youth's perspective and preparing a youth for independence and/or transitioning out of foster care. This training would focus on strategies for supervising the child welfare worker in how to identify the specific needs of these youth and develop a plan for achieving goals to meet those needs regardless of other permanency work being done in the family unit.

Specialized skills are essential to work effectively with older youth. Child welfare supervisors need training to understand youth development principles and strategies, to focus on giving young people age-appropriate opportunities to exercise leadership, build skills, and become involved in the decision-making about their future.

In January 2000, DHHS established the Child and Family Service Reviews (CFSR) that have enhanced monitoring of State child welfare programs. Previous approaches had not allowed for states to learn from their mistakes and make improvements accordingly. Meetings with stakeholders during CFSR indicate that foster parents, guardians and other primary care providers need youth development training. In addition, state agency staff need training and technical assistance in assisting youth in developing their case plan, and developing life-long connections that will assist them with permanency. Results of the 2002 reviews indicate that all of the states were found to need improvement in involving the family in case planning, assessing needs and providing services.

In the fall of 2000, the Children's Bureau awarded twelve grants for Independent Living Training for Child Welfare practitioners. One finding of these recently completed projects is that Child Welfare supervisors needed training on youth development to understand the unique developmental and service needs of youth in care in order to support caseworker efforts.

The Children's Bureau recognizes the need to involve young people in decision-making and planning for a life of independence. To accomplish this,

service providers must offer specialized, age-appropriate support for these youth as they transition to adulthood. Training implemented under this program will provide child welfare supervisors with the training and tools needed to assist child welfare workers to help move their older youth through a successful transition to independence and achieving self-sufficiency.

Projects funded under this announcement will be expected to:

1. Have the project fully functioning within 90 days following the notification of the grant award.

2. Participate if the Children's Bureau chooses to do a national evaluation or a technical assistance contract that relates to this funding announcement.

3. Submit all performance indicator data, program and financial reports in a timely manner, in recommended format (to be provided), and submit the final report on disk or electronically using a standard word-processing program.

4. Submit a copy of the final report, the evaluation report, and any program products to the National Clearinghouse on Child Abuse and Neglect Information, 330 C Street, SW., Washington, DC 20447, within 90 days of project end date. This is in addition to the standard requirement that the final program and evaluation report must also be submitted to the Grants Management Specialist and the Federal Project Officer.

5. Allocate sufficient funds in the budget to:

(a) Provide for the project director, the evaluator and a child welfare representative to attend an annual 3-day grantees' meeting in Washington, DC.

(b) Provide for the project director, the evaluator and a child walfare representative to attend an early kickoff meeting for grantees funded under this priority area to be held within the first three months of the project (first year only) in Washington, DC; and

(c) Provide for 10–15 percent of the proposed budget to project evaluaton.

*Legislative Authority*

The Promoting Safe and Stable Families Program (Section 430, Title IV–B, subpart 2, of the Social Security Act) (42 U.S.C. 629a)

**II. Award Information**

*Funding Instrument Type:* Grant.

*Anticipated total priority area funding:* $1,000,000.

*Anticipated number of awards:* 0 to 4.

*Average Projected Award Amount:* $250,000.

*Length of Project Periods:* 36 month project with three 12 month budget periods.

*Other:*

*Explanation of other:* The grant amount will not exceed $250,000 in the first budget period. The projects will be awarded for a project period of 36 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the Government.

*Ceiling of Individual Awards per budget period:* $250,000.

Floor on amount of individual awards None.

**III. Eligibility Information**

*1. Eligible Applicants*

State governments
County governments
City or township governments
Special district governments
Independent school districts
Nonprofits having a 501(c)(3) status with the IRS, other than institutions of higher education
Nonprofits that do not have a 501(c)(3) status with the IRS, other than institutions of higher education
State controlled institutions of higher education
Private institutions of higher education

*Additional Information on Eligibility*

Faith-based and community organizations that meet all other eligibility requirements are eligible to apply.

Institutions of higher education that choose to apply must have an accredited social work education program, or other accredited bachelor or graduate level programs leading to a degree relevant to work in child welfare. Government agencies must be child welfare agencies to be eligible to apply.

Collaborative efforts are acceptable, but applications should identify a primary applicant responsible for administering the grant.

*2. Cost Sharing/Matching*

*Cost Sharing/Matching:* Yes.

Matching/Cost-Sharing

Grantees must provide at least *25* percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting *$250,000* in Federal funds (based on an award of $250,000 per budget period) must provide a match of at least *$83,333* (25 percent of the total approved project costs). Grantees will be held accountable for commitments of non-Federal resources even if over the amount of the required match. Failure to provide the amount will result in disallowance of Federal funds. Lack of supporting documentation at the time of application will not impact the responsiveness of the application for competitive review.

Cost-sharing will not be used as a preference and/or evaluation criterion in the review of applications.

*3. Other Eligibility Information*

All applicants must have a Dun & Bradstreet number. On June 27, 2003 the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires all Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

Non-profit organizations applying for funding are required to submit proof of their non-profit status.

Proof of non-profit status is any one of the following:

- A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code.
- A copy of a currently valid IRS tax exemption certificate.
- A statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earning accrue to any private shareholders or individuals.
- A certified copy of the organization's certificate of

incorporation or similar document that clearly establishes non-profit status.

- Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

*Disqualification Factors*

Applications that exceed the ceiling amount will be considered non-responsive and will not be considered for funding under this announcement.

Any application that fails to satisfy the deadline requirements referenced in Section IV.3 will be considered non-responsive and will not be considered for funding under this announcement.

**IV. Application and Submission Information**

1. Address to Request Application Package

ACYF Operations, The Dixon Group ATTN: Children's Bureau, 118 Q St., NE., Washington, DC 20002–2132, Phone: 866–796–1591, URL: *http://www.acf.hhs.gov/grants/open/HHS-2005-ACF-ACY-CA-0001.html*.

2. Content and Form of Application Submission

Originals, Copies and Signatures

If submitting your application in paper format, an original and two copies of the complete application are required. The original and each of the two copies must include all required forms, certifications, assurances, and appendices, be signed by an authorized representative, have original signatures, and be submitted unbound.

Each application must contain the following items in the order listed:

Application for Federal Assistance (Standard Form 424). Follow the instructions below and those that accompany the form.

In Item 5 of Form 424, put DUNS number in "Organizational DUNS:" box.

In Item 5 of Form 424, include name, phone number, and, if available, email and fax numbers of the contact person.

In Item 8 of Form 424, check 'New.'

In Item 10 of Form 424, clearly identify the Catalog of Federal Domestic Assistance (CFDA) program title and number for the program for which funds are being requested as stated in this funding opportunity announcement.

In Item 11 of Form 424, identify the single funding opportunity the application addresses.

In Item 12 of Form 424, identify the specific geographic area to be served.

In Item 14 of Form 424, identify Congressional districts of both the applicant and project.

Budget Information Non-Construction Programs (Form 424A) and Budget Justification.

Follow the instructions provided here and those in Section V. Application Review Information.

*Description*—Please see Section V.1. Criteria, for instructions on preparing the project summary/abstract and the full project description.

*Proof of non-profit status* (if applicable). Please see Section III.3 Other Eligibility for ways to demonstrate non-profit status.

*Indirect cost rate agreement.* If claiming indirect costs, provide documentation that applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

*Letters of agreement and memoranda of understanding.* If applicable, include a letter of commitment or Memorandum of Understanding from each partner and/or sub-contractor describing their role, detailing specific tasks to be performed, and expressing commitment to participate if the proposed project is funded.

*Match.* Provide a letter of commitment verifying the actual amount of the non-Federal share of project costs (see Section III.2).

*General Content and Form information:* The application limit is 75 pages total including all forms and attachments. Pages over this page limit will be removed from the application and will not be reviewed.

The application must be typed, double spaced, printed on only one side, with at least ½ inch margins on each side and 1 inch at the top and bottom, using standard 12 Point fonts (such as Times New Roman or Courier). Pages must be numbered.

All copies of an application must be submitted in a single package, and a separate package must be submitted for each funding opportunity. The package must be clearly labeled for the specific funding opportunity it is addressing.

Because each application will be duplicated, do not use or include separate covers, binders, clips, tabs, plastic inserts, maps, brochures, or any other items that cannot be processed easily on a photocopy machine with an automatic feed. Do not bind, clip, staple, or fasten in any way *separate subsections* of the application, including supporting documentation; however, each *complete* copy must be stapled securely in the upper left corner. Applicants are advised that the copies of the application submitted, not the original, will be reproduced by the Federal government for review.

*Tips for Preparing a Competitive Application.* It is essential that applicants read the entire announcement package carefully before preparing an application and include all of the required application forms and attachments. The application must reflect a thorough understanding of the purpose and objectives of the applicable legislation. Reviewers expect applicants to understand the goals of the legislation and the Children's Bureau's interest in each topic. A "responsive application" is one that addresses all of the evaluation criteria in ways that demonstrate this understanding. Applications that are considered to be "unresponsive" generally receive very low scores and are rarely funded.

The Children's Bureau's Web site (*http://www.acf.dhhs.gov/programs/cb*) provides a wide range of information and links to other relevant Web sites. Before you begin preparing an application, we suggest that you learn more about the mission and programs of the Children's Bureau by exploring the Web site.

*Organizing Your Application.* The specific evaluation criteria in Section V of this funding announcement will be used to review and evaluate each application. The applicant should address each of these specific evaluation criteria in the project description. Applicants should organize their project description in this sequence: (1) Objectives and Need for Assistance; (2) Approach; (3) Organizational Profiles; (4) Budget and Budget Justification; and should use the same headings as these criteria, so that reviewers can readily find information that directly addresses each of the specific review criteria.

*Project Evaluation Plan.* Project evaluations are very important. If you do not have the in-house capacity to conduct an objective, comprehensive evaluation of the project, then the Children's Bureau advises that you propose contracting with a third-party evaluator specializing in social science or evaluation, or a university or college, to conduct the evaluation. A skilled evaluator can assist you in designing a data collection strategy that is appropriate for the evaluation of your proposed project. Additional assistance may be found in a document titled "Program Manager's Guide to Evaluation." A copy of this document can be accessed at *http://www.acf.hhs.gov/programs/opre/other_resrch/pm_guide_eval/reports/pmguide/pmguide_toc.html*.

*Logic Model.* A logic model is a tool that presents the conceptual framework for a proposed project and explains the linkages among program elements. While there are many versions of the logic model, they generally summarize the logical connections among the needs that are the focus of the project, project goals and objectives, the target population, project inputs (resources), the proposed activities/processes/outputs directed toward the target population, the expected short- and long-term outcomes the initiative is designed to achieve, and the evaluation plan for measuring the extent to which proposed processes and outcomes actually occur. Information on the development of logic models is available on the Internet at *http://www.uwex.edu/ces/pdande/* or *http://www.extension.iastate.edu/cyfar/capbuilding/outcome/outcome_logicmdir.html.*

*Project Use of Human Subjects.* If your evaluation plan includes gathering data from or about clients, there are specific procedures which must be followed in order to protect their privacy and ensure the confidentiality of the information about them. Applicants planning to gather such data are asked to describe their plans regarding an Institutional Review Board (IRB) review. If applicable, applicants must include a completed Form 310, Protection of Human Subjects. For more information about use of human subjects and IRB's you can visit these Web sites: *http://www.hhs.gov/ohrp/irb/irb_chapter2.htm#d2* and *http://www.hhs.gov/ohrp/humansubjects/guidance/ictips.htm.*

You may submit your application to us in either electronic or paper format. To submit an application electronically, please use the *http://www.Grants.gov* apply site. If you use Grants.gov, you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to us.

Please note the following if you plan to submit your application electronically via Grants.Gov

- Electronic submission is voluntary, but strongly encouraged.
- When you enter the Grants.Gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.Gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including all information typically included on the SF 424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application from Grants.gov.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *www.Grants.gov.*
- You must search for the downloadable application package by the CFDA number.

Private, non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms," "Survey for Private, Non-Profit Grant Applicants," titled, "Survey on Ensuring Equal Opportunity for Applicants," at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Standard Forms and Certifications

Applicants seeking financial assistance under this announcement must file the Standard Form (SF) 424, Application for Federal Assistance; SF–424A, Budget Information—Non-Construction Programs; SF–424B, Assurances—Non-Construction Programs. The forms may be reproduced for use in submitting applications. Applicants must sign and return the standard forms with their application.

Applicants must furnish prior to award an executed copy of the Standard Form LLL, Certification Regarding Lobbying, when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form, if applicable, with their applications (approved by the Office of Management and Budget under control number 0348–0046). Applicants must sign and return the certification with their application.

Applicants must also understand they will be held accountable for the smoking prohibition included within Pub. L. 103–227, Title XII Environmental Tobacco Smoke (also known as the PRO–KIDS Act of 1994). A copy of the **Federal Register** notice which implements the smoking prohibition is included with forms. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification of their compliance with all Federal statutes relating to nondiscrimination. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification form. Complete the standard forms and the associated certifications and assurances based on the instructions on the forms. The forms and certifications may be found at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Those organizations required to provide proof of non-profit status, please refer to Section III.3.

Please see Section V.1, for instructions on preparing the full project description.

*3. Submission Dates and Times*

*Explanation of Due Dates:* The closing time and date for receipt of applications is 4:30 p.m. (Eastern Time Zone) on the date noted above. Mailed or hand carried applications received after 4:30 p.m. on the closing date will be classified as late.

*Deadline:* Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the ACYF Operations Center, c/o The Dixon Group, Inc., ATTN: Children's Bureau, 118 Q Street NE., Washington, DC 20002–2132. Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4 p.m., e.s.t., at the ACYF Operations Center, c/o The Dixon Group, Inc., ATTN: Children's Bureau, 118 Q Street NE., Washington, DC 20002–2132, between Monday and Friday (excluding Federal holidays).

This address must appear on the envelope/package containing the application with the note. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

*Late applications:* Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition. Any application received after 4:30 p.m. on the deadline date will not be considered for competition. Applicants using express/overnight mail services should allow two working days prior to the deadline date for receipt of applications. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed).

*Extension of deadlines:* ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service, or in other rare cases. A determination to extend or waive deadline requirements rests with the Chief Grants Management Officer.

REQUIRED DOCUMENTS

| What to submit | Required content | Required form or format | When to submit |
|---|---|---|---|
| Project Abstract | See Section IV and V | Format described in Section IV and V. | By application due date. |
| Project Narrative | See Section IV and V | Format described in Section IV and V. | By application due date. |
| SF424 | See Section IV | Format described in Section IV | By application due date. |
| SF424A | See Section IV | Format described in Section IV | By application due date. |
| SF424B | See Section IV | Format described in Section IV | By application due date. |
| Assurances and Certifications | See Section IV | Format described in Section IV | By Time of Award. |
| Proof of Non-profit status, if applicable. | See Section III and IV | Format described in Section III | By Time of Award. |
| Indirect Cost rate Agreement, if applicable. | See Section IV | Format described in IV | By Time of Award. |
| Letters of commitment from partner organizations, if applicable. | See Section IV | Format described in IV | By Time of Award. |
| Non-Federal Commitment Letter | See Section III.2 | See Section III.2 | By Time of Award. |

*Additional Forms:* Private, nonprofit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants" at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

| What to submit | Required content | Required form or format | When to submit |
|---|---|---|---|
| Survey for Private, Non-Profit Grant Applicants. | Per required form | May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.* | With application. |

*4. Intergovernmental Review*

State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of October 1, 2004, the following jurisdictions have elected to participate in the Executive Order process: Arkansas, California, Delaware, District of Columbia, Florida, Georgia, Illinois, Iowa, Kentucky, Maine, Maryland, Michigan, Mississippi, Missouri, Nevada, New Hampshire, New Mexico, New York, North Dakota, Rhode Island, South Carolina, Texas, Utah, West Virginia, Wisconsin, American Samoa, Guam, North Mariana Islands, Puerto Rico, and Virgin Islands. As these jurisdictions have elected to participate in the Executive Order process, they have established SPOCs. Applicants from participating jurisdictions should contact their SPOC, as soon as possible, to alert them of prospective applications and receive instructions. Applicants must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade SW., 4th floor, Washington, DC 20447.

Although the remaining jurisdictions have chosen not to participate in the process, entities that meet the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. Therefore, applicants from these jurisdictions, or for projects administered by federally-recognized Indian Tribes, need take no action in regard to E.O. 12372.

The official list, including addresses, of the jurisdictions elected to participate in E.O. 12372 can be found on the following URL: *http://www.whitehouse.gov/omb/grants/spoc.html.*

*5. Funding Restrictions*

Grant awards will not allow reimbursement of pre-award costs.

Construction is not an allowable activity or expenditure under this solicitation.

Applicants should note that grants to be awarded under this program announcement are subject to the availability of funds. The size of the actual awards will vary.

Because this is a training grant, indirect costs used for these projects shall not exceed 8 percent. Funds from this grant cannot be used to match Title IV–E training funds.

*6. Other Submission Requirements*

*Submission by Mail:* An Application must provide an original application with all attachments, signed by an authorized representative and two copies. Please see Section IV.3 for an explanation of due dates. Applications should be mailed to: ACYF Operations Center, The Dixon Group, 118 Q St. NE., Washington, DC 20002–2132, Attention: Children's Bureau.

*Hand Delivery:* An Applicant must provide an original application with all attachments signed by an authorized representative and two copies. Please see Section IV.3 for an explanation of due dates. Applications should be delivered to: ACYF Operations Center, The Dixon Group, 118 Q St. NE. Washington, DC 20002–2132, Attention: Children's Bureau.

*Electronic Submission: http://www.grants.gov* Please see section IV.2 Content and Form of Application Submission, for guidelines and requirements when submitting applications electronically.

**V. Application Review Information**

*The Paperwork Reduction Act of 1995 (Pub. L. 104–13)*

Public reporting burden for this collection of information is estimated to average 40 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information.

The project description is approved under OMB control number 0970–0139 which expires 4/30/2007.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The following are instructions and guidelines on how to prepare the "Project Summary/Abstract" and "Full Project Description" sections of the application. Under the evaluation criteria section, note that each criterion is preceded by the generic evaluation requirement under the ACF Uniform Project Description (UPD).

*1. Criteria*

General Instructions

ACF is particularly interested in specific project descriptions that focus on outcomes and convey strategies for achieving intended performance. Project descriptions are evaluated on the basis of substance and measurable outcomes, not length. Extensive exhibits are not required. Cross-referencing should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix. Pages should be numbered and a table of contents should be included for easy reference.

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions while being aware of the specified evaluation criteria. The text options give a broad overview of what your project description should include while the evaluation criteria identifies the measures that will be used to evaluate applications.

Project/Summary Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Approach

Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement. Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished.

When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates. If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information that is conducted or sponsored by ACF." List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners, such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. If the applicant is a non-profit organization, submit proof of non-profit status in its application. The non-profit agency can accomplish this by providing: (a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code; (b) a copy of a currently valid IRS tax exemption certificate, (c) a statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and

that none of the net earnings accrue to any private shareholders or individuals; (d) a certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status, (e) any of the items immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Budget and Budget Justification

Provide a budget with line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. Also include a breakout by the funding sources identified in Block 15 of the SF–424. Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

General

Use the following guidelines for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. "Federal resources" refers only to the ACF grant for which you are applying. "Non Federal resources" are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel

Description: Costs of employee salaries and wages. Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel). Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment

Description: "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (Note: Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.) Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category. Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those that belong under other categories such as equipment, supplies, construction, etc. Include third party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant. Justification: Demonstrate that all procurement transactions will be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000).

Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc. Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs. Justification: Provide computations, a narrative description and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency. Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, upon notification that an award will be made, it should immediately develop a tentative indirect cost rate proposal based on its most recently completed fiscal year, in accordance with the cognizant agency's guidelines for establishing indirect cost rates, and

submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. When an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

*Evaluation Criteria*

The following evaluation criteria appear in weighted descending order. The corresponding score values indicate the relative importance that ACF places on each evaluation criterion; however, applicants need not develop their applications precisely according to the order presented. Application components may be organized such that a reviewer will be able to follow a seamless and logical flow of information (*e.g.* from a broad overview of the project to more detailed information about how it will be conducted).

In considering how applicants will carry out the responsibilities addressed under this announcement, competing applications for financial assistance will be reviewed and evaluated against the following criteria:

Approach 50 Points

In reviewing the approach, the following factors will be considered: (50 Points)

(1) The extent to which there is a reasonable timeline for effectively implementing the proposed project, including major milestones and target dates. The extent to which the project will complete the development, field testing and revisions of the training program in a timely manner and conduct a thorough evaluation of its effectiveness within the 3-year project time frame.

(2) The extent to which the application proposes development of appropriate materials and provides for effective training under the proposed project.

(3) The extent to which the application demonstrates a thorough knowledge and understanding of the issues related to interventions with older youth and differences and similarities between youth-centered and family-centered practice. The extent to which the application demonstrates a thorough understanding of these issues in terms of the Adoption and Safe Families Act goals of safety, permanency and well-being of older youth and the results of the Child and Family Service Reviews.

(4) The extent to which the application evidences a thorough knowledge and understanding of the challenges of providing and improving training for supervisors within a public child welfare agency. The extent to which the proposed project would successfully overcome these challenges.

(5) The extent to which past and/or current collaboration between the applicant and the public (State/local and Tribal) agencies in training of child welfare staff would strengthen this project. The extent to which this project will be strengthened by building on existing partnerships with such agencies. The extent to which the applicant includes interagency agreements and commitments from the participating entities. The extent to which there are strong links between the proposed project, and the State's Child and Family Service Review Program Improvement Plan.

(6) The extent to which the proposed approach to developing a curriculum is soundly based on an appropriate conceptual framework, research and practice experience. The extent to which this curriculum would build on, expand and strengthen the existing curriculum approaches/models that emphasize youth-focused services.

(7) The extent to which the application evidences a thorough knowledge and understanding of the four core principles (youth development, cultural competence, collaboration, and permanent connections) and the challenges attendant to incorporating these principles within child welfare practices.

(8) The extent to which the curriculum development and training of supervisors will be culturally responsive to the diverse child welfare population.

(9) The extent to which appropriate criteria would be utilized for selection and recruitment of trainees. The extent to which there are specific, sound, strategies for recruiting minority and Tribal agency trainees.

(10) The extent to which there is a sound plan for evaluating the training curriculum. The extent to which there is a sound plan for field-testing the effectiveness of the competency-based curriculum and modifying the curriculum, if necessary. The extent to which the applicant clearly identifies and justifies the location of the project and the State/local child welfare agencies where the proposed curriculum will be field-tested. The extent to which the evaluation will examine outcomes identified in this announcement.

(11) The extent to which there is a sound plan for dissemination of the curriculum and project evaluation findings. The extent to which the applicant's dissemination plan will contribute to the purposes described in this announcement. The extent to which the dissemination plan clearly describes what will be disseminated, to whom, how extensive these efforts will be, and includes plans for evaluating dissemination efforts.

(12) The extent to which there is a sound plan for continuing this project beyond the period of Federal funding.

Organizational Profiles 20 Points

In reviewing the organizational profiles, the following factors will be considered: (20 Points)

(1) The extent to which the application evidences sufficient experience and expertise in developing training curricula and providing training to child welfare agency staff in the area of youth-focused services; in collaboration with child welfare agencies and other appropriate entities; and in administration, development, implementation, management, and evaluation of similar projects. The extent to which each participating organization (including partners and/or subcontractors) possesses the organizational capability to fulfill their assigned roles and functions effectively (if the application involves partnering and/or subcontracting with other agencies/organizations).

(2) The extent to which the proposed project director and key project staff possess sufficient relevant knowledge, experience and capabilities to implement and manage a project of this size, scope and complexity effectively (*e.g.*, resume). The extent to which the role, responsibilities and time commitments of each proposed project staff position, including consultants, subcontractors and/or partners, are clearly defined and appropriate to the successful implementation of the proposed project.

(3) The extent to which there is a sound management plan for achieving the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines and milestones for accomplishing project tasks and ensuring quality. The extent to which the plan clearly defines the role and responsibilities of the lead agency. The extent to which the plan clearly describes the effective management and coordination of activities carried out by any partners, subcontractors and

consultants (if applicable). The extent to which there would be a mutually beneficial relationship between the proposed project and other work planned, anticipated or underway with Federal assistance by the applicant.

Objectives and Need for Assistance 20 Points

In reviewing the objectives and need for assistance, the following factors will be considered: (20 Points)

(1) The extent to which the application demonstrates a thorough understanding of the need for a specific curriculum and training to strengthen child welfare supervisors' capacity to prepare and guide staff in their work with older youth involved in the child welfare system.

(2) The extent to which the application demonstrates a thorough knowledge and understanding of the issues faced by older youth involved in the child welfare system and appropriate intervention approaches for working with these youth.

(3) The extent to which the proposed project's goals (end products of an effective project) and objectives (measurable steps for reaching these goals) clearly and appropriately relate to the training needs of public child welfare agency frontline workers and supervisory staff.

(4) The extent to which the proposed project would produce significant results and benefits by developing, field testing, delivering, evaluating and disseminating a youth-focused training curriculum for supervisors.

(5) The extent to which an appropriate group of trainees and a reasonable number of trainees will be trained over the life of the project.

(6) The extent to which the lessons learned from the project will clearly and significantly benefit policy, practice and theory development in addressing older youth's transition needs, issues and crises.

Budget and Budget Justification 10 Points

In reviewing the budget and budget justification, the following factors will be considered: (10 Points)

(1) The extent to which the costs of the proposed project are clearly identified, justified and reasonable, in view of the activities to be conducted and expected results and benefits.

(2) The extent to which the applicant's fiscal controls and accounting procedures would ensure prudent use, proper and timely disbursement and accurate accounting of funds received under this program announcement.

*2. Review and Selection Process*

Since ACF will be using non-Federal reviewers in the review process, applicants have the option of omitting from the application copies (not the original) of specific salary rates or amounts for individuals specified in the application budget.

No grant award will be made under this announcement on the basis of an incomplete application.

A panel of at least three reviewers (primarily experts from outside the Federal government) will use the evaluation criteria described in this announcement to evaluate each application. The reviewers will determine the strengths and weaknesses of each application, provide comments about the strengths and weaknesses and give each application a numerical score.

The results of the competitive review are a primary factor in making funding decisions. In addition, Federal staff conducts administrative reviews of the applications and, in light of the results of the competitive review, will recommend applications for funding to the ACYF Commissioner. ACYF reserves the option of discussing applications with other funding sources when this is in the best interest of the Federal government. ACYF may also solicit and consider comments from ACF Regional Office staff in making funding decisions. ACYF may take into consideration the involvement (financial and/or programmatic) of the private sector, national, or State or community foundations; a favorable balance between Federal and non-Federal funds for the proposed project; or the potential for high benefit from low Federal investment. ACYF may elect not to fund any applicants having known management, fiscal, reporting, programmatic, or other problems which make it unlikely that they would be able to provide effective services or effectively complete the proposed activity.

With the results of the peer review and the information from Federal staff, the Commissioner of ACYF makes the final funding decisions. The Commissioner may give special consideration to applications proposing services of special interest to the Government and to achieve geographic distributions of grant awards. Applications of special interest may include, but are not limited to, applications focusing on un-served or inadequately served clients or service areas and programs addressing diverse ethnic populations.

Approved but Unfunded Applications

Applications that are approved but unfunded may be held over for funding in the next funding cycle, pending the availability of funds, for a period not to exceed one year.

3. Anticipated Announcement and Award Dates

Applications will be reviewed in the summer of 2005. Grant awards will have a start date no later than September 30, 2005.

**VI. Award Administration Information**

*1. Award Notices*

The successful applicants will be notified through the issuance of a Financial Assistance Award document which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided, and the total project period for which support is contemplated. The Financial Assistance Award will be signed by the Grants Officer and transmitted via postal mail.

Organizations whose applications will not be funded will be notified in writing.

*2. Administrative and National Policy Requirements*

Direct Federal grants, sub-award funds, or contracts under this program shall not be used to support inherently religious activities such as religious instruction, worship, or proselytization. Therefore, organizations must take steps to separate, in time or location, their inherently religious activities from the services funded under this Program. Regulations pertaining to the Equal Treatment for Faith-based Organizations, which includes the prohibition against Federal funding of inherently religious activities, can be found at either 45 CFR 87.1 or the HHS Web site at *http://www.os.dhhs.gov/fbci/waisgate21.pdf.*

Grantees are subject to the requirements in 45 CFR Part 74 (non-governmental) or 45 CFR Part 92 (governmental) organizations.

3. Reporting Requirements

Program Progress Reports: Semi-Annually.

Financial Reports: Semi-Annually.

Grantees will be required to submit program progress reports and financial reports (SF269) throughout the project period. Program progress and financial reports are due 30 days after the reporting period. In addition, final programmatic and financial reports are

due 90 days after the close of the project period.

**VII. Agency Contacts**

Program Office Contact: Pam Johnson, 330 C St., SW., Washington, DC 20447, Phone: 202–205–8086, E-mail: *pjohnson@acf.hhs.gov*.

Grants Management Office Contact: Peter Thompson, Grants Officer, Administration for Children and Families, Children's Bureau, 330 C Street, SW., Room 2070, Washington, DC 20447, Phone: 202–401–4608, E-mail: *pathompson@acf.hhs.gov*.

**VIII. Other Information**

*Notice:* Beginning with FY 2006, the Administration for Children and Families (ACF) will no longer publish grant announcements in the **Federal Register**. Beginning October 1, 2005 applicants will be able to find a synopsis of all ACF grant opportunities and apply electronically for opportunities via: *www.Grants.gov*. Applicants will also be able to find the complete text of all ACF grant announcements on the ACF Web site located at: *http://www.acf.hhs.gov/grants/index.html*.

Additional information about this program and its purpose can be located on the following Web sites: *http://www.acf.hhs.gov/programs/cb/*.

For general questions regarding this announcement please contact: ACYF Operations Center, The Dixon Group ATTN: Children's Bureau, 118 Q Street, NE., Washington DC 20002–2132, Telephone: 866–796–1591.

Applicants will not be sent acknowledgements of received applications.

Dated: June 8, 2005.

**Susan Orr,**

*Acting Commissioner, Administration on Children, Youth and Families.*

[FR Doc. 05–11920 Filed 6–15–05; 8:45 am]

BILLING CODE 4184–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2005N–0124]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry: Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by July 18, 2005.

**ADDRESSES:** OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**Guidance for Industry: Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body—(OMB Control Number 0910–0374)—Extension**

Section 403(r)(2)(G) and (r)(3)(C) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(r)(2)(G) and (r)(3)(C)), as amended by the FDA Modernization Act of 1997 (FDAMA), provides that a food producer may market a food product whose label bears a nutrient content claim or a health claim that is based on an authoritative statement of a scientific body of the U.S. Government or the National Academy of Sciences. Under this section of the act, a food producer that intends to use such a claim must submit a notification of its intention to use the claim 120 days before it begins marketing the product bearing the claim. In the **Federal Register** of June 11, 1998 (63 FR 32102), FDA announced the availability of a guidance entitled "Guidance for Industry: Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body." The guidance provides the agency's interpretation of terms central to the submission of a notification and the agency's views on the information that should be included in the notification. The agency believes that the guidance will enable food producers to meet the criteria for notifications that are established in section 403(r)(2)(G) and (r)(3)(C) of the act. In addition to the information specifically required by the act to be in such notifications, the guidance states that the notifications should also contain information on analytical methodology for the nutrient that is the subject of a claim based on an authoritative statement. FDA intends to review the notifications the agency receives to ensure that they comply with the criteria established by the act.

In the **Federal Register** of April 8, 2005 (70 FR 18031), FDA published a 60-day notice requesting public comment on the information collection provisions. One comment was received that was not relevant to the information collection.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

| Section of the act/basis of burden | No. of respondents | No. of responses per respondent | Total annual responses | Hours per response | Total hours |
|---|---|---|---|---|---|
| 403(r)(2)(G) (nutrient content claims) | 1 | 1 | 1 | 250 | 250 |
| 403(r)(3)(C) (health claims) | 2 | 1 | 2 | 450 | 900 |

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

| Section of the act/basis of burden | No. of respondents | No. of responses per respondent | Total annual responses | Hours per response | Total hours |
|---|---|---|---|---|---|
| Guidance for notifications | 3 | 1 | 3 | 1 | 3 |
| Total | | | | | 1,153 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates are based on FDA's experience with health claims, nutrient content claims, and other similar notification procedures that fall under the agency's jurisdiction. Because the claims are based on an authoritative statement of certain scientific bodies of the Federal Government or the National Academy of Sciences or one of its subdivisions, FDA believes that the information submitted with a notification will either be provided as part of the authoritative statement, or readily available as part of the scientific literature to firms wishing to make claims. Presentation of a supporting bibliography and a brief balanced account or analysis of this literature should be fairly straightforward.

Dated: June 9, 2005.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 05–11860 Filed 6–15–05; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2005N–0216]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Devices: Humanitarian Use Devices

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for Humanitarian Use Devices.

**DATES:** Submit written or electronic comments on the collection of information by August 15, 2005.

**ADDRESSES:** Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Medical Devices: Humanitarian Use Devices—21 CFR Part 814 (OMB Control Number 0910–0332)—Extension**

This collection implements the humanitarian use device (HUD) Provision under section 520(m) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(m)) and 21 CFR part 814, subpart H. Under section 520(m) of the act, FDA is authorized to exempt an HUD from the effectiveness requirements of sections 514 and 515 of the act (21 U.S.C. 360d and 360e) provided that the device do the following: (1) Is used to treat or diagnosis a disease or condition that affects fewer than 4,000 individuals in the United States; (2) would not be available to a person with such a disease or condition unless the exemption is granted, and there is no comparable device, other than another HUD approved under this exemption, available to treat or diagnose the disease or condition; and (3) the device will not expose patients to an unreasonable or significant risk of illness or injury, and the probable benefit to health from using the device outweighs the risk of injury or illness from its use, taking into account the probable risks and benefits of currently available devices or alternative forms of treatment.

The information collection will allow FDA to determine whether to do the following: (1) Grant HUD designation of a medical device, (2) exempt a HUD from the effectiveness requirements in sections 514 and 515 of the act provided that the device meets requirements set forth in section 520(m) of the act, and (3) grants marketing approval(s) for the HUD. Failure to collect this information would prevent FDA from making those determinations. Also, this information enables FDA to determine whether the holder of a HUD is in compliance with the HUD requirements.

*Description of Respondents*: Businesses or others for-profit.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| 21 CFR Section | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 814.102 | 20 | 1 | 20 | 40 | 800 |
| 814.104 | 8 | 1 | 8 | 320 | 2,560 |
| 814.106 | 8 | 2 | 16 | 50 | 800 |
| 814.108 | 20 | 1 | 20 | 80 | 1,600 |
| 814.116(e)(3) | 1 | 1 | 1 | 1 | 1 |
| 814.124(a) | 5 | 1 | 5 | 1 | 5 |
| 814.124(b) | 1 | 1 | 1 | 2 | 2 |
| 814.126(b)(1) | 35 | 1 | 35 | 120 | 4,200 |
| Total | | | | | 9,968 |

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

| 21 CFR Section | No. of recordkeepers | Annual frequency per recordkeeping | Total annual records | Hours per record | Total hours |
|---|---|---|---|---|---|
| 814.126(b)(2) | 35 | 1 | 35 | 2 | 70 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: June 9, 2005.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 05–11861 Filed 6–15–05; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2004N–0441]**

### Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Application for Food and Drug Administration Approval to Market a New Drug

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Application for FDA Approval to Market a New Drug" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of January 31, 2005 (70 FR 4853), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0001. The approval expires on May 31, 2008. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: June 9, 2005.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 05–11862 Filed 6–15–05; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2005N–0208]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Dissemination of Information on Unapproved/New Uses for Marketed Drugs, Biologics, and Devices

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the reporting and recordkeeping requirements associated with the dissemination of unapproved or new

uses for marketed drugs, biologics, and devices.

**DATES:** Submit written or electronic comments on the collection of information by August 15, 2005.

**ADDRESSES:** Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Karen L. Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Dissemination of Information on Unapproved/New Uses for Marketed Drugs, Biologics, and Devices (OMB Control Number 0910–0390)—Extension**

In the **Federal Register** of November 20, 1998 (63 FR 64556), FDA published a final rule that added a new part 99 (21 CFR part 99) entitled "Dissemination of Information on Unapproved/New Uses for Marketed Drugs, Biologics, and Devices."

The final rule implemented section 401 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115). In brief, section 401 of FDAMA amended the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360aaa through 360aaa–6) to permit drug, biologic, and device manufacturers to disseminate certain written information concerning the safety, effectiveness, or benefits of a use that is not described in the product's approved labeling to health care practitioners, pharmacy benefit managers, health insurance issuers, group health plans, and Federal and State Government agencies, provided that the manufacturer complies with certain statutory requirements. For example, the information that is to be disseminated must be about a drug or device that is being marketed legally; it must be in the form of an unabridged reprint or copy of a peer-reviewed journal article or reference publication; and it must not be derived from another manufacturer's clinical research, unless that other manufacturer has given its permission for the dissemination. The information must be accompanied by certain information, including a prominently displayed statement that the information discusses a use (or uses) that has not been approved or cleared by FDA. Additionally, 60 days before dissemination, the manufacturer must submit to FDA a copy of the information to be disseminated, any other clinical trial information that the manufacturer has relating to the safety or effectiveness of the new use, any reports of clinical experience that pertain to the safety of the new use, and a summary of such information.

The final rule sets forth the criteria and procedures for making such submissions to FDA. Under the final rule, submissions include certification that the manufacturer has completed clinical studies necessary to submit a supplemental application to FDA for the new use, and will submit the supplemental application within 6 months after its initial dissemination of information. If the manufacturer has planned, but not completed, such studies, the submission includes proposed protocols and a schedule for conducting the studies, as well as a certification that the manufacturer will complete the clinical studies and submit a supplemental application no later than 36 months after its initial dissemination of information. The final rule also permits manufacturers to request extensions of the time period for completing a study and submitting a supplemental application, and to request an exemption from the requirement to submit a supplemental application. The final rule prescribes the timeframe within which the manufacturer shall maintain records that would enable it to take corrective action. The final rule requires the manufacturer to submit lists pertaining to the disseminated articles and reference publications, the categories of persons (or individuals) receiving the information, and a notice and summary of any additional research or data (and a copy of the data) relating to the product's safety or effectiveness for the new use. The final rule requires the manufacturer to maintain a copy of the information, lists, records, and reports for 3 years after it has ceased dissemination of the information and to make the documents available to FDA for inspection and copying.

FDA based its estimates of the number of submissions it will receive, and the number of manufacturers who would be subject to part 99, on the average of the total number of required submissions received during 2002, 2003, and 2004. The estimated burden hours for these provisions are based on the following calculations:

Section 99.201(a)(1) requires the manufacturer to provide an identical copy of the information to be disseminated, including any information required under § 99.103. Because the manufacturer must compile this information in order to prepare its submission to FDA, FDA estimates that 40 hours will be required per submission. Because 10 annual responses are expected under § 99.201(a)(1), the estimated total burden for this provision is 400 hours (10 annual responses x 40 hours per response).

Section 99.201(a)(2) requires the manufacturer to submit clinical trial information pertaining to the safety and effectiveness of the new use, clinical experience reports on the safety of the new use, and a summary of the information. FDA estimates 24 burden hours per response for this provision for assembling, reviewing, and submitting the information and assumes that the manufacturer will have already acquired

some of this information in order to decide whether to disseminate information on an unapproved use under part 99. The estimated total burden for this provision is 240 hours (10 annual responses x 24 hours per response).

Section 99.201(a)(3) requires the manufacturer to explain its search strategy when assembling its bibliography. FDA estimates that only 1 hour will be required for the explanation because the manufacturer would have developed and used its search strategy before preparing the bibliography. Because 10 annual responses are expected under § 99.201(a)(3), the estimated total burden for this provision is 10 hours (10 annual responses x 1 hour per response).

Section 99.201(b) simply requires the manufacturer's attorney, agent, or other authorized official to sign its submissions, certifications, and requests for an exemption. FDA estimates that only 30 minutes are necessary for such signatures. Because 10 annual responses are expected under § 99.201(b), the estimated total burden for this provision is 5 hours (10 annual responses x 0.5 hours per response).

Section 99.201(c) requires the manufacturer to provide two copies with its original submission. Copying the submission should not be time-consuming, so FDA estimates the burden to be 30 minutes. Because 10 annual responses are expected under § 99.201(c), the estimated total burden for this provision is 5 hours (10 annual responses x 0.5 hours per response).

While the act requires manufacturers to provide a submission to FDA before they disseminate information on unapproved/new uses, it also permits the following actions for manufacturers: (1) To have completed studies and promise to submit a supplemental application for the new use within 6 months after the date of initial dissemination; (2) to provide protocols, a schedule for completing studies, and submit a supplemental application for the new use within 36 months after the date of initial dissemination; (3) to have completed studies and have submitted a supplemental application for the new use; or (4) to request an exemption from the requirement to submit a supplemental application. These possible scenarios are addressed in §§ 99.201(a)(4)(i)(A), (a)(4)(ii)(A), (a)(5), and 99.205(b). Based on the average of the total number of required submissions received during 2002, 2003, and 2004, FDA has made the following burden estimates:

Section 99.201(a)(4)(i)(A) requires the manufacturer, if the manufacturer has completed studies needed for the submission of a supplemental application for the new use, to submit the protocol(s) for the completed studies, or, if the protocol was submitted to an investigational new drug application (IND) or investigational device exemption (IDE), to submit the IND or IDE number(s), the date of submission of the protocol(s), the protocol number(s), and the date of any amendments to the protocol(s). FDA estimates that 30 hours will be required for this response because this is information that each manufacturer already maintains for its drugs or devices. The estimated total burden for this provision is 210 hours (7 annual responses x 30 hours per response).

For manufacturers who submit protocols and a schedule for conducting studies, § 99.201(a)(4)(ii)(A) requires the manufacturer to include, in its schedule, the projected dates on which the manufacturer expects the principal study events to occur. FDA estimates a manufacturer will need approximately 60 hours to include the projected dates because it would have to contact the studies' principal investigator(s) and other company officials. The estimated total burden for this provision is 420 hours (7 annual responses x 60 hours per response).

If the manufacturer has submitted a supplemental application for the new use, § 99.201(a)(5) requires a cross-reference to that supplemental application. FDA estimates that only 1 hour will be needed because manufacturers already maintain this information. The estimated total burden for this provision is 2 hours (2 annual responses x 1 hour per response).

FDA has not received any requests for an exemption under § 99.205(b). However, for purposes of this request for OMB approval, FDA estimates that annually one manufacturer may submit one exemption request under § 99.205(b). FDA estimates that the reporting burden for each exemption request will be 82 hours. The estimated total burden for this provision is 82 hours (1 annual response x 82 hours per response).

Under § 99.203, a manufacturer that has certified that it will complete studies necessary to submit a supplemental application within 36 months after its submission to FDA, but later finds that it will be unable to complete such studies or submit a supplemental application within that time period, may request an extension of time from FDA. Such requests for extension should be limited, occurring less than 1 percent of the time, because manufacturers and FDA, when developing or reviewing study protocols, should be able to identify when a study will require more than 36 months to complete. Section 99.203 contemplates extension requests under two different scenarios. Under § 99.203(a), a manufacturer may make an extension request before it makes a submission to FDA regarding the dissemination of information under part 99. The agency expects such requests to be limited, occurring less than 1 percent of the time (or one annual response), and that such requests will result in a reporting burden of 10 hours per request. The estimated total burden hours for this provision, therefore, is 10 hours (1 annual response x 10 hours per response). Section 99.203(b) specifies the contents of a request to extend the time for completing planned studies after the manufacturer has provided its submission to FDA. The required information includes a description of the studies, the current status of the studies, reasons why the studies cannot be completed on time, and an estimate of the additional time needed. FDA estimates that 10 hours will be needed for reporting the required information under § 99.203(b) because it would require consultation between the manufacturer and key individuals (such as the studies' principal investigator(s)). As in the case of § 99.203(a), the expected number of responses is very small (one annual response), and the estimated total burden hours for this provision is 10 hours (1 annual response x 10 hours per response).

Section 99.203(c) requires two copies of an extension request (in addition to the request required under section 554(c)(3) of the act (21 U.S.C. 360aaa–3)). FDA estimates that these copies will result in a minimal reporting burden of 30 minutes. However, this requirement would apply to extension requests under § 99.203(a) and (b), so the estimated total number of annual responses is two, resulting in an estimated total burden for this provision of 1 hour (2 annual responses x 0.5 hours per response).

The remaining reporting and recordkeeping burdens are shown in the following estimates:

Section 99.501(a)(1) requires the manufacturer to maintain records that identify recipients by category or individually. Under § 99.301(a)(3), FDA will notify the manufacturer if it needs to maintain records identifying individual recipients because of special safety considerations associated with the new use. This means that, in most cases, the manufacturer will only have

to maintain records identifying recipients by category. In either event, the manufacturer will know if it must maintain records that identify individual recipients before it begins disseminating information. The time required to identify recipients individually should be minimal, and the time required to identify recipients by category should be even less. Therefore, FDA estimates the burden for this provision to be 10 hours, and, because 8 annual records are expected under § 99.501(a)(1), the estimated total burden for this provision is 80 hours (8 annual records x 10 hours per record).

Section 99.501(a)(2) requires the manufacturer to maintain a copy of the information it disseminates. This task is not expected to be time-consuming, so FDA estimates the burden to be 1 hour. Because 8 annual records are expected under § 99.501(a)(2), the estimated total burden for this provision is 8 hours (8 annual records x 1 hour per record).

Section 99.501(b)(1) requires the manufacturer to submit to FDA semiannually a list containing the articles and reference publications that were disseminated in the preceding 6-month period. FDA estimates a burden of 8 hours for this provision. The burden may be less if the manufacturer develops and updates the list while it disseminates articles and reference publications during the 6-month period (as opposed to generating a completely new list at the end of each 6-month period), and if the volume of disseminated materials is small. The estimated total burden for this provision is 160 hours (10 responses submitted semiannually x 8 hours per response).

Section 99.501(b)(2) requires manufacturers that disseminate information to submit to FDA semiannually a list that identifies the categories of providers who received the articles and reference publications. Section 99.501(b)(2) also requires the list to identify which category of recipients received each particular article or reference publication. If each of the 10 submissions under part 99 results in disseminated information, § 99.501(b)(2) would result in 20 lists (10 submissions x 2 submissions semiannually) identifying which category of recipients received each particular article or reference publication. The agency estimates the burden to be only 1 hour per response because this type of information is maintained as a usual and customary business practice, and the estimated total burden for this provision is 20 hours (20 responses submitted semiannually x 1 hour per response).

In relation to § 99.201(a)(2), § 99.501(b)(3) requires the manufacturer to provide, on a semiannual basis, a notice and summary of any additional clinical research or other data relating to the safety and effectiveness of the new use and, if it possesses such research or data, to provide a copy to FDA. This burden should not be as extensive as that in § 99.201(a)(2), so FDA estimates the burden to be 20 hours per response, for an estimated total burden of 400 hours for this provision (10 responses submitted semiannually x 20 hours per response).

If a manufacturer discontinues or terminates a study before completing it, § 99.501(b)(4) requires the manufacturer to state the reasons for discontinuing or terminating the study in its next progress report. FDA estimates that annually this will affect only 1 percent of all applications (8 x 0.01 = 0.08, rounded up to 1) and only one manufacturer. FDA estimates 2 hours of reporting time for this requirement because the manufacturer should know the reasons for discontinuing or terminating the study and would only need to provide those reasons in its progress report. The estimated total burden hours for this provision is 2 hours (1 annual response x 2 hours per response).

Section 99.501(b)(5) requires the manufacturer to submit any new or additional information that relates to whether the manufacturer continues to meet the requirements for the exemption after an exemption has been granted. FDA estimates that 10 percent of all submissions will contain an exemption request (8 annual submissions x 0.10 = 0.8, rounded up to 1), and has assumed that all exemption requests will be granted, for a total of 1 annual response. The information sought under § 99.501(b)(5) pertains solely to new or additional information and is not expected to be as extensive as the information required to obtain an exemption. Thus, FDA estimates the burden for § 99.501(b)(5) to be 41 hours per response (or half the burden associated with an exemption request), for an estimated total burden of 41 hours for this provision (1 annual response x 41 hours per response).

Section 99.501(c) requires the manufacturer to maintain records for 3 years after it has ceased dissemination of the information. FDA estimates the burden for this provision to be 1 hour. Because eight annual records are expected under § 99.501(c), the estimated total burden for this provision is 8 hours (8 annual records x 1 hour per record).

The estimates for §§ 99.201(a)(1), (a)(2), (a)(3), (b), and (c), and 99.501(b)(1), (b)(2), and (b)(3) have been increased by two responses each to account for manufacturer resubmissions. In addition, the estimate for § 99.201(a)(4)(i)(A) and (a)(4)(ii)(A) has been increased by one response each to account for manufacturer resubmissions.

Description of Respondents: All manufacturers (persons and businesses, including small businesses) of drugs, biologics, and device products.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

| 21 CFR section | No. of respondents | Annual responses per respondent | Total annual responses | Hours per response | Total hours |
|---|---|---|---|---|---|
| 99.201(a)(1) | 5 | 1 | 10 | 40 | 400 |
| 99.201(a)(2) | 5 | 1 | 10 | 24 | 240 |
| 99.201(a)(3) | 5 | 1 | 10 | 1 | 10 |
| 99.201(a)(4)(i)(A) | 6 | 1 | 7 | 30 | 210 |
| 99.201(a)(4)(ii)(A) | 6 | 1 | 7 | 60 | 420 |
| 99.201(a)(5) | 1 | 1 | 2 | 1 | 2 |

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

| 21 CFR section | No. of respondents | Annual responses per respondent | Total annual responses | Hours per response | Total hours |
|---|---|---|---|---|---|
| 99.201(b) | 5 | 1 | 10 | 0.5 | 5 |
| 99.201(c) | 5 | 1 | 10 | 0.5 | 5 |
| 99.203(a) | 1 | 1 | 1 | 10 | 10 |
| 99.203(b) | 1 | 1 | 1 | 10 | 10 |
| 99.203(c) | 1 | 1 | 2 | 0.5 | 1 |
| 99.205(b) | 1 | 1 | 1 | 82 | 82 |
| 99.501(b)(1) | 5 | 3 | 20 | 8 | 160 |
| 99.501(b)(2) | 5 | 1 | 20 | 1 | 20 |
| 99.501(b)(3) | 5 | 1 | 20 | 20 | 400 |
| 99.501(b)(4) | 1 | 1 | 1 | 2 | 2 |
| 99.501(b)(5) | 1 | 1 | 1 | 41 | 41 |
| Total Hours | | | | | 2,018 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

| 21 CFR Section | No. of Recordkeepers | Annual Frequency per Recordkeeping | Total Annual Records | Hours per Record | Total Hours |
|---|---|---|---|---|---|
| 99.501(a)(1) | 5 | 1 | 8 | 10 | 80 |
| 99.501(a)(2) | 5 | 1 | 8 | 1 | 8 |
| 99.501(c) | 5 | 1 | 8 | 1 | 8 |
| Total Hours | | | | | 96 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimated burden associated with the information collection requirements for these regulations is 2,114 hours.

Dated: June 9, 2005.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 05–11863 Filed 6–15–05; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Support for Small Scientific Conference Grants; Availability of Grants; Request for Applications; Announcement Type: Modification of Notice; Funding Opportunity Number: HHS–GRANTS–110204–001; Catalog of Federal Domestic Assistance Number: 93.103

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

**ACTION:** Notice.

### I. Funding Opportunity Description

The Food and Drug Administration (FDA) is revising the Request for Applications (RFA) published in the **Federal Register** of June 6, 2002 (67 FR 39013). This revised RFA supercedes the June 6, 2002, document in its entirety. FDA's authority to enter into grants and cooperative agreements is detailed under title XVII of the Public Health Service Act (42 U.S.C. 300u–1) or the Radiation Control for Health and Safety Act of 1968 (Pub. L. 90–602) (21 U.S.C. 360hh-ss, formerly 42 U.S.C. 263b-n).

*1. Background*

FDA recognizes the value of partially supporting scientific meetings and conferences designed to coordinate, exchange, and disseminate information when the objectives are clearly within the scope of the agency's mission. FDA's policy is to participate with other organizations to support meetings where practicable, rather than provide sole support. In view of the diversity of interests among the various FDA centers/offices, and in order to provide maximum flexibility, FDA will not set rigid requirements concerning the type of scientific meetings to be supported so long as they are within the agency's mission.

### II. Award Information

FDA views the partial support of scientific conferences as an ongoing program and may award a limited number of grants each fiscal year. These awards are subject to availability of funds and range from $1,000 to $25,000 in direct costs only per conference. This announcement is intended to be a "Standing Program Announcement" and will be modified in the event of required changes to the program.

Support for this program will be in the form of a grant. These grants will be

subject to all policies and requirements that govern the support for small scientific conference grant programs of FDA, including the provisions of 42 CFR part 52, and 45 CFR parts 74 and 92, as applicable. The length of support will last for up to 1 year from date of award.

**III. Eligibility**

*1. Eligible Applicants*

Conference grant support is available to any public or private nonprofit entity including State and local units of government, scientific and professional societies, faith-based organizations, and for-profit entities. For-profit entities must commit to excluding fees or profit from the conference in their request for support.

In the case of an international conference held in the United States or Canada, the U.S. component of an established international scientific or professional society is the eligible applicant. In exceptional cases, where there is no U.S. component, a grant to support a specific segment of an international conference may be awarded directly to a foreign institution provided that the following conditions are met: (1) Grants to foreign institutions or international organizations are not prohibited under the governing legislation and (2) approval of the Department of Health and Human Services (HHS) agency head or his or her designee is obtained in each case.

An individual is not eligible to receive grant funds in support of a conference. As provided in 2 U.S.C. 1611, organizations described in section 501(c)(4) of the Internal Revenue Code that engage in lobbying are not eligible to receive Federal funds constituting grant awards.

*2. Cost Sharing or Matching*

See section IV.2.B.11 of this document.

**IV. Application and Submission**

*1. Addresses to Request Applications*

FDA is accepting new applications for this program electronically via Grants.gov. Applicants are strongly encouraged to apply electronically by visiting the Web site *http://www.grants.gov* and following the instructions under "APPLY." The applicant must register in the Central Contractor Registration (CCR) database in order to be able to submit the application. Information about CCR is available at *http://www.grants.gov/CCRRegister*. (FDA has verified the Web site address, but FDA is not responsible for subsequent changes to the Web site after the document publishes in the **Federal Register**). The applicant must register with the Credential Provider for Grants.gov. Information about this requirement is available at *http://www.grants.gov/CredentialProvider*. (FDA has verified the Web site address, but FDA is not responsible for subsequent changes to the Web site after the document publishes in the **Federal Register**). If applicants cannot submit applications through the electronic process, application forms are available from, and completed applications should be submitted to, Tya Marks, Division of Contracts and Grants Management (HFA–500), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7179, e-mail: *tya.marks@fda.gov*. Applications hand-carried or commercially delivered should be addressed to 5630 Fishers Lane (HFA–500), rm. 2139, Rockville, MD 20857. Application instructions (PHS 5161–1 revised 7/00) and application forms (SF–424 revised 9/03) are available via the Internet at: *http://www.hhs.gov/forms*.

*2. Content and Form of Applications*

A. Submission

If submission is electronic, the application package is posted under the "APPLY" section of this announcement under Grants.gov. The required application forms are listed under "Mandatory Documents." They can be completed and submitted online.

If applicants are not submitting electronically, an original and two copies of the completed grant application form SF–424 (revised 9/03) should be delivered to the address listed in *Addresses to Request Application* in section IV of this document. The outside of the package should clearly state "Request for Conference Grant" and must be received by the appropriate submission date (see *Submission Dates and Times* in section IV of this document).

B. Content

Applications must include the following information:

1. Title that has the term scientific "conference," "council," "workshop," or other similar description to assist in the identification of the request;
2. Location of the conference;
3. Expected number of registrants and type of audience expected, along with speaker credentials;
4. Dates of conference (inclusive). Each application must address only one specific conference;
5. Conference format and projected agenda, including list of principal areas or topics to be addressed;
6. Physical facilities required for the conduct of the meeting (e.g., simultaneous translation facilities);
7. Justification of the conference, including the problems it intends to clarify and any developments it may stimulate;
8. Brief biographical sketches of individuals responsible for planning the conference and indication of adequate support staff;
9. Information about all related conferences held by the applicant on this subject during the last 3 years (if known);
10. Details of proposed per diem/subsistence rates, transportation, printing, supplies, and facility rental costs;
11. The budget for the entire conference, budget items requested from FDA, budget items supported by other sources, and a list, including amounts, of all other anticipated support; and
12. The necessary checklist and assurance pages provided in each application package.

Some examples of allowable costs include the following items: (1) Salaries in proportion to the time or effort spent directly on the conference, (2) rental of necessary equipment, (3) travel and per diem, (4) supplies needed to conduct the meeting, (5) conference services, (6) publication costs, (7) registration fees, (8) working meals where business is transacted, and (9) speaker fees.

Some examples of nonallowable costs include the following items: (1) Purchase of equipment; (2) transportation costs exceeding coach class fares; (3) visas; (4) passports; (5) entertainment; (6) tips; (7) bar charges; (8) personal telephone calls; (9) laundry charges; (10) travel or expenses other than local mileage for local participants; (11) organization dues; (12) honoraria or other payments for the purpose of conferring distinction or communicating respect, esteem, or admiration; (13) patient care; (14) alterations or renovations; and (15) indirect costs.

Grant funds may not be used to provide general support for international scientific conferences held outside the United States or Canada. Grant funds may be awarded to a U.S. component of an international organization to provide limited support for specific segments of an international conference held outside the United States of Canada if the conference is compatible with FDA's mission. An example of such support would be a selected symposium, panel, or workshop within the conference, including the cost of planning and the cost of travel for U.S. participants for the specified segment of the scientific

conference. Any Public Health Service (PHS) foreign travel restrictions that are in effect at the time of the award must be followed, including but not limited to, limitations or restrictions on countries to which travel will be supported, and budgetary or other limitations on availability of funds for foreign travel.

C. Letter of Intent

A letter of intent is not mandatory. However, applicants may submit a letter of intent to the contact (see *Addressees to Request Applications* in section IV of this document) at least 30 days prior to the application receipt date. Potential applicants are also encouraged to talk to the contact to determine if the proposed scientific conference is clearly consistent with FDA's interest, mission, and priorities. Potential applicants may fax letters of intent to: 301–827–7101 or e-mail: *tya.marks@fda.gov.*

*3. Submission Dates and Times*

Applications will be received and reviewed quarterly during each fiscal year. The receipt dates are in direct relation to the conference date and can be seen in table 1 of this document.

TABLE 1.—KEY RECEIPT DATES

| Earliest Beginning Conference Date | Receipt Date |
|---|---|
| December 15 | October 15 |
| March 15 | January 15 |
| June 15 | April 15 |
| September 15 | July 15 |

If the receipt date falls on a weekend or holiday, it will be extended to the following workday. Responsive applications received after the quarterly deadline date will be held for the next review cycle if the conference date falls under the next cycle. Applications received after the quarterly deadline date for a conference within that review cycle will be returned to the applicant if not received in time for orderly processing.

Applications will be accepted during normal business hours, from 8 a.m. to 4:30 p.m., Monday through Friday, on or before the established receipt date. Applications will be considered on time if sent, mailed, or electronically submitted on or before the appropriate receipt date as evidenced by a legible U.S. Postal Service dated postmark or a legible date receipt from a commercial carrier. Private metered postmarks will not be acceptable as proof of timely mailing. Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this method, applicants should check with their local post office.

*4. Intergovernmental Review*

The regulations issued under Executive Order 12372 may also apply to this program and are implemented through HHS regulations under 45 CFR part 100. Executive Order 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review processes. The names and addresses of SPOCs are listed on the Office of Management and Budget's (OMB's) Web site at *http://www.whitehouse.gov/omb/grants/spoc.html.* (FDA has verified the Web site address, but FDA is not responsible for subsequent changes to the Web site after the document publishes in the **Federal Register**). The SPOC should send any State review process recommendations to FDA's administrative contact (see section IV of this document). The due date for the State process recommendation is no later than 60 days after the deadline date for the receipt of applications. FDA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cutoff.

*5. Funding Restrictions*

See section IV.2.B of this document.

*6. Other Submission Requirements*

See section IV.1 of this document.

## V. Application Review Information

*1. Criteria*

Upon receipt, all applications submitted in response to this announcement will be evaluated for responsiveness to this RFA. Responsiveness is defined as submission of a complete application with original signatures within the required submission dates (see *Submission Dates and Times* in section IV of this document). Applications found to be nonresponsive will be returned to the applicant without further consideration.

An application will be considered nonresponsive if any of the following criteria are not met: (1) If the applicant organization is ineligible, (2) if it is received in the grants management office after the specified receipt date (see *Submission Dates and Times* in section IV of this document), (3) if it is incomplete or if it is missing any of the elements under *Content and Form of Application* in section IV of this document, (4) if it is illegible, (5) if the proposed conference is not within FDA's mission, (6) if the material presented is insufficient to determine an adequate review, and/or (7) if it exceeds the recommended threshold amount reflected in the RFA.

*2. Review and Selection Process*

Responsive applications will be reviewed and evaluated for their scientific and technical merit by an ad hoc review panel composed of experts in the field using the following criteria:

a. The content/subject matter and how current and appropriate it is for FDA's mission;

b. The conference plan and how thorough, reasonable, and appropriate it is for the intended audience;

c. The experience, training, and competence of the principal investigator/director and support staff;

d. The adequacy of the facilities;

e. The reasonableness of the proposed budget give the total conference plan, program, speakers, travel, and facilities; and

f. Previous experience of the organization/principal investigator.

## VI. Award Administration Information

*1. Award Notices*

Successful applicants will be notified via Notice of Grant Award signed by the Chief Grants Management Officer, FDA.

*2. Administrative and National Policy*

Applications submitted under this program may be subject to the requirements of Executive Order 12372. FDA's conference grant program is described in the Catalog of Federal Domestic Assistance, No. 93.103. The applicable administrative regulations for this program are 45 CFR parts 74 and 92. The legislative authority is title XVII of the Public Health Service Act.

*3. Reporting*

A final Financial Status Report (SF–269) and a final progress report or conference proceedings are required. An original and two copies of these reports must be submitted to the Grants Management Office (see section VII of this document), within 90 days after the end of the budget period of the grant award. Copies of conference proceedings resulting from the meeting may be substituted for the final progress report. Failure to provide these reports in a timely manner may jeopardize future grant support or delay an award.

### VII. Agency Contacts

For information regarding this program, please contact Tya Marks (see *Addresses to Request Applications* in section IV of this document).

### VIII. Other Information

FDA strongly encourages all award recipients to provide a smoke-free workplace and to discourage the use of all tobacco products. This is consistent with FDA's mission to protect and advance the physical and mental health of the American people.

FDA is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010," a national effort designed to reduce morbidity and mortality and to improve quality of life. Applicants may obtain a paper copy of the "Healthy People 2010" objectives, vols. I and II, for $70 ($87.50 foreign), S/N 017–000–00550–9, by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954. Telephone orders can be placed to 202–512–2250. The document is also available in CD–ROM format, S/N 017–001–00549–5, for $19 ($23.50 foreign), as well as on the Internet at *http://www.healthypeople.gov* under "Publications" (FDA has verified the Web site address, but FDA is not responsible for subsequent changes to the Web site after the document publishes in the **Federal Register**).

Information collection requirements requested on PHS Form SF–424 were approved and issued under OMB Circular A–102.

Data included in the application, if restricted with the legend specified in this section of the document, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

Unless disclosure is required under the Freedom of Information Act as amended (5 U.S.C. 552), as determined by the freedom of information officials of HHS or by a court, data contained in the portions of this application that have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted information, shall not be used or disclosed except for evaluation purposes.

Dated: June 10, 2005.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 05–11957 Filed 6–14–05; 10:57 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Submission for OMB Review; Comment Request; The Agricultural Health Study: A Prospective Cohort Study of Cancer and Other Disease Among Men and Women in Agriculture

**SUMMARY:** Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on February 14, 2005, page 7509 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

*Proposed Collection: Title:* The Agricultural Health Study—A Prospective Cohort Study of Cancer and Other Diseases Among Men and Women in Agriculture: Phase III. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* The purpose of this information collection is to update occupational and environmental exposure information as well as medical history information for subjects enrolled in the the Agricultural Health Study. The primary objectives of the study are to determine the health effects resulting from occupational and environmental exposures in the agricultural environment. The findings will provide valuable information concerning the potential link between agricultural exposures and cancer and other chronic diseases among Agricultural Health Study cohort members, and this information may be generalized to the entire agricultural community.

*Frequency of Response:* Single-time reporting. *Affected Public:* Individuals or households; Farms; Type of Respondents: Licensed pesticide applicators and their spouses. The annual reporting burden is as follows: *Estimated Number of Respondents:* 74,320; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* .5845 for 72,320 and 1.0 for 2,000; and *Estimated Total Annual Burden Hours Requested:* 44,270. The annualized cost to respondents is estimated at: $708,320.00. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

| Type of respondent | Estimated number of respondents | Frequency of response | Average hours per response | Estimated annual return hours requested |
|---|---|---|---|---|
| Private Applicators Interview only | 39,479 | 1 | 0.5845 | 23,075.0 |
| Interview and buccal cells | 1,100 | 1 | 1.0 | 1,100.0 |
| Spouses Interview only | 30,054 | 1 | 0.5845 | 17,566.0 |
| Interview and buccal cells | 820 | 1 | 1.0 | 820.0 |
| Commercial Applicators Interview only | 2,787 | 1 | 0.5845 | 1,629.0 |
| Interview and buccal cells | 80 | 1 | 1.0 | 80.0 |
| Total | 74,320 | | | 44,270 |

*Request for Comments:* Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be

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

*Direct Comments to OMB:* Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Michael C.R. Alavanja, DrPH, Occupational and Environmental Epidemiology Branch, Epidemiology and Biostatistics Program, Division of Cancer Epidemiology and Genetics, National Cancer Institute, 6120 Executive Boulevard, Room 8000, Bethesda, MD 20892, or call (301) 435–4720, or e-mail your request, including your address to: *alavanjm@mail.nih.gov.*

*Comments Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: June 6, 2005.

**Rachelle Ragland-Greene,**

*NCI Project Clearance Liaison, National Institutes of Health.*

[FR Doc. 05–11897 Filed 6–15–05; 8:45 am]

BILLING CODE 4101–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel, Virtual Microscopy for the Early Detection of Cancer.

*Date:* July 6, 2005.

*Time:* 12 p.m. to 3 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institutes of Health, 6130 Executive Blvd., Rockville, MD 20852. (Telephone conference call.)

*Contact Person:* Kenneth L. Bielat, PhD, Scientific Review Administrator, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 7147, Bethesda, MD 20892. (301) 496–7546. *bielatk@mail.nih.gov.*

Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 7, 2005.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–11901 Filed 6–15–05; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel, Molecular Libraries Screening Centers Network (MLSCN).

*Date:* June 28, 2005.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Yong Yao, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9606, Bethesda, MD 20892–9606, (301) 443–6102, *yyao@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel, SRV-Stats.

*Date:* June 28, 2005.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Serena P. Chu, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Rockville, MD 20892–9609, (301) 443–0004, *sechu@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 7, 2005.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–11898 Filed 6–15–05; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Initial Review Group, Clinical and Treatment Subcommittee AA–3.

*Date:* July 7–8, 2005.

*Time:* 8:30 a.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Mahadev Murthy, MBA, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, MSC 9304, Room 3037, Bethesda, MD 20892–9304, (301) 443–0800, *mmurthy@mail.nih.gov*.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Initial Review Group, Health Services Research Review Subcommittee AA–2.

*Date:* July 13–14, 2005.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Lorraine Gunzerath, PhD, Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, Office of Extramural Activities, Extramural Project Review Branch, 5635 Fishers Lane, Room 3043, Bethesda, MD 20892–9304, (301) 443–2369, *lgunzera@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: June 7, 2005.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–11899 Filed 6–15–05; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel, Violence Prevention/Mental Disorder Assessments.

*Date:* June 22, 2005.

*Time:* 11 a.m. to 12:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone conference call.)

*Contact Person:* A. Roger Little, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6157, MSC 9609, Rockville, MD 20852–9609. (301) 402–5844. *alittle@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 7, 2005.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–11900 Filed 6–15–05; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Environmental Health Sciences Review Committee, Environmental Health Sciences Review Committee Meeting.

*Date:* July 21–22, 2005.

*Time:* 8 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

*Contact Person:* Linda K. Bass, PhD., Scientific Review Administrator, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–24, Research, Triangle Park, NC 27709. (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental, Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: June 7, 2005

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–11903 Filed 6–15–05; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Environmental Health Sciences Special Emphasis Panel, National Center for Toxicogenomics Proteomics Biomarkers.

*Date:* July 21–22, 2005

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Hawthorne Suites Hotel, 300 Meredith Drive, Research Triangle Park, NC 27713.

*Contact Person:* RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709. 919/541–0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: June 7, 2005.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–11904 Filed 6–15–05; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Library of Medicine Special Emphasis Panel, Imaging Informatics.

*Date:* July 27, 2005.

*Time:* 1 p.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892. (Telephone conference call.)

*Contact Person:* Hua-Chuan Sim, MD, Health Science Administrator, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892. (301) 496–4253. *simh@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: June 7, 2005.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–11907 Filed 6–15–05; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal infomation concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Brain Stimulation and Neuroimaging.

*Date:* June 28, 2005.

*Time:* 3 p.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

*Contact Person:* Sherry L. Steusse, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892. (301) 435–1785. *stuesses@csr.nih.gov.*

*Name of Committe:* Center for Scientific Review Special Emphasis Panel, Genes, Genetics, Genomics Fellowships.

*Date:* June 30–July 1, 2005.

*Time:* 8:30 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

*Contact Person:* Mary P. McCormick, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 2208, MSC 7890, Bethesda, MD 20892. (30) 435-1047. *mccormim@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, SBIR; Alcohol, Tobacco and Substance Abuse.

*Date:* July 1, 2005.

*Time:* 8:30 a.m. to 5 p.m.

*Agenca:* To review and evaluate grant applications.

*Place:* The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

*Contact Person:* Elisabeth Koss, PhD, Scientific Review Administrator, Center for Scientific Review, Ceter for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3028C, MSC 7759, Bethesda, MD 20892. (301) 435–1235 *kosse@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Studies of Obesity and Diabetes.

*Date:* July 1, 2005.

*Time:* 2 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Ntional Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

*Contact Person:* Syed M. Amir, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6172, MSC 7892, Bethesda, MD 20892. (30) 435-1043. *amirs@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Brain Injury and Neurovascular Pathologies.

*Date:* July 1, 2005.

*Time:* 4 p.m. to 5 p.m.

*Agenca:* To review and evaluate grant applications.

*Place:* Radisson Barcello, 2121 P Street, NW., Washington, DC, Washington, DC 20037.

*Contract Person:* Seetha Bhagavan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3022D, MSC 7846, Bethesda, MD 20892. (301) 435–1211. *bhagavas@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 7, 2005.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–11902 Filed 6–15–05; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 28, 2005, 8 a.m. to June 29, 2005, 5 p.m.,

Holiday Inn Select, 480 King Street, Alexandria, VA 22314 which was published in the **Federal Register** on June 3, 2005, 70 FR 32640–32641.

The meeting will be held July 12, 2005 to July 13, 2005. The meeting time and location remain the same. The meeting is closed to the public.

Dated: June 7, 2005.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–11905 Filed 6–15–05; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 17, 2005, 12 p.m. to June 17, 2005, 5 p.m., Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009 which was published in the **Federal Register** on May 11, 2005, 70 FR 24829–24832.

The starting time of the meeting on June 17, 2005, has been changed to 11 a.m. until adjournment. The meeting date and location remain the same. The meeting is closed to the public.

Dated: June 7, 2005.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–11906 Filed 6–15–05; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HOMELAND SECURITY

**[DHS–2005–0045]**

### United States Visitor and Immigrant Status Indicator Technology Program; Privacy Impact Assessment

**AGENCY:** Department of Homeland Security, United States Visitor and Immigrant Status Indicator Technology Program.

**ACTION:** Notice of availability of Privacy Impact Assessment.

**SUMMARY:** The Department of Homeland Security intends to modify the United States Visitor and Immigrant Status Indicator Technology Program to conduct a live test of the technology required to read biometrically enabled travel documents that comply with international standards. In conjunction with this change, US–VISIT is revising its Privacy Impact Assessment to discuss the impact of this live test on privacy. The revised Privacy Impact Assessment is available on the Web site of the Privacy Office of the Department of Homeland Security, *http://www.dhs.gov/privacy*, and on the US–VISIT Web site, *http://www.dhs.gov/usvisit*. The original US–VISIT PIA was published in the **Federal Register** on January 16, 2004 (69 FR 2608); a revised version reflecting subsequent changes was published on September 23, 2004 (69 FR 57036).

**FOR FURTHER INFORMATION CONTACT:** Steve Yonkers, Privacy Officer, US–VISIT, Department of Homeland Security, Washington, DC 20528, telephone (202) 298–5200, facsimile (202) 298–5201. e-mail: *usvisitprivacy@dhs.gov*; Nuala O'Connor Kelly, Chief Privacy Officer, Department of Homeland Security, Mail Stop 0550, 601 S. 12th Street, Arlington, VA 22202–4220; by telephone (571) 227–4127 or facsimile (571) 227–4171.

**Nuala O'Connor Kelly,**

*Chief Privacy Officer, Department of Homeland Security.*

[FR Doc. 05–12026 Filed 6–14–05; 3:36 pm]

BILLING CODE 4410–10–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[USCG–2005–21405]**

### Commercial Fishing Industry Vessel Safety Advisory Committee

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of meeting.

**SUMMARY:** The Commercial Fishing Industry Vessel Safety Advisory Committee (CFIVSAC) will meet to discuss various issues relating to commercial vessel safety in the fishing industry. The meetings are open to the public.

**DATES:** CFIVSAC will meet on July 18 and 19, 2005, from 8 a.m. to 5 p.m. The meetings may close early if all business is finished. Requests to make oral presentations should reach the Coast Guard on or before July 11, 2005. Written material for distribution at the meeting should reach the Coast Guard on or before July 11, 2005. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before July 4, 2005.

**ADDRESSES:** CFIVSAC will meet on the third floor of the New Bedford Public Library, 613 Pleasant Street, New Bedford, Massachusetts 02740. The World Wide Web site can be found at: *http://www.ci.new-bedford.ma.us/SERVICES/LIBRARY/library2.htm*.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (JG) Roberto Trevino, by telephone at 202–267–2854, fax 202–267–0506, or e-mail: *Rtrevino@comdt.uscg.mil*.

**SUPPLEMENTARY INFORMATION:** Information about the CFIVSAC, up to date meeting information, and past meeting minutes are available at the following World Wide Web site: *http://www.uscg.mil/hq/g-m/cfvs/CFIVSAC.htm*.

CFIVSAC will meet to discuss various issues relating to commercial vessel safety in the fishing industry. The meetings are open to the public.

Notice of the meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

**Agenda of Meeting**

The agenda includes the following:

(1) Approval of last meeting's minutes.

(2) Brief from the Coast Guard on the Fishing Vessel GALAXY casualty report. The brief will cover lessons learned and recommendations.

(3) Updated status report from the Coast Guard on the commercial fishing vessel World Wide Web site and other communication issues.

(4) Vessel stability presentation update by the Society of Naval Architects and Marine Engineers (SNAME).

(5) Discussions and working group sessions by the subcommittees on current program strategies and future plans.

**Procedural**

The meetings are open to the public. Please note the meetings may close early if all business is finished. At the Chair's discretion, members of the public may make presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Executive Director no later than July 11, 2005. Written material for distribution at the meeting should reach the Coast Guard no later than July 11, 2005. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 25 copies to Lieutenant (JG) Roberto Trevino no later than July 4, 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 Lieutenant (JG) Roberto Trevino as soon as possible.

Dated: June 9, 2005.

**R. Petow,**

*Captain, U.S. Coast Guard, Acting Director of Standards Marine Safety, Security & Environmental Protection.*

[FR Doc. 05–11848 Filed 6–15–05; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### North American Wetlands Conservation Council Meeting Announcement

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** The North American Wetlands Conservation Council (Council) will meet to select North American Wetlands Conservation Act (NAWCA) grant proposals for recommendation to the Migratory Bird Conservation Commission (Commission). The meeting is open to the public.

**DATES:** July 6, 2005, 1–4 p.m.

**ADDRESSES:** The meeting will be held at the Grappone Conference Center, 70 Constitution Avenue, Concord, NH 03301. The Council Coordinator is located at the U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Mail Stop: MBSP 4501–4075, Arlington, Virginia 22203.

**FOR FURTHER INFORMATION CONTACT:** David A. Smith, Council Coordinator, (703) 358–1784 or *dbhc@fws.gov*.

**SUPPLEMENTARY INFORMATION:** In accordance with NAWCA (Pub. L. 101–233, 103 Stat. 1968, December 13, 1989, as amended), the State-private-Federal Council meets to consider wetland acquisition, restoration, enhancement, and management projects for recommendation to, and final funding approval by, the Commission. Proposal due dates, application instructions, and eligibility requirements are available through the NAWCA Web site at *http://birdhabitat.fws.gov*. Proposals require a minimum of 50 percent non-Federal matching funds. Canadian and U.S. Standard grant proposals will be considered at the Council meeting. The tentative date for the Commission meeting is September 7, 2005.

Dated: June 3, 2005.

**Paul Schmidt,**

*Assistant Director—Migratory Birds.*

[FR Doc. 05–11853 Filed 6–15–05; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[(NM–920–1310–05); (NMNM 009954)]**

### Proposed Reinstatement of Terminated Oil and Gas Lease NMNM 009954

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of reinstatement of terminated oil and gas lease.

**SUMMARY:** Under the provisions of Pub. L. 97–451, Benson-Montin-Greer timely filed a petition for reinstatement of oil and gas lease NMNM 009954 for lands in Rio Arriba County, New Mexico, and it was accompanied by all required rentals and royalties accruing from August 1, 2004, the date of termination.

**FOR FURTHER INFORMATION CONTACT:** Lourdes B. Ortiz, BLM, New Mexico State Office, (505) 438–7586.

**SUPPLEMENTARY INFORMATION:** No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 per acre or fraction thereof and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice. The Lessee has met all the requirements for reinstatement of the lease as set out in sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate the lease effective August 1, 2004, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: April 25, 2005.

**Lourdes B. Ortiz,**

*Land Law Examiner.*

[FR Doc. 05–11854 Filed 6–15–05; 8:45 am]

BILLING CODE 4310–FB–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CO–923; COC–06785]**

### Public Land Order No. 7639; Partial Revocation of Public Land Order No. 1176; CO

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order partially revokes Public Land Order No. 1176 insofar as it affects 99.35 acres of National Forest System land withdrawn for the Forest Service as an administrative site. This action will open the land to such forms of disposition as may by law be authorized on National Forest System land and to mining. The land has been and remains open to mineral leasing.

**EFFECTIVE DATE:** July 18, 2005.

**FOR FURTHER INFORMATION CONTACT:** Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado, 80215–7093, (303) 239–3706.

**Order**

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Public Land Order No. 1176, which withdrew National Forest System land for recreation and administrative sites and other public purposes, is hereby revoked insofar as it affects the following described land in the State of Colorado:

**Manti-LaSal National Forest, New Mexico Principal Meridian**

T. 48 N., R. 20 W.,
Sec. 3, lots 3 and 4.

The area described contains 99.35 acres in Montrose County.

2. At 9 a.m. on July 18, 2005, the land will be opened to such forms of disposition as may by law be authorized on National Forest System land, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C 38 (2000), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: May 31, 2005.

**Rebecca W. Watson,**

*Assistant Secretary—Land and Minerals Management.*

[FR Doc. 05–11856 Filed 6–15–05; 8:45 am]

BILLING CODE 3410–11–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CO–930–1430–ET; COC–28315]**

### Public Land Order No. 7640; Revocation of Secretarial Order Dated September 4, 1936; Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order revokes a Secretarial Order in its entirety as it affects the remaining 800 acres of National Forest System land withdrawn for the Bureau of Reclamation's Western Slope Survey/Yampa-White Reclamation Project. This order opens the land to such forms of disposition as may by law be authorized on National Forest System land and to mining.

**DATES:** Effective July 18, 2005.

**FOR FURTHER INFORMATION CONTACT:** Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7093, 303–239–3706.

**SUPPLEMENTARY INFORMATION:** The Bureau of Reclamation has determined that this land is no longer needed for reclamation purposes and has requested the revocation.

**Order**

By virtue of the authority vested in the Secretary of the Interior by Section 204(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. The Secretarial Order dated September 4, 1936, which withdrew National Forest System land for the Bureau of Reclamation Western Slope Survey/Yampa-White Project, is hereby revoked in its entirety:

Routt National Forest, Sixth Principal Meridian

T. 1 N., R. 86 W.,
Sec. 16;
Sec. 17, SE¼.

The area described contains 800 acres in Garfield County.

2. At 9 a.m. on July 18, 2005, the land will be opened to such forms of disposition as may by law be authorized on National Forest System lands, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (2000), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: May 31, 2005

**Rebecca W. Watson,**

*Assistant Secretary—Land and Minerals Management.*

[FR Doc. 05–11857 Filed 6–15–05; 8:45 am]

BILLING CODE 4310–JB–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY–921–1430–FQ; WYW 83356–05]**

### Public Land Order No. 7638; Partial Revocation of Two Secretarial Orders; Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order partially revokes two Secretarial Orders insofar as they affect 240 acres of public lands withdrawn for stock driveway purposes. The lands are no longer needed for the purpose for which they were withdrawn. This action will open the lands to surface entry unless closed by overlapping withdrawals or temporary segregations of record.

**EFFECTIVE DATE:** July 15, 2005.

**FOR FURTHER INFORMATION CONTACT:** Janet Booth, BLM Wyoming State Office, PO Box 1828, Cheyenne, Wyoming 82003, 307–775–6124.

**SUPPLEMENTARY INFORMATION:** This action will allow for completion of a pending land exchange and clear the records of an unneeded withdrawal.

**Order**

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. The Secretarial Orders dated February 2, 1924, and April 30, 1938, which withdrew public lands for Stock Driveway No. 128 (Wyoming No. 13), are hereby revoked insofar as they affect the following described lands:

**Sixth Principal Meridian**

T. 43 N., R. 86 W.,
Sec. 3, E½SE¼;
Sec. 10, NE¼NE¼;
Sec. 21, W½NE¼ and NW¼SE¼.

The areas described aggregate approximately 240 acres in Washakie County.

2. At 9 a.m. on July 18, 2005, the lands described in paragraph 1 shall be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on July 18, 2005, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: May 12, 2005.

**Rebecca W. Watson,**

*Assistant Secretary—Land and Minerals Management.*

[FR Doc. 05–11855 Filed 6–15–05; 8:45 am]

BILLING CODE 4310–22–P

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### Notice of Intent To Prepare an Environmental Impact Statement

**SUMMARY:** Pursuant to the National Environmental Policy Act of 1969 (NEPA), we, the Office of Surface Mining Reclamation and Enforcement (OSM), plan to prepare an environmental impact statement (EIS) to analyze the effects of possibly revising our regulations pertaining to excess spoil generation and disposal and stream buffer zones. On January 7, 2004, we published in the **Federal Register** proposed changes to regulations regarding excess spoil disposal, the stream buffer zone, and corresponding changes to the stream diversion regulations. We have subsequently determined that preparation of an EIS would be an appropriate mechanism to fully assess alternative approaches to these specific proposed actions and their potential impacts. By this notice, we are announcing our intent to prepare an EIS on this rulemaking initiative and are asking for your help in identifying the significant issues and specific

alternatives related to the proposed action.

**DATES:** *Electronic or written comments:* We must receive your written comments by 4 p.m. eastern standard time on August 15, 2005, to ensure consideration in the preparation of the draft EIS.

**ADDRESSES:** You may mail or hand carry comments to: "EIS Scoping SBZ Rulemaking Comments" c/o OSM Appalachian Region, 3 Parkway Center, Pittsburgh, Pennsylvania 15220, or you may send comments via electronic mail to: *SBZ-EIS@osmre.gov.*

See the **SUPPLEMENTARY INFORMATION** section for a list of potential public meeting places. Public meetings will only be held if a sufficient number of people request a meeting by contacting the person listed below in the section **FOR FURTHER INFORMATION CONTACT.**

**FOR FURTHER INFORMATION CONTACT:** David Hartos, Physical Scientist, OSM Appalachian Region, 3 Parkway Center, Pittsburgh, Pennsylvania 15220; telephone: (412) 937–2909 or by e-mail at *dhartos@osmre.gov.*

**SUPPLEMENTARY INFORMATION:**



## I. Why Is OSM Initiating Rulemaking?

We are considering rulemaking to address issues regarding excess spoil fills and to clarify the stream buffer zone requirements. For a more in depth discussion of reasons for initiating rulemaking, we refer the reader to the January 7, 2004, **Federal Register** (69 FR at 1036).

### *A. Why Is OSM Initiating Rulemaking To Minimize the Adverse Environmental Effects Stemming From Excess Spoil Fill Construction?*

* * * * *

Mining operations that generate large amounts of excess spoil to be disposed of outside the coal extraction area may cover significant areas over and around stream reaches, especially in mountainous areas. Such fills may have a variety of effects on stream reaches and related environmental values. As discussed below, available information indicates that in some cases, more land is disturbed for the disposal of excess spoil outside the coal extraction area than is necessary. Existing regulations do not specifically address in detail the size and configuration or environmental effects of excess spoil. Therefore, OSM anticipates that the purpose of this action would be to provide regulatory guidance to ensure that fills are no larger than necessary to accommodate anticipated excess spoil, and to address the adverse environmental effects of excess spoil disposal, particularly impacts on streams, consistent with the underlying authority and purposes of SMCRA.

In SMCRA section 515(b)(3), Congress recognized the importance of returning mine spoil to the mined area as an integral part of reclamation, but Congress also recognized that there are situations where this may not be desirable or possible (30 U.S.C. 1265(b)(3)). This statutory provision requires that all surface coal mining and reclamation operations "backfill, compact (where advisable to ensure stability or to prevent leaching of toxic materials), and grade in order to restore the approximate original contour [AOC] of the land" except for mountaintop mining operations pursuant to SMCRA section 515(c), for which an alternative post mining land use requires a level or gently rolling contour. 30 U.S.C. 1265(b)(3). Section 515(b)(3) also provides for exceptions to the AOC requirement in situations when it may not be possible to return all the spoil to the mined area because the volume of overburden is large relative to the thickness of coal. In those situations, the operator is required to demonstrate that "due to volumetric expansion the amount of overburden and other spoil and waste material is more than sufficient to restore the approximate original contour." *Id.* The operator is also required to "backfill, grade, and compact (where advisable) the excess overburden and other spoil and waste materials to attain the lowest possible grade but not more than the angle of repose," in order to "achieve an ecologically sound land use compatible with the surrounding region" and to prevent slides, erosion, and water pollution. *Id.*

Evidence that Congress anticipated excess spoil is further illustrated by section 515(b)(22) of SMCRA, 30 U.S.C. 1265(b)(22). In this provision, Congress imposed specific controls for the disposal of excess spoil to assure mass stability and to prevent mass movement and erosion. Among the various controls, section 515(b)(22)(D) requires that the excess spoil disposal area "not contain springs, natural water courses, or wet weather seeps unless lateral drains are constructed from the wet areas to the main underdrains," to prevent filtration of water into the spoil pile. Section 515(b)(22)(I) requires that all other provisions of SMCRA be met.

SMCRA also sets out special requirements for spoil handling for steep-slope surface coal mining. Section 515(d)(1), 30 U.S.C. 1265(d)(1), requires that, "no * * * spoil material * * * be placed on the downslope below the bench or mining cut: Provided, That spoil material in excess of that required for the reconstruction of the approximate original contour under the provisions of paragraph 515(b)(3) or 515(d)(2) shall be permanently stored pursuant to section 515(b)(22)."

Since the early 1970's, large-scale surface mining has become a more prevalent means of coal extraction, especially in the Appalachian coalfields. Most surface coal mining in the mountainous terrain of central Appalachian coalfields unavoidably generates excess spoil. This excess spoil is often placed in the upper reaches of valleys adjacent to the mine. In this terrain and relatively wet climate, even the upper reaches of valleys may include stream channels or watercourses with continual (perennial) or intermittent flow. Most excess spoil fills occur in the steep terrain of the central Appalachian coal region. Excess spoil fills also occur occasionally in other parts of the United States where surface coal mining is conducted in steep terrain.

In 1998, we conducted studies in Kentucky, Virginia and West Virginia. When we examined permit files and reclaimed mines, we found it difficult to distinguish between the topography of mines backfilled and graded to achieve the approximate original contour (AOC) and the topography of mines that were granted a variance from the AOC requirement. We also found that there were no clear differences in the number and size of the excess spoil fills associated with these mines, although we anticipated that non-AOC mines would have larger or more numerous fills. We determined that typically, coal mine operators could have retained more spoil on mined-out areas under applicable AOC requirements than they were actually retaining.

In addition, we found that, in many instances, coal mine operators were overestimating the anticipated volume of excess spoil. As a result, we

concluded that coal companies were designing fills larger than necessary to accommodate the anticipated excess spoil. Where fills are larger than needed, more land outside the coal extraction area is disturbed than is necessary. We attributed these problems, in part, to inadequate regulatory guidance. Therefore, we recommended that each regulatory authority work with us to develop enhanced guidance on material balance determinations, spoil management, and AOC. Kentucky, Virginia and West Virginia have developed such guidance; we also developed such guidance for the Tennessee Federal program.

We commend Kentucky, Virginia, and West Virginia for their improvements in addressing AOC and the volume of excess spoil. However, we believe there is also a need to revise the national regulations concerning excess spoil placement, because surface mining throughout the country may generate excess spoil. We are considering changes to strengthen our regulatory requirements to address the adverse environmental effects of spoil disposal, particularly impacts on streams, stemming from the construction of excess spoil fills.

*B. Why Is OSM Proposing To Revise Its Stream Buffer Zone Regulation?*

There are highly contradictory views on the application of the existing SBZ rule, which have been reflected in litigation; and OSM believes there may be a need to clarify the SBZ rule, consistent with SMCRA. Therefore, OSM anticipates that the purpose of this action would be to clarify the requirements of the SBZ rule consistent with underlying authority in SMCRA, the purposes of SMCRA and the SBZ rule, and the legislative history of SMCRA; and to improve regulatory stability.

Recent litigation has brought to light widely divergent opinions on how our stream buffer zone regulatory requirements should be interpreted. These opinions cause confusion and uncertainty among State and Federal regulatory agencies responsible for coal mining as well as the coal industry and the public.

The courts have expressed different opinions relating to the interpretation of the stream buffer zone regulation. For example, the District Court for the Southern District of West Virginia effectively concluded that under the stream buffer zone rule, excess spoil fill cannot be allowed in any segment of an intermittent or perennial stream because the fill will cause adverse effects in that stream segment and violate water quality standards. *Bragg* v. *Robertson (Bragg)*, Civ. No. 2:98–0636, Memorandum Opinion and Order at 43–47 (S.D. W. Va., October 20, 1999).

The court stated:

> When valley fills are permitted in intermittent and perennial streams, they destroy those stream segments. The normal flow and gradient of the stream is now buried under millions of cubic yards of excess spoil waste material, an extremely adverse effect. If there are fish, they cannot migrate. If there is any life form that cannot acclimate to life deep in a rubble pile, it is eliminated. No effect on related environmental values is more adverse than obliteration. Under a valley fill, the water quantity of the stream becomes zero. Because there is no stream, there is no water quality.

*Id.* at 43.

This opinion regarding the stream buffer zone regulation was later overturned by the 4th Circuit on jurisdictional grounds without addressing the merits. In a separate case, the District Court for the Southern District of West Virginia discussed its view that under SMCRA, excess spoil fill is not allowed in streams. In that case, the 4th Circuit rejected the district court's view:

> Indeed, it is beyond dispute that SMCRA recognizes the possibility of placing excess spoil material in waters of the United States. Section 515(b)(22)(D) of SMCRA authorizes mine operators to place excess spoil material in "springs, natural water courses or wet weather seeps" so long as "lateral drains are constructed from the wet areas to the main underdrains in such a manner that filtration of the water into the spoil pile will be prevented. 30 U.S.C. 1265(b)(22)(D). In addition, § 515(b)(24) requires surface mine operators to "minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable," implying the placement of fill in the waters of the United States. 30 U.S.C. § 1265(b)(24). It is apparent that SMCRA anticipates the possibility that excess spoil material could and would be placed in waters of the United States'.

*Kentuckians for the Commonwealth* v. *Rivenburgh*, (Rivenburgh) No. 02–1736 (Sept. 23, 2002) 317 F.3d at 443.

These are examples of the conflicting views that have been expressed related to interpretation of the existing stream buffer zone rule. We believe it is important to ensure that our regulations are clear and understood.

*History of the Stream Buffer Zone Rule:* There are no provisions in SMCRA requiring establishment or protection of a stream buffer zone. With the exception of roads and access ways (*see* 30 U.S.C.1265(b)(18)), SMCRA does not prohibit mining activities within or near streams. OSM promulgated a stream buffer zone rule initially as an interim regulatory program provision to establish a "vegetative filter strip" of undisturbed land "to protect stream channels from abnormal erosion" from nearby upslope mining activities. 42 FR 62652 (December 13, 1977). That interim program regulation, which is still in effect, requires only that the regulatory authority approve all incursions into the stream buffer zone.

When we published our permanent program regulations in the **Federal Register** on March 13, 1979, we included a revised stream buffer zone rule and explained that the stream buffer zone concept was a means to implement various SMCRA provisions, particularly, sections 515(b)(10) and 515(b)(24) [30 U.S.C. 1265(b)(10) and (24)]. 44 FR 15176 (March 13, 1979). Section 515(b)(10)(B)(i) of SMCRA requires that mining operations "minimize the disturbances to the prevailing hydrologic balance at the mine-site and in associated offsite areas and to the quality and quantity of water in surface and ground water systems" by preventing, "to the extent possible, using the best technology currently available, additional contributions of suspended solids to stream flow or runoff outside the permit area." This section also requires that operations minimize downstream water quality and quantity impacts using several measures. Section 515(b)(24) of SMCRA requires operations "to the extent possible using the best technology currently available" to "minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values." These standards are consistent with the other requirements of SMCRA to minimize impacts within the mining permit area and prevent material damage to the hydrologic balance offsite (*e.g.*, downstream). For example, section 1260(b)(3) requires:

> No permit or revision application shall be approved unless the application affirmatively demonstrates and the regulatory authority finds in writing on the basis of the information set forth in the application or from information otherwise available which will be documented in the approval, and made available to the applicant, that the assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance has been made by the regulatory authority and the proposed operation thereof has been designed to prevent material damage to hydrologic balance outside permit area.

On June 30, 1983, we revised the stream buffer zone rule to include several changes. First, the 1983 stream buffer zone rule applies to intermittent and perennial streams, rather than

streams with a biological community. Second, it allows permanent diversion of stream flow. Third, it adds requirements for findings that the mining activities will not cause or contribute to violations of applicable water quality standards and will not adversely affect other environmental resources of the stream (in addition to the finding concerning effect on water quality and quantity required in the 1979 rule). Finally, it does not retain the phrase from the 1979 rule expressly limiting the required finding concerning adverse effects, to the section of stream within 100 feet of the mining activities.

The current Federal stream buffer zone rule has been in effect since August 1, 1983, and State regulatory programs include similar requirements. Neither OSM nor the State regulatory authorities have interpreted or implemented the stream buffer zone rule to prohibit either placement of excess spoil fills or other surface mining activities within the stream buffer zone. Under the various Federal and State regulatory programs, an operator may conduct a coal mining activity closer than 100 feet from an intermittent or perennial stream, if the operator demonstrates that the activity would meet the conditions set forth in 30 CFR 816/817.57 for a stream buffer zone waiver. Regulatory authorities have approved many mining activities, including excess spoil fill construction in stream buffer zones, because they met all applicable regulatory requirements.

## II. What Alternatives Have We Identified?

For ease of consideration by the public in scoping this EIS, we will be discussing changes to the excess spoil and stream buffer zone regulations separately. However, changes to these regulations will not necessarily be analyzed separately since changes to one regulation may affect the other.

We will consider only those non-substantive word changes to the stream diversion rule that are necessary for consistency with any excess spoil and stream buffer zone changes; therefore, in this EIS, we will not consider alternatives to those changes in the stream diversion rule.

### *A. "No Action" Alternative*

NEPA requires us to consider the "no action" alternative which would result in no changes to the excess spoil and stream buffer zone regulations as they currently exist in the Federal program.

### *B. Strengthening the Excess Spoil Requirements*

We are considering changes to the excess spoil regulations that would add the following: Require the applicant to demonstrate that the volume of excess spoil generated has been minimized, that fills would be no larger than necessary, and to submit alternative spoil disposal plans in order to identify the plan that minimizes adverse environmental effects.

### *C. Clarifying the Stream Buffer Zone Requirements*

We are considering revising the stream buffer zone regulation at 30 CFR 816.57 and 817.57 to clarify under which circumstances the regulatory authority can allow surface coal mining activities within 100 feet of an intermittent or perennial stream. We will consider a clarification that would closely follow our historic interpretation and implementation of the current stream buffer zone rule.

## III. What Are the Potential Issues Associated With the Action?

As a general matter, we will analyze issues such as the effects of the alternatives on the hydrologic balance, streams, fish and wildlife habitat, and compliance with the Clean Water Act. We may consider additional issues that may be identified during scoping.

## IV. How Will the NEPA Process Integrate With the Rulemaking Process?

Section 102(2)(C) of NEPA, 42 U.S.C. 4332(2)(C), and the regulations of the Council on Environmental Quality implementing NEPA, 40 CFR parts 1500 through 1508, require us to take a "hard look" at the consequences of any major Federal action we undertake that may significantly affect the quality of the human environment We have decided that the NEPA process is applicable to this rulemaking and intend to analyze the impacts of our proposed action and reasonable alternatives that we will consider. We anticipate that the rulemaking and NEPA processes will proceed as follows.

After we complete the initial stages of scoping and identify the reasonable rulemaking alternatives for analysis, we will prepare a draft EIS that will include our "preferred alternative." Upon release of the draft EIS, we anticipate publishing a notice of proposed rulemaking consistent with the preferred alternative, unless we select a preferred alternative that makes rulemaking unnecessary. The public comment periods for the draft EIS and proposed rule will run concurrently for 60 days. Once the public comment period closes and comments are considered, OSM will publish a final EIS. After a minimum of 30 days following release of a final EIS, OSM will publish a combined final rule and a record of decision unless OSM decides to adopt the "no action" alternative.

## V. How Can I Suggest What Issues and Alternatives the EIS Will Examine?

In accordance with the Council on Environmental Quality's regulations for implementing NEPA, 40 CFR parts 1500 through 1508, OSM is soliciting public comments on the scope and significant issues that you believe we should address in the EIS. We are specifically asking for your opinions as to the feasibility and appropriateness of the proposed alternatives discussed above, and any other reasonable alternatives that you think should be considered by the EIS. Suggestions and information on attendant environmental and economic impacts regarding the alternatives are welcome as well.

Send written comments, including email comments, to OSM at the locations listed under the section **ADDRESSES.**

Comments should be specific and pertain only to the issues relating to the proposals. OSM will include all comments in the administrative record for this EIS.

If you want your name on the mailing list to receive future information, please contact the person listed under the section **FOR FURTHER INFORMATION CONTACT.**

### *Availability of Comments*

OSM will make comments, including names and addresses of respondents, available for public review during normal business hours. OSM will not consider anonymous comments. If individual respondents request confidentiality, OSM will honor their requests to the extent allowable by law. Individual respondents who wish to withhold their name or address (except for the city or town) from public review must state this prominently at the beginning of their comments and must submit their comments by regular mail, not by e-mail. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be available for public review in their entirety.

### *Public Meetings*

We are prepared to hold meetings in five locations. All meetings will be structured to be conducive to a high degree of interaction among participants

and meeting facilitators. The primary purpose of these meetings will be to bring together interested parties to discuss the scope of the proposed action, reasonable alternatives to the proposed action, and other significant issues relating to the EIS preparation. We will consider other reasonable alternatives that may be suggested in the scoping process. The other issues include the identification of impact topics, data needs, and national, State, and local concerns that need to be considered. If meetings are held, the format will be structured to promote interaction among the participants to determine what issues and concerns should be addressed by the EIS.

We have identified five potential locations below where we are prepared to conduct public meetings if we receive sufficient interest. Please call, write, or email the person listed under the section **FOR FURTHER INFORMATION CONTACT** if you are interested in participating in a meeting at the location listed. For logistical reasons and for the benefit of the participants, we need to know approximately how many participants we can expect at each of the meetings.

- Pittsburgh, Pennsylvania.
- Knoxville, Tennessee.
- Alton, Illinois.
- Denver, Colorado.
- Washington, DC.

If a meeting is held, we will have some means available to make a formal record, which will be made part of the administrative record for the EIS. If you have written suggestions regarding issues, alternatives, and sources of additional information, we encourage you to give us a copy at the meeting. We will consider these written comments and also make them part of the record.

Any disabled individual who needs special accommodation to attend a public meeting is encouraged to contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

If you wish to speak to an OSM representative to discuss the scope of the EIS or if you would like to request an additional meeting at a location and date that is more convenient to you, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will exercise our discretion as to whether additional meetings will be held and the form of such meetings. We will announce the details of any future meeting in the **Federal Register**, the OSM Web site (*http://www.osmre.gov*) and local newspapers as the meetings take form.

Dated: May 2, 2005.

**Sterling J. Rideout,**

*Assistant Director, Program Support.*

[FR Doc. 05–11926 Filed 6–15–05; 8:45 am]

**BILLING CODE 4310–05–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–529]**

### In the Matter of Certain Digital Processors, Digital Processing Systems, Components Thereof, and Products Containing Same; Notice of a Commission Determination Not To Review an Initial Determination Granting a Motion To Amend Complaint and Notice of Investigation

**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's") initial determination ("ID") granting complainant's motion to amend the complaint and notice of investigation in the above-captioned investigation to add claims 5 and 6 of U.S. Patent No. 5,517,628.

**FOR FURTHER INFORMATION CONTACT:** Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152. Copies of the nonconfidential version of the ID and all nonconfidential 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. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on January 6, 2005 (70 FR 1277) based on a complaint filed on behalf of BIAX Corporation ("BIAX"), of Boulder, Colorado. The complaint alleged violations of section 337 in the importation into the United States, sale for importation, and sale within the United States after importation of certain digital processors, digital processing systems, components thereof, and products containing same by reason of infringement of certain claims of five U.S. patents, US Patent Nos. 4,487,755; 5,021,954; 5,517,628 ("the '628 patent"); 6,253,313; and 5,765,037. The notice of investigation named Texas Instruments, Inc., of Dallas, Texas; iBiquit Digital Corporation, of Columbia, Maryland; Kenwood Corporation, of Japan; and Kenwood U.S.A. Corporation, of Long Beach, California as respondents.

On May 17, 2005, the ALJ issued the subject ID, Order No. 10, granting complainant's motion to amend the complainant and notice of the investigation to add claims 5 and 6 of the 628 patent. No party filed a petition to review the subject ID.

This action is taken under the authority of section 337 of the Tariff at of 1930, 19 U.S.C. 1337, and section 210.42 of Rules of Practice and Procedure, 19 CFR 210.42.

By order of the Commission.

Issued: June 10, 2005.

**Marilyn R. Abbott,**

*Secretary of the Commission.*

[FR Doc. 05–11868 Filed 6–15–05; 8:45 am]

**BILLING CODE 7020–02–M**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–287 (Review)]**

### Raw in-Shell Pistachios From Iran

**AGENCY:** United States International Trade Commission

**ACTION:** Notice of Commission determination to conduct a full five-year review concerning the antidumping duty order on raw in-shell pistachios from Iran.

**SUMMARY:** The Commission hereby gives notice that it will proceed with a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty order on raw in-shell pistachios from Iran would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the review will be established and announced at a later date. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207,

subparts A, D, E, and F (19 CFR part 207).

**EFFECTIVE DATES:** June 6, 1005.

**FOR FURTHER INFORMATION CONTACT:** Mary Messer (202) 205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

**SUPPLEMENTARY INFORMATION:** On June 6, 2005, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group response to its notice of institution (70 FR 9976, March 1, 2005) was adequate and that the respondent interested party group response was inadequate. The Commission also found that other circumstances warranted conducting a full review.[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

**Authority:** This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: June 10, 1005.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 05–11869 Filed 6–15–05; 8:45 am]

**BILLING CODE 7020–02–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Safe Drinking Water and Clean Water Act

Consistent with 28 CFR 50.7, notice is hereby given that on June 6, 2005, a proposed consent decree ("Decree") in *United States* v. *BP America Production Company, et al.*, Civil Action No. 05–CV 156J, was lodged with the United States District Court for Wyoming.

In this action, the United States seeks penalties and injunctive relief against BP America Production Company f/k/a Amoco Production Company, CamWest, Inc., and CamWest Limited Partnership under section 1423(b) of the Safe Drinking Water Act and section 309 of the Clean Water Act, based on violations alleged at the Lander and Winkleman Dome Oil Fields in Fremont County, Wyoming, within the exterior boundaries of the Wind River Indian Reservation. The United States has also sought penalties under section 311 of the Clean Water Act as to the CamWest entities. The settlement provides for a series of Supplemental Environmental Projects ("SEPs") for the benefit of the Eastern Shoshone Tribe and the Northern Arapaho Tribe—the two tribes living at the Wind River Indian Reservation and for CamWest to perform certain injunctive relief. CamWest will pay a civil penalty of $487,352 and contribute $429,621 to the SEPs, for a total of $916,973. BP Amoco will pay a civil penalty of $115,138 and contribute $295,335 towards the SEPs, for a total of $410,473. The total value of this settlement, not including the injunctive relief performed by CamWest, is $1,327,446.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *BP America Production Company et al.*, D.J. Ref 90–5–1–1–07294/1, 90–5–1–1–07294.

The decree may be examined at the Office of the United States Attorney, 2120 Capitol Ave., Cheyenne, Wyoming 82001, and at the U.S. Environmental Protection Agency—Region VIII, 999—18th Street, Denver, Colorado 80202–2466. During the public comment, the decree may also be examined on the following Department of Justice Web site, *http://www.uddoj.gov/enrd/open.htlm*. A copy of the decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $14.50 (not including attachments) (25 cents per page reproduction cost) payable to the U.S. Treasury.

**Robert Brook,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Section.*

[FR Doc. 05–11851 Filed 6–15–05; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under Cercla

Consistent with to 28 CFR 50.7, notice is hereby given that on May 31, 2005, a proposed consent decree ("decree") in *United States and the State of Colorado* v. *The B&B Mines, Inc., French Gulch Mines, Inc., Diamond Dick Co., Eckart Patch Co., Little Lizzie Limited Liability Company, and Wire Patch Limited Liability Company*, Civil Action No. 05–CV–992–EWN–OES, was lodged with the United States District Court for the District of Colorado.

In this action, the United States and the State seek reimbursement of costs incurred and to be incurred for response actions, and natural resource damages, under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") in connection with the Wellington/Oro French Creek Superfund Site in Summit County, Colorado ("Site"). Parties to the prosed consent decree include Summit County and the Town of Breckenridge as Bona Fide Prospective Purchasers who will perform certain response actions at the Site and preserve it as Open Space.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and the State of Colorado* v. *The B&B Mines, Inc., French Gulch Mines, Inc., Diamond Dick Co., Eckart Patch Co., Little Lizzie Limited Liability Company, and Wire Patch Limited Liability Company*, D.J. Ref. 90–11–2–06306/1.

The decree may be examined at the U.S. Environmental Protection Agency-Region 8, 999 18th Street, Suite 300, Denver, CO 80202. During the public comment period, the decree (without attachments) may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the decree may also be obtained by mail from the

[1] Chairman Stephen Koplan and Commissioners Marcia E. Miller and Jennifer A. Hillman dissenting.

Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $4.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

**Catherine McCabe,**

*Deputy Chief, Environmental Enforcement Section.*

[FR Doc. 05–11852 Filed 6–15–05; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Combating Exploitive Child Labor Through Education in Sierra Leone and Liberia; Correction

**AGENCY:** Bureau of International Labor Affairs, Department of Labor.

**ACTION:** Correction.

**SUMMARY:** In notice document 05–10621 beginning on page 30805 in the issue of Friday, May 27, 2005, make the following correction:

On page 30805, in the second column, third sentence of Section II "Award Information", the language, "The duration of the project(s) funded by this solicitation is four (4) years", is incorrect. This sentence should be changed to read, "The duration of the project(s) funded by this solicitation must be between 30 months and 48 months."

Dated: June 10, 2005.

**Lisa Harvey,**

*Grant Officer.*

[FR Doc. 05–11873 Filed 6–15–05; 8:45 am]

BILLING CODE 7510–28–M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Combating Exploitive Child Labor Through Education in Angola; Correction

**AGENCY:** Bureau of International Labor Affairs, Department of Labor.

**ACTION:** Correction.

**SUMMARY:** In notice document 05–10620 beginning on page 30791 in the issue of Friday, May 27, 2005, make the following correction:

On page 30791, in the second column, third sentence of Section II "Award Information", the language, "The duration of the project(s) funded by this solicitation is four (4) years", is incorrect. This sentence should be changed to read, "The duration of the project(s) funded by this solicitation must be between 30 months and 48 months."

Dated: June 10, 2005.

**Lisa Harvey,**

*Grant Officer.*

[FR Doc. 05–11874 Filed 6–15–05; 8:45 am]

BILLING CODE 4510–28–M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Combating Exploitive Child Labor Through Education in Mozambique; Correction

**AGENCY:** Bureau of International Labor Affairs, Department of Labor.

**ACTION:** Correction.

**SUMMARY:** In notice document 05–10619 beginning of page 30777 in the issue of Friday, May 27, 2005, make the following correction:

On page 30777, in the third column, third sentence of Section II "Award Information", the language, "The duration of the project(s) funded by this solicitation is four (4) years", is incorrect. This sentence should be changed to read, "The duration of the project(s) funded by this solicitation must be between 30 months and 48 months."

Dated: June 10, 2005

**Lisa Harvey,**

*Grant Officer.*

[FR Doc. 05–11875 Filed 6–15–05; 8:45 am]

BILLING CODE 4510–28–M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Combating Exploitive Child Labor Through Education in Guyana; Correction

**AGENCY:** Bureau of International Labor Affairs, Department of Labor.

**ACTION:** Correction.

**SUMMARY:** In notice document 05–9284 beginning on page 24635 in the issue of Tuesday, May 10, 2005, make the following correction:

On page 24635 in the first column, third sentence of Section II "Award Information", the language, "The duration of the project(s) funded by this solicitation is four (4) years", is incorrect. This sentence should be changed to read, "The duration of the project(s) funded by this solicitation must be between 30 months and 48 months.".

Dated: June 10, 2005.

**Lisa Harvey,**

*Grant Officer.*

[FR Doc. 05–11876 Filed 6–15–05; 8:45 am]

BILLING CODE 4510–28–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Workforce Investment Act—Limited English Proficiency and Hispanic Worker Initiative

*Announcement Type:* New. Notice of solicitation for grant applications.

*Funding Opportunity Number:* SGA/DFA PY–05–02.

*Catalog of Federal Domestic Assistance CFDA Number:* 17.261.

*Key Dates:* Deadline for Application Receipt—August 15, 2005.

**Executive**

*Executive Summary:* The U.S. Department of Labor, Employment and Training Administration (ETA), announces the availability of approximately $5 million in demonstration grant funds to test unique and innovative training strategies for services to individuals with Limited English Proficiency (LEP) (those who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English [1]) and Hispanic Americans, specifically, those who lack basic and occupational skills needed by high-growth occupations. This demonstration program is targeted to incumbent workers, new job entrants or youth who lack the language, basic skills, and occupational skills necessary to succeed in the 21st century workplace. This demonstration program emphasizes the use of innovative contextualized learning strategies which simultaneously provide language and occupational skills training that open career opportunities and pathways for LEP and Hispanic Americans.

The Limited English Proficiency (LEP) and Hispanic Worker Initiative is a strategic effort to improve access to employment and training services for LEP persons and to better serve Hispanic Americans through workforce investment programs that address the

[1] Who is a Limited English Proficient individual? FAQ on *http://www.lep.gov* Web site.

specific workforce challenges facing these individuals. Grant funds awarded under this Solicitation for Grant Applications (SGA) should be used to develop unique and innovative strategies that specifically address the workforce challenges of LEP individuals and Hispanic Americans. Applications must reflect a strategic partnership between the public workforce investment system, the employer community, the education and training community, and, if applicable, community-based or faith-based organizations. It is anticipated that individual awards will fall within the range of $500,000 to $1 million. The Department reserves the right to award grants at either lower or higher amounts.

*Key Dates:* The closing date for receipt of applications under this announcement is August 15, 2005. Applications must be received no later than 5 p.m. (Eastern Time). Application and submission information is explained in detail in Part IV of this SGA.

**SUPPLEMENTARY INFORMATION:** This solicitation provides background information on the LEP and Hispanic Worker Initiative and critical elements required of projects funded under the solicitation. It also describes the application submission requirements, the process that eligible entities must use to apply for funds covered by this solicitation, and how grantees will be selected. This announcement consists of eight parts:

- Part I provides background information on the LEP and Hispanic Worker Initiative; an overview of the current status of the growing Hispanic American population; and describes the critical elements of the LEP and Hispanic Worker Initiative grants.
- Part II describes the size and nature of the award.
- Part III describes who qualifies as eligible applicants.
- Part IV provides information on the application and submission process.
- Part V explains the review process and rating criteria that will be used to evaluate applications for funding.
- Part VI provides award administration information.
- Part VII contains DOL agency contact information.
- Part VIII lists additional resources of interest to applicants.

## Part I—Funding Opportunity Description

### *A. Background on the Limited English Proficiency and Hispanic Worker Initiative*

The demographic composition of the American workforce is changing. In the coming years the workforce will become much older and more diverse, creating new challenges for employers, educators, and the public workforce investment system. Current immigration trends, lower birth rates in recent years, and the aging and retirement of the "baby boom" generation have resulted in an ever-shrinking United States labor force. Currently, the percentage of Hispanics within the general population is steadily increasing and their participation in the workforce is projected to grow tremendously in the coming years. As employers continue to need skilled workers to remain competitive in a global economy, the influx of Hispanics and other immigrants into the workforce is creating a higher demand for English language and occupational skill training to meet employer demands for highly skilled workers. These circumstances make it critical that employers, educators, and the public workforce system ensure that every available worker is prepared with the language and occupational skills necessary to join the workforce and for the continued competitiveness of American businesses in the 21st century. To meet the rapidly changing skill demands of growing and emerging industries and to address the issue of a potential skilled labor shortage, employers in high-growth industries and occupations are seeking out untapped labor pools, such as older workers, Hispanics, and LEP individuals. These growing segments of the population will need meaningful access to public workforce services to gain the skills required by the 21st century economy and to connect with the employers that need them.

#### Size of the LEP and Hispanic American Populations

According to the U.S. Census Bureau, Hispanics are the fastest-growing segment of the population in the United States, representing 13.3 percent of the total population. This means that more than one in eight people in the United States are of Hispanic origin. [2] In addition, the Bureau of Labor Statistics estimates that the Hispanic labor force is expected to grow from 17.9 million in 2002 to 23.8 million by 2012. [3]

The numbers for the LEP population are similarly striking. According to the U.S. Census Bureau, the number of people in the United States who spoke a language other than English at home increased by 15 million (4 percent) between 1990 and 2000. In 2000, 47 million people (18 percent) aged 5 and over reported they spoke a language other than English at home.[4] Previously, in 1990, 32 million people (14 percent) indicated they spoke a language other than English at home. In both 1990 and 2000, Spanish was the largest of the four major non-English language groups; in 2000, Spanish was at 28 million followed by other Indo-European languages at 10 million, Asian and Pacific Islander languages at 7 million, and other languages at 1.9 million.

#### Workforce Challenges of LEP Individuals and Hispanic Americans

The influx of Hispanic workers and other immigrant populations over the past two decades has significantly increased the need for language-related services throughout the workforce investment system. LEP individuals face critical challenges in their ability to perform self-sustaining work in the United States. The lack of English language skills impedes how LEP individuals communicate with employers, educators, and service providers. In addition, immigrants with low levels of formal education who lack English language skills are the most disadvantaged in the labor market.[5]

Hispanic workers also face unique challenges in attaining the necessary education and skill requirements demanded by high-growth industries. More than two in five Hispanics aged 25 and older have not graduated from high school; two in five Hispanics are born outside of the United States, which presents language and cultural barriers; and Hispanics are more likely to live in poverty in the United States.[6] As a result of these and other factors, Hispanics are much more likely to be out of the active labor force, and those

[2] Ramirez, R.R. and de la Cruz, C.P. June 2003. The Hispanic Population in the United States: March 2002. Current Population Reports. U.S. Census Bureau.

[3] Bureau of Labor Statistics Press Release. February 11, 2004. BLS Releases 2002–2012 Employment Projections. *http://www.bls.gov/news.release/archives/ecopro_02112004.pdf.*

[4] Shin, H.B. and Bruno, R. October 2003. Language Use and English-Speaking Ability: 2000. Census 2000 Brief. U.S. Census Bureau.

[5] English Literacy and Language Minorities in the United States: Results from the National Adult Literacy Survey. U.S. Department of Education, Office of Educational Research and Improvement. August 2001.

[6] Ramirez, R.R. and de la Cruz, C.P. June 2003. The Hispanic Population in the United States: March 2002. Current Population Reports. U.S. Census Bureau.

that are employed typically earn less than non-Hispanic workers.

In 2003, ETA convened a working group to conduct an environmental scan of the LEP and Hispanic workforce issues, and to identify the major workforce challenges workers and youth in these groups face. The working group concluded that LEP and/or Hispanic Americans face the following five challenges in the workforce:

1. A severe mismatch between workers' skills and U.S. business' demands.
2. The need for a mix of services to prepare LEP and Hispanic workers for 21st century career opportunities.
3. The difficulties teachers face in helping LEP and Hispanic workers learn.
4. The high dropout rate among Hispanic and potentially other LEP youth.[7]
5. The LEP and Hispanic Workforce Paradox—high workforce participation coupled with a lack of basic language and occupational skills.

Workplace Literacy

Literacy plays an important role in each of the challenges identified above, and is the foundation for success in the workplace and for self-sufficiency. The Workforce Investment Act of 1998 (WIA) defines literacy as "an individual's ability to read, write, speak English, compute, and solve problems at levels of proficiency necessary to function on the job and in society." According to the U.S. Department of Education, immigrants and Hispanics who arrived in the United States before age 12 possess lower levels of literacy proficiency than the general population, and those who arrived at age 12 or older are at an even greater literacy disadvantage.[8] The literacy levels among immigrants and Hispanics are not meeting the minimum workplace standards for success in the labor market.

The U.S. Department of Education further defines English as a Second Language (ESL) literacy which encompasses a range of speaking and listening skills, basic reading and writing skills, and functional and workplace skills. The lowest level, Beginning ESL Literacy, indicates an ability to handle only very routine entry-level jobs that do not require communication in English. The highest level, High Advanced ESL, indicates the ability to understand and effectively use English, to interpret graphs, charts, and tables, to complete forms, to use common software and to learn new applications, as well as the capacity to instruct others in these areas.[9]

This solicitation does not focus on the progression of an individual through each of these traditional ESL levels since that is generally a very long-term process. Rather, the projects awarded will demonstrate how unique and innovative learning programs can quickly and effectively connect the unemployed Hispanic or LEP individual to the workplace, or upgrade the language skills, and earnings, of workers who are already employed.

Applicants are encouraged to identify literacy assessment instruments which are appropriate to the industry-identified literacy benchmarks for each particular occupation being focused on, as well as the English-language proficiency required by the industry to ensure a project participant's workplace achievement. Improving literacy levels through creative and accelerated teaching methodologies will help LEP individuals and Hispanic Americans attain the minimum workplace literacy standard necessary to successfully participate in the labor market.

Strategies for Addressing the Workforce Challenges of LEP and Hispanic Workers

In response to two Executive Orders, ETA has been strategically investing in activities to help LEP individuals and Hispanic Americans obtain services available through the workforce investment system. Executive Order 13166, signed on August 11, 2000, emphasizes that the protections of the Civil Rights Act of 1964 apply to LEP individuals and reinforces the Administration's commitment to promoting activities designed to help individuals learn English. The Order also requires all recipients of Federal financial assistance to insure that individuals in their area are being provided meaningful and equitable access to program services. Executive Order 13230, signed on October 12, 2001, established the Advisory Commission on Educational Excellence for Hispanic Americans with the emphasis of providing services to Hispanic-Americans through coordination of Federal efforts to promote high-quality education.

On May 29, 2003, ETA issued guidance on the LEP Order to help the workforce investment system understand how ETA grant funds and partnerships can further maximize the coordination of benefits to LEP individuals. In addition, the Department has developed tools to assist the workforce investment system address the special needs of LEP individuals. These include translation services on national electronic tools for participants, as well as online resources for service providers such as a technical assistance guide, a best practices catalog for serving LEP individuals, and specialized Census data that will provide local population census information and characteristics for each language group by local workforce investment area. Complete information on these activities is available at *http://www.doleta.gov/reports/DPLD.cfm.*

The LEP and Hispanic Worker Initiative

The Limited English Proficiency (LEP) and Hispanic Worker Initiative is a strategic effort to improve access to workforce investment services for persons with limited English proficiency and to better serve Hispanic Americans through workforce investment programs by addressing the specific workforce challenges facing these individuals. ETA has identified three broad strategies to meet these challenges:

a. Increase the English language proficiency of LEP and Hispanics.
b. Increase the high school graduation rate of LEP and Hispanic youth.
c. Upgrade the skills of LEP and Hispanic low-wage and low-skill workers.

The strategies are focused on providing a mix of services through partnerships between the public workforce investment system, community colleges, employers and, where applicable, community-based or faith-based organizations to help LEP individuals and Hispanic Americans build the skills required by growing industries.

Examples of ETA LEP and Hispanic Initiative Investments to Date

ETA has funded several unique and innovative projects that implement some of these strategies and provide solutions to the workforce challenges of LEP and Hispanic Americans. These projects offer significant examples of

[7] According to a GAO Report, the dropout rate for Hispanics was 29 percent whereas the national average was 11 percent for the year 2000. According to the Current Population Survey, more than two in five Hispanics have not graduated from high school, and more than a quarter had less than a ninth-grade education.

[8] Literacy Levels of the Foreign-born Population and Speakers of English as a Second Language in the U.S. National Institute for Literacy. *http://www.nifl.gov/nifl/facts/esl.html.*

[9] Measure and Methods for the National Reporting System for Adult Education: Implementation Guidelines. U.S. Department of Education, Office of Vocational and Adult Education, Division of Adult Education and Literacy. March 2001. *http://www.nrsweb.org/reports/implement.pdf.*

solutions to meeting both the workforce challenges of LEP and Hispanic individuals and the workforce needs of high-growth industry employers. These projects can also serve as models for other areas and industries facing similar concerns with LEP and Hispanic populations. It may be useful to review these projects highlighted below:

The Oregon Manufacturing Extension Partnership (MEP) has formed a partnership with Idaho Tech Help (Idaho MEP), Washington Manufacturing Services, Nevada Management Assistance Partnership (MAP), and the Northwest Food Processors Association to provide lean manufacturing training for at least 2,000 workers in 48 value-added food processing companies. A large portion of the workers in the food processing industry have limited English skills; therefore, the project includes the development of a curriculum for English language training in lean manufacturing for food processing. Each company will receive customized training based on its needs, including theory and application of fundamental lean manufacturing principles and techniques as well as a cultural awareness component for all employees. Employee training will take place on the worksite during work hours. Those who are trained will have increased job security, be on track for promotions, and receive higher wages.

The Hotel Employees and Restaurant Employees (HERE) union is implementing its Hospitality Industry-Demand project. HERE is partnering with 24 hospitality industry employers and Nevada Partners, Inc., a community-based training provider which houses the Culinary Training Academy. The project demonstrates ways to prepare Hispanic workers to fill the high-demand for qualified, trained employees in the growing hospitality industry of Las Vegas, Nevada, and Atlantic City, New Jersey. In Las Vegas, HERE is delivering occupational English training to 2,000 new area residents and immigrant workers for entry-level and career-ladder hospitality positions through its partnership. Onsite pre- and post-shift occupational English proficiency training is also being offered to 450 incumbent workers at 10 major area hotels. In Atlantic City, HERE is partnering with 13 employers and Atlantic Cape Community College to train 45 incumbent workers with limited English skills for jobs as fully trained and skilled cooks.

The Cuban American National Council, Inc. (CNC) is implementing its Academic, Leadership, and Career Prep for Hispanic American Youth (ALPHA) Program. This program assists Hispanic youth to overcome educational and employment barriers. CNC is operating Hispanic community centers in Miami-Dade County and Orlando, Florida. The project will serve 300 at-risk Hispanic youth in grades 9–12 and out-of-school Hispanic youth ages 16–21. In Miami-Dade County, the program serves students in grades 9–12 at Little Havana and Hialeah High School Institute and out-of-school youth at the Youth Center located in South Miami-Dade. In Greater Orlando, the program serves students in grades 9–12 in Orange and Osceola public high schools. The CNC also serves out-of-school youth through Workforce Florida's Institute for the Development of Engaged Adolescents (IDEA).

The Digital Learning Group (DLG) is developing and implementing its Words for Work program. The program is geared toward underemployed and unemployed Hispanics with limited English proficiency that impedes their access to employment or a living wage. Words for Work is a user-friendly multimedia instruction program that enhances participant employability by developing occupation-specific English language and related workplace skills training for health care and construction industry employment. The program works closely with local employers in demand occupations to provide quick-start training and job placement to 225 Hispanic youth and adults in the Baltimore, Maryland, metropolitan area to maximize their chances for job retention.

These demonstration examples are helping both LEP individuals and Hispanics overcome the aforementioned workforce challenges. Common in all of these demonstration projects is the unique and innovative use of creative teaching methodologies that assist workers and youth in attaining and improving English language skills while concurrently gaining the occupational skills demanded by businesses. Another common thread is the regional scope of the solutions and their applicability to multiple locations and industries. Some of the projects also provide basic skills and computer literacy skills to assist LEP and Hispanic workers and youth in becoming job ready.

Through these demonstrations and this LEP and Hispanic Worker Initiative, ETA is pursuing additional unique and innovative strategies which will assist our public workforce system in meeting the needs of businesses for a pipeline of occupationally skilled individuals, resulting in job placement or career enhancement opportunities in high-growth industries for LEP individuals and/or Hispanic Americans. Unique and innovative projects are those that:

- Merge English language instruction with occupational skill training; or
- Accelerate both the English language and occupational skills attainment by using technology in the instruction/curriculum; or
- Customize English language and occupational skill training to meet the specific needs of a high-growth industry; or
- Provide new technological platforms for learners to attain English language and occupational skills at their own pace.

*B. Critical Elements of the LEP and Hispanic Worker Initiative*

The purpose of the LEP and Hispanic Worker Initiative is to demonstrate the effectiveness of creative teaching methodologies that simultaneously enhance English language and occupational skills in order to respond to specific workforce challenges identified by employers. The 21st century job market demands workers with specific occupational skills as well as the ability to interact in specialized forms of English, (*e.g.*, cultural nuance, reasoning, critical thinking, team work, etc.). Projects funded under this LEP and Hispanic Worker Initiative should include the following elements:

1. Creative Teaching Methodologies

Applicants will develop (if necessary) and implement creative teaching methodologies that accelerate and focus the learning process in order for participants to learn English language skills along with the basic and occupational skills that are in demand by local high-growth/high-demand industries and employers. Creative teaching methodologies should be flexible and provide alternate settings and schedules to ensure participants are able to successfully partake in the training programs as well as balance work and life needs. This solicitation is seeking proposals that are not centered on traditional ESL programs, but rather are using Vocational English as a Second Language (VESL) and/or Contextualized Language Instruction methodologies to provide Hispanics and LEP individuals with both the occupational skills and specialized English proficiency that will enable them to be productive and competitive workers.

- Vocational English as a Second Language—VESL programs are primarily vocational training programs that provide basic English language instruction to enable students to be successful in their vocational training

and careers. Rather than full English literacy, students are expected to become proficient in the basic English required to interact with English-speaking customers, managers, or employees to successfully perform job-related duties (*e.g.*, filling out job applications, using manuals or catalogues to understand job-related safety requirements, reading work schedules, etc.). Occupational contexts are often used to emphasize the occupational language skills necessary for success in vocational training and employment.[10]

• Contextualized Language Instruction—The contextualized language instruction strategy approaches literacy instruction by focusing on topics familiar to the learner. While traditional academic language instruction teaches the abstractions of English grammar and vocabulary in a manner that is often confusing and meaningless for LEP individuals, contextualized language instruction approaches increasing English proficiency from a practical viewpoint, seeking to relate these abstractions to the everyday life or workplace of the learner.[11] Concrete experiences are emphasized by using real objects and situations to set a meaningful context for the lesson. Research shows that English literacy instruction provided in a context shaped by occupational requirements allows students to make greater progress in a shorter period of time than when receiving traditional general ESL instruction.[12] This contextualized approach allows training programs, including VESL programs, to incorporate literacy and language learning opportunities into occupational education coursework.

In VESL and Contextualized Language Instruction, employers play a pivotal role in determining the occupational skill and language content required to perform the job successfully, and the minimum levels of proficiency needed to do so. Through participation in these short-term or accelerated training programs, which may be provided in conjunction with employment, participants of projects funded under this SGA will complete their participation prepared to meet the workforce demands of employers in high-growth industries now and throughout the coming decades.

2. Connections to High-Growth, High-Demand Industries

The Workforce Investment Act of 1998 emphasizes a workforce investment system driven by the needs of local employers. To meet this mandate, ETA is working to transform the public workforce investment system through the identification of the challenges facing high-growth industries and the development of targeted workforce solutions in collaboration with industry leaders and workforce investment professionals. The President's High Growth Job Training Initiative (High Growth Initiative) has established that high-growth/high-demand industries tend to meet one or more of the following criteria: (1) The industry is projected to add substantial numbers of new jobs to the economy; (2) the industry has a significant impact on the economy overall; (3) the industry impacts the growth of other industries; (4) the industry is being transformed by technology and innovation requiring new skills sets for workers; or (5) the industry is a new and emerging business that is projected to grow. Information specific to the workforce challenges of each industry targeted in the High Growth Initiative is available on ETA's Web site at *http://www.doleta.gov/BRG/JobTrainInitiative.*

One of the common challenges identified by these high-growth industries is access to new and untapped labor pools, such as Hispanic and Asian workers, LEP individuals, older workers, and individuals with disabilities. The issue of access to LEP and Hispanic individuals, in particular, arose in discussions with retail, construction, and hospitality industry leaders; however, the issue of language skills impeding worker access to jobs and progress once hired was of universal concern among all high-growth employers. For example, workers with limited English language skills comprise a significant portion of the construction workforce, therefore communication with LEP and Hispanic workers can be challenging. However, improving their English language skills can help them advance in the industry, and the jobs available have good salaries. Similarly, a large percentage of workers in the Hospitality industry are non-English speaking, resulting in the need to identify and implement solutions that facilitate the attainment of English language and workplace skills training. Finally, as the demographics of the United States continue to diversify, multilanguage employees become more desirable—such as is becoming increasingly evident in the retail industry. Retailers are customer service driven and need workers who can speak the languages of their customer base. While workers speak the language of customers, their lack of basic English language and literacy skills proficiency can hinder their ability to perform all job functions, work effectively with other employees, and move up the career ladder. As part of ETA's demand-driven workforce strategy, projects funded under this solicitation will be those that provide viable solutions to this access challenge and connect Hispanic and LEP individuals with career opportunities in local high-growth, high-demand industries where they can succeed and prosper.

3. Strategic Partnerships

In order to implement effective demand-driven training strategies for the LEP and Hispanic workforce, ETA believes that strategic partnerships must be created between the education and training community, the public workforce investment system, and employers, all of which must be actively involved in the project's design and implementation. These strategic partnerships should focus broadly on the workforce challenges of one or more of the high-growth, high-demand industry(ies) and members of the partnership must work collaboratively to identify and implement solutions that will equip the LEP and Hispanic workforce with the language and occupational skills needed to address those challenges.

Each partner should have clearly defined roles. The exact nature of these roles may vary depending on the issue areas being addressed and the scope and nature of the activities undertaken. ETA expects that each partner will, at a minimum, contribute in the following ways:

• Employers should be actively engaged and participate fully in every aspect of grant activities including defining the program strategy and goals; identifying needed skills and competencies; designing training approaches and curricula; implementing the program; contributing financial and in-kind support; and, where appropriate, hiring qualified training graduates.

• The workforce investment system may play a number of roles, including

[10] Buchanan, Keith. Vocational English-as-a-Second-Language Programs. ERIC Digest. ED321551. ERIC Clearinghouse on Languages and Linguistics. Washington, DC 1990. *http://www.ericdigests.org/pre-9216/vocational.htm.*

[11] Tharp, Roland G. From At-Risk to Excellence: Research, Theory, and Principles for Practice. Center for Research on Education, Diversity & Excellence. 1997. *http://crede.ucsc.edu/products/ptint/reports/rr1.html.*

[12] What is Contextualized Learning? Contextualized learning technical assistance project final report & handbook on contextualized learning. Division of Adult and Continuing Education, Office of Academic Affairs, City University of New York. July 1993. *http://literacy.kent.edu/~nebraska/curric/ttim1/art5.html.*

identifying and assessing LEP and Hispanic candidates for training; working collaboratively to leverage WIA investments; referring qualified candidates to the training provider; providing wrap-around support services, where appropriate; and referring qualified training graduates to employers with existing job openings.

• The education and training partner is expected to lead the curriculum development and deliver contextualized training that will prepare participants for employment opportunities in high-growth industry(ies).

To maximize the success of the project and to keep pace with the rapid changes in the economy and the nature of skills and competencies necessary for work in these industries, these partnerships need to be substantial and sustained throughout the operation of the project and beyond.

4. Leveraged Resources

Leveraging resources in the context of strategic partnerships accomplishes three goals: (1) It allows for the strategic pursuit of resources; (2) it increases stakeholder investment in the project at all levels including design and implementation phases; and (3) it broadens the impact of the project itself.

Applicants must indicate that there are cash or in-kind resources from non-Federal sources available to augment Federal dollars in the development and implementation of the project. Non-Federal resources may include those provided by private entities, foundations, and state and local tax revenue funds, among others. The partnership as a whole is expected to contribute resources, either through cash or in-kind contributions, totaling at least 50 percent of the amount of funding requested from ETA. Of this 50 percent, business partners are expected to contribute at least half of the resources leveraged for the project.

ETA strongly encourages applicants to integrate WIA funding at the state and local levels into their proposed project. Integrating WIA funds ensures that the full spectrum of assets available from the workforce investment system is leveraged to support the LEP and Hispanic American worker training activities. The wide variety of WIA programs and activities provides both breadth and depth to the proposed solution that the project will offer to both business and individuals. The use of WIA funds also serves to embed the training solution into the local or regional workforce investment system, which strengthens the system's ability to become more demand-driven. While these funds may not count toward the match requirement, they are considered to be leveraged resources and will serve to demonstrate the effective integration of services in the grant application.

5. Sustainability and Replication

The funds awarded under this SGA should be considered seed funding. Applicants are expected to sustain successful projects once grant funds have been exhausted in order to provide long-term solutions to the ongoing workforce challenges facing high-growth industries in hiring and retaining LEP and Hispanic Americans. In addition, projects must be designed with the expectation that curricula and training models that prove successful through this demonstration will be shared with the public workforce investment system in order to expand the impact of the LEP and Hispanic Worker Initiative. Projects should be applicable to multiple locations and/or industries.

6. Outcomes

The primary objective of the LEP and Hispanic Worker Initiative is to raise the English and occupational skills levels of individuals served in order to meet the workforce demands of high-growth/high-demand industries. Therefore, projects funded under the initiative must be results-oriented and identify clear and specific outcome measures that are appropriate to the proposed training solution(s). Because the LEP and Hispanic Worker Initiative will invest in customized strategies, ETA recognizes that specific outcomes will vary from project to project. Training outcomes should include those applicable performance measures tracked by the workforce system's "Common Measures" as specified in Training and Employment Guidance Letter No. 28–04 (*http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=1711*). Other outcome measures may include the English literacy gains attained by participants (as discussed above and referenced in TEGL 28–04 Attachment 4), employer satisfaction with the competencies of training graduates, and other measures appropriate to the scope of activities in the proposed project.

**Part II—Award Information**

*A. Award Amount*

ETA intends to fund 7 to 10 projects in a range of $500,000 to $1 million; however, this does not preclude funding decisions outside this range, or funding a smaller or larger numbers of projects, based on the number and quality of submissions. Applicants may submit budgets for quality projects at appropriate funding levels, however, as noted the limited funding available through this SGA is intended to supplement project budgets (as mentioned under Part I.B.4—Leveraged Resources) rather than be the sole funding source for the proposal.

*B. Period of Performance*

The period of performance will be up to 24 months from the date of execution of the grant documents. Delivery of services to participants should begin within 90 days of the grant execution date. The Department may approve a request for a no-cost extension to grantees for an additional period of time based on the success of the project and other relevant factors.

**Part III—Eligibility Information**

*A. Eligible Applicants*

Eligible applicants include any organization meeting the requirements of this Part and capable of fulfilling the terms and conditions of this solicitation such as public, private for-profit, and private non-profit organizations including community and faith-based organizations. Any applicant that is not a Workforce Investment Board or One-Stop Career Center will be required to demonstrate evidence of an active partnership or coordination with the public workforce investment system in the proposed service area for the delivery of services to participants of that area. Such evidence may include a memorandum of agreement, a memorandum of understanding, or letters of commitment from partners. Applicants are also encouraged to work with other local partners.

The application must clearly identify the applicant and describe its capacity to administer this project. The applicant must also identify whether the fiscal agent is an organization other than the applicant.

*B. Demonstrated Partnerships*

Applicants are encouraged to think broadly and collaborate with entities that possess a sound grasp of economic and labor market conditions in the region and are in a position to address the workforce challenges of Hispanics and LEP individuals. As indicated in Part I.B.3—Strategic Partnerships, applicants must demonstrate the existence of a partnership that includes at least one entity from each of three categories:

• The publicly funded workforce investment system, which may include state or local Workforce Investment Boards, State Workforce Agencies, and One-Stop Career Centers and their partners;

• The education and training community, which includes community and technical colleges, tribal colleges, four-year colleges and universities, and other training entities; and

• High-growth/high-demand employers or industry-related organizations such as associations and unions.

Additionally, partnerships may include community-based or faith-based organizations. While the Department welcomes applications from newly formed partnerships, applicants are advised that grant funds may not be used to develop partnerships, and participant services are expected to be a part of the application.

*C. Participant's Share of Resources*

As mentioned in Part I.B.4—Leveraged Resources, applicants are required to commit non-Federal resources equivalent to at least 50 percent of the grant award amount. The applicant's match resources may be provided by cash or in-kind contributions to support allowable activities; however, at least 50 percent of the applicant's share must be made up of cash or in-kind contributions from the business partners. Federal resources of any kind may not be counted to meet these requirements. For example, if a project is expected to cost $750,000, the applicant might request grant funds from ETA under this solicitation in the amount of $500,000. The applicant would then be expected to provide a match of non-Federal cash and in-kind contributions totaling $250,000 (50 percent of the funding requested), of which $125,000 (50 percent of the match) must be contributed by the business partners. Match funds must be documented on either the Application for Federal Assistance Standard Form (SF) 424 (available at *http://www.whitehouse.gov/omb/grants/sf424.pdf*) or the Budget Information Sheet SF–424A (available at *http://www.whitehouse.gov/omb/grants/sf424a.pdf*).

Please note that, to count toward these requirements, a cost must be an allowable charge for Federal grant funds. If the cost would not be allowable as a grant-funded charge, then it also cannot be counted toward the selected applicant's share. Match resources are subject to the Uniform Administrative Requirements at 29 CFR 97.24 and 29 CFR 95.23 (depending on the applicant's type of organization).

*D. Other Eligibility Requirements*

*Veterans Priority.* This program is subject to the provisions of the "Jobs for Veterans Act," Public Law 107–288. In cases where providers of services must choose between two or more candidates with similar background and skill sets, the Job for Veterans Act requires that veterans, and in some cases, their spouses, be given priority. Please note that, to obtain priority of service, a veteran must meet the program's eligibility requirements. The directive providing policy guidance on veterans' priority is available at *http://www.doleta.gov/programs/VETs/*.

*Administrative Costs.* The primary use of the grant funds should be used to support the actual project (curriculum development, training, *etc.*). Therefore, applicants receiving grant funds under this solicitation may not use more than 10 percent of the amount requested for administrative costs associated with the project. Administrative costs are defined at 20 CFR 667.220.

*Distribution Rights.* Selected applicants must agree to give ETA the right to use and distribute all materials such as training models, curriculum, technical assistance products, *etc.*, developed with grant funds. Materials developed with grant resources are in the public domain; therefore, ETA has the right to use, reuse, modify, and distribute all grant-funded materials and products to any interested party, including broad distribution to the public workforce investment system via the Internet or other means.

*Legal rules pertaining to inherently religious activities by organizations that receive Federal financial assistance.* The government is generally prohibited from providing direct Federal financial assistance for inherently religious activities. Grants under this solicitation may not be used for religious instruction, worship, prayer, proselytizing, or other inherently religious activities. Neutral, non-religious criteria that neither favor nor disfavor religion will be employed in the selection of grant recipients and must be employed by grantees in the selection of sub-recipients.

**Part IV—Application and Submission Information**

*A. Address To Request Application Package*

This SGA contains all of the information and forms needed to apply for grant funding.

*B. Content and Form of Application Submission*

Applicants must submit an original signed application and three hard copies. The proposal consists of two separate and distinct parts, part I and II. Both parts must be included in a complete application. Applications that fail to adhere to the instructions in this section will be deemed non-responsive and will not be considered for funding.

Part I of the proposal is the Financial Proposal and must include the following two items.

• The Application for Federal Assistance SF–424 (Appendix A) (available at *http://www.whitehouse.gov/omb/grants/sf424.pdf*.) Upon confirmation of an award, the individual signing the SF–424 on behalf of the applicant shall represent the responsible entity. All applications for Federal grant and funding opportunities are required to have a Dun and Bradstreet (DUNS) number. See OMB Notice of Final Policy Issuance, 68 FR 38402 (June 27, 2003). Applicants must supply their DUNS number in item #5 of SF–424 (Rev. 9–2003). The DUNS number is easy to obtain and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

• The Budget Information Form SF–424A (Appendix B) (available at *http://www.whitehouse.gov/omb/grants/sf424a.pdf*.) In addition to preparing the Budget Information form, the applicant must provide a concise narrative explanation to support the request. The budget narrative should break down the budget and corresponding matching funds by deliverable and should discuss precisely how the administrative costs support the project goals.

Part II of the application is the Technical Proposal, which demonstrates the applicant's capabilities to plan and implement a demonstration project under the LEP and Hispanic Worker Initiative in accordance with the provisions of this solicitation. The Technical Proposal is limited to 20 double-spaced, single-sided, 8.5-inch-by-11-inch pages with 12-point font and 1-inch margins. In addition, the applicant may provide resumes, a staffing pattern, statistical information, and related materials in attachments which may not exceed 10 pages. Letters of commitment from partners providing matching resources may be submitted as attachments. Such letters will not count against the allowable maximum page totals. The applicant must reference any participating entities in the text of the Technical Proposal.

No cost data or reference to prices should be included in the Technical Proposal. The following information is required:

• A table of contents listing the application sections;

• A two-page abstract summarizing the proposed project and applicant

profile information including: Applicant name, project title, industry focus, the LEP and Hispanic workforce challenge being addressed, partnership members, funding level request, and the leveraged resources;

- A timeline outlining project activities; and
- A project description addressing the Evaluation Criteria in part V.A. of this solicitation.

Please note that the table of contents, the abstract, and the timeline are not included in the 20-page limit. Applicants that do not meet these requirements will not be considered.

*C. Submission Date, Times and Addresses*

The closing date for receipt of applications under this announcement is August 15, 2005. Applications must be received at the address below no later than 5 p.m. (Eastern 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 honored. 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: Mrs. Serena Boyd, Reference SGA/DFA PY 05–02, 200 Constitution Avenue, NW., Room N–4438, Washington, DC 20210. Applicants are advised that mail delivery in the Washington area may be delayed due to mail decontamination procedures. Hand-delivered proposals 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*. Any application received after the deadline will not be accepted. 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*. These steps will probably take multiple days to complete which should be factored into your plans for electronic application submission in order to avoid facing unexpected delays that could result in the rejection of your application.

*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. "Postmarked" 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.

*D. Intergovernmental Review*

This funding opportunity is not subject to Executive Order (EO) 12372, "Intergovernmental Review of Federal Programs."

*E. Funding Restrictions*

Determinations of allowable costs will be made in accordance with the applicable Federal cost principles as indicated in Part VI.B. 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. As discussed above, only costs that would be allowable with grant funds may be counted as part of the recipients' share of project costs.

*F. Other Submission Requirements*

*Withdrawal of Applications.* 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 signs a receipt for the proposal.

**Part V—Application Review Information**

*A. Rating Criteria*

This section identifies and describes the criteria that will be used to evaluate the proposals for the LEP and Hispanic Worker Initiative. The criteria and point values are:

| Criteria | Points |
|---|---|
| 1. Statement of Need and Target Population | 15 |
| 2. Strategic Partnership and Leveraged Resources | 10 |
| 3. Project Design | 30 |
| 4. Outcomes, Benefits, and Impact | 25 |
| 5. Sustainability and Replication | 10 |
| 6. Program Management and Organization Capacity | 10 |
| Total Possible Points | 100 |

1. Statement of Need and Target Population (15 Points)

The applicant must demonstrate a clear and specific need for the LEP and Hispanic Worker Initiative investment in that workforce area. Projects funded through this solicitation should be based in local, regional, or state labor markets. The applicant must describe the economic and workforce conditions in the project community; identify the needs of the targeted high-growth industry(ies) that will be addressed by the project; and define the high-demand occupations targeted for project participants. The applicant is expected to indicate the appropriateness of the occupations being focused on given local labor market conditions, wage enhancement potential, job retention for the target group, and upward mobility opportunities for participants. Applicants may draw from a variety of resources for supporting data, including traditional labor market information, information from economic developers on locally projected growth, information collected by business organizations such as chambers of commerce and trade associations, and discussions with local businesses that make up the high-growth industries of the local area.

The applicant must describe the proposed target population for the project, including the nature of the population in the region or area that would be served such as what percent of the population is LEP or Hispanic. The description should include the number of individuals to be served, and the specific workforce challenge(s) to be addressed through the project. In addition, the applicant should identify the target group to be served (*i.e.*, incumbent workers, new job entrants,

youth or adults) who lack the language, basic, and occupational skills identified as in high demand locally.

Scoring on this criterion will be based on the extent of demonstrated need. Important factors for evaluation include:

- Demonstrated knowledge of the LEP and Hispanic population in the project area, including their impact on and participation in the local or regional labor force.
- Clear identification of target population characteristics, including their English language proficiency, and basic and occupational skill needs.
- Demonstrated existence of one or more industry identified workforce challenge in the area in which the grant activity will take place.
- Documented language and skill shortages for industry or occupations targeted.
- Identification of the sources of the data used in the analysis.
- If appropriate, the nature of larger strategic economic development or workforce investment plans or projects with which the proposed project is aligned.

2. Strategic Partnership and Leveraged Resources (10 Points)

Applicants must demonstrate that the proposed project will be implemented by a partnership that includes at least one entity from each of three categories:

- The publicly funded workforce investment system, which may include state and local Workforce Investment Boards, State Workforce Agencies, and One-Stop Career Centers and their partners;
- The education and training community, which includes community and technical colleges, four year colleges and universities, and other training entities; and
- Employers or industry-related organizations such as associations and unions.

Additionally, partnerships may include community-based or faith-based organizations. While the Department welcomes applications from newly formed partnerships, applicants are advised that grant funds may not be used to develop partnerships.

The Department encourages, and will be looking for, applications that go beyond the minimum level of partnership 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. Applicants must demonstrate their ability to leverage non-Federal resources equivalent to at least 50 percent of the amount of funding requested from ETA. Both cash and in-kind contributions are acceptable. At least 50 percent of the applicant's total share of resources must be cash or in-kind contributions from business partners. Federal resources cannot be counted towards the match.

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 demonstrated commitment of leveraged non-Federal resources for the project. Important factors include:

- The number of partners involved, the nature of their in-kind or cash 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, an MOU, or partner signatures on the proposal.)
- 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.
- The demonstrated commitment of leveraged resources of at least 50 percent of the total amount requested from ETA, 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.

3. Project Design (30 Points)

Applicants are requested to specify the purpose of the proposed project and demonstrate how the project will provide solutions to the workforce challenges of LEP individuals or Hispanics as well as those of the targeted high-growth industries. Describe how the training curricula proposed to upgrade the language, basic, and occupational skills of participants will be integrated. Describe how creative teaching methodologies will be used in implementing accelerated education and training services for participants and where such methodologies will be provided (*i.e.*, on the worksite, in a classroom setting, at a One-Stop Career Center, etc.). Describe how these creative teaching methodologies will:

- Shorten the period of time required for individuals to acquire the language, basic, and occupational skills demanded by local high-growth industry employers;
- Increase the levels of literacy and employment communication skills to meet the levels demanded by local high-growth employers; and
- Increase the direct participation of high-growth employers in developing or implementing the training.

Applicants are required to identify the outreach and recruitment methods that will be used to contact and recruit participants including (if applicable) any organization other than the grantee that will be responsible for such activities. Describe why the methods and organizations (if applicable) will be effective in achieving the planned participation levels. Identify the criteria that will be used, and the organization (if applicable) that will be responsible for selecting individuals that will participate in the project.

Applicants are required to describe the service process that will be used in the project including any sequence of services in the overall process (*i.e.*, assessments, training, etc.), how the specific services for participants are determined, and which partner will provide the services. For example, partners of the One-Stop Career Center system can play a key role in assessing each participant's basic language and occupational skill levels as well as assist in placing individuals in employment after completion of training. In addition, identify the support services (if applicable) that will be provided to participants during and post training as well as pre- and post-employment/placement services, and describe how such services will facilitate the individuals' participation. Describe the rationale for the services that are necessary for participants to attain, retain, or advance in the targeted occupation or industry. Indicate what services will be provided by project partners or sources other than the grant itself.

Scoring on this criterion will be based on how well the service plan/project design provides solutions to the workforce challenges of LEP and Hispanic workers while addressing the needs of high-growth 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.

• The demonstrated link between the proposed project and the workforce challenges identified for LEP and Hispanic workers.

• The existence of a strategy that incorporates outreach and recruitment activities geared toward the appropriate target group, including disseminating information about the project and planned activities.

• The industry and occupation, in which participants are to be placed, retained, or advanced relative to target skills and wage goals.

• Evidence that the training curricula will be developed (if applicable) and implemented to meet language, basic, and occupational skill standards required by high-growth employers.

• The length of the project for participants.

4. Outcomes, Benefits and Impact (25 Points)

Applicants must fully describe the outcomes, benefits, and impacts expected to result from the project in relation to the workforce challenges described in the statement of need. Applicants must describe the proposed outcome measures relevant to measuring the success or impact of the project. To the extent possible, such outcome measures should mirror those defined by the workforce system's Common Measures for all Federal job training and employment programs, which include an entered employment rate, a retention rate, and a measurement of earnings gains as specified in Training and Employment Guidance Letter No. 28–04 (*http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=1711*).

Other performance outcomes to be measured should include English literacy skills gained by participants, and diplomas or credentials resulting from the project, as appropriate. Applicants are required to identify the assessment tool(s) and/or method(s) that will be used to determine the skills and aptitudes of participants, including tools that will be used to measure English proficiency and basic skills levels. Describe the specific strategies and methods that will be used for measuring skills acquisition during the training process. Any discussion of outcome goals should include the methods proposed to collect and validate outcome data in a timely and accurate manner.

Scoring on this criterion will be based on the following factors:

• The expected project outcomes are clearly identified, measurable, realistic, and consistent with the objectives of the project.

• Applicant commitment to track and report training outcome measures, including employment outcomes.

• Identification of the specific assessment instrument(s) and method(s) that will be used for measuring industry-identified occupational and literacy skills gains during the training process.

• 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.

• The extent to which the project will be of significant and practical use to the public workforce investment system.

5. Sustainability and Replication (10 Points)

Applicants must provide evidence that, if successful, activities supported by the demonstration grant project will be continued after the expiration date of the grant. Applicants must describe how the model, training curricula, partnership strategies, and project design elements can be replicated in other workforce investment areas.

Scoring of this criterion will be based on the extent to which the project can be sustained after the grant expires and the expressed commitment of the applicant to make curricula and training models available for distribution.

6. Program Management and Organization Capacity (10 Points)

Applicants must describe their ability to provide the services proposed and their experience working with integrated learning strategies and with LEP individuals and Hispanics. The applicant must also include a description of organizational capacity and the organization's track record in projects similar to that described in the proposal 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, 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 staff are sufficient to carry out their designated roles.

• The applicant organization has significant capacity to accomplish the goals and outcomes of the project, including appropriate systems to track outcome data.

*B. Review and Selection Process*

Applications for the LEP and Hispanic Worker Initiative will be accepted commencing on the date of publication of this announcement until the closing date. A technical review panel will carefully evaluate applications against the rating criteria described in Part V.A., which are based on the policy goals, priorities, and emphases set forth in this SGA. Up to 100 points may be awarded to an application, based on the Rating Criteria described in Part V.A. 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 or her attention.

The ranked scores will serve as the primary basis for selection of applications for funding, in conjunction with other factors such as urban, rural, and geographic balance; the availability of funds; uniqueness and innovative aspect of the project; and which proposals are most advantageous to the government. The government reserves the right to award projects with or without negotiations. Should a grant be awarded without negotiations, the award will be based on the applicant's signature on the SF–424, which constitutes a binding offer.

**Part VI—Award Administrative Information**

*A. Award Notices*

All award notifications will be posted on the ETA homepage at *http://www.doleta.gov.*

*B. Administrative and National Policy Requirements*

*Administrative Program Requirements.* All grantees, including faith-based organizations, will be subject to all applicable Federal laws (including provisions in appropriations law), regulations, and the applicable Office of Management and Budget (OMB) Circulars. The applicants selected under the SGA will be subject to the following administrative standards and provisions, if applicable:

• Workforce Investment Boards—20 Code of Federal Regulations (CFR) Part 667.220 (Administrative Costs).

• Non-Profit Organizations—Office of Management and Budget (OMB) Circulars A–122 (Cost Principles) and 29 CFR Part 95 (Administrative Requirements).

- Educational Institutions—OMB Circulars A–21 (Cost Principles) and 29 CFR Part 95 (Administrative Requirements).
- State and Local Governments—OMB Circulars A–87 (Cost Principles) and 29 CFR Part 97 (Administrative Requirements).
- Profit-Making Commercial Firms—Federal Acquisition Regulation (FAR)—48 CFR Part 31 (Cost Principles), and 29 CFR Part 95 (Administrative Requirements).
- All entities must comply with 29 CFR Parts 93 and 98, and, where applicable, 29 CFR Parts 96 and 99.
- In accordance with Section 18 of the Lobbying Disclosure Act of 1995, Public Law 104–65 (2 U.S.C. 1611) non-profit entities incorporated under Internal Revenue Code Section 501(c)(4) that engage in lobbying activities will not be eligible for the receipt of Federal funds and grants.

**Note:** Except as specifically provided in this notice, 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 ensure that all procurement transactions are conducted, as much as practical, to provide open and free competition. If a proposal identifies a specific entity to provide services, the ETA's award does not provide the justification or basis to sole-source the procurement, i.e., avoid competition, unless the activity is regarded as the primary work of an official partner to the application.

*Evaluation Requirements.* The Department may require that the project participate in an overall evaluation of the LEP and Hispanic Worker Initiative performance. To measure the impact of grants funded under the initiative, the Department may arrange for or conduct an independent evaluation of the outcomes and benefits of the projects. Grantees must agree to make records on participants, employers and funding available and to provide access to program operating personnel and to participants, as specified by the evaluator(s) under the direction of the Department, including after the expiration date of the grant.

*C. Reporting Requirements*

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 financial reports are due 30 days after the end of each calendar year quarter. Grantees must use ETA's Online Electronic Reporting System.

*Progress Reports.* The grantee must submit a quarterly progress report to the designated Federal Project Officer within 30 days after the end of each calendar year quarter. Two copies are to be submitted providing a detailed account of activities undertaken during that quarter. The Department may require additional data elements to be collected and reported on either a regular basis or special request basis. Grantees must agree to meet the Department's 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, and promising approaches and processes.
2. Progress toward performance outcomes, including updates on product, curricula, and training development.
- Training outcomes should include employment placement, employment retention, earnings gain data, as well as literacy, language, and occupational skill attainment.
- When appropriate, include employer outcomes such as increased productivity, Return on Investment (ROI), and/or employee retention rates.

3. Challenges, barriers, or concerns regarding project progress.
4. Lessons learned in the areas of project administration and management, project implementation, partnership relationships, and other related areas.

*Final Report.* A draft final report must be submitted no later than 60 days prior to the expiration date of the grant. This report must summarize project activities, employment outcomes, and related results of the training project, and should thoroughly document the project solution approach. After responding to ETA's questions and comments on the draft report, three copies of the final report must be submitted no later than the grant expiration date. Grantees must agree to use a designated format specified by the Department to prepare the final report.

**Part VII—Agency Contacts**

Any questions regarding this SGA should be faxed to Ms. Serena Boyd, Grants Management Specialist, Division of Federal Assistance, fax number (202) 693–2705 (not a toll-free number). You must specifically address your fax to the attention of Ms. Serena Boyd and should include SGA/DFA PY 05–02 a contact name, fax, and phone number.

**FOR FURTHER INFORMATION CONTACT:** Ms. Serena Boyd, Grants Management Specialist, Division of Federal Assistance, at (202) 693–3338 (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*.

**Part VIII—Other Information**

Resources for the Applicant. The Department maintains a number of Web-based resources that may be of assistance to applicants. The Web page for ETA's Division of Policy, Legislation and Dissemination (*http://www.doleta.gov/reports/DPLD.cfm*) is a valuable source of background information for the LEP and Hispanic Worker Initiative. America's Service Locator (*http://www.servicelocator.org*) provides a directory of the nation's One-Stop Career Centers. The Business Relations Group (*http://www.doleta.gov/BRG*) provides information on the President's High Growth Job Training Initiative. 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.htm*). For a basic understanding of the grants process and basic responsibilities of receiving Federal grant support, please see "Guidance for Faith-Based and Community Organizations on Partnering with the Federal Government (*http://www.fbci.gov*).

Signed at Washington, DC, this 13th day of June 2005.

**James Stockton,**

*Grant Officer, Employment and Training Administration.*

Attachments:

Appendix A: (SF) 424 Application Form

Appendix B: (SF) 424–A Budget Information Form

Appendix C: OMB Survey N. 1890–0014: Survey on Ensuring Equal Opportunity for Applicants

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:** | | **Name and telephone number of person to be contacted on matters involving this application (give area code)** | |
| Street: | | 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<br>If Revision, enter appropriate letter(s) in box(es) (See back of form for description of letters.) ☐ ☐<br>Other (specify) | **7. TYPE OF APPLICANT:** (See back of form for Application Types)<br>Other (specify)<br>**9. NAME OF FEDERAL AGENCY:** |
| **10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:** ☐☐-☐☐☐<br>TITLE (Name of Program):<br>**12. AREAS AFFECTED BY PROJECT** *(Cities, Counties, States, etc.):* | **11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:** |
| **13. PROPOSED PROJECT** Start Date: / Ending Date: | **14. CONGRESSIONAL DISTRICTS OF:** 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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Prescribed by OMB Circular A-102

## INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

This is a standard form used by applicants as a required face sheet for pre-applications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

| Item: | Entry: | Item: | Entry: |
|---|---|---|---|
| 1. | Select Type of Submission. | 11. | Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project. |
| 2. | Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable). | 12. | List only the largest political entities affected (e.g., State, counties, cities). |
| 3. | State use only (if applicable). | 13 | Enter the proposed start date and end date of the project. |
| 4. | Enter Date Received by Federal Agency<br>Federal Identifier number: If this application is a continuation or revision to an existing award, enter the present Federal Identifier number. If for a new project, leave blank. | 14. | List the applicant's Congressional District and any District(s) affected by the program or project |
| 5. | Enter legal name of applicant, name of primary organizational unit (including division, if applicable), which will undertake the assistance activity, enter the organization's DUNS number (received from Dun and Bradstreet), enter the complete address of the applicant (including country), and name, telephone number, e-mail and fax of the person to contact on matters related to this application. | 15 | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 6. | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service. | 16. | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. |
| 7. | Select the appropriate letter in the space provided.<br>A. State<br>B. County<br>C. Municipal<br>D. Township<br>E. Interstate<br>F. Intermunicipal<br>G. Special District<br>H. Independent School District<br>I. State Controlled Institution of Higher Learning<br>J. Private University<br>K. Indian Tribe<br>L. Individual<br>M. Profit Organization<br>N. Other (Specify)<br>O. Not for Profit Organization | 17. | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. |
| 8. | Select the type from the following list:<br>• "New" means a new assistance award.<br>• "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.<br>• "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. If a revision enter the appropriate letter:<br>A. Increase Award B. Decrease Award<br>C. Increase Duration D. Decrease Duration | 18 | To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.) |
| 9. | Name of Federal agency from which assistance is being requested with this application. | | |
| 10. | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested. | | |

## 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 (1) | (2) | (3) | (4) | Total (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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| 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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## INSTRUCTIONS FOR THE SF-424A



**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**General Instructions**

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

**Section A. Budget Summary Lines 1-4 Columns (a) and (b)**

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

**Lines 1-4, Columns (c) through (g)**

*For new applications*, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

*For continuing grant program applications*, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

*For supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

**Line 5** - Show the totals for all columns used.

**Section B Budget Categories**

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

**Line 6a-i** - Show the totals of Lines 6a to 6h in each column.

**Line 6j** - Show the amount of indirect cost.

**Line 6k** - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

**Line 7** - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

**INSTRUCTIONS FOR THE SF-424A** (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

**Section C. Non-Federal Resources**

**Lines 8-11** Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

**Column (a)** - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

**Column (b)** - Enter the contribution to be made by the applicant.

**Column (c)** - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

**Column (d)** - Enter the amount of cash and in-kind contributions to be made from all other sources.

**Column (e)** - Enter totals of Columns (b), (c), and (d).

**Line 12** - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

**Section D. Forecasted Cash Needs**

**Line 13** - Enter the amount of cash needed by quarter from the grantor agency during the first year.

**Line 14** - Enter the amount of cash from all other sources needed by quarter during the first year.

**Line 15** - Enter the totals of amounts on Lines 13 and 14.

**Section E. Budget Estimates of Federal Funds Needed for Balance of the Project**

**Lines 16-19** - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

**Line 20** - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

**Section F. Other Budget Information**

**Line 21** - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

**Line 22** - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

**Line 23** - Provide any other explanations or comments deemed necessary.

# 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

[FR Doc. 05–11881 Filed 6–15–05; 8:45 am]
BILLING CODE 4510–30–C

## NUCLEAR REGULATORY COMMISSION

### Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** U.S. Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of the OMB review of information collection and solicitation of public comment.

**SUMMARY:** The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR Part 54, "Requirements for Renewal of Operating Licenses for Nuclear Power Plants".

3. *The form number if applicable:* N/A.

4. *How often the collection is required:* One-time submission with application for renewal of an operating license for a nuclear power plant and occasional collections for holders of renewed licenses.

5. *Who will be required or asked to report:* Commercial nuclear power plant licensees who wish to renew their operating licenses.

6. *An estimate of the number of annual responses:* 26.

7. *The estimated number of annual respondents:* 17.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* Approximately 148,000 hours (128,000 hours one-time reporting burden and 20,000 hours recordkeeping burden).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* N/A.

10. *Abstract:* 10 CFR part 54 of the NRC regulations, "Requirements for Renewal of Operating Licensees for Nuclear Power Plants," specifies the procedures, criteria, and standards governing nuclear power plant license renewal, including information submittal and recordkeeping requirements, so that the NRC may make determinations that extension of the license term will continue to ensure the health and safety of the public.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by July 18, 2005. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

John A. Asalone, Office of Information and Regulatory Affairs (3150–0155), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *John_A._Asalone@omb.eop.gov* or submitted by telephone at (202) 395–4650.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 10th day of June, 2005.

For the Nuclear Regulatory Commission.

**Brenda Jo. Shelton,**

*NRC Clearance Officer, Office of Information Services.*

[FR Doc. E5–3087 Filed 6–15–05; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–275 AND 50–323]**

### Pacific Gas and Electric Company Diablo Canyon Power Plant, Units 1 and 2 ; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Pacific Gas and Electric Company (the licensee) to withdraw its January 7, 2004, application for proposed amendment to Facility Operating License No. DPR–80 and Facility Operating License No. DPR–82 for the Diablo Canyon Power Plant, Unit Nos. 1 and 2, respectively, located in San Luis Obispo County, California.

The proposed amendments would have revised the Technical Specifications to allow application of 4-volt alternate repair criteria at intersections of the SG tube hot-legs with the four lowest SG tube support plates.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on February 3, 2004 (69 FR 5206). However, by letter dated May 13, 2005, the licensee withdrew the proposed changes. The licensee's application dated January 7, 2004, and withdrawal letter dated May 13, 2005 are available in the NRC's Agencywide Documents Access and Management System (ADAMS) under Accession Numbers ML040120619 and ML051440406, respectively.

For further details with respect to this action, see the application for amendment dated January 7, 2004, and the licensee's letter dated May 13, 2005, which withdrew the application for the license amendments. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this10th day of June 2005.

For the Nuclear Regulatory Commission.

**Girija S. Shukla,**

*Project Manager, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. E5–3088 Filed 6–15–05; 8:45 am]

BILLING CODE 7590–01–P

## PEACE CORPS

### Privacy Act of 1974, Systems of Records

**AGENCY:** Peace Corps.

**ACTION:** Notice of establishment of new system of records.

**SUMMARY:** Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Peace Corps is establishing a new system of records, PC–28 entitled "Applications for Employment."

**DATES:** Please submit any comments within 40 days of publication on or before July 10, 2005. Unless the Peace Corps receives comments that would require another determination, this system becomes effective on July 11, 2005.

**ADDRESSES:** Please submit any comments within 40 days of publication on or before July 10, 2005 to Director, Human Resources Management *OR* Records Management Officer Peace Corps Headquarters, 1111 20th St., NW., Washington, DC 20526.

**SUPPLEMENTARY INFORMATION:** Section 552a(e)(4) and (11) of Title 5 of the United States Code provides that the public be given a 30-day period in which to comment on the new system. The Office of Management and Budget (OMB), which was oversight responsibility under the Act, requires a 40-day period in which to review the proposed system. In accordance with 5 U.S.C. 552a(r), Peace Corps has provided a report on this system to OMB and the Congress.

**PEACE CORPS (PC–28)**

**SYSTEM NAME:**

Applications for Employment.

**SYSTEM LOCATION:**

Office of Management, Human Resources Management, 1111 20th Street NW., Washington, DC 20526. Occasionally located on a temporary basis in domestic regional offices and overseas Posts. Electronic records are stored offsite by a contracted agent of the agency in a secure facility.

**CATEGORIES OF INDIVIDUALS COVERED BY SYSTEM:**

All applicants for employment with the Peace Corps (including unsuccessful applicants); all application documents and materials of current and former Foreign Service (FS) employees of the Peace Corps excluding Presidential Appointments, employees under full-time, part-time, intermittent, temporary, and limited appointments; anyone serving in an advisory capacity (compensated and uncompensated) and expert consultants; application documents and materials of other agency employees on detail; student applicants for internships, student interns and other student summer hires, Stay-in-School student employees, and Cooperative Education Program participants; Persons who have applied to the agency for Federal employment and current and former Federal employees submitting applications for other positions in the Federal service and within Peace Corps.

**CATEGORIES OF RECORD IN THE SYSTEM:**

To the extent that an agency utilizes and automated medium in connection with maintenance of records in this system, the automated versions of these records are considered covered by this system of records.

Application forms, resumes, and related correspondence. Position vacancy announcement information such as position title, series and grade level(s), office and duty location, opening and closing date of the announcement, and dates of referral and return of lists of qualified candidates; applicant personal data such as name, address, social security number, date of birth, sex, veterans' preference and federal competitive status; and applicant qualification and processing information such as qualifications, grade level eligibility, reason for ineligibility, referral status, and dates of notification.

Related correspondence may include referral letters and memoranda relating to the application process; education and training related documentation; employment history and earnings; honors, awards or fellowships; military service; convictions or offenses against the law; names of relatives employed in the Federal service; qualification determinations; employment consideration; priority groupings; correspondence relating to the consideration of the individual for employment. These records may also include copies of correspondence (electronic and otherwise) between the applicant and the Office or agency and other items provided by applicants but not specifically requested by the agency.

This system also includes any Peace Corps employment application materials established for making appointments outside a register; or reassignments, promotions, reinstatements, or transfers of Federal employees into positions at Peace Corps.

These records also contain information on the ranking of an applicant, his or her placement on a list of eligible, what certificates/rosters applicant's names appeared on, requests for Office approval of or opposition to an eligible qualifications and the Office's decision in the matter, an office's request for approval for the agency to pass over an eligible and the Office's decision in the matter, and an agency's decision: to object/pass over an eligible when the agency has authority to make such decisions. Reasons for when the objection/pass over decision applies to a compensable preference eligible with 30 percent or more disability. Records may also include: Agency applicant file systems where the agency retains applications, resumes, and other related records for hard-to-fill or unique positions for future consideration. Records and statements related to an applicant's involvement in intelligence related activities.

**AUTHORITY FOR MAINTENANCE OF SYSTEM:**

The Peace Corps Act, 22 U.S.C. 2501, *et. seq.*, including 22 U.S.C. 2506 and 22 U.S.C. 3901 *et seq.* (Foreign Service Act of 1980).

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

Used to evaluate qualifications of potential candidates by the Director, Human Resource Management and his/her delegates, Executive Staff, Hiring Managers and their delegates, other supervisors and personnel security staff. These records also may be reviewed by staff with internal audit responsibilities. The records are available to personnel specialists who review the applicants' qualifications and consider them for appropriate agency vacancies. More specifically these records and the information in these records may be used: General Routine Uses A, B, C, D, E, F, G, H, I, J, and K apply to this system.

**RECORDS MAY ALSO BE DISCLOSED TO:**

a. In contacting persons named as references, and present or former supervisors, for purposes of commenting upon, rating or verifying information about past performance submitted as part of job application.

b. To provide information to other Federal agencies, state governments, foreign governments and international organizations where employees are being considered for detail, assignment or secondment.

c. By attorneys, union representatives or other persons designated by employees in writing to represent them in complaints, grievance, appeal, litigation cases or administrative processes;

d. To disclose information to the Department of Labor, Department of Veterans Affairs, Social Security Administration, Department of Defense, or any other Federal agencies that have special civilian employee retirement and disability programs; or to a national, state, county, municipal, or other publicly recognized charitable or income security, administration agency (*e.g.*, State unemployment compensation agencies), when necessary to adjudicate a claim under the retirement, insurance, unemployment or health benefits programs of the agency or an agency cited above, or to an agency to conduct an analytical study or audit of benefits being paid or to be paid under such programs.

e. To provide an official of another Federal agency with information needed in the performance of official duties in

support of the functions for which the records were collected and maintained.

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

**STORAGE:**

These records are electronic media and hard copy. Records are maintained on data storage devices, lists, forms and hard copy record files. Electronic records are maintained within Peace Corps on proprietary systems or within an automated application system on data storage devices. Information contained in the automated system is housed offsite in a secure location as government owned and retrievable information. All information, regardless of media, is retained to be available in document form.

**RETRIEVAL:**

These records may be retrieved by the names of the individuals on whom they are maintained or by vacancy announcement number. In the Personnel Office, the records are recorded by name and vacancy announcement number. They can also be retrieved, by any common identifier in the automated application. These may be by individual name, social security number, vacancy announcement, demographic fields, veteran's status, current grade, grade applied for, or any other data fields completed by the applicant. Records are generally retrieved by the name with the social security number or date birth as a secondary identifier when necessary.

**ACCESSIBILITY/SAFEGUARDS:**

All Peace Corps employees have undergone background investigations. Access to the Agency is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. The HRM office is in a secondary secured area where even Peace Corps employees not within the HRM organization are required to have escorts. All records containing personal information are maintained in secured file cabinets or in restricted areas, access to which is limited to authorized personnel. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager and contractor has the capability of printing audit trails of access through the computer media, thereby permitting regular and ad hoc monitoring of system usage. Automated media is access limited to authorized personnel whose duties require access. Access to and use of these records are limited to those persons whose official duties require such access. The AVUE system is secured by password and through a permissions based system. Permission is granted by a system administrator. Remote data storage facilities are secured through physical and system-based safeguards. Electronic files are password protected and accessible only by authorized personnel. Data maintained electronically at Peace Corps is on network servers and located in a locked room with physical access limited to authorized personnel.

**RETENTION AND DISPOSAL:**

Applications from individuals who are selected for positions with the Peace Corps are placed on the permanent side of the employee's Official Personnel Folder. Paper applications rejected in the initial review because they do not meet requirements for Agency employment and applications which appear to meet requirements for Agency employment, but which are subsequently rejected, are retained for two years and then destroyed. Electronic media files are maintained indefinitely for the applicant to draw upon when seeking future opportunities. These files also remain available for the Agency when searching for qualified applicants for the variety of positions available agency-wide. Paper files on applicants who may be of interest at a later date are also retained indefinitely. In divisional or regional offices, the paper records may be retained for an indefinite period of time. They are then forwarded to HRM or discarded. Applicant records, whether electronic media or hard copy will be maintained until they become inactive at which time they will be retired or destroyed in accordance with published records schedules of the Peace Corps or as approved by the National Archives and Records Administration. Most records are retained for a period of 2 years. Some records are destroyed by shredding or burning while magnetic tapes or disks are erased.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Human Resources Management *OR* Records Management Officer Peace Corps Headquarters, 1111 20th St. NW., Washington, DC 20526.

**NOTIFICATION PROCEDURES:**

Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the System Manager. Requests should be accepted for processing if they contain sufficient information to convince the System Manager that the requester is the subject of the records, including identifying information needed to locate your record and a brief description of the item or items of information required. Requesters will be required to provide adequate identification, such as a driver's license, employment identification card, passport, or other identifying documents. Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete Peace Corps Privacy Act procedures are set out in 22 CFR part 308.

**RECORD ACCESS PROCEDURES:**

Requests from individuals should be addressed as indicated in the Notification section above. Individuals who wish to amend records pertaining to themselves should also address their requests as described in the Notification section above.

**CONTESTING RECORD PROCEDURES:**

Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information. Individuals have the right to request that we amend a record pertaining to them when it is believed to be inaccurate, or lacks relevance, timeliness, or completeness. At the time we grant access to a record, we will furnish guidelines for you to request amendment to the record.

Requests for amendments to records must be in writing and mailed or delivered to the FOIA/Privacy Act Officer, FOIA/Privacy Act Office, Peace Corps Headquarters, 1111 20th St. NW., Washington, DC 20526, who will coordinate the review of the request to amend the record with the appropriate office(s). Such requests must contain, at a minimum, identifying information needed to locate the record, a brief description of the item or items of information to be amended, and the reason for the requested change. The requester should submit as much documentation, arguments or other data as seems warranted to support the request for amendment. We will review all requests for amendments to records within 20 working days of receipt of the request and either make the changes or inform you of our refusal to do so and the reasons.

**RECORD SOURCE CATEGORIES:**

These records are normally submitted by the individuals seeking employment Some records could come from

individuals or employment agencies sponsoring the applications. Information in this system of records is provided by:

(a) The individual to whom the information pertains;

(b) Peace Corps officials;

(c) Other sources contacted to provide additional information about the individual under appropriate routine uses listed above in the notice. System exempted from certain provisions of the Privacy Act: Pursuant to 5 U.S.C. 552a(k)(4), records contained within this system that are required by statute to be maintained and used solely for statistical purposes are exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f). Pursuant to 5 U.S.C. 552a(k)(5)), certain records contained within this system contain confidential source information and are exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f). Pursuant to 5 U.S.C. 552a(k)(6), records that contain testing or examination material the release of which may compromise testing or examination procedures are also exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

Dated: June 6, 2005.

**Gilbert Smith,**

*Associate Director for Management.*

[FR Doc. 05–11843 Filed 6–10–05; 3:21 pm]

BILLING CODE 6051–01–M

## RAILROAD RETIREMENT BOARD

### Agency Forms Submitted for OMB Review

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

**Summary of Proposal(s)**

(1) *Collection title:* Application for Reimbursement for Hospital Services in Canada.

(2) *Form(s) submitted:* AA–104.

(3) *OMB Number:* 3220–0086.

(4) *Expiration date of current OMB clearance:* 07/31/2005.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 50.

(8) *Total annual responses:* 50.

(9) *Total annual reporting hours:* 8.

(10) *Collection description:* The Railroad Retirement Board administers the Medicare program for persons covered by the Railroad Retirement system. The collection obtains the information needed to determine eligibility and for the amount due for covered hospital services received in Canada.

**FOR FURTHER INFORMATION CONTACT:** Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer ((312) 751–3363) or *Charles.Mierzwa@rrb.gov.*

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or *Ronald.Hodapp@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

**Charles Mierzwa,**

*Clearance Officer.*

[FR Doc. 05–11871 Filed 6–15–05; 8:45 am]

BILLING CODE 7905–01–P

## RAILROAD RETIREMENT BOARD

### Sunshine Act; Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on June 22, 2005, 9:30 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

(1) Discussion on the Hiring Plan, Considering All Positions (Field Service and Others).

(2) Field Committee Report.

(3) Projected RRB Staffing Through Fiscal Year 2007.

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: June 13, 2005.

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 05–11972 Filed 6–14–05; 10:50 am]

BILLING CODE 7905–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51812; File No. SR–Amex–2005–054]**

### Self-Regulatory Organizations; American Stock Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments No. 1 and 2 Thereto Relating to Continuation of a Quote Assist Feature in Options on a Pilot Basis

June 9, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 18, 2005, the American Stock Exchange LLC ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Amex. On May 31, 2005, the Amex filed Amendment No. 1 to the proposed rule change.[3] On June 2, 2005, the Amex filed Amendment No. 2 to the proposed rule change.[4] The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[5] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Amex proposes to amend Amex Rule 950(g) to extend its pilot program implementing a quote-assist feature until April 30, 2006. The text of the proposed rule change is available on Amex's Web site (*http://www.amex.com*), at the Amex's principal office, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 made technical changes to the proposed rule text and made a clarifying change to Section III of the filing.

[4] Amendment No. 2 made technical changes to the proposed rule text and to Exhibit 4 of the filing.

[5] 15 U.S.C. 78s(b)(3)(A).

rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

Purpose

Exchange Rule 958A(e) currently requires all option specialists to execute or display customer limit orders that improve the bid or offer by price or size immediately upon receipt, unless one of the exceptions set forth in the rule applies. "Immediately upon receipt" is defined in the rule "as soon as practicable which shall mean, under normal market conditions, no later than 30 seconds after receipt."[6]

In order to assist the specialists in complying with Amex Rule 958A(e) as described above, at the end of June 2004, the Exchange provided specialists with an automated quote assist feature as part of the Amex Options Display Book (also referred to as "AODB") on a pilot basis.[7] The quote assist feature automatically displays eligible limit orders within a configurable time that can only be set on a floor-wide basis by the Exchange. While all customer limit orders are expected to be displayed immediately, the quote assist feature can be set to automatically display limit orders at or close to the end of the 30-second time frame, or within any other shorter time frame established by the Exchange. In the event there are instances where the specialist has not yet addressed the order within the applicable 30-second period, the quote assist feature will automatically display the eligible customer limit order in the limit order book at or close to the end of that period. The quote assist feature helps to ensure that eligible customer limit orders are displayed within the required time period then in effect. Commentary .01 to Amex Rule 950(g) requires the specialist to maintain and keep active the limit order quote assist feature. The Exchange has established the time frame within which the quote assist feature displays eligible customer limit orders, which time frame does not exceed the customer limit order display requirement set forth in Amex Rule 958A(e).

The Exchange now proposes to extend the quote assist feature on a pilot program basis until April 30, 2006, or until all products are trading on the ANTE System,[8] whichever occurs first. There are currently only three option classes not yet trading on the ANTE System. These products, which are all index options, will be put on the ANTE System once issues relating to the System's quote calculation methodology for these products are corrected.

The Exchange notes that the quote assist feature does not relieve the specialists of their obligation to display customer limit orders immediately. To the extent that a specialist excessively relies on the quote assist feature to display eligible limit orders without attempting to address the orders immediately, the specialist could be violating Amex Rule 958A(e). However, brief or intermittent reliance on the quote assist feature by a specialist during an unexpected surge in trading activity in an option class would not violate Amex Rule 958A(e) if used when the specialist is not physically able to address all the eligible limit orders within 30 seconds. The Exchange has issued a regulatory notice discussing the issue of excessive reliance on the quote assist feature.

The Exchange will continue to conduct surveillance to ensure that specialists comply with their obligation to execute or book all eligible limit orders within the time period prescribed by Exchange rules or policy. The Exchange commits to conducting surveillance designed to detect whether specialists, as a matter of course, rely on the quote-assist feature to display all eligible limit orders. A practice of excessive reliance upon the quote assist feature will be reviewed by Member Firm Regulation as a possible due diligence violation and/or a violation of Amex Rule 958A(e). The Exchange runs its limit order display exception report at various display intervals in an attempt to detect a pattern suggestive of undue reliance on the quote assist feature. The Exchange reports to the Commission every three months the statistical data it uses to determine whether there has been impermissible reliance on the quote assist feature by specialists.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade. The quote assist feature provides a mechanism to ensure that eligible customer limit orders are displayed within the appropriate time frame.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The proposed rule change has been designated by the Amex as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act[11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12] Consequently, because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Amex has requested that the Commission waive the 30-day operative delay specified in Rule 19b–4(f)(6) so that the Amex may continue the quote assist pilot program for three products not yet trading on the ANTE System. The Exchange states that the proposed

[6] *See* Securities Exchange Act Release No. 51062 (January 21, 2005), 70 FR 4163 (January 28, 2005).

[7] *See* Securities Exchange Act Release No. 49797 (June 3, 2004), 69 FR 32637 (June 10, 2004).

[8] *See* Securities Exchange Act Release No. 49747 (May 20, 2004), 69 FR 30344 (May 27, 2004).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

rule is substantially similar to comparable rules the Commission has approved for the Amex,[15] the Chicago Board Options Exchange, Inc. ("CBOE"),[16] and the New York Stock Exchange, Inc. ("NYSE").[17] Accordingly, the Amex believes that its proposal does not raise new regulatory issues, significantly affect the protection of investors or the public interest, or impose any significant burden on competition.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[18] The Commission believes that the Amex's proposal raises no new issues or regulatory concerns that the Commission did not consider in approving the Amex, CBOE, and NYSE proposals.

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.[19]

**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–2005–054 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–Amex–2005–054. 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 Amex. 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–2005–054 and should be submitted on or before July 7, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. E5–3092 Filed 6–15–05; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51815; File No. SR–Amex–2005–55]**

## Self-Regulatory Organizations; American Stock Exchange, LLC; Notice of Filing of Proposed Rule Change Relating to the Continuation of a Quote Assist Feature in Options on a Pilot Basis

June 9, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 19, 2005, the 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 Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Amex proposes to extend its pilot program implementing a quote-assist feature retroactively from April 30, 2005 to May 18, 2005. The text of the proposed rule change is available on the Amex's Web site (*www.amex.com*), at the Amex's principal office, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the 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 places specified in Item IV below. The 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

Exchange Rule 958A(e) currently requires all option specialists to execute or display customer limit orders that improve the bid or offer by price or size immediately upon receipt, unless one of the exceptions set forth in the rule applies. "Immediately upon receipt" is defined in the rule "as soon as practicable which shall mean, under normal market conditions, no later than 30 seconds after receipt."[3]

In order to assist the specialists in complying with Amex Rule 958A(e) as described above, at the end of June 2004, the Exchange provided specialists with an automated quote assist feature as part of the Amex Options Display Book (also referred to as "AODB") on a pilot program basis.[4] The pilot program expired on April 30, 2005, and was extended on May 18, 2005, for those products not on the ANTE System.[5] The

[15] *See* Securities Exchange Act Release No. 42952 (June 16, 2000), 65 FR 39210 (June 23, 2000).

[16] *See* Securities Exchange Act Release No. 47701 (April 18, 2003), 68 FR 22426 (April 28, 2003).

[17] *See* Securities Exchange Act Release No. 41386 (May 10, 1999), 64 FR 26809 (May 17, 1999).

[18] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] For purposes of calculating the 60-day abrogation period, the Commission considers the proposal to have been filed on June 2, 2005, the date the Amex filed Amendment No. 2.

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 51062 (January 21, 2005), 70 FR 4163 (January 28, 2005).

[4] *See* Securities Exchange Act Release No. 49797 (June 3, 2004), 69 FR 32637 (June 10, 2004).

[5] *See* SR–Amex–2005–54, filed May 18, 2005.

Exchange proposes in this filing to retroactively extend the quote assist feature pilot program from April 30, 2005, to May 18, 2005, for those products not yet trading on the ANTE System. There are currently only three option classes not yet trading on the ANTE System. These products, which are all index options, will be put on the ANTE System once issues relating to the System's quote calculation methodology for these products are corrected.

The quote assist feature automatically displays eligible limit orders within a configurable time that can only be set on a floor-wide basis by the Exchange. While all customer limit orders are expected to be displayed immediately, the quote assist feature can be set to automatically display limit orders at or close to the end of the 30-second time frame, or within any other shorter time frame established by the Exchange. In the event that there are instances in which the specialist has not yet addressed the order within the applicable 30-second period, the quote assist feature will automatically display the eligible customer limit order in the limit order book at or close to the end of that period. The quote assist feature helps to ensure that eligible customer limit orders are displayed within the required time period then in effect. Commentary .01 to Amex Rule 950(g) requires the specialist to maintain and keep active the limit order quote assist feature. The Exchange has established the time frame within which the quote assist feature displays eligible customer limit orders, which time frame does not exceed the customer limit order display requirement set forth in Amex Rule 958A(e).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The quote assist feature provides a mechanism to ensure that eligible customer limit orders are displayed within the appropriate time frame.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposed rule change will impose no burden on competition.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received with respect to 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 Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2005–55 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–Amex–2005–55. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. 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–2005–55 and should be submitted on or before July 7, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. E5–3094 Filed 6–15–05; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51821; File No. SR–BSE–2004–51]**

## Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 4 Thereto Relating to the Trading of Market Orders on the Boston Options Exchange

June 10, 2005.

**I. Introduction**

On December 15, 2004, the Boston Stock Exchange, Inc. ("BSE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] to amend the rules of the Boston Options Exchange ("BOX") to allow market orders to trade on BOX. On January 5, 2005, April 19, 2005 and April 21, 2005, BSE filed Amendment Nos. 1, 2 and 3, respectively, to the proposal. The proposed rule change, as amended, was published for comment in the **Federal Register** on April 28, 2005.[3] The Commission received no comments on the proposal. On June 2, 2005, BSE filed

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 51597 (April 21, 2005), 70 FR 22156 ("Notice").

Amendment No. 4 to the proposed rule change.[4] This order approves the proposed rule change, as amended, provides notice of filing of Amendment No. 4, grants accelerated approval to Amendment No. 4, and solicits comments from interested persons on Amendment No. 4.

## II. Description of the Proposal

BSE proposes to allow an additional order type, "Market Orders," to trade on BOX, governed by detailed procedures as set forth in the proposed rule change. BSE also proposes to clarify how BOX-Top Orders are treated in certain situations.

### *A. Trading of Market Orders on BOX*

The proposed Market Orders would be similar to, but differ from, Market-on-Opening Orders and BOX-Top Orders, two other order types currently available on BOX.[5] Market Orders submitted to BOX would be executed at the best price available in the market for the total quantity available from any contra side bid or offer. Unlike Market-on-Opening and BOX-Top Orders, however, if the full quantity of a Market Order could not be executed at the initial execution price, the remaining quantity of the Market Order would then execute at the next best price available from any contra side bid or offer, and the process would continue until the Market Order was fully executed. To avoid trading through the national best bid or offer ("NBBO"), Market Orders would be filtered prior to execution at each price level pursuant to the procedures set forth in Chapter V, Section 16(b) of the BOX Rules.

At the opening, Market Orders would have priority over Market-on-Opening and Limit Orders. In the case where the lowest offer for any options contract is $.05, and a BOX Participant enters a Market Order to sell that series, any such Market Order would be treated as a Limit Order to sell at a price of $.05.

Under the proposal, a Market Order could be designated as a Minimum Volume ("MV") order (an order type that currently exists on BOX) and in such case would only be executed if the specified minimum volume is immediately available to trade.[6] Market Orders also would be eligible to be submitted for price improvement through the PIP.[7]

### *B. Market Orders and BOX-Top Orders Submitted During a PIP*

The BOX Rules currently provide that in cases when an executable unrelated order is submitted to BOX during a PIP on the same side as the customer order, such that the unrelated order would cause an execution to occur prior to the end of the PIP, the PIP is deemed concluded and the customer order is matched pursuant to the relevant PIP provisions. The proposed rule change would set forth specifically that the submission to BOX of a Market Order or BOX-Top Order on the same side as a PIP Order will prematurely terminate the PIP when, at the time of the submission of the Market Order or BOX-Top Order, the best Improvement Order is equal to or better than the NBBO.[8] In Amendment No. 4, BSE added language to clarify that "NBBO" in this proposed provision refers to the NBBO "on the same side of the market as the best Improvement Order."[9] When the PIP is terminated, the PIP Order would be matched against the best prevailing orders on BOX (whether Improvement Orders or unrelated orders received by BOX during the PIP),[10] pursuant to Paragraph (e)(iii) of Section 18 of Chapter V of the BOX Rules. Following the execution of the PIP Order, any remaining Improvement Orders would be cancelled and the Market Order or BOX-Top Order would be filtered pursuant to Paragraph (b) of Section 16 of Chapter V of the BOX Rules.

The proposed rule change would also address the treatment of Market Orders and BOX-Top Orders entered on BOX during a PIP on the opposite side of a PIP Order.[11] As rephrased in Amendment No. 4, the proposed rule change would set forth specifically that the submission to BOX of a Market Order or BOX-Top Order on the opposite side as a PIP Order will immediately execute against the PIP Order when, at the time of the submission of the Market Order or BOX-Top Order, the best Improvement Order "does not cross the NBBO on the same side of the market as the PIP Order."[12] The Market Order or BOX-Top Order would immediately execute against the PIP Order up to the lesser of (a) the size of the PIP Order, or (b) the size of the Market Order or BOX-Top Order. The trade would be executed at a price equal to either (i) one penny better than the NBBO, if the best BOX price on the opposite side of the market from the Market Order or BOX-Top Order is equal to the NBBO at the time of the execution, or (ii) the NBBO.[13] The remainder of the Market Order or BOX-Top Order, if any, would be filtered pursuant to Section 16(b) of Chapter V of the BOX Rules. The remainder of the PIP Order, if any, would continue in the PIP process. In Amendment No. 4, BSE

[4] In Amendment No. 4, BSE made simplifying and clarifying revisions to a portion of the proposed rule text and represented that BSE will provide certain information to the Commission as discussed further below.

[5] Market-on-Opening Orders, which are valid only during the pre-opening and opening match phases of the market, are executed on the market opening at the best price available in the market until all volume required to fill the order on the opposite side of the market has been traded or the order quantity has been exhausted. BOX-Top Orders, which may be submitted only during the continuous trading phase of the market, are executed at the best price available in the market for the total quantity available from any contra side bid or offer. In general, in the case of both Market-on-Opening Orders and BOX-Top Orders, any residual volume left after part of the order has been executed is automatically converted to a limit order at the price at which the original Market-on-Opening Order and BOX-Top Order was executed.

[6] If a volume equal to or greater than the specified minimum volume of an MV order trades, the residual volume would be filtered against trading through the NBBO according to the procedures set forth in Section 16(b) of Chapter V of the BOX Rules and, if applicable, executed with any orders on the BOX Book.

[7] In general, the PIP is a three-second auction starting at a price better than the current NBBO during which BOX Participants compete to participate in the execution of a customer order submitted to the PIP (newly termed under the proposal as a "PIP Order"), by submitting specially designated orders called Improvement Orders in one-penny increments that are valid only in the PIP process. For a more complete description of the PIP process, see Securities Exchange Act Release No. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (approving establishment of trading rules for BOX, including the PIP process).

[8] Proposed change to Paragraph (i) of Section 18 of Chapter V of the BOX Rules.

[9] The above phrase replaces parenthetical language in the proposed rule text as set forth in the Notice, which stated: "If a BOX-Top Order or Market Order is a buy order, the best Improvement Order is better than the NBBO when the price of the best Improvement Order is lower than the National Best Offer. If a BOX-Top Order or Market Order is a sell order, the best Improvement Order is better than the NBBO when the price of the best Improvement Order is higher than the National Best Bid." BSE proposed this revision to simplify and clarify the proposed rule text, and represents that the revised language has the same meaning as the language previously proposed.

[10] Excluding unrelated orders that were immediately executed during the interval of the PIP, as described below. *See* proposed Paragraph (e)(iii) of Section 18 of Chapter V of the BOX Rules.

[11] Proposed change to Paragraph (i) of Section 18 of Chapter V of the BOX Rules.

[12] The above phrase replaces the phrase "is equal to or better than the NBBO" in the proposed rule text, as well as the accompanying proposed parenthetical language that stated: "If a BOX-Top Order or Market Order is a buy order, the best Improvement Order is better than the NBBO when the price of the best Improvement Order is lower than the National Best Offer. If a BOX-Top Order or a Market Order is a sell order, the best Improvement Order is better than the NBBO when the price of the best Improvement Order is higher than the National Best Bid." BSE proposed these revisions to simplify and clarify the proposed rule text, and represents that the revised language has the same meaning as the language previously proposed.

[13] If the PIP Order is to buy, the trade will be priced at the national best bid or one penny more than the national best bid. If the PIP Order is to sell, the trade will be priced at the national best offer or one penny less than the national best offer.

also proposes to clarify that following the execution of the PIP Order, any remaining Improvement Orders would be cancelled.[14]

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 4, including whether Amendment No. 4 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–BSE–2004–51 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–BSE–2004–51. 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 BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2004–51 and should be submitted on or before July 7, 2005.

## IV. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change, as amended, and finds that it is consistent with the requirements of Section 6 of the Act[15] and the rules and regulations thereunder applicable to a national securities exchange.[16] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[17] which requires, in part, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Section 6(b)(5) also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

BSE represents that the majority of BOX's current and prospective order flow providers ("OFPs") have requested the ability to trade Market Orders on BOX because their technology is designed for the use of market orders and their customers prefer market orders over BOX-Top Orders. BOX wishes to accommodate and attract order flow from these OFPs.[18] The Commission notes that other options exchanges accept market orders, and believes that it is consistent with the Act for BOX to accommodate this type of order, as well. The Commission notes, in particular, that Market Orders would be filtered at every price level to prevent trading through the NBBO.

The Commission further believes that the various related provisions that BSE has proposed regarding the use and handling of Market Orders, including the availability of the MV designation for Market Orders, the ability to submit Market Orders as PIP Orders, and the priority of Market Orders at the opening over Limit Orders and Market-on-Opening Orders, are reasonable and consistent with the Act.

The Commission notes that the proposed rule change sets forth in detail the manner in which Market Orders will interact with other orders in the BOX system, and in particular how such orders, as well as BOX-Top Orders, will be treated if entered while a PIP is in progress. The BOX Rules currently provide that a PIP is concluded early when an unrelated order is submitted to the BOX in certain cases. The proposed rule change specifies the circumstances under which a Market Order or Box-Top Order will cause an early termination, and how the PIP Order and Market Order or Box-Top Order will be executed in these circumstances. The proposed rule change further specifies the circumstances in which a Market Order or Box-Top Order on the opposite side of a PIP Order will execute against the PIP Order before the conclusion of the PIP, and the principles governing what price the PIP Order will receive in these circumstances. These proposed provisions thus clarify for investors and market participants how their orders will be executed in various situations.

While BSE has set forth the reasons why it believes early termination of the PIP and immediate execution of opposite-side Market Orders and Box-Top Orders is necessary in the relevant circumstances,[19] the Commission is cognizant of a concern that premature termination of the PIP could result in a PIP Order being disadvantaged by the premature conclusion of a PIP, in that the PIP Order would not have received the full three-second auction exposure period in which to receive price improvement. The Commission notes that current Paragraph (i) of Section 18 of Chapter V of the BOX Rules states that it is considered conduct inconsistent with just and equitable principles of trade for any BOX Participant to enter unrelated orders into BOX for the purpose of disrupting or manipulating the Improvement Period process. The Commission believes that this rule should help address the above concern.

In addition, in Amendment No. 4, BSE represents that during the Pilot Period set forth in the BOX Rules relating to aspects of the PIP and reports on the PIP process,[20] BOX will provide additional information each month with respect to situations in which the PIP is terminated prematurely or a Market

[14] Proposed change to Paragraph (i) of Section 18 of Chapter V of the BOX Rules. A related change would be made to Paragraph (b) of Section 16 of Chapter V of the BOX Rules, which describes how inbound orders to BOX are filtered to avoid trading through the NBBO. BSE proposes to add subparagraph (iv) to clarify that at each step in the filtering process, under certain circumstances if an order (including a Market Order) is an unrelated order on the opposite side of a PIP Order, the order will be immediately executed against the PIP Order as described above, and that any remaining quantity will continue in the filtering process as set forth in Paragraph (b) of Section 16 of Chapter V of the BOX Rules.

[15] 15 U.S.C. 78f.

[16] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b)(5).

[18] *See* Notice.

[19] *See* Notice.

[20] *See* Paragraph .01 of Supplemental Material to Section 18 of Chapter V of the BOX Rules and Securities Exchange Act Release No. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004).

Order or BOX-Top Order interacts with a PIP Order before the PIP's conclusion. This data should aid the Commission in evaluating the effect of these rules. The following information will be provided:

(1) The number of times that a Market Order or BOX-Top Order in the same series on the same side of the market as the PIP Order prematurely terminated the PIP, and (a) the number of times such orders were entered by the same (or affiliated) firm that initiated the PIP that was terminated, and (b) the number of times such orders were entered by a firm (or an affiliate of such firm) that participated in the execution of the PIP Order;

(2) For the orders addressed in each of 1(a) and 1(b) above, the percentage of PIP premature terminations due to the receipt of a Market Order or BOX-Top Order in the same series on the same side of the market as the PIP Order that occurred within one second of the start of the PIP; the percentage that occurred between one and two seconds of the start of the PIP; and the percentage that occurred between two and three seconds of the start of the PIP; and the average amount of price improvement provided to the PIP Order where the PIP is prematurely terminated during each of these time periods;

(3) The number of times that a Market Order or BOX-Top Order in the same series on the opposite side of the market as the PIP Order immediately executed against the PIP Order, and (a) the number of times such orders were entered by the same (or affiliated) firm that initiated the PIP, and (b) the number of times such orders were entered by a firm (or an affiliate of such firm) that participated in the execution of the PIP Order;

(4) For the orders addressed in each of 3(a) and 3(b) above, the percentage of PIP early executions due to the receipt of a Market Order or BOX-Top Order in the same series on the opposite side of the market as the PIP Order that occurred within one second of the start of the PIP; the percentage that occurred between one and two seconds of the start of the PIP; and the percentage that occurred between two and three seconds of the start of the PIP; and the average amount of price improvement provided to the PIP Order where the PIP Order is immediately executed during each of these time periods; and

(5) The average amount of price improvement provided to the PIP Order when the PIP runs the full three seconds.

**V. Accelerated Approval of Amendment No. 4**

Pursuant to Section 19(b)(2) of the Act,[21] the Commission may not approve any proposed rule change, or amendment thereto, prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and do publishes its reasons for so finding. The Commission hereby finds good cause for approving Amendment No. 4 to the proposal prior to the 30th day after publishing notice of Amendment No. 4 in the **Federal Register**. The Commission believes that the proposed revisions made by Amendment No. 4 simplify and clarify the proposed rule change and do not change its substance. As such, the Commission believes it is appropriate to accelerate approval of Amendment No. 4 so that BSE can implement the proposed rule change without delay. In addition, in Amendment No. 4, BSE represents that it will provide specified information each month that the Commission believes will aid it in its evaluation of the PIP. Accordingly, pursuant to Section 19(b)(2) of the Act,[22] the Commission finds good cause to approve Amendment No. 4 prior to the 30th day after notice of Amendment No. 4 is published in the **Federal Register**.

**VI. Conclusion**

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act.[23]

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (SR–BSE–2004–51) and Amendment Nos. 1, 2, and 3 are approved; and that Amendment No. 4 thereto is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

**J. Lynn Taylor,**

*Assistant Secretary.*

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[21] 15 U.S.C. 78s(b)(2).

[22] 15 U.S.C. 78s(b)(2).

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51818; File No. SR–ISE–2005–18]**

## Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to the Preferencing of Orders to Exchange Market Makers

June 10, 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 March 31, 2005, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On May 31, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On June 7, 2005, the Exchange filed Amendment No. 2.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal, as amended, on an accelerated basis, for a pilot period through July 22, 2005.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend the allocation procedures contained in Exchange Rule 713 to allow Electronic Access Members to designate "Preferred Market Makers" on the Electronic Access Members" orders (*i.e.*, "preference" orders to a particular market maker), who would receive an enhanced allocation if such market maker is quoting at the national best bid or offer ("NBBO") at the time such order is received by the Exchange. The text of the proposed rule change is set forth below. *Italics* indicate additions; [brackets] indicate deletions.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Form 19b–4 dated May 31, 2005 ("Amendment No. 1"). Amendment No. 1 replaced and superseded the original filing in its entirety.

[4] *See* Partial Amendment dated June 6, 2005 ("Amendment No. 2"). In Amendment No. 2, the Exchange proposed that the length of the pilot period for the proposed rule change be reduced from one year from the date of approval to six weeks from the date of approval. Amendment No. 2 also modified the Exchange's representations regarding surveillance in note 10 *infra*.

Rule 713. Priority of Quotes and Orders

No change.

**Supplementary Material to Rule 713**

.01 no change.

(a) Subject to the two limitations *in subparagraphs (b) and (c)* below *and subject to paragraph .03 (Preferenced Orders)*, Non-Customer Orders and market maker quotes at the best price receive allocations based upon the percentage of the total number of contracts available at the best price that is represented by the size of the Non-Customer Order or quote;

(b) no change.

(c) no change.

.02 no change.

*.03 Preferenced Orders. For a pilot period ending [insert date six-weeks from approval], an Electronic Access Member may designate a "Preferred Market Maker" on orders it enters into the System ("Preferenced Orders").*

*(a) A Preferred Market Maker may be the Primary Market Maker appointed to the options class or any Competitive Market Maker appointed to the options class.*

*(b) If the Preferred Market Maker is not quoting at a price equal to the NBBO at the time the Preferenced Order is received, the allocation procedure contained in paragraph .01 shall be applied to the execution of the Preferenced Order.*

*(c) If the Preferred Market Maker is quoting at the NBBO at the time the Preferenced Order is received, the allocation procedure contained in paragraph .01 shall be applied to the execution of the Preferenced Order except that the Primary Market Maker will not receive the participation rights described in paragraphs .01(b) and (c), and instead the Preferred Market Maker shall have participation rights equal to the greater of:*

*(i) the proportion of the total size at the best price represented by the size of its quote, or*

*(ii) sixty percent (60%) of the contracts to be allocated if there is only one (1) other Non-Customer Order or market maker quotation at the best price and forty percent (40%) if there are two (2) or more other Non-Customer Orders and/or market maker quotes at the best price.*

* * * * *

Rule 804. Market Maker Quotations

(a) through (d) no change.

(e) Continuous Quotes. A market maker must enter continuous quotations for the options classes to which it is appointed pursuant to the following:

(1) Primary Market Makers. Primary Market Makers must enter continuous quotations and enter into any resulting transactions in all of the series listed on the Exchange of the options classes to which he is appointed on a daily basis.

(2) Competitive Market Makers. (i) On any given day, a Competitive Market Maker must participate in the opening rotation and make markets and enter into any resulting transactions on a continuous basis in *all of the series listed on the Exchange of* at least sixty percent (60%) of the options classes for the Group to which the Competitive Market Maker is appointed *or 60 options classes in the Group, whichever is lesser.* [and all the series of such options classes listed on the Exchange.]

(ii) Whenever a Competitive Market Maker enters a quote [or order] in an options class to which it is appointed, it must maintain continuous quotations for all series *of the options class listed on the Exchange* [within the same expiration month] until the close of trading that day[; provided, however, if such quote or order is entered in an options series during the month in which such series expires, the Competitive Market Maker must participate in the opening rotation and maintain continuous quotations for all series in that month each day through their expiration].

(iii) A Competitive Market Maker may be called upon by an Exchange official designated by the Board to submit a single quote or maintain continuous quotes in one or more of the series of an options class to which the Competitive Market Maker is appointed whenever, in the judgment of such official, it is necessary to do so in the interest of fair and orderly markets.

* * * * *

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

According to the Exchange, the purpose of the proposed rule change is to assure that the Exchange remains competitive with other options exchanges that have proposed to allow order-flow providers to designate or "preference" non-specialist market makers, and to provide enhanced allocations to those preferenced market makers in order to reward them for attracting order flow to the Exchange.[5] The Exchange proposes to implement the rule change on a six-week pilot basis.

The proposal amends the Exchange's procedure for allocating trades among market makers and non-customer orders under Exchange Rule 713 to provide an enhanced allocation to a "Preferred Market Maker" when the Preferred Market Maker is quoting at the NBBO. Specifically, under the proposal, an Electronic Access Member may designate any market maker appointed to an options class to be a Preferred Market Maker on orders the Electronic Access Member enters into the Exchange's system ("Preferenced Orders"). If the Preferred Market Maker is not quoting at the NBBO at the time the Preferenced Order is received, the Exchange's existing allocation and execution procedures would be applied to the execution.[6]

Under existing Exchange Rule 713, Supplementary Material .01, no market participant can execute a greater number of contracts than is associated with the price of the market participant's existing interest. After all Public Customer Orders are filled, Non-Customer Orders and market maker quotes at the best price automatically receive allocations based upon the percentage of the total number of contracts available at the best price that is represented by the size of the Non-Customer Order or quote (*i.e.*, pro-rata based on size). However, if the Primary Market Maker is quoting at the best price, it automatically receives an enhanced participation equal to the greater of: (i) The proportion of the total

[5] *See* Securities Exchange Act Release Nos. 51759 (May 27, 2005), 70 FR 32860 (June 6, 2005) (order approving SR–Phlx–2004–91); and 51779 (June 2, 2005), 70 FR 33564 (June 8, 2005) (order approving SR–CBOE–2004–71).

[6] Marketable customer orders are not automatically executed at prices inferior to the NBBO. If the Exchange's best bid or offer is inferior to the NBBO, the marketable customer order is handled by the Primary Market Maker according to Exchange Rule 803(c).

size at the best price represented by the size of the Primary Market Maker's quote, or (ii) 60 percent of the contracts to be allocated if there is only one other Non-Customer Order or market maker quote at the best price, 40 percent if there are two other Non-Customer Orders and/or market maker quotes at the best price, and 30 percent if there are more than two other Non-Customer Orders and/or market maker quotes at the best price. In addition, the Primary Market Maker has priority to execute orders for five contracts or fewer if the Primary Market Maker is quoting at the best price.[7]

Under the proposal, if a Preferred Market Maker is quoting at the NBBO at the time a Preferenced Order is received, the allocation procedure would be modified so that the Preferred Market Maker—instead of the Primary Market Maker[8]—would receive an enhanced allocation equal to the greater of: (i) The proportion of the total size at the best price represented by the size of its quote, or (ii) 60 percent of the contracts to be allocated if there is only one other Non-Customer Order or market maker quote at the best price and 40 percent if there are two or more other Non-Customer Orders and/or market maker quotes at the best price.[9] Unexecuted contracts remaining after the Preferred Market Maker's allocation would be allocated pro-rata based on size as described above.[10]

As part of this proposal, the Exchange also proposes to increase the quotation obligations of Competitive Market Makers. Pursuant to current Exchange Rule 802, the Exchange allocates options classes into ten Groups and then appoints Primary Market Makers and Competitive Market Makers to the Groups. Under current Exchange Rule 804(e), a Primary Market Maker is required to maintain continuous quotations in all of the series of all of the options classes to which the Primary Market Maker is appointed, *i.e.*, all of the series in all of the options classes in the Primary Market Maker's appointed Group. Competitive Market Makers are required to maintain continuous quotations in all of the series in at least 60 percent of the options classes in the Group to which they are appointed. However, a Competitive Market Maker may enter continuous quotes in less than all of the series in the remaining 40 percent of the classes in its appointed Group, subject to a requirement to maintain continuous quotes in those and related series through the end of the day and, in certain circumstances, through expiration of the series.

Because under the proposal, all Competitive Market Makers would be eligible to be designated as a Preferred Market Maker by Electronic Access Members and receive an enhanced allocation in any options series in which the Competitive Market Maker is quoting at the NBBO, the Exchange proposes to amend Exchange Rule 804(e) to require that a Competitive Market Maker maintain continuous quotes in all of the series of any options class it is quoting. Specifically, under the proposed amendment to Exchange Rule 804(e), a Competitive Market Maker would continue to be required to make markets in all of the series of a minimum number of options classes in its appointed Group, but also would be required to enter continuous quotes in all of the series of any options class in which it seeks to make markets above the minimum requirement. Accordingly, a Competitive Market Maker would be required to maintain continuous quotations in all of the series of any options classes in which it might receive an enhanced participation as the result of being designated as a Preferred Market Maker.[11]

The proposal also seeks to amend the 60 percent requirement to more fairly apply the minimum quotation requirement on Competitive Market Makers. The number of options classes allocated to the ten different Groups changes as options classes are listed and delisted by the Exchange. Because the minimum requirement is a percentage of the number of options classes in a Group, some Competitive Market Makers are required to maintain continuous quotes in a much larger number of options classes than others. While the Exchange believes a percentage-based minimum requirement remains appropriate, it believes there should be a limit to the number of options classes a Competitive Market Maker is required to continuously quote. Accordingly, the Exchange proposes to amend Exchange Rule 804(e)(2) to provide that a Competitive Market Maker must quote at least 60 percent of the options classes in the Group or 60 options classes, whichever is lesser. The Exchange believes that this change would assure that Competitive Market Makers appointed to Groups with more than 100 options classes would not be required to quote more than 60 options classes. The proposed amendment would not change the minimum requirement for any Competitive Market Maker appointed to a Group with less than 100 options classes, which, according to the Exchange, currently is the case in eight of the ten Groups.

The Exchange believes the proposed rule change is a necessary competitive response to the preferencing proposals filed by other options exchanges and will help the Exchange attract and retain order flow. The Exchange further believes that such order flow will add depth and liquidity to the Exchange's markets and enable the Exchange to continue to compete effectively with other options exchanges.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[12] in that the proposed rule change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system because a Preferred Market Maker must be quoting at the NBBO in order to receive the proposed enhanced allocation.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[7] According to the Exchange, all allocations are automatically performed by the Exchange's system.

[8] A Primary Market Maker may be the Preferred Market Maker, in which case such market maker would receive the enhanced allocation for Preferred Market Makers.

[9] According to the Exchange, all allocations are automatically performed by the Exchange's system.

[10] In Amendment No. 2, the Exchange stated that Electronic Access Members and Preferred Market Makers may not coordinate their actions. Such conduct would be a violation of Exchange Rule 400 (Just and Equitable Principles of Trade). The Exchange represented that it will proactively conduct surveillance for, and enforce against, such violations.

[11] The Exchange proposes to eliminate the requirement that a market maker start quoting if the market maker enters an order in an options series. Under Exchange Rule 805(a), Competitive Market Makers are not permitted to enter limit orders that would sit on the limit order book in options in their appointed Group. The entry of an immediate-or-cancel limit order, which either executes immediately against existing bids or offers in the market or is cancelled, does not cause a market maker to disseminate a bid or offer. Accordingly, a Competitive Market Maker that enters an order would not become eligible to receive an enhanced allocation as a Preferred Market Maker, and therefore should not become subject to the increased obligation to quote all of the series of an options class.

[12] 15 U.S.C. 78f(b)(5).

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit comments on the proposed rule change. The Exchange has not received any written comments from members or other interested parties. However, on April 6, 2005, written comments were submitted to the Commission by a member regarding the proposed rule change.[13] This written comment opposed the proposed rule change, as well as similar proposals by the Philadelphia Stock Exchange, Inc. ("Phlx") and the Chicago Board Options Exchange, Incorporated ("CBOE").[14]

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act and whether the pilot time frame is appropriate. 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–ISE–2005–18 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303. All submissions should refer to File Number SR–ISE–2005–18. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2005–18 and should be submitted on or before July 7, 2005.

**IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change**

The Exchange has asked the Commission to approve the proposed rule change on an accelerated basis for six weeks while the Commission seeks comment on the proposed rule change. The Exchange believes the proposed rule change is substantially similar to rule changes by Phlx and CBOE that were recently approved by the Commission.[15] After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[16] and the rules and regulations thereunder applicable to a national securities exchange[17], and, in particular, the requirements of Section 6(b)(5) of the Act.[18] Section 6(b)(5) requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Pursuant to Section 19(b)(2) of the Act,[19] the Commission may not approve any proposed rule change, or amendment thereto, prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding. The Commission hereby finds good cause for approving the proposed rule change, as amended, prior to the 30th day after publishing notice thereof in the **Federal Register**.

The Commission received one comment letter opposing the proposal.[20] This commenter criticized the proposal because the commenter believes the proposal would grant a Preferred Market Maker a guarantee based solely on being at the NBBO rather than on such Preferred Market Maker's obligations.[21] The commenter asserts that the proposal would reward a Preferred Market Maker for the Preferred Market Maker's relationships with order flow providers rather than the quality of the Preferred Market Maker's quotes, and therefore the proposal would have a negative impact on price competition.[22] In addition, this commenter notes that the proposal would extend the allocation entitlement to Competitive Market Makers, who have fewer obligations to the market than Primary Market Makers.[23]

The Commission has previously approved rules that guarantee a Primary Market Maker a portion of each order when the Primary Market Maker's quote is equal to the NBBO.[24] The Commission has closely scrutinized exchange rule proposals to adopt or amend a participation guarantee where the percentage of participation would rise to a level that could have a material adverse impact on quote competition within a particular exchange.[25] Because the proposal would not increase the overall percentage of an order that is guaranteed beyond the currently acceptable threshold, but instead would allow any Competitive Market Maker appointed to an options class to be designated as a Preferred Market Maker and be eligible to receive a participation guarantee instead of the Primary Market Maker, the Commission does not believe that the proposal will negatively impact quote competition on the Exchange. Under the proposal, the remaining portion of each order will still be allocated based on the competitive bidding of market participants.

In addition, a Preferred Market Maker will have to be quoting at the NBBO at

[13] Letter from Matthew B. Hinerfeld, Managing Director and Deputy General Counsel, Citadel Investment Group, L.L.C., on behalf of Citadel Derivatives Group LLC, to Jonathan G. Katz, Secretary, Commission, dated April 6, 2005.

[14] *Supra* note 5.

[15] *Supra* note 5.

[16] 15 U.S.C. 78f.

[17] In approving this proposal, the commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(2).

[20] *See supra* note 13. This written comment opposed the proposed rule change, as well as similar proposals by the Phlx and the CBOE. *See supra* note 5.

[21] *See supra* note 13 at 1 and 2.

[22] *See supra* note 13 at 2.

[23] *See supra* note 13 at 2. The Exchange refers to its specialists as "Primary Market Makers."

[24] *See* Securities Exchange Act Release Nos. 42808 (May 22, 2000), 65 FR 34515 (May 30, 2000) (SR–ISSE–2000–01); 44340 (May 22, 2001), 66 FR 29373 (May 30, 2001) (SR–ISE–2001–46); and 44641 (August 2, 2001), 65 FR 41643 (August 8, 2001) (SR–ISE–2001–17).

[25] *See, e.g.*, Securities Exchange Act Release No. 43100 (July 31, 2000), 65 FR 48788 (August 9, 2000).

the time the Preferenced Order is received to capitalize on the participation guarantee. The Commission believes it is critical that the Preferred Market Maker cannot step up and match the NBBO after it receives an order, but must be publicly quoting at that price when the order is received. In this regard, the Exchange's proposal prohibits Electronic Access Members and Preferred Market Makers from coordinating their actions. The Exchange has stated that such coordinated actions would violate Exchange Rule 400, Just and Equitable Principles of Trade, and will proactively conduct surveillance for, and enforce against, such violations.[26]

The commenter also states that specialists (*i.e.*, Primary Market Makers) currently receive participation entitlements based on their obligations to the market. The commenter believes that the proposal, by allowing any market maker quoting at the NBBO to receive a guaranteed percentage of an order without in turn increasing the market maker's obligations to the market, would "eliminate the incentive to be a specialist, thereby potentially leaving the obligations of the specialist to the market unfulfilled."[27] The Commission does not believe that the proposal will result in the role of the specialist going unfulfilled, and notes that it recently approved an options exchange without specialists.[28] Moreover, specialists' obligations to the market have been reduced through other changes, including greater automation of functions previously handled manually by the specialist. While this proposal may reduce the incentive to be a specialist, the Commission does not believe that makes the proposal inconsistent with the Act. Finally, the Commission notes that, as part of this proposal, the Exchange proposes to increase the quotation obligations of Competitive Market Makers. Currently, a Primary Market Maker is required to maintain continuous quotations in all of the series of all of the options classes to which the Primary Market Maker is appointed. Competitive Market Makers are required to maintain continuous quotations in all of the series in at least 60 percent of the options classes in the Group to which they are appointed. However, a Competitive Market Maker may enter continuous quotes in less than all of the series in the remaining 40 percent of the classes in its appointed Group, subject to a requirement to maintain continuous quotes in those and related series through the end of the day and, in certain circumstances, through expiration of the series.[29]

Under the proposal, since all Competitive Market Makers would be eligible to be designated as a Preferred Market Maker by Electronic Access Members and receive an enhanced allocation in any options series in which the Competitive Market Maker is quoting at the NBBO, the Exchange proposes to require that a Competitive Market Maker maintain continuous quotes in all of the series of any options class it is quoting. Specifically, with respect to any series of any options class in which a Competitive Market Maker seeks to make markets above the minimum requirement, the proposal would require a Competitive Market Maker to enter continuous quotes in all of the series of any options class in which it enters quotes. Accordingly, the proposed rule change would require a Competitive Market Maker to maintain continuous quotations in all of the series of any options classes in which it might receive an enhanced participation as the result of being designated as a Preferred Market Maker.[30]

The proposal also seeks to amend the minimum quotation requirement on Competitive Market Makers to provide that a Competitive Market Maker must quote at least 60 percent of the options classes in the Group or 60 options classes, whichever is lesser.[31] Under the current rule, because the minimum quotation requirement is 60 percent of the number of options classes in a Group, and the number of options classes in a Group varies, according to the Exchange, some Competitive Market Makers are required to maintain continuous quotes in a much larger number of options classes than other Competitive Market Makers. The Commission notes that this change to the quotation requirement only affects Competitive Market Makers appointed to Groups with more than 100 options classes and that such Competitive Market Makers would still be required to quote continuous in 60 options classes.[32] The Commission also notes that the proposed change to the quotation requirement does not affect the proposed requirement that a Competitive Market Maker maintain continuous quotes in a series in order to be eligible to receive a participation guarantee for that series.

The Commission emphasizes that approval of this proposal does not affect a broker-dealer's duty of best execution. A broker-dealer has a legal duty to seek to obtain best execution of customer orders, and any decision to preference a particular Primary Market Maker or Competitive Market Maker must be consistent with this duty.[33] A broker-dealer's duty of best execution derives from common law agency principles and fiduciary obligations, and is incorporated in SRO rules and, through judicial and Commission decisions, the antifraud provisions of the federal securities laws.[34]

The duty of best execution requires broker-dealers to execute customers' trades at the most favorable terms reasonably available under the circumstances, *i.e.*, at the best reasonably available price.[35] The duty of best execution requires broker-dealers

[26] *See* Amendment No. 2.

[27] *Supra* note 13 at 2.

[28] *See* Securities Exchange Act Release No. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR–BSE–2002–15) (order approving trading rules for the Boston Options Exchange Facility).

[29] See Exchange Rule 804(e).

[30] *See* proposed Exchange Rule 804(e).

[31] *See* proposed Exchange Rule 804(e)(2).

[32] The proposed amendment would not change the minimum requirement for any Competitive Market Maker appointed to a Group with less than 100 options classes.

[33] *See, e.g., Newton* v. *Merrille, Lynch, Pierce, Fenner & Smith, Inc.*, 135 F.3d 266, 269–70, 274 (3d Cir.), *cert. denied*, 525 U.S. 811 (1998); *Certain Market Making Activities on Nasdaq*, Securities Exchange Act Release No. 40900 (January 11, 1999) (settled case) (citing *Sinclair* v. *SEC*, 444 F.2d 399 (2d Cir. 1971); *Arleen Hughes*, 27 SEC 629.636 (1948), *aff'd sub nom. Hughes* v. *SEC*. 174 F.2d 969 (D.C. Cir. 1949)). *See also* Order Execution Obligations, Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) ("Order Handling Rules Release").

[34] Order Handling Rules Release, 61 FR at 48322, *See also Newton*, 135 F.3d at 270. Failure to satisfy the duty of best execution can constitute fraud because a broker-dealer, in agreeing to execute a customer's order, makes an implied representation that it will execute it in a manner that maximizes the customer's economic gain in the transaction. *See Newton*, 135 F.3d at 273 ("[T]he basis for the duty of best execution is the mutual understanding that the client is engaging in the trade-and retaining the services of the broker as his agent-solely for the purpose of maximizing his own economic benefit, and that the broker receives her compensation because she assists the client in reaching that goal."); *Marc N. Geman*, Securities Exchange Act Release No. 43963 (February 14, 2001) (citing *Newton*, but concluding that respondent fulfilled his duty of best execution). *See also* Payment for Order Flow, Securities Exchange Act Release No. 34902 (October 27, 1994), 59 FR 55006, 55009 (November 2, 1994) ("Payment for Order Flow Final Rules"). If the broker-dealer intends not to act in a manner that maximizes the customer's benefit when he accepts the order and does not disclose this to the customer, the broker-dealer's implied representation is false. *See Newton*, 135 F.3d at 273–274.

[35] *Newton*, 135 F.3d at 270. *Newton* also noted certain factors relevant to best execution-order size, trading characteristics of the security, speed of execution, clearing costs, and the cost and difficulty of executing an order in a particular market. *Id.* at 270 n. 2 (citing Payment for Order Flow, Securities Exchange Act Release No. 33026 (October 6, 1993), 58 FR 52934, 52937–38 (October 13, 1993) (Proposed Rules)). *See In re E.F. Hutton & Co.* ("Manning"), Securities Exchange Act Release No. 25887 (July 6, 1988). *See also* Payment for Order Flow Final Rules, 59 FR at 55008–55009.

to periodically assess the quality of competing markets to assure that order flow is directed to the markets providing the most beneficial terms for their customer orders.[36] Broker-dealers must examine their procedures for seeking to obtain best execution in light of market and technology changes and modify those practices if necessary to enable their customers to obtain the best reasonably available prices.[37] In doing so, broker-dealers must take into account price improvement opportunities, and whether different markets may be more suitable for different types of orders or particular securities.[38]

The Commission notes that the proposed rule change would be implemented on a pilot basis for six weeks. During this time, the Commission intends to evaluate the impact of the proposal on the options markets to determine whether it would be beneficial to customers and to the options markets as a whole before approving any request to extend the pilot program. The Commission believes that the proposed rule change's six-week pilot period will allow the Commission an opportunity of solicit comments on the proposed rule change prior to considering whether the approve such pilot program for an extended period. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[39] to approve the proposal, as amended, on an accelerated basis.

For these reasons, the Commission believes that the proposal is consistent with the requirements of Section 6(b)(5) of the Act,[40] and will not jeopardize market integrity or the incentive for market participants to post competitive quotes.[41]

## V. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[42] that the proposed rule change (SR–ISE–2005–18), as amended, which institutes the pilot program until July 22, 2005, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[43]

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. E5–3095 Filed 6–15–05; 8:45 am]

BILLING CODE 8010–01–P

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51814; File No. SR–NASD–2004–185]**

## Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto To Establish a Unitary Fee Schedule for Distribution of Real Time Data Feed Products Containing Nasdaq Market Center Data

June 9, 2005.

## I. Introduction

On December 14, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a unitary fee schedule for distribution of real time data feed products containing Nasdaq market center data. On February 17, 2005, Nasdaq filed Amendment No. 1 to the original filing.[3] Nasdaq filed Amendment No. 2 on April 14, 2005.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on April 28, 2005.[5] The Commission received one comment on the proposed rule change.[6] This order approves the proposed rule change, as amended.

## II. Description of the Proposal

Nasdaq proposes to modify NASD Rule 7010 to establish a unitary fee schedule for the distribution of Nasdaq Market Center real time data feed products. Nasdaq offers various data products that firms may purchase and redistribute either within their own organizations or to outside parties. According to Nasdaq, "distributor fees" are designed to encourage broad distribution of the data, and allow Nasdaq to recover what it describes as the relatively high fixed costs associated with supporting connectivity and contractual relationships with distributors. Nasdaq believes that because the data products and associated fees were established over many years, the method of calculating such fees should be updated. Accordingly, Nasdaq proposes to establish a revised monthly distributor pricing structure for its real time data feed products that it believes will allocate equitably data fees across the customer base of data distributors and consumers of Nasdaq market data.

Specifically, the proposed rule change will establish a distributor fee pricing structure for four real time data feed products: TotalView, OpenView, Mutual Fund Quotation Service ("MFQS"), and Real Time Index. The proposed fees will be assessed to distributors of these real time data feed products, defined in the proposed rule change to include any entity that receives a feed or data file of Nasdaq data directly from Nasdaq or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside the entity). The new distributor fees would not apply to Nasdaq's Web-based historical data products, which are governed by NASD Rule 7010(p), and they would not apply to data feeds that are produced pursuant to the national market system plan governing Nasdaq stocks ("Nasdaq UTP Plan"). The proposed distributor pricing is also distinct from any per display device or

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[36] Order Handling Rules Release, 61 FR at 48322–48333 ("In conducting the requisite evaluation of its internal order handling procedures, a broker-dealer must regularly and rigorously examine execution quality likely to be obtained from different markets or market makers trading a security."). *See also Newton,* 135 F.3d at 271; Market 2000: An Examination of Current Equity Market Developments V–4 (SEC Division of Market Regulation January 1994) ("Without specific instructions from a customer, however, a broker-dealer should periodically assess the quality of competing markets to ensure that its order flow is directed to markets providing the most advantageous terms for the customer's order."); Payment for Order Flow Final Rules, 59 FR at 55009.

[37] Order Handling Rules, 61 FR at 48323.

[38] Order Handling Rules, 61 FR at 48323. For example, in connection with orders that are to be executed at a market opening price, "[b]roker-dealers are subject to a best execution duty in executing customer orders at the opening, and should take into account the alternative methods in determining how to obtain best execution for their customer orders." Disclosure of order Execution and Routing Practices, Securities Exchange Act Release No. 43590 (November 17, 2000), 65 FR 75414, 75422 (December 1, 2000) (adopting new Rules 11Ac1–5 and 11Ac1–6 under the Act and noting that alternative methods offered by some Nasdaq market centers for pre-open orders included the mid-point of the spread or at the bid or offer).

[39] 15 U.S.C. 78s(b)(2).

[40] 15 U.S.C. 78f(b)(5).

[41] Approval of this proposal is in no way an endorsement of payment for order flow by the Commission.

[42] 15 U.S.C. 78s(b)(2).

[43] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original proposed rule change in its entirety.

[4] Amendment No. 2 replaced and superseded the original proposed rule change, as amended.

[5] *See* Securities Exchange Act Release No. 51598 (Apr. 21, 2005), 70 FR 22162.

[6] *See* letter from Gene L. Finn to Jonathan Katz, Secretary, Securities and Exchange Commission dated May 17, 2005 ("Finn Letter").

per user population fees for data products such as TotalView.

The proposed pricing structure is comprised of two components for each Nasdaq real time data feed product: (1) A monthly Direct Access Fee, and (2) either a monthly Internal Distribution Fee or a monthly External Distribution Fee. The Direct Access Fee will apply to any organization that receives a real time data product directly from Nasdaq via a data feed. Distributors receiving Nasdaq real time data indirectly (*i.e.*, via re-transmission from another entity) will not be liable for the Direct Access Fee. Nasdaq represents that this fee will allow it to recover the fixed costs of establishing and maintaining relationships with direct access distributors.

The Internal Distribution Fee will apply to any organization that receives a real time data feed product (either directly from Nasdaq or through a vendor) and distributes the data solely within its own organization. The External Distribution Fee will apply to any organization that receives a real time data feed product (either directly from Nasdaq or through a vendor) and distributes the data outside its own organization. Nasdaq states that the External Distribution Fee is higher than the Internal Distribution Fee because external distributors typically have broader distribution of the data than internal distributors. An organization that receives real time data directly from Nasdaq will pay the Direct Access Fee plus the higher of either the Internal Distribution or External Distribution Fee but not both. An organization that only receives a real time data feed indirectly and distributes it within its organization will pay the Internal Distribution Fee; an organization that receives data indirectly and distributes it outside its organization will pay the External Distribution Fee; and an organization that receives a real time data feed indirectly and distributes it both internally and externally will pay the External Distribution Fee.

Under the proposed pricing structure, Nasdaq real time data feed products that are available for distribution will be divided into two categories: "Issuer Specific Data" and "Market Summary Statistics." Issuer Specific Data will further be divided into a "Dynamic Intraday" subcategory and a "Daily" subcategory. Market Summary Statistics, at present, will have one subcategory: "Intraday." Each subcategory of real time data feed product will be assigned a Direct Access Fee, Internal Distribution Fee, and External Distribution Fee.

The change will effect distributor fees for the aforementioned products as follows: Currently, the monthly distribution fee for Nasdaq TotalView (set forth at Rule 7010(q)) is based on whether the data distributor receives the TotalView data in an aggregate or detailed form. The current monthly fee for TotalView data in aggregate form is $1,000 per distributor and in detailed form is $7,500 per distributor. There is no current monthly distributor fee for OpenView. Under the proposed fee structure, TotalView and OpenView, whether in aggregate or detailed form, will fall into the "Issue Specific Data-Dynamic Intraday" subcategory, for which the proposed monthly fees are $2,500 for Direct Access, $1,000 for Internal Distribution, and $2,500 for External Distribution.[7] Organizations that currently purchase detailed TotalView information, particularly internal distributors and non-direct connection recipients, will pay less in the future; organizations that currently purchase aggregate TotalView data, particularly those that access the data directly, will pay higher fees.

The current monthly fee for distribution of the MFQS is $1,000 for each external distributor. Under the proposed fee structure, MFQS data will fall into the "Issue Specific Data—Daily" subcategory, for which the proposed monthly fees are $500 for Direct Access, $500 for External Distribution, and no charge for Internal Distribution. The proposed pricing will benefit external distributors that do not take their data directly from Nasdaq. Organizations that take their data directly from Nasdaq but only distribute it internally will pay the Direct Access Fee.

Under the current monthly fee structure set forth in NASD Rule 7030, the fee for Real-Time Index data is $2,000 for external distributors. Under the proposed fee structure, Real-Time Index data will be labeled as "Market Summary Statistics—Intraday." The proposed monthly fees for Market Summary Statistics will involve a Direct Access fee of $500, an Internal Distribution Fee of $50, and an External Distribution fee of $1,500. The proposed pricing will decrease the costs of non-direct connection external distributors, but increase them for organizations that distribute the data internally.

Nasdaq is also proposing a more flexible policy for distributor reporting of, and payment for, market data usage. NASD Rule 7060 currently provides that such reporting be based on a pro-rated accounting of the specific installation and termination dates for service. Because some data distributors prefer to report data usage on a "full-month" basis, Nasdaq will offer its market data distributors the option of reporting and paying based on either a pro-rated or full-month basis. The selection of pro-rated or full-month reporting will be the business decision of each market data distributor based on its needs and the needs of its customers.

## III. Discussion and Commission Findings

After careful review of the proposal and consideration of the comment letter, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.[8] In particular, the Commission believes that the proposed rule change, as amended, is consistent with section 15A(b)(5) of the Act,[9] which requires that the rules of a national securities association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls. Specifically, the Commission believes that the proposed pricing structure is reasonable and notes that it would apply across-the-board to distributors of the aforementioned Nasdaq real time data feed products. In approving the proposed rule change, the Commission notes that, pursuant to Section 19(b)(1) of the Act[10] and Rule 19b–4 thereunder,[11] Nasdaq will be required to file with the Commission proposed rule changes relating to any additional Nasdaq real time data feed products to which it plans to apply the new pricing structure in the future.

The Commission received one comment letter on the proposal.[12] Referring to "Section 7030—Special Options" of the NASD Marketplace Rules, the commenter stated that the proposed rule change continues to apply a discriminatory access fee to nonprofessional online investors. The

[7] Nasdaq believes that because OpenView provides the same depth and scope of information for exchange-listed securities as TotalView does for Nasdaq-listed securities, and entails similar costs, it is appropriate to put into place the same distribution fee structure for OpenView at this time. Telephone conversation between Bill O'Brien, Senior Vice President, Market Data Distribution, Nasdaq, and Ira Brandriss, Assistant Director, Division of Market Regulation, Commission, April 21, 2005.

[8] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78o–3(b)(5).

[10] 15 U.S.C. 78s(b)(1).

[11] 17 CFR 240.19b–4.

[12] *See* Finn Letter, *supra* note 6.

commenter also set forth a series of reasons why he believes generally that nonprofessional access fees for online investors should be eliminated, noting that he has enumerated these reasons in comment letters to the Commission in the past. The Commission notes that the continuance of fees for the data products included in NASD Rule 7030 is not the subject of the proposed rule change, although a different pricing structure for the fees charged to distributors for the Nasdaq Market Index, which is being moved from NASD Rule 7030 to Rule 7010, is being proposed. With respect to the commenter's more general concerns about nonprofessional access fees for online investors, the Commission notes that it has recently solicited public comment as part of a comprehensive review it has undertaken regarding market data fees and revenues,[13] and the commenter's views will be taken into account in that review.

## IV. Conclusion

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NASD–2004–185), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 05–11927 Filed 6–15–05; 8:45 am]

BILLING CODE 8010–01–P

## SELECTIVE SERVICE SYSTEM

### Forms Submitted to the Office of Management and Budget for Extension of Clearance

**AGENCY:** Selective Service System.

**ACTION:** Notice.

The following forms have been sumbitted to the Office of Management and Budget (OMB) for extension of clearance in compliance with the Paperwork Reduction Act (44 U.S. Chapter 35):

SSS Form No. and Title:

- SSS Form 152, Alternative Service Employment Agreement
- SSS Form 153, Employer Data Sheet
- SSS Form 156, Skills Questionnaire
- SSS Form 157, Alternative Service Job Data Form
- SSS Form 160, Request for Overseas Job Assignment
- SSS Form 163, Employment Verification Form
- SSS Form 164, Alternative Service Worker Travel Reimbursement Request
- SSS Form 166, Claim for Reimbursement for Emergency Medical Care

Copies of the above identified forms can be obtained upon written request to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia, 22209–2425.

No changes have been made to the above identified forms. OMB clearance is limited to requesting a three-year extension of the current expiration dates.

Written comments should be sent within 60 days after the publication of this notice, to: Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia, 22209–2425.

A copy of the comments should be sent to Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, DC 20435.

Dated: June 1, 2005.

**William A. Chatfield,**

*Director.*

[FR Doc. 05–11896 Filed 6–15–05; 8:45 am]

BILLING CODE 8015–01–M

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

**[Docket No. PHMSA–03–14455]**

### Pipeline Safety: Public Meeting on Applying, Interpreting, and Evaluating Data From In-Line Inspection Devices

**AGENCY:** Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, DOT.

**ACTION:** Notice; public meeting.

**SUMMARY:** The Pipeline and Hazardous Materials Safety Administration's Office of Pipeline Safety (OPS) is hosting a public meeting to discuss concerns it has with how operators are applying, interpreting, and evaluating data acquired from In-Line Inspection Devices (ILI), and OPS's expectations about how operators should be effectively integrating this data with other information about the operator's pipeline. The meeting will be held Thursday, August 11, 2005, in Houston, TX, and is open to all interested parties.

**DATES:** The public meeting will be held Thursday, August 11, 2005, from 8:30 a.m. to 4.30 p.m.

**ADDRESSES:** The meeting will be held in Houston, TX. The meeting location has not been determined yet and will be made available on *http://ops.dot.gov* shortly.

**FOR FURTHER INFORMATION CONTACT:** Joy Kadnar (PHMSA/OPS) at 202–366–0568; *joy.kadnar@dot.gov*, regarding the subject matter of this notice. For information regarding meeting logistics, please contact Veronica Garrison at (202) 366–4996; *veronica.garrison@dot.gov* or Janice Morgan at (202) 366–2392; *janice.morgan@dot.gov.*

**SUPPLEMENTARY INFORMATION:** Subsequent to information acquired from integrity management program inspections and problems discovered during accident investigations, OPS has become concerned with performance issues associated with in-line inspection devices and how the data from these devices is being integrated with other information on the pipeline system. So that OPS can share these concerns in a public forum, OPS invites public participation in a meeting to be held Thursday, August 11, 2005, to discuss the characterization—discrimination, interpretation, and evaluation—of data acquired from ILI devices.

ILI technology has been used for approximately 20 years and has become the preferred method used by pipeline operators to ensure the integrity of their pipeline assets. However, as demonstrated by recent accidents on hazardous liquid and natural gas pipeline systems, some pipelines that were inspected by ILI devices continue to fail.

OPS will share its findings from these accidents and from recent Integrity Management Program (IMP) inspections. OPS needs to determine if the problem resides in the technology or in the secondary and tertiary stages of the ILI data evaluation—data characterization, validation, and mitigation. Specifically, is the problem data analysis, peer review of technicians involved in data review, lack of common standards for data review, detection thresholds, data validation, or the understanding of each tool's strengths and weaknesses? A secondary objective of this meeting is for OPS to understand how the government, pipeline operators, standards organizations, and ILI vendors can help improve pipeline assessment using ILI technology. At this public meeting, OPS will highlight effective practices and use this medium to share these practices with the public.

[13] *See* Securities Exchange Act Release No. 50700 (Nov. 18, 2004), 69 FR 71256 (Dec. 8, 2004). *See also* Securities Exchange Act Release No. 50699 (Nov. 18, 2004), 69 FR 71126 (Dec. 8, 2004).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

The preliminary agenda for this meeting includes briefings on the following topics:

- OPS's Experiences on Data Extracted using ILI Devices.
- OPS Case Studies.
- Hazardous Liquid IMP Inspection Experiences.
- Views of Pipeline Operators.
- Perspective from ILI Vendors.
- Focus of Independent ILI Data Analysts.
- ILI Standards—

—Personnel Qualification and Vendor Reports;
—ILI Flaw Detection Criteria;
—ILI Data Discrimination;
—Field Evaluation of ILI Data—Statistical Sampling, Flaw Thresholds, and Tolerances;
—Contractual Criteria for Defect Reports.

- Next Steps.

**Background**

ILI is the preferred technology to assure pipeline integrity. The OPS IMP inspections have revealed that many operators elect to use ILI devices to inspect their "piggable" pipeline sections to evaluate the condition of the pipe wall. OPS also found that many pipeline operators now use high-resolution and deformation ILI tools.

OPS is concerned about the secondary and tertiary evaluations being performed after ILI data is acquired because of several accidents that have occurred throughout the U.S. in the recent past. According to OPS's experience, failures have occurred on pipelines inspected by all types of ILI tools. The following are some examples of pipelines that failed relatively soon after the pipelines were inspected; the data was analyzed, and the findings were reported to the pipeline operators:

- In 1999, a small hazardous liquid pipeline operator used a state-of-the-art tool and mischaracterized a "wrinkle with a crack" as a "T-piece." A few months later the pipeline ruptured at the location of this wrinkle. Most appurtenances and fittings like a T-Piece will be welded to the main pipe. However, there were no girth welds on either side of this mischaracterized T-piece as is typical for a T-piece.
- In 2003, a hazardous liquid pipeline that was inspected just about a year before, failed in service. OPS's investigation revealed that general corrosion caused the failure. On analyzing the data, OPS gathered that the ILI tool detected some pitting and the maximum pit depth was reported to be less that 50% of remaining wall. However, from a metallurgical analysis of the pipe segment OPS discovered 27 corrosion pits varying from 18% wall loss to 95% wall loss. The pipe failed where the wall loss was 95%.
- In February 2004, a natural gas pipeline operator launched a geometry pig but the tool missed a series of wrinkles. One of those wrinkles ruptured. During our post-incident investigation OPS discovered that other wrinkles in the pipe were called out as pipe wall thickness changes although there were no girth welds adjacent to the location where the wall thickness changed.
- Another hazardous liquid pipeline that was inspected seven times with different tools in a span of 10 years ruptured in 2004. The rupture was determined to have been caused by general corrosion. The general corrosion was detected by an ILI tool launched before the most recent ILI run.
- In October 2004, a hazardous liquid pipeline operator launched three tools—a geometry pig, a corrosion detection pig, and an axial flaw detection pig—in relative succession to conduct a baseline assessment and to comply with the IMP regulations. About six months after these tools were launched, the pipeline's seam split.
- In November 2003, incipient third party damage caused another hazardous liquid pipeline to rupture just eight months after it was pigged. Our investigation revealed several longitudinal scratches and gouges on the pipe surface that were undetected by the ILI device.

From our IMP inspections, OPS has also learned that pipeline operators do not have a consistent, standardized process to evaluate and assess data extracted by ILI devices. For example, some pipeline operators provide guidance to ILI vendors, contract field inspection personnel, and company personnel on how to assess ILI data. Others rely entirely on the ILI vendor or may actively participate in data extraction, or may even conduct an independent peer review of the ILI data if they have in-house expertise.

For corrosion anomalies, pipeline operators use different interaction criteria. Some pipeline operators want only the deepest pit reported on each pipe length. Others want all pit depths reported. One pipeline operator directed the ILI vendor to report all anomalies, especially those with signatures that are indecipherable. OPS believes this to be a good practice, although it is not universally applied.

OPS believes that most of the pipeline failures that occurred on pipeline segments that were inspected with ILI tools could have been prevented with the correct application of technology. The failures that OPS investigated have revealed that the larger problem may be with the machine-man interface during the latter stages of data analyses. Specifically, should the repositories of flaw signatures that ILI vendors use be improved? Must there be more attention expended on the peer review of technicians? Is the sample size used to confirm electronic data adequate or must it be increased? Should the data extraction process be more stringently monitored?

Pipeline operators use a variety of surveying, monitoring, and testing practices to assure the integrity of their assets. Different practices may be used independently, or as supplements to others to assess pipeline integrity. ILI is just one of many integrity assurance practices used by the pipeline industry. An ILI using a smart device is one method to interrogate the pipe wall to detect irregularities that could decrease the pressure containment strength of the pipe.

An ILI device is a computerized, self-contained device that is inserted into the pipeline. These ILI devices are propelled forward by the fluid flowing through the pipeline and record information of the pipe wall as they travel through the pipeline. An ILI tool can detect, measure, record, and display irregularities in the pipe wall. These irregularities may represent corrosion, cracks, laminations, geometric deformations (dents, gouges, ovality, wrinkles, ripples, buckles), and other defects.

Specialized "smart pigs" rely on various technologies to detect and determine the existence and severity of features in the pipeline. Corrosion tools use a magnetic field or ultra-sound to detect and record changes in the wall thickness of the pipe (crack detection tools most commonly use ultrasound) generating a signal into the pipe wall, which, based on how the signal is reflected back, detects cracks. Geometry tools examine a number of characteristics using mechanical fingers or electromagnetic waves to measure deviations in a pipeline's internal diameter or to show the position of dents in the pipe.

OPS is concerned that some pipelines continue to fail after being inspected by ILI tools. OPS will discuss its concerns at this public forum and share its expectations on how operators integrate this data. During this public meeting, OPS will seek answers to the following questions:

- What are operators' experiences and expectations with the capabilities of ILI technology?

- Is there a gap in understanding ILI tool data submitted by vendors of this technology?
- Do ILI technology vendors educate their clients about the limitations of the tool being recommended for the application?
- What defect detection and report criteria are used? Is it developed jointly by the vendor and the pipeline operator?
- How are tool defect identification tolerances applied in reported criteria?
- Is there a formal detection, validation, and mitigation process used to evaluate defects? How is it communicated to the pipeline operator?
- What process is used to arrive at the number of confirmatory digs to corroborate the data extracted by the ILI device?
- Are the standards developed for ILI technology appropriate for the current state ILI deployment? Does the guidance meet the needs of the large or small pipeline operator who is the first-time user of such technology?

OPS expects at this public meeting to inform on the following:

- The technique and criteria used to report defects;
- Information exchange between the ILI vendor and pipeline operator during the secondary and tertiary stages of flaw characterization;
- The currency and adequacy of performance standards for vendors of assessment technologies;
- Sufficiency and relevance of performance standards for ILI assessment technology; and
- Stages in data discrimination: Detection, validation, and mitigation.

Issued in Washington, DC, on June 10, 2005.

**Joy Kadnar,**

*Director of Engineering and Emergency Support, Office of Pipeline Safety.*

[FR Doc. 05–11866 Filed 6–15–05; 8:45 am]

BILLING CODE 4910–60–P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–70 (Sub-No. 5X]**

### Florida East Coast Railway, L.L.C.—Abandonment Exemption—in Brevard County, FL

Florida East Coast Railway, L.L.C. (FEC) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 9.8-mile line of railroad known as the Titusville Branch, extending from milepost TB 0.0 in Titusville to milepost TB 9.8 in Aurantia, in Brevard County, FL. The line traverses United States Postal Service Zip Codes 32754 and 32796.

FEC has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line, either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 16, 2005, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by June 27, 2005. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 6, 2005, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to FEC's representative: Marlene Hammock, Assistant Secretary, Florida East Coast Railway, L.C.C., One Malaga Street, St. Augustine, FL 32085–1048.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,200. *See* 49 CFR 1002.2(f)(25).

FEC has filed an environmental and historic report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by June 21, 2005. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), FEC shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by FEC's filing of a notice of consummation by June 16, 2006, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: June 6, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 05–11640 Filed 6–15–05; 8:45 am]

BILLING CODE 4915–01–P

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

## FEDERAL RESERVE SYSTEM

## FEDERAL DEPOSIT INSURANCE CORPORATION

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

### Agency Information Collection Activities; Submission for OMB Review; Comment Request Concerning the Interagency Bank Merger Act Application

**AGENCIES:** Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve

System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

**ACTION:** Notice of information collections to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

**SUMMARY:** In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the OCC, Board, FDIC, and OTS (Agencies) hereby give notice that they plan to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection systems described below.

**DATES:** Comments must be submitted on or before July 18, 2005.

**ADDRESSES:** Interested parties are invited to submit comments to any or all of the Agencies. All comments, which should refer to the OMB control number, will be shared among the Agencies:

*OCC*: Comments should be sent to Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0014, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

*Board*: You may submit comments, identified by FR 2070; OMB No. 7100–0171, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov*. Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov*. Include docket number in the subject line of the message.
- *FAX*: 202/452–3819 or 202/452–3102.
- *Mail*: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

*FDIC*: All comments should refer to "Bank Merger Application, 3064–0015." Comments may be submitted by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/propose.html*.
- *E-mail: comments@fdic.gov*. Include "Bank Merger Application, 3064–0015." in the subject line of the message.
- *Mail*: Gary A. Kuiper (202.942.3824), Counsel, Federal Deposit Insurance Corporation, PA1730–3000, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery*: Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

*OTS*: You may submit comments to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, ATTN: 1550–0016, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

A copy of the comments should also be submitted to the OMB desk officer for the agencies: Mark Menchik, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503, or by electronic mail to *mmenchik@omb.eop.gov*.

**FOR FURTHER INFORMATION CONTACT:** You may request additional information from:

*OCC*: Mary Gottlieb, OCC Clearance Officer, (202) 874–4824, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. For subject matter information, you may contact Cheryl Martin at (202) 874–4614, Licensing Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

*Board*: Michelle Long, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Capria Mitchell, (202) 872–4984, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

*FDIC*: Gary A. Kuiper, Counsel, (202) 942–3824, Federal Deposit Insurance Corporation, PA1730–3000, 550 17th Street, NW., Washington, DC 20429.

*OTS*: Marilyn K. Burton, OTS Clearance Officer, (202) 906–6467; Frances C. Augello, Senior Counsel, Business Transactions Division, (202) 906–6151; or Patricia D. Goings, Regulatory Analyst, Examination Policy, (202) 906–5668, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** Proposal to extend for three years, with clarifications, the following currently approved collection of information:

*FRB, FDIC, and OTS Report Title:* Interagency Bank Merger Act Application.

*OCC Title:* Comptroller's Licensing Manual (Manual). The specific portions of the Manual covered by this notice are those that pertain to clarifying changes to the instructions.

*OMB Numbers:*

OCC: 1557–0014.
Board: 7100–0171.
FDIC: 3064–0015.
OTS: 1550–0016.

*Form Numbers:*

OCC: None.
Board: FR 2070.
FDIC: None.
OTS: 1639.

*Affected Public:* Individuals or households; businesses or other for-profit.

*Type of Review:* Review of a currently approved collection.

*Estimated Number of Respondents:*

OCC: Nonaffiliate—90; Affiliate—106.
Board: Nonaffiliate—62; Affiliate—18.
FDIC: Nonaffiliate—190; Affiliate—172.
OTS: Nonaffiliate—16; Affiliate—0.

*Frequency of Response:* On occasion.

*Estimated Annual Burden Hours per Response:*

OCC: Nonaffiliate—30; Affiliate—18.
Board: Nonaffiliate—30; Affiliate—18.
FDIC: Nonaffiliate—30; Affiliate—18.

OTS: Nonaffiliate—30; Affiliate—18.

*Estimated Total Annual Burden Hours:*

OCC: Nonaffiliate—2,700; Affiliate—1,908. Total: 4,608 burden hours.
Board: Nonaffiliate—1,860; Affiliate—324. Total: 2,184 burden hours.
FDIC: Nonaffiliate—5,700; Affiliate—3,096. Total: 8,796 burden hours.
OTS: Nonaffiliate—480; Affiliate—0. Total: 480 burden hours.

*General Description of Report:* This information collection is mandatory. 12 U.S.C. 1828(c) (OCC, FDIC, and OTS), and 12 U.S.C. 321, 1828(c), and 4804 (Board). Except for select sensitive items, this information collection is not given confidential treatment. Small businesses, that is, small institutions, are affected.

*Abstract:* This submission covers a renewal of the Agencies' merger application form, which may include clarified instructions for both affiliated and nonaffiliated institutions. The Agencies need the information to ensure that the proposed transactions are permissible under law and regulation and are consistent with safe and sound banking practices. The Agencies are required, under the Bank Merger Act, to consider financial and managerial resources, future prospects, convenience and needs of the community, community reinvestment, competition, bank secrecy, and anti-money laundering efforts.

Some agencies collect limited supplemental information in certain cases. For example, the OCC and OTS collect information regarding CRA commitments; the Federal Reserve collects information on debt servicing from certain institutions; and the FDIC requires additional information on the competitive impact of proposed mergers.

*Current Actions:* On March 30, 2005, the Agencies published in the **Federal Register** (70 FR 16331) a notice on the proposed clarifications to this information collection. The comment period expired on May 31, 2005. The Agencies received no public comments, and each Agency is now submitting its request to OMB for approval of this information collection, as proposed.

The General Information and Instructions section of the merger application form would be modified to clarify the first subsection (Preparation and Use), which explains more clearly the range of merger transactions that may require use of the application. The remaining clarifications include a new paragraph in the Preparation and Use subsection noting that applications must be submitted to the appropriate regulatory agency. Also, a new Compliance subsection would inform applicants of compliance expectations and of the potential that some very large transactions may be subject to the Hart-Scott-Rodino Antitrust Improvement Act. These additional paragraphs, which would provide further practical advice that is generally included in the other recently approved interagency forms, are intended to highlight certain elements of the applications process to prevent confusion or delay, and add no additional burden.

The Federal Reserve approved extending for three years, with minor revisions, its current supplemental form. The two revisions are intended to facilitate the applications review process and provide further practical guidance to the applicant. The first revision recognizes the possible need of biographical or financial information from any individual that, as a consequence of the proposed transaction, becomes a new principal, shareholder, director, or senior executive officer of a state member bank. While all of the Agencies agree that a significant change in management or ownership must be evaluated under the statutory factors of the Bank Merger Act, they have elected to deal with this information need on a case-by-case basis. The second revision eliminates the need for any formal certification from a target institution. This certification is unique to the bank merger application, and is not specifically required by the Bank Merger Act. As the FRB generally waives this requirement if objected to by the target institution and as the applicant is the party to which bank merger authority is granted, the FRB believes that only the applicant need provide the requested certification. The other agencies believe that the target institution should certify to the accuracy of the information and that the institutions will notify the agency if any material changes occur prior to a decision. Also, the target institution certifies that any communications with the agency do not constitute a contract.

*Comments:* No comments were received in response to the first notice. Comments submitted in response to this second notice will be analyzed to determine the extent to which the instructions for the collection should be modified. All comments will become a matter of public record.

Written comments are invited on:

a. Whether the information collection is necessary for the proper performance of the Agencies' functions, and how the instructions can be clarified so that information gathered has more practical utility;

b. The accuracy of the Agencies' estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of 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.

Dated: June 13, 2005.

**Stuart Feldstein,**

*Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.*

Dated: June 8, 2005.

By order of the Board of Governors of the Federal Reserve System,

**Jennifer J. Johnson,**

*Secretary of the Board.*

Dated at Washington, DC, this 13th day of June, 2005.

**Robert E. Feldman,**

*Executive Secretary, Federal Deposit Insurance Corporation.*

Dated: June 10, 2005.

By the Office of Thrift Supervision.

**Richard M. Riccobono,**

*Acting Director.*

[FR Doc. 05–11925 Filed 6–15–05; 8:45 am]

BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P, 6720–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[REG–124667–02, EE–35–85]**

### 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing

final regulation, REG–124667–02 (NPRM) Disclosure of Relative Values of Optional Forms of Benefit; and EE–35–85 (Final) Income Tax: Taxable Years Beginning After December 31, 1953; OMB Control Number Under The Paperwork Reduction Act; Survivor Benefits, Distribution Restriction and Various Other Issues Under the Retirement Equity Act of 1984.

**DATES:** Written comments should be received on or before August 15, 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:* Disclosure of Relative Values of Optional Forms of Benefit; and Income Tax: Taxable Years Beginning After December 31, 1953; OMB Control Number Under The Paperwork Reduction Act; Survivor Benefits, Distribution Restriction and Various Other Issues Under the Retirement Equity Act of 1984.

*OMB Number:* 1545–0928.

*Regulation Project Number:* REG–124667–02.

*Abstract:* The notices referred to in this NPRM are required by statute and by state and must be provided by employers to retirement plan participants to inform participants of their rights under the plan or under the law. Failure to timely notify participant of their rights may result in loss of plan benefits.

*Current Actions:* There are no changes to this existing regulation.

*Type of Review:* Extension of currently approved collection.

*Affected Public:* Business or other for-profit.

*Estimated Total Annual Reporting Burden:* 385,000.

*Estimated Average Annual Burden Per Respondent:* 5 hours.

*Estimated Number of Respondents:* 750,000.

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: June 9, 2005.

**Allan Hopkins,**

*IRS Reports Clearance Officer.*

[FR Doc. E5–3083 Filed 6–15–05; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[REG–122450–98, REG–100276–97]**

### 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing final regulations, REG–122450–98, REG–100276–97, and REG–122450–98 (NPRM) Sections 1.860E–1(c)(4)–(10).

**DATES:** Written comments should be received on or before August 15, 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:* Financial Asset Securitization Investment Trusts; Real Estate Mortgage Investment Conduits.

*OMB Number:* 1545–1675.

*Regulation Project Number:* REG–122450–98, REG–100276–97, REG–122450–98.

*Abstract:* REG–122450–98 Sections 1.860E–1(c)(4)–(10) of the Treasury Regulations provide circumstances under which a transferor of a noneconomic residual interest in a Real Estate Mortgage Investment Conduit (REMIC) meeting the investigation, and two representation requirements may avail itself of the safe harbor by satisfying either the formula test or asset test. REG–100276–97; REG–122450–98. This regulation provides start-up and transitional rules applicable to financial asset securitization investment trust.

*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 Total Annual Reporting and/or Record Keeping Burden:* 750.

*Estimated Average Annual Burden Hours per Respondent and/or Record-keeping:* 5 hours.

*Estimated Number of Respondents and/or Record-Keeping:* 150.

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: June 9, 2005.

**Allan Hopkins,**

*IRS Reports Clearance Officer.*

[FR Doc. E5–3084 Filed 6–15–05; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Revenue Procedure 2005–26; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to notice and request for comments.

**SUMMARY:** This document contains corrections to a notice and request for comments, which was published in the **Federal Register** on Tuesday, May 31, 2005 (70 FR 31015). This notice relates to the Department of the Treasury's invitation to the general public to submit public comments on proposed and/or continuing information collections.

**FOR FURTHER INFORMATION CONTACT:** Larnice Mack, (202) 622–3179 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

#### Background

The notice and request for comments that is the subject of these corrections is required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

#### Need for Correction

As published, the comment request for Revenue Procedure 2005–26 contains errors which may prove to be misleading and are in need of clarification.

#### Correction of Publication

Accordingly, the publication of the comment request for Revenue Procedure 2005–26, which was the subject of FR Doc. E5–2720, is corrected as follows:

1. On page 31015, column 1, in the heading, the title "Proposed Collection; Comment Request for Revenue Procedure 101177–05" is corrected to read "Proposed Collection; Comment Request for Revenue Procedure 2005–26".

2. On page 31015, column 2, under the caption **SUPPLEMENTARY INFORMATION**, the language "Revenue Procedure Number: Revenue Procedure 101177–05." is corrected to read "Revenue Procedure Number: Revenue Procedure 2005–26."

**Cynthia E. Grigsby,**

*Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. E5–3085 Filed 6–15–05; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[REG–118662–98]**

### 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing final regulation, REG–118662–98 (TD 8873), New Technologies in Retirement Plans.

**DATES:** Written comments should be received on or before August 15, 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:* New Technologies in Retirement Plans.

*OMB Number:* 1545–1632.

*Regulation Project Number:* REG–118662.98.

*Abstract:* These regulations provide that certain notices and consents require in connection with distributions from retirement plans may be transmitted through electronic media. The regulations also modify the timing requirements for provision of certain distribution-related notices.

*Current Actions:* There are no change to this existing regulation.

*Type of Review:* Extension of currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 375,000.

*Estimated Time Per Respondent:* 1 hr.

*Estimated Total Hours:* 477,563.

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: June 8, 2005.

**Allan Hopkins,**

*IRS Reports Clearance Officer.*

[FR Doc. E5–3086 Filed 6–15–05; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0075]**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before July 18, 2005.

**FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT:** Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0075."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0075" in any correspondence.

**SUPPLEMENTARY INFORMATION:**

*Title:* Statement in Support of Claim, VA Form 21–4138.

*OMB Control Number:* 2900–0075.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Statements submitted by or on behalf of a claimant must contain a certification by the respondent that the information provided to VA is true and correct in support of benefits claims processed by VA. VA Form 21–4138 facilitates claims processing by providing a uniform format for the certification statement.

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 **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on January 19, 2005, at page 3105.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 188,000 hours.

*Estimated Average Burden Per Respondent:* 15 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 752,000.

Dated: June 6, 2005.

By direction of the Secretary.

**Loise Russell,**

*Director, Records Management Service.*

[FR Doc. 05–11834 Filed 6–15–05; 8:45 am]

BILLING CODE 8320–01–P

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0399]**

### Proposed Information Collection Activity: Proposed Collection; Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to this notice. This notice solicits comments on the information needed to confirm a student's continued entitlement to Restored Entitlement Program for Survivors.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before August 15, 2005.

**ADDRESSES:** Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *nancy.kessinger@vba.va.gov*. Please refer to "OMB Control No. 2900–0399" in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 273–7079 or fax (202) 275–5947.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Student Beneficiary Report " REPS (Restored Entitlement Program For Survivors), VA Forms 21–8938 and 21–8938–1.

*OMB Control Number:* 2900–0399.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* A student between the ages of 18–23 who is receiving Restored Entitlement Program for Survivors (REPS) benefits based on schoolchild status complete VA Forms 21–8938 and 21–8938–1 to certify that he or she is enroll full-time in an approved school. REPS benefit is paid to children of veterans who died in service or who died as a result of service-connected disability incurred or aggravated prior to August 13, 1981. VA uses the data collected to determine the student's eligibility for continued REPS benefits.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 1,767.

*Estimated Average Burden per Respondent:* 20 minutes.

*Frequency of Response:* Annually.

*Estimated Number of Respondents:* 5,300.

Dated: June 6, 2005.

By direction of the Secretary:

**Loise Russell,**

*Director, Records Management Service.*

[FR Doc. 05–11835 Filed 6–15–05; 8:45 am]

BILLING CODE 8320–01–P

# Corrections

Federal Register
Vol. 70, No. 115
Thursday, June 16, 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.

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 52**

**[R03–OAR–2005–PA–0013; FRL–7923–4]**

## Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NOx RACT Determinations for Seven Individual Sources

*Correction*

Proposed rule document 05–11548 was inadvertently published in the Rules and Regulations section in issue of Friday, June 10, 2005, appearing on pages 33850-33852. It should have appeared in the Proposed Rules section.

FR Doc. C5–11548 Filed 6–15–05; 8:45 am]

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**H.R. 2566/P.L. 109–14**

Surface Transportation Extension Act of 2005 (May 31, 2005; 119 Stat. 324)

**Last List May 17, 2005**

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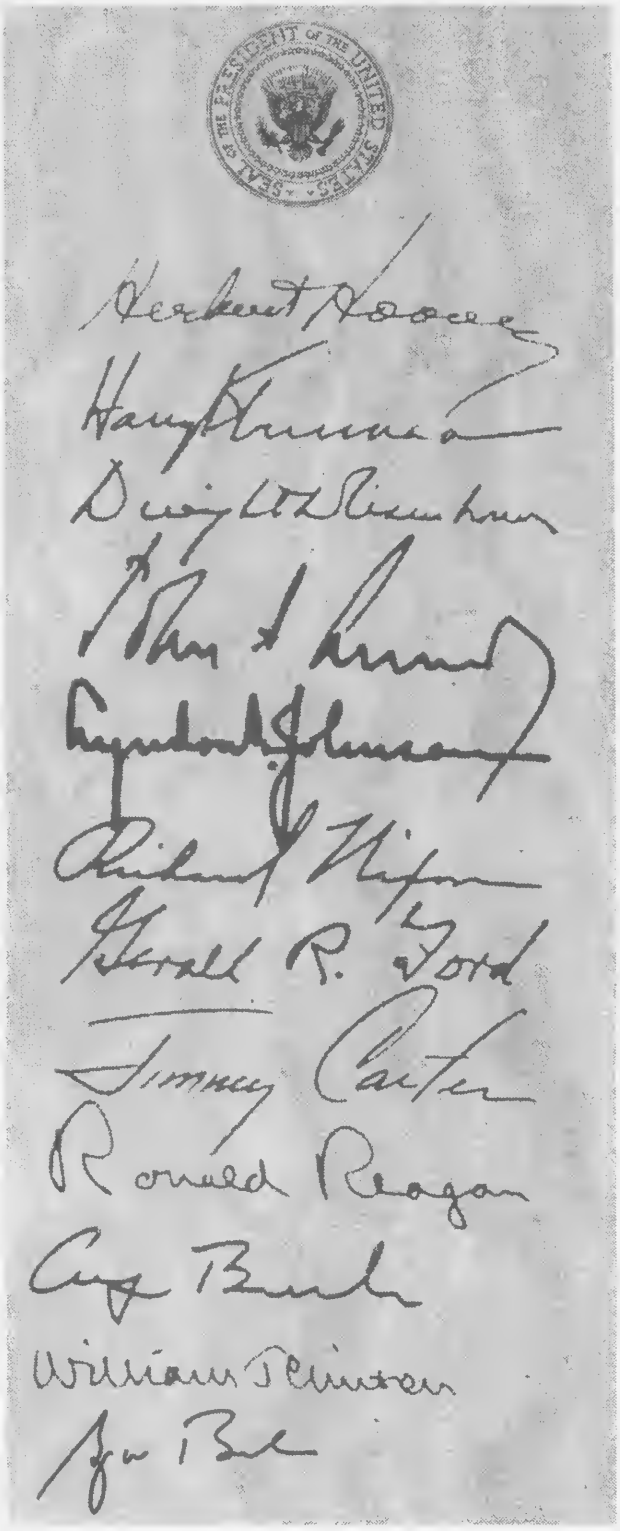


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