

regarding Ohio's request for approval of its sewage sludge management program.

### C. Regulatory Flexibility Act

Based on General Counsel Opinion 78-7 (April 18, 1978), EPA has long considered a determination to approve or deny a State Clean Water Act (CWA) program submission to constitute an adjudication because an "approval," within the meaning of the Administrative Procedure Act (APA), constitutes a "licence," which, in turn, is the project of an "adjudication." For this reason, the statutes and Executive Orders that apply to rulemaking action are not applicable here. Among these are provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* Under the RFA, whenever a Federal agency proposes or promulgates a rule under section 553 of the APA, after being required by that section or any other law to publish a general notice of proposed rulemaking, the Agency must prepare a regulatory flexibility analysis for the rule, unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. If the Agency does not certify the rule, the regulatory flexibility analysis must describe and assess the impact of a rule on small entities affected by the rule. Even if the CWA program approval were a rule subject to the RFA, the Agency would certify that approval of the State proposed CWA program would not have a significant economic impact on a substantial number of small entities. EPA's action to approve a CWA program merely recognizes that the necessary elements of the program have already been enacted as a matter of State law; it would, therefore, impose no additional obligation upon those subject to the State's program. Accordingly, the Regional Administrator would certify that this Ohio sewage sludge management program, even if a rule, would not have 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. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit

analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Today's decision includes no Federal mandates for State, local or tribal governments or the private sector. The Act excludes from the definition of a "Federal mandate" duties that arise from participation in a voluntary Federal program, except in certain cases where a "Federal intergovernmental mandate" affects an annual Federal entitlement program of \$500 million or more which are not applicable here. Ohio's request for approval of its sewage sludge management program is voluntary and imposes no Federal mandate within the meaning of the Act. Rather, by having its sewage sludge management program approved, the State will gain the authority to implement the program within its jurisdiction, in lieu of EPA, thereby eliminating duplicative State and Federal requirements. If a State chooses not to seek authorization for administration of a sewage sludge management program, regulation is left to EPA. EPA's approval of State

programs generally may reduce compliance costs for the private sector, since the State, by virtue of the approval, may now administer the program in lieu of EPA and exercise primary enforcement. Hence, owners and operators of sewage sludge management facilities or businesses generally no longer face dual Federal and State compliance requirements, thereby reducing overall compliance costs. Thus, today's decision is not subject to the requirements of sections 202 and 205 of the UMRA. The Agency recognizes that small governments may own and/or operate sewage sludge management facilities that will become subject to the requirements of an approved State sewage sludge management program. However, small governments that own and/or operate sewage sludge management facilities are already subject to the requirements in 40 CFR parts 123 and 503 and are not subject to any additional significant or unique requirements by virtue of this program approval. Once EPA authorizes a State to administer its own sewage sludge management program and any revisions to that program, these same small governments will be able to own and operate their sewage sludge management facilities or businesses under the approved State program, in lieu of the federal program. Therefore, EPA has determined that this document contains no regulatory requirements that might significantly or uniquely affect small governments.

**Authority for parts 123 and 501:** Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: November 23, 2004.

**Norman Niedergang,**

*Acting Regional Administrator, Region 5.*

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**BILLING CODE 6560-50-P**

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## FEDERAL COMMUNICATIONS COMMISSION

### Sunshine Act Meeting; Open Commission Meeting Wednesday, December 15, 2004

December 8, 2004.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, December 15, 2004, which is scheduled to commence at 9:30 a.m. in Room TW-C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	Office of Engineering and Technology .....	<i>Title:</i> Revision of Part 15 of the Commission's Rules Regarding Ultra-Wideband Transmission Systems (ET Docket No. 98-153). <i>Summary:</i> The Commission will consider a Second Report and Order and Second Memorandum Opinion and Order concerning unlicensed operation. This item responds to proposals made in the previous Notice of Proposed Rulemaking and addresses the petitions for reconsideration filed in response to the previous Memorandum Opinion and Order in this proceeding.
2	International .....	<i>Title:</i> Procedures to Govern the Use of Satellite Earth Stations on Board Vessels in the 5925-6425 MHz/3700-4200 MHz Bands and 14.0-14.5 GHz/11.7-12.2 GHz Bands (IB Docket No. 02-10). <i>Summary:</i> The Commission will consider a Report and Order establishing licensing and service rules for Earth Stations on Vessels operating in the 5925-6425 MHz/3700-4200 MHz (C-Band) and 14.0-14.5/11.7-12.2 GHz (Ku-band) frequencies.
3	Wireless Tele-Communications .....	<i>Title:</i> Amendment of Part 22 of the Commission's Rules to Benefit the Consumers of Air-Ground Telecommunications Services (WT Docket No. 03-103); Biennial Regulatory Review-Amendment of Parts 1, 22, and 90 of the Commission's Rules; Amendment of Parts 1 and 22 of the Commission's Rules to Adopt Competitive Bidding Rules for Commercial and General Aviation Air-Ground Radiotelephone Service Mutually Exclusive Applications; and Application of Verizon Airfone Inc. for Renewal of 800 MHz Air-Ground Radiotelephone License, Call Sign KNKG804. <i>Summary:</i> The Commission will consider a Report and Order and Further Notice of Proposed Rulemaking regarding commercial air-ground telecommunications service, Part 22 non-cellular Public Mobile Service rules, and general aviation air-ground radiotelephone service mutually exclusive applications. The Commission also will consider the Application of Verizon Airfone for renewal of 800 MHz Air-Ground Radiotelephone license call sign KNKG804.
4	Wireless Tele-Communications .....	<i>Title:</i> Amendment of the Commission's Rules to Facilitate the Use of Cellular Telephones and other Wireless Devices Aboard Airborne Aircraft. <i>Summary:</i> The Commission will consider a Notice of Proposed Rulemaking regarding changes to the rule prohibiting the airborne use of cellular telephones.
5	Wireline Competition .....	<i>Title:</i> Rural Health Care Support Mechanism (WC Docket No. 02-60). <i>Summary:</i> The Commission will consider a Second Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking concerning modifications to the Commission's rules to improve the effectiveness of the rural health care universal service support mechanism.
6	Wireline Competition .....	<i>Title:</i> Unbundled Access to Network Elements (WC Docket No. 04-313) and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket No. 01-338). <i>Summary:</i> The Commission will consider an Order on Remand concerning incumbent local exchange carriers' obligations to make elements of their networks available on an unbundled basis.

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418-0500; TTY 1-888-835-5322. Audio/Video coverage of the meeting will be broadcast live over the Internet from the FCC's Audio/Video Events web page at <http://www.fcc.gov/realaudio>.

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993-3100 or go to <http://www.capitolconnection.gmu.edu>.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488-5300; Fax (202) 488-5563; TTY (202) 488-5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing,

Inc. may be reached by e-mail at [FCC@BCPIWEB.com](mailto:FCC@BCPIWEB.com).

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

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## FEDERAL HOUSING FINANCE BOARD

### Sunshine Act Meeting Notice; Announcing a Closed Meeting of the Board of Directors

**TIME AND DATE:** The meeting of the Board of Directors is scheduled to begin at 10 a.m. on Wednesday, December 15, 2004.

**PLACE:** Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

**STATUS:** The entire meeting will be closed to the public.

### MATTER TO BE CONSIDERED AT THE

**MEETING:** Periodic Update of Examination Program Development and Supervisory Findings.

### CONTACT PERSON FOR MORE INFORMATION:

Shelia S. Willis, Paralegal Specialist, Office of General Counsel, by telephone at (202) 408-2876 or by electronic mail at [williss@fhfb.gov](mailto:williss@fhfb.gov).

Dated: December 9, 2004.

By the Federal Housing Finance Board.

**Mark J. Tenhundfeld,**

*General Counsel.*

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